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CONSTRUCTION AND TRANSFER OF WATER, SEWER AND  
RECYCLED WATER INFRASTRUCTURE AGREEMENT  
BETWEEN MARINA COAST WATER DISTRICT,  
EAST GARRISON PARTNERS I, LLC AND  
EAST GARRISON PUBLIC FINANCING AUTHORITY

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### Exhibits

EXHIBIT A – COUNTY RESOLUTION

EXHIBIT B – LEGAL DESCRIPTION

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# CONSTRUCTION AND TRANSFER OF WATER, SEWER AND RECYCLED WATER INFRASTRUCTURE AGREEMENT

## 1. General Requirements

This Agreement made and entered into this JUL 27 2006, by and between **Marina Coast Water District**, 11 Reservation Road, Marina, CA, 93933, hereinafter called "District", **East Garrison Partners I, LLC**, a California limited partnership, with its principal offices at 24571 Silver Cloud Ct, Suite 101, Monterey Ca 93940, hereinafter called the "Developer," and the **East Garrison Public Financing Authority**, a California joint exercise powers authority, hereinafter called the "Authority" pertains to the financing, construction and transfer of water, sewer and recycled water infrastructure.

The Developer owns and is developing a 244-acre parcel of land, to be developed in phases, all within the proposed boundaries of the Authority's Community Facilities District No. 2006-1 (East Garrison Project)("CFD No. 2006-01"), such property described in Exhibit "B" attached hereto and made a part hereof, in the County of Monterey, California, ("County") all hereafter referred to as the "Development".

CFD No. 2006-1 is being established by the Authority pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Mello-Roos Act") for the purpose, among others, of providing bond financing for all or a portion of the cost and expense of the capital facilities described in Exhibit "F" attached hereto and made a part hereof (the "CFD Financed Water District Facilities"). The CFD Financed Water District Facilities are to become the property of the District upon completion and satisfaction of other conditions prescribed by this Agreement, which shall serve as the joint community facilities Agreement required by Section 53316.2 of the Mello-Roos Act with respect to the CFD Financed Water District Facilities.

The County has approved an allocation of water and sewer capacity for the entire East Garrison Development. The total water allocated by the County to East Garrison is 470.0 AFY. However, neither the County nor the District may approve: (1) water allocations that exceed the allocations set by the Fort Ord Reuse Authority (FORA), or (2) sewer capacity established by the type and density of development as included in the FORA Consistency Determinations. The District's role in the Development is to approve the plans for, and inspect the construction of the water, sewer, and recycled water "facilities", (defined to mean those certain infrastructure improvements provided for in this Agreement and as approved by District as part of its review of Development plans), accept the transfer of the title, to maintain and operate the systems, and to bill customers for water and sewer service at rates set for the District's Ord Service Area from time to time.

The District will only serve the Development if the Developer delivers to the District a certified copy of the resolution from the County attached to this Agreement as Exhibit A, approving the allocation of water for the Development from water allocated to the County by FORA.

## 2. Design and Construction Requirements

The water, sewer, and recycled water facilities shall be designed, constructed and be operable to the District's requirements, which shall be a condition of the District's acceptance of the system facilities under this Agreement. District requirements shall include, but not be limited to the following:

- 2005 7 2 JUL
- A. Developer shall design and construct the water, sewer and recycled water system facilities in accordance with the District's most recent *Standard Plans and Specifications for Construction of Domestic Water, Sewer, and Recycled Water Facilities* (hereafter *Standards*), Construction Inspection Manual and any other applicable State Regulatory Agency requirements, whichever are most stringent. Any conflict in Development requirements shall be worked out during the plan review process. A licensed civil engineer registered in the State of California shall prepare all plans and specifications.
  - B. The Developer shall comply with the District's most recent *Procedure Guidelines and Design Requirements* (hereafter *Procedures*) and the District's *Standards* when submitting project plans and specifications to the District for review and consideration of approval. District's review shall commence after determining compliance with District's *Procedures* regarding the submittals and any other applicable State Regulatory Agency requirements, whichever are most stringent. District review of the project plans and specifications shall commence after receipt of the initial deposit (see Paragraph 2G). District may approve plans concurrent with the County's Approval.
  - C. The Developer shall comply with most recent District Code including, but not limited to, section 4.28 *Recycled Water*. More specifically, section 4.28.010 *Applicability* states that "[T]his chapter applies to publicly owned properties, to commercial, industrial and business properties, and to other such properties as may be specified from time to time by Marina Coast Water District ... " It is not the requirement of section 4.28 to require recycled water for irrigation to privately owned residential lots. Improvement plans for the Development must contain recycled water lines to serve common areas and other non-residential lot irrigation within the Development. The Developer and the District will cooperatively identify recycled water turnout location(s). The Developer will also be responsible to install the lateral lines off of each turnout. The Developer, or its successors or assignees (such as a homeowner's association) will be responsible for obtaining any and all permits that allow the use of recycled water for this Development project. This shall include, but not be limited to, complying with the California Department of Health Services and other regulatory agency requirements prior to constructing any recycled water facilities.
  - D. The District will have the sole responsibility for inspecting the construction of water, sewer and recycled water facilities and verifying that construction conforms to approved project plans and specifications. District responsibilities for inspection extends to five (5) feet from the building exterior at the point where the utility enters the structure. The District shall also have sole responsibility for inspecting special fixtures including, but not limited to, zero water use urinals, hot water recirculation systems, etc. The District will inform the Developer of required field changes and will contact the Developer and

the County regarding easements outside of publicly dedicated rights of way. The District will enter into a franchise agreement with the County for non-exclusive use within the public rights of way. Upon receipt of recorded private easements to serve the Development in accordance with the plans and specifications approved by the District, the District will quitclaim any easements not required to serve the Development and not required by the District for service to others.

- E. Limited to the time period of Developer's construction of the infrastructure and the Warranty period of such work and in accordance with the District's most recent *In-Tract Policy*, the Developer shall be responsible for replacing or repairing any existing water and sewer facilities within its project limits in order for the District to maintain service to its customers as further described in paragraph 3 *Existing Water and Sewer Infrastructure* of this Agreement, and the *In-Tract Policy*. Temporary service interruptions due to construction shall be coordinated with the District in advance.
- F. All system facilities shall be tested to meet District requirements. No system or portion thereof, including but not limited to pipes, pumps, electrical and instrumentation and control will be accepted without meeting District test requirements. The District shall have the right at any time or from time-to-time to inspect work in progress in the construction of either in-tract and out-of-tract water, recycled water and sewer infrastructure facilities or special fixtures, as describe above.
- G. Plan Review Fees. The Developer, on a phased basis, agrees to pay all fees and charges, including additional plan check fees and construction inspection fees as required by the District for all work which is Developer's obligation. These fees will be assessed at the time the fee is paid at the then-current fee schedule as approved by the District Board of Directors. The District may also require a prepaid fee to cover staff time before preliminary level or concept level plan check begins. (See *Procedures* section 100.6.2) In addition to these fees, currently a deposit of five hundred dollars (\$500.00) is required and for larger developments, a minimum two percent (2%) of the water, sewer, and recycled water infrastructure costs based on preliminary plan check submittal information and the District's Bond Worksheet prepared by the Developer's Engineer (See *Procedures* section 200.3), if not already paid, before undertaking a plan review of the proposed plans for the water, recycled water and sewer facilities. If the District Engineer determines consultant assistance is required for plan check review or portion thereof, then the Developer agrees to prepay the additional plan check fees to the extent that there are not funds available as provided above. The District shall seek the Developer's written approval for any costs in excess of this amount, for which approval shall not be unreasonably withheld. Upon the execution of this Agreement by both parties, the Developer shall deposit with the District the applicable administration and plan check fees. Any surplus fees shall be returned to the Developer, or at Developer's request, used to pay subsequent fees, e.g., construction inspection fees.
- H. Construction Inspection Fees. On a phased basis, the District shall require the construction inspection fee before undertaking a construction inspection review of the proposed water, recycled water and sewer facilities. As a condition precedent to the District's obligation to undertake a construction inspection review of the proposed water,

recycled water and sewer facilities, the Developer shall provide to the District the construction inspection fee, which is currently five hundred dollars (\$500.00) per unit plus three percent (3%) of water, recycled water and sewer facilities construction costs, pursuant to Developer's Engineer's estimate. (See *Procedures* section 200.3.2) Any surplus inspection fees shall be returned to Developer.

1. The Developer will submit actual construction bid data. The submitted data shall be in a unit cost format and shall be certified by both the contractor and the Developer as being the actual costs incurred in furnishing and installing the water, sewer and recycled facilities. The water, sewer and recycled construction costs must be reviewed and accepted by the District. The District shall maintain all such information as confidential and shall not disclose the same to any third party.

### 3. Existing Water and Sewer Infrastructure

The Developer shall comply with the District's *In-Tract Policy* regarding any water, reclaimed water and sewer mains or appurtenances within the Development. Developer, or its successors or assignees, shall assume all responsibility, and will hold District harmless, for all water/sewer infrastructure within the Development boundaries that will be removed or abandoned by Developer. Abandonment-in-place requires written approval by the District. The Developer is responsible to repair or replace water, recycled water and sewer facilities within its project limits during the construction of the Development which are for the exclusive use of the Development.

For Developments that use existing infrastructure as described in the *In-Tract Policy* (reference Policy no. 2), the Developer shall provide a completed, signed Utility Agreement with the District that provides anticipated higher costs of the remaining older system left in-place. The Utility Agreement shall include detailed language regarding form of payment and date certain for receipt of payment. Acceptable forms of payment include payment bond, irrevocable letter of credit, cash deposit, or construction "set-aside" loan. Developments that do not use existing infrastructure as described in the *In-Tract Policy* will follow Policy no. 1 of that document. At the time this Agreement was entered into, the Developer does not anticipate use of any existing in-tract infrastructure. Therefore, this paragraph would not apply. However, should that change, as design progresses, the requirements of this paragraph shall be enforced as described in the *In-Tract Policy*, Developer will follow Policy no.1 of that document.

As part of District review, District may require Developer to design and construct over-sized infrastructure to accommodate water, recycled water and sewer service to areas other than the Development. All costs and expenses relating to any installation or upsizing of facilities which are for any third party users shall be the sole obligation of the District or the third party(s) user and will not delay approvals required from the District. Any such obligation may be satisfied by a reimbursement agreement or other agreement reasonably satisfactory to Developer. Other than pipeline or related appurtenances that are repaired or replaced by the Developer, if the Developer repairs or replaces facilities that benefit properties other than the Development, the District may provide a portion of the replacement costs through a cost sharing Agreement or other Agreement acceptable to the District and the Developer, or in accordance with the then-current District payment structure required of all new developments, or as determined pursuant to the dispute

resolution procedure in paragraph 19 *Dispute Resolution Procedures* if the parties cannot agree.

#### 4. District to Serve Development

Subject to District's rules, regulations, policies and ordinances that are now in effect and as hereafter adopted and modified, provided that Developer complies with the provisions of this Agreement, District will, after acceptance of the Deed conveying the water and sewer system and final Board Acceptance of the conveyance of the water, recycled water, and sewer system facilities and final Board Acceptance of the system (see *Procedures* section 300.25), provide water, recycled water and sewer service to the Development as shown on Exhibit C and will bill and serve them in accordance with all rules, regulations, policies and ordinances of the District now in existence and as hereafter adopted and modified. The bill will include, but not be limited to, the prepayment of applicable meter fees and charges, cross connection charges, and other applicable fees and charges approved pursuant to the agreement with FORA for service on the former Fort Ord. Once the applicable fees and charges are made, the District will immediately begin service with the installation of the water meter(s).

#### 5. Capacity Charge

In July 2005, the District Board of Directors approved a capacity charge for water and sewer services in the amount of \$2,800 per EDU and \$1,000 per EDU (both in 2005 dollars) respectively. These charges are due at the date of building permit issuance. The District Board of Directors reserves its right to review and revise these charges from time to time; subject to applicable law and the District's approval procedures for such charges.

Exhibit E is a notice that will be provided to the homeowners informing them of the need for and amount of water and sewer surcharge that will be included on their District customer bills. The Developer hereby agrees that the Notice to Homeowner(s) informing them of the Water and Sewer surcharge adopted by the District shall either be contained in the Department of Real Estate Public Report or a letter from the Developer to each prospective property buyer. The Developer agrees to provide this notice to each prospective property buyer prior to the execution of any contract to purchase property in the Development. The Developer will submit the text and format of this Notice to the General Manager of the Marina Coast Water District for review and approval prior to inclusion in the Real estate Public Report or in a letter from the Developer to each prospective property buyer.

#### 6. Water Augmentation Project

In October 2004, the District Board of Directors certified its Regional Urban Water Augmentation Project Environmental Impact Report for a Water Augmentation Project which will provide additional water to the former Fort Ord. Alternatives included a 3,000 AFY recycled water project, a 3,000 AFY desalination project, or a 3,000 AFY hybrid project that includes a 1,500 AFY desalination plant and a 1,500 AFY recycled water project. In June 2005, the District and FORA Board of Directors approved the Hybrid Alternative and directed staff to initiate the scoping process. The selection of the Hybrid Alternative will result in the availability of recycled water. Therefore, improvement plans must be compatible with and anticipate the

availability of a non-potable water supply to serve common area open spaces within the Development, as permitted by applicable laws and regulations. In the event that an alternative water supply does satisfy the foregoing requirements, Developer and District will cooperatively identify recycled water turnout location(s).

Owner or its successors or assignees (such as a homeowner's association) will be responsible for obtaining any and all permits that allow the use of recycled water in the Development, and agrees to take recycled water for non-potable use at the time it becomes available. The District shall establish a separate cost for recycled water in the same manner that it establishes the cost of potable water. Developer or its successors or assignees agrees that the District-established cost will be paid by the recycled water customers.

## 7. Licensed Contractor

The Developer, or his authorized representative (contractor) performing the work, shall be licensed under the provisions of the Business and Professions Code of the State of California to do the type of work called for in the proposed project. District reserves the right to waive this requirement at its discretion where permitted under state statute.

The Developer, or his contractor, shall be skilled and regularly engaged in the installation of water and sewer systems. The District may request evidence that the constructing party has satisfactorily installed other projects of like magnitude or comparable difficulty. It is the intent of the District that a contractor who furnishes satisfactory evidence of the qualifications to do the work performs the work.

## 8. Permits, Easements, and Related Costs

Except as otherwise provided in this Agreement, the Developer shall obtain all necessary local, county and state permits (including encroachment permits) and conform to requirements thereof and shall arrange for inspection and pay any necessary fees and deposits legally imposed by the local jurisdiction, county or state. Developer shall obtain all permanent and temporary easements, for other than public rights of way, necessary for ingress and egress to and from the facilities for the purpose of installation, operation, maintenance and removal of said facilities (pipeline easements shall be 20 feet in width or as otherwise agreed by the District Engineer and Developer), and said easements shall be in a form reasonably approved by the District and shall be submitted/conveyed to the District in recordable form prior to District acceptance of the facilities

## 9. Final Inspection and Reimbursement of District Costs

Upon completion of construction of the water, sewer and recycled water system facilities, or portion thereof, it shall be finally inspected and approved as completed, only with the written concurrence of the District Engineer, which shall be a condition precedent to District's obligations hereunder. In accordance with the provisions of this Agreement, Developer shall be responsible for all costs incurred by the District that are associated with interim and final inspection, completion, additional construction, and testing of the system facilities as needed or

required for the approval of the water, sewer and recycled water system facilities by the District and any other regulatory agency having jurisdiction (such as the State Department of Health Services or California Regional Water Quality Control Board), subject to the limitations set forth in Paragraph 2 *Design and Construction Requirements*, above. Within the warranty period the Developer shall reimburse District for costs to correct any damages to on-site or off-site facilities related to the construction of the Development. Developer shall remit to District prior to the conveyance of the water, sewer and recycled water system facilities to the District, payment of reimbursable costs, if any, incurred for inspection, administration and plan review, over and above deposits previously paid to the District in accordance with the terms of this Agreement, or if there is a surplus in such accounts or any refunds due Developer, then District shall return to Developer the amount of such surplus or refunds.

Upon completion of construction of the CFD Financed Water District Facilities, as evidenced by the written concurrence of the District Engineer as provided above in this Paragraph 9, the Developer may submit a written request to the Authority for payment of the Developer's actual cost and related incidental expense of constructing such completed CFD Financed Water District Facilities. The procedures for submission and processing such payment requests shall be established by separate written agreement between the Developer and the Authority, and except for providing the Authority with a copy of the written concurrence of the District Engineer referred to in the foregoing sentence, the District shall have no responsibility for or participation in such payment request procedures or such payments.

This Agreement shall remain in effect until the warranty period has ended as described in paragraph 15 *Warranties*.

#### 10. Underground Obstructions

The District does not assume any responsibility or liability whatsoever for Developer's (or Developer's contractor's) acts and omissions during the construction of the water, sewer and recycled water facilities. Any location of underground utility lines or surface obstructions given to the Developer or placed on the project drawing by District are for the Developer's convenience, and must be verified by Developer in the field. The District assumes no responsibility for the sufficiency or accuracy of such information, lines, or obstructions.

#### 11. As-Built Plans, Specifications, Values, Etc.

Developer shall, as a condition of District's acceptance of the water, sewer and recycled water system facilities and its obligations under this Agreement, provide to the District in accordance with Section 400.13 of the *Procedures* which generally require:

- A. A complete and final set of vellums and AutoCAD digitized files of the improvement plans which show the water, sewer and recycled water system facilities, and a hardcopy and electronic copy of the specifications, and any contract documents used for the construction of the water, sewer and recycled water system facilities. Electronic copies of specifications and other documents not including engineering drawings shall be in Adobe Acrobat format.

- B. A complete, detailed statement of account, the form and content to be provided by the District at the time of conveyance, of the amounts expended for the installation and construction of the system facilities, with values applicable to the various components thereof, together with a list of any other materials and equipment (and their values) being transferred.
- C. Any other documents required by Section 400.13.

## 12. Indemnity, Insurance, and Sureties

A. Insurance and Liability - The Developer agrees to have its contractor provide the indemnity, defense, and save harmless agreement to the District, its officers, agents, and employees as provided in Exhibit D, attached hereto and hereby incorporated by reference. Insurance policies shall provide that such insurance is primary insurance. Coverages described in Exhibit D shall be maintained through the term of this Agreement, and the Developer's contractor shall file with the District prior to the execution of this Agreement, and as policy renewals occur, a Certificate of Insurance evidencing that the insurance coverages required herein have been obtained and are currently in effect.

B. Performance and Payment Surety - Developer or its authorized representative to do the work (contractor) shall furnish the District with a surety in the amount of the District's estimate of the project construction cost to secure the completion of and payment for the work. The surety shall be in a form satisfactory to the District such as a performance and payment bond, irrevocable letter of credit, cash deposit, or construction "set-aside" letter. Such surety may include evidence that it was submitted to another public agency of an equivalent or greater amount covering the work to be done under this Agreement.

C. Submittal of Insurance Certificates and Surety - The required insurance certificates shall be delivered prior to commencement of construction and performance, and payment surety shall be delivered to the District prior to District approval of plans and specifications.

## 13. Transfer of System Facilities to District after Completion

Developer will execute and obtain all signatures of any other parties having any interest (including any Deed of Trust), and deliver a conveyance satisfactory in form and content to District. This conveyance shall transfer absolute and unencumbered ownership of the completed water, sewer and recycled water system facilities to the District together with all real property, interest in real property, easements and rights-of-ways (including any off-site easements or real property) other than those contained in public rights of way, and all overlying and other underground water rights that are a part of, appurtenant to, or belonging to any parcels now or hereafter served by the water, sewer and recycled water system facilities that are necessary or appropriate in the opinion of the District for the ownership and operation of the system. Provided all other conditions set forth herein are satisfied, the District shall accept the

conveyance. All costs of construction of the system facilities, for which the Developer is responsible, shall have been paid for by Developer, the time for filing mechanics liens shall have expired (or Developer shall provide other security to protect against liens), and the title to the water, sewer and recycled water system facilities and the interests in real property transferred shall be good, clear and marketable title, free and clear of all encumbrances, liens or charges. Developer shall pay costs of title insurance deemed necessary by the District. All construction, including final inspection punch list items must be completed prior to transfer, and the transfer shall not be completed until the conveyance transferring the water, sewer and recycled water system facilities has been formally accepted by the District. After transfer, the District shall own and be free in every respect to operate and manage the water, sewer and recycled water system facilities and to expand or improve, or interconnect with adjacent facilities, as it deems appropriate.

#### 14. Developer Assistance

Developer shall, both before and after the transfer, secure and provide any information or data reasonably needed by District to take over the ownership, operation and maintenance of the system facilities.

#### 15. Warranties

Developer hereby warrants that as of the time of the District's acceptance of the conveyance of the water, sewer and recycled system facilities (or when Developer thereafter completes the installation of any works or components subsequently installed, repaired, or replaced) the water, sewer and recycled system facilities and all components thereof, will be in satisfactory working order and quality; and that the water, sewer and recycled systems facilities and all components thereof have been constructed and installed in compliance with specifications and as-built plans being provided to the District, and in accordance with applicable requirements of any governmental agency having jurisdiction. Developer also warrants that as of the time of the District's acceptance of the conveyance of the water, sewer and recycled water system facilities (or when Developer thereafter completes the installation of any works or components subsequently installed, repaired, or replaced) the system facilities will operate in good and sufficient manner for the purpose intended for one (1) year after the date of acceptance (see *Procedures* section 300.24), or 180-days from the date new facilities are subsequently re-installed, repaired, or replaced (hereafter *replacement facilities*), whichever is later and the Developer shall indemnify District for any costs or expenses (including District's own labor costs) incurred by reason of failure, malfunction, replacements, repairs or any other expenses incurred by District during the one (1) year warranty period or 180-days for *replacement facilities*, whichever is later.

Developer shall furnish the District with a Bond (or other instrument satisfactory to the District) in the amount of twenty percent (20%) of the actual construction costs to protect the District against any failure of the work due to faulty materials, poor workmanship or defective equipment within a period of one (1) year following the date of acceptance or 180-days for *replacement facilities*, whichever is later.

## 16. No Water, Recycled Water and Sewer Service Prior to Completion and Transfer

The Developer shall not allow any occupant or person to commence operations or use of any part of the water, recycled water and sewer system facilities within the Development prior to the transfer and acceptance by the District of the water, sewer and recycled system facilities (or portion thereof) without the express written consent of the District. Such consent will normally not be given, and without limiting in any way District's right to refuse such consent, District may impose conditions or restrictions upon any consent to such prior service, including but not limited to the posting of satisfactory surety to assure the completion and transfer of the water, sewer and recycled system facilities within a period of time specified by the District. District recognizes and acknowledges that the Development, and hence the water, sewer and recycled system facilities, will be built and shall be accepted and transferred in multiple phases. Notwithstanding any of the foregoing, Developer may use the sewer, water and recycled system facilities before they are accepted for fire protection and construction purposes in all phases, subject to satisfaction of applicable testing.

The only exception to this paragraph is East Garrison Partners I existing "Vision Center," new sales office, and model homes. Use of those facilities shall not change and be limited to East Garrison Partners I until the water, reclaimed water and sewer system is accepted by the District.

## 17. Performance

Developer agrees to promptly design and construct the water and sewer and recycled water system and to, in phase, transfer the same to the District in accordance with the terms of this Agreement. If construction of the water and sewer and recycled water system facilities of the Development has not been completed and accepted by District within twenty four (24) months from the date of execution of this Agreement (such date may be extended for delays beyond Developer's control, but in no event shall such delay exceed twelve (12) additional months), the District shall have the option to terminate this Agreement. If construction on any phase is not completed within twenty four months or as extended as provided above, then an Amendment to this Agreement will be necessary to address each such phase. Subsequent phases also may at District's discretion be addressed by Amendment(s) to this Agreement.

## 18. Assignment

Neither this Agreement nor any of the Developer's rights or District's obligations under it shall be transferable or assignable without the express written consent of the other party, but in the event of any assignment, all terms, conditions and obligations herein shall be binding upon the assignee. Notwithstanding the foregoing and exclusive of any Developer rebates, reimbursements, etc., the rights to water, recycled water and sewer service shall automatically be deemed assigned to each homeowner upon acquisition of his/her residential unit in the Development, and the obligations of the Developer relating to recycled water facilities, use and approvals will become the obligation of any successors or assignees (such as a homeowners association).

## 19. Dispute Resolution Procedure

If any dispute arises between the parties as to the proper interpretation, application or enforcement of this Agreement, the parties shall first seek to resolve the dispute in accordance with the terms of this paragraph, and if unsuccessful proceed to arbitration.

- A. If any dispute arises, the parties shall first meet and confer in an attempt to resolve the matter between themselves. Each party shall make all reasonable efforts to provide to the other party with all the information that the party has in its possession that is relevant to the dispute, so that both parties have all available information upon which to base a decision.
- B. If the dispute cannot be negotiated between the parties, the matter shall first be brought to the attention of the District's Board of Directors who may seek to intervene in the negotiation or may direct staff to seek arbitration. In the case of arbitration, the parties shall jointly select a single arbiter, or, if the parties are unable to agree, they shall each select an arbiter and the matter shall be resolved by two arbiters. The two arbiters may, if they deem it appropriate and warranted and after consultation with the parties, themselves select a third arbiter. Any person selected as an arbiter shall be a qualified professional with expertise in the area that is subject of the dispute, unless the parties otherwise agree. Before commencement of the arbitration, the parties may agree upon procedures for the arbitration; however, if the parties are unable to agree, then the arbitration shall be conducted in accordance with Code of Civil Procedure, Sections 1280, et seq., and to the extent that procedural issues are not there resolved, in accordance with the rules of American Arbitration Association. The decision of the arbiter or arbiters shall be binding. Discovery shall be available to the parties pursuant to Code of Civil Procedure, Section 1283.05.
- C. If, for any reason outside the control of a party requesting, in writing, the resolution of a dispute under this Agreement, a dispute remains unresolved 61 days after delivery of the request to the other party, the party requesting resolution of the dispute may file suit for legal or equitable relief, including specific performance, if appropriate.
- D. The prevailing party in any Dispute Resolution shall be entitled to receive from the other party its costs and outside fees as required to prepare for and attend the Dispute Resolution meeting(s). The phrase "prevailing party" shall mean the party who receives substantially the relief desired whether by settlement, dismissal, summary judgment, or otherwise.

## 20. Waiver Of Rights

Any waiver, at any time, by either party hereto, of its rights with respect to a default or any other matter pertaining to this Agreement shall not be deemed a waiver with respect to any other default or matter. None of the covenants or other provisions in this Agreement can be waived except by written consent of the waiving party.

## 21. Notices

All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered, or mailed by certified mail, return receipt requested, or delivered by reliable overnight courier, to the respective party as follows:

<b>To District:</b>	Marina Coast Water District Attn: Marc A. Lucca, General Manager 11 Reservation Road Marina, California 93933 (831) 384-6131 fax (831) 384-2479
<b>To Developer:</b>	East Garrison Partners I Attn: Keith Mc Coy 24571 Silver Cloud Ct, Suite 101 Monterey, CA 93940 (831) 647-2446 fax (831) 647-0446
<b>To Authority:</b>	East Garrison Public Financing Authority c/o Monterey County Resources Management Authority Office of Housing & Redevelopment 168 West Alisal Street Salinas, CA 93901 (831) 755-5390 fax (831) 755-5398 Attn: Director of Housing & Redevelopment

The address to which notice may be sent may be changed by written notification of each party to the other as above provided.

## 22. Severability

If any portion or provision of this Agreement is found to be contrary to law or policy of the law or unenforceable in a court of competent jurisdiction, then the portion so found shall be null and void, but all other portions of the Agreement shall remain in full force and effect.

## 23. Paragraph Headings

Paragraph headings are for convenience only and are not to be construed as limiting or amplifying the terms of this Agreement in any way.

## 24. Successors and Assignees

This Agreement shall be binding on and benefit the assignees or successors to this Agreement in the same manner as the original parties hereto.

## 25. Integrated Agreement

This Agreement integrates and supersedes all prior and contemporaneous Agreements and understandings concerning the subject matter herein. This Agreement may be changed only by written amendment approved by all the parties' signatures hereto.

## 26. Negotiated Agreement

This Agreement has been arrived at through negotiation between the parties. Neither party is deemed the party that prepared the Agreement within the meaning of Civil Code Section 1654.

## 27. Attorneys Fees

In the event of arbitration or litigation proceedings to enforce or interpret this Agreement, the prevailing party shall be entitled to reasonable and actual attorneys' fees and costs, including the costs and fees of experts engaged for the proceedings, in addition to any other relief granted. A party who incurs fees or costs in enforcing a judgment or arbitration award on this Agreement shall be entitled to collect such fees and costs from the party against whom the judgment is entered, including all fees and costs for post-judgment or post-award collection activities. The parties hereto waive the benefits of the Code of Civil Procedure Section 685.080. The parties specifically intend and agree that this provision shall survive any judgment on this Agreement and shall not be extinguished by merger with the judgment or arbitration award. The phrase "prevailing party" shall include a party who receives substantially the relief desired, whether by settlement, dismissal, summary judgment, or otherwise.

## 28. Exhibits

All exhibits referred to in this Agreement and attached to this Agreement are incorporated in this Agreement by reference.

## 29. Disclaimer/Indemnity Regarding Public Works

District has not determined whether the project would be considered a "Public Works" project for the purposes of California law, and makes no warranties or representations to Developer about whether the project would be considered a "Public Works" project. Developer is aware that if the project is considered a "Public Works" project, then Developer would have to pay "prevailing wages" under California Labor Code section 1771. If Developer fails to pay such prevailing wages, Developer acknowledges that it will be liable to, among other things, pay any shortfall owed as well as any penalties that might be assessed for failure to comply with the law. If Developer does not pay prevailing wages, and an action or proceeding of any kind or nature is brought against the District based on such failure, Developer will defend and indemnify District in the action or proceeding. District agrees to reasonably cooperate and assist Developer in any the defense of any such action.

### 30. No Third Party Beneficiaries

There are no intended third party beneficiaries to this Agreement.

### 31. Compliance with Laws

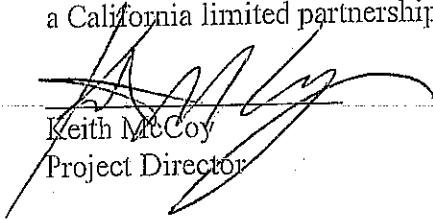
Developer will comply with all laws, rules and regulations in carrying out its obligations under this Agreement.

### 32. Counterparts

This Agreement may be executed in counterparts, and each fully executed counterpart shall be deemed an original document.

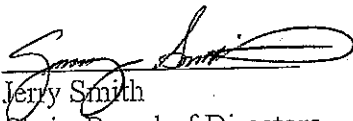
Signature Page

By: EAST GARRISON PARTNERS I, LLC  
a California limited partnership




Keith McCoy  
Project Director

By: EAST GARRISON PUBLIC FINANCING AUTHORITY  
a California joint exercise of powers authority



Jerry Smith  
Chair, Board of Directors

By: MARINA COAST WATER DISTRICT



Marc A. Lucca, P.E.  
General Manager



EXHIBIT A

COUNTY RESOLUTION

**Board of Directors of the  
East Garrison Public Financing Authority  
County of Monterey, State of California**

**Agreement No. A-10456**

Approve and authorize the Chair to sign an Infrastructure )  
 Agreement among the East Garrison Public Financing )  
 Authority, the Marina Coast Water District, and East )  
 Garrison Partners I, LLC for financing and construction of )  
 water, sewer, and recycled water improvements related to )  
 the East Garrison development project. )

Upon motion of Supervisor Calcagno, seconded by Supervisor Armenta, and carried by those members present the Board of Directors of the East Garrison Public Financing Authority hereby approves and authorizes the Chair to sign an Infrastructure Agreement among the East Garrison Public Financing Authority, the Marina Coast Water District, and East Garrison Partners I, LLC for financing and construction of water, sewer, and recycled water improvements related to the East Garrison development project.

PASSED AND ADOPTED on this 16<sup>th</sup> day of May 2006, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Lindley and Smith

NOES: None

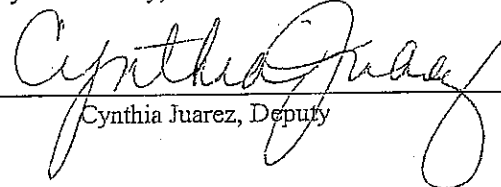
ABSENT: Supervisor Potter

I, Lew C. Bauman, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof Minute Book 73, on May 16, 2006.

Dated: May 17, 2006

Lew C. Bauman, Clerk of the Board of Supervisor,  
County of Monterey, State of California.

By

  
Cynthia Juarez, Deputy

**EXHIBIT B**

**LEGAL DESCRIPTION**

LEGAL DESCRIPTION OF THE SITE

**LEGAL DESCRIPTION  
BEING A PORTION OF THE EAST GARRISON  
OF FORT ORD MILITARY RESERVATION  
MONTEREY COUNTY, CALIFORNIA**

CERTAIN REAL PROPERTY SITUATE IN MONTEREY CITY LANDS TRACT NO. 1,  
COUNTY OF MONTEREY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 1, AS SAID PARCEL 1 IS SHOWN AND SO  
DESIGNATED ON THAT CERTAIN RECORD OF SURVEY RECORDED JUNE 26, 2000,  
IN VOLUME 23 OF SURVEYS AT PAGE 104, IN THE OFFICE OF THE COUNTY  
RECORDER OF MONTEREY COUNTY, MORE PARTICULARLY DESCRIBED AS  
FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERN LINE OF SAID PARCEL 1, SAID  
POINT BEING THE SOUTHEASTERN TERMINUS OF THAT CERTAIN COURSE  
DESIGNATED AS "(SOUTH 57°53'16" EAST) (1,442.38 FEET)" ON SAID RECORD OF  
SURVEY:

THENCE, FROM SAID POINT OF BEGINNING, ALONG SAID NORTHEASTERN LINE  
AND SOUTHEASTERN LINE OF SAID PARCEL 1, THE FOLLOWING NINE (9)  
COURSES:

- 1) NORTH 86°10'27" EAST 647.59 FEET,
- 2) SOUTH 50°06'58" EAST 317.97 FEET,
- 3) SOUTH 74°46'08" EAST 287.64 FEET,
- 4) SOUTH 58°35'42" EAST 324.17 FEET,
- 5) SOUTH 40°05'11" EAST 697.82 FEET,
- 6) SOUTH 27°33'51" EAST 478.75 FEET,
- 7) SOUTH 09°43'24" EAST 277.22 FEET,
- 8) SOUTH 38°47'16" WEST 464.82 FEET AND
- 9) SOUTH 36°27'16" WEST 553.37 FEET;

THENCE, LEAVING SAID SOUTHEASTERN LINE, SOUTH 73°07'44" WEST 50.80 FEET;

THENCE, NORTH 08°08'06" EAST 62.52 FEET; THENCE, NORTH 05°15'27" WEST 94.71 FEET;

THENCE, ALONG THE ARC OF A TANGENT 115.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 73°21'05", AN ARC DISTANCE OF 147.23 FEET; THENCE, NORTH 78°36'32" WEST 632.84 FEET;

THENCE, SOUTH 86°20'31" WEST 521.93 FEET;

THENCE, ALONG THE ARC OF A TANGENT 150.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 71°15'51", AN ARC DISTANCE OF 186.57 FEET;

THENCE, NORTH 22°23'38" WEST 71.92 FEET TO A POINT ON THE WESTERN LINE OF PARCEL 17, AS SAID PARCEL 17 IS SHOWN AND SO DESIGNATED ON THAT CERTAIN RECORD OF SURVEY, RECORDED JANUARY 31, 1997, IN VOLUME 20 OF SURVEY MAPS AT PAGE 110, IN SAID OFFICE OF THE COUNTY RECORDER OF MONTEREY COUNTY;

THENCE, ALONG SAID WESTERN LINE, THE FOLLOWING THREE (3) COURSES:

- 1) ALONG THE ARC OF NON-TANGENT 230.00 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 54°30'22" EAST, THROUGH A CENTRAL ANGLE OF 10°28'32", AN ARC DISTANCE OF 42.05 FEET,
- 2) NORTH 45°58'10" EAST 276.86 FEET, AND
- 3) ALONG THE ARC OF A TANGENT 970.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 00°32'15", AN ARC DISTANCE OF 9.10 FEET TO A POINT ON THE SOUTHERN LINE OF PARCEL 11, AS SAID PARCEL 11 IS SHOWN AND SO DESIGNATED ON SAID RECORD OF SURVEY (20 SURVEYS 110);

THENCE, ALONG SAID SOUTHERN LINE AND WESTERN AND NORTHERN LINES OF SAID PARCEL 11 (20 SURVEYS 110) THE FOLLOWING SEVENTEEN (17) COURSES:

- 1) NORTH 47°43'00" WEST 58.68 FEET,
- 2) ALONG THE ARC OF A TANGENT 45.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE 38°38'00", AN ARC DISTANCE OF 30.34 FEET,
- 3) ALONG THE ARC OF A COMPOUND 570.00 FOOT RADIUS CURVE TO THE LEFT, FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 03°39'00" WEST, THROUGH A CENTRAL ANGLE OF 14°16'00", AN ARC DISTANCE OF 141.93 FEET,

- 4) ALONG THE ARC OF A REVERSE 580.00 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH  $10^{\circ}37'00''$  WEST, THROUGH A CENTRAL ANGLE OF  $19^{\circ}59'30''$ , AN ARC DISTANCE OF 202.37 FEET,
- 5) ALONG THE ARC OF A REVERSE 1,220.00 FOOT RADIUS CURVE TO THE LEFT, FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH  $09^{\circ}22'30''$  WEST, THROUGH A CENTRAL ANGLE OF  $03^{\circ}42'40''$ , AN ARC DISTANCE OF 79.02 FEET,
- 6) NORTH  $84^{\circ}20'10''$  WEST 842.92 FEET,
- 7) ALONG THE ARC A TANGENT 1,970.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF  $08^{\circ}42'50''$ , AN ARC DISTANCE OF 299.61 FEET,
- 8) SOUTH  $86^{\circ}57'00''$  WEST 212.93 FEET,
- 9) ALONG THE ARC OF A TANGENT 355.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF  $29^{\circ}19'10''$ , AN ARC DISTANCE OF 181.66 FEET,
- 10) NORTH  $63^{\circ}43'50''$  WEST 166.36 FEET,
- 11) ALONG THE ARC OF A TANGENT 320.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF  $44^{\circ}56'30''$ , AN ARC DISTANCE OF 251.00 FEET,
- 12) ALONG THE ARC OF A REVERSE 1,030.00 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH  $18^{\circ}40'20''$  WEST, THROUGH A CENTRAL ANGLE OF  $06^{\circ}03'10''$ , AN ARC DISTANCE OF 108.81 FEET,
- 13) SOUTH  $77^{\circ}22'50''$  WEST 292.82 FEET,
- 14) ALONG THE ARC OF A TANGENT 370.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF  $09^{\circ}50'40''$ , AN ARC DISTANCE OF 63.57 FEET,
- 15) ALONG THE ARC OF A REVERSE 445.00 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH  $22^{\circ}27'50''$  WEST, THROUGH A CENTRAL ANGLE OF  $33^{\circ}08'00''$ , AN ARC DISTANCE OF 257.34 FEET,
- 16) NORTH  $10^{\circ}40'10''$  EAST 60.00 FEET, AND

- 17) ALONG THE ARC OF A NON-TANGENT 385.00 FOOT RADIUS CURVE THE LEFT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH  $10^{\circ}40'10''$  EAST, THROUGH A CENTRAL ANGLE OF  $13^{\circ}57'59''$ , AN ARC DISTANCE OF 93.85 FEET TO A POINT ON THE WESTERN LINE OF SAID PARCEL 12, AS SAID PARCEL 12 IS SHOWN AND SO DESIGNATED ON SAID RECORD OF SURVEY (20 SURVEYS 110);

THENCE, ALONG SAID WESTERN LINE, THE FOLLOWING ELEVEN (11) COURSES:

- 1) NORTH  $05^{\circ}46'10''$  WEST 243.25 FEET,
- 2) ALONG THE ARC OF A TANGENT 530.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF  $06^{\circ}12'50''$ , AN ARC DISTANCE OF 57.48 FEET,
- 3) NORTH  $00^{\circ}26'40''$  EAST 123.80 FEET,
- 4) ALONG THE ARC OF A TANGENT 5,030.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF  $00^{\circ}40'40''$ , AN ARC DISTANCE OF 59.50 FEET,
- 5) NORTH  $01^{\circ}07'20''$  EAST 371.18 FEET,
- 6) ALONG THE ARC OF A TANGENT 90.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF  $53^{\circ}27'20''$ , AN ARC DISTANCE OF 83.97 FEET,
- 7) NORTH  $52^{\circ}20'00''$  WEST 57.65 FEET,
- 8) ALONG THE ARC OF A TANGENT 140.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF  $82^{\circ}47'00''$ , AN ARC DISTANCE OF 202.28 FEET,
- 9) NORTH  $30^{\circ}27'00''$  EAST 134.37 FEET,
- 10) ALONG THE ARC OF A TANGENT 170.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF  $89^{\circ}07'10''$ , AN ARC DISTANCE OF 264.42 FEET, AND
- 11) NORTH  $58^{\circ}40'10''$  WEST 70.02 FEET TO A POINT ON THE SOUTHERN LINE OF PARCEL 10, AS SAID PARCEL 10 IS SHOWN AND SO DESIGNATED ON SAID RECORD OF SURVEY (20 SURVEYS 110);

THENCE, ALONG SAID SOUTHERN LINE, NORTH  $85^{\circ}01'10''$  WEST 480.03 FEET;

THENCE, LEAVING SAID SOUTHERN LINE, NORTH  $32^{\circ}14'08''$  EAST 1,772.68 FEET TO A POINT ON SAID NORTHEASTERN LINE OF PARCEL 1(23 SURVEYS 104);

THENCE, ALONG SAID NORTHEASTERN LINE, THE FOLLOWING SEVEN (7) COURSES:

- 1) SOUTH 57°45'52" EAST 40.03 FEET,
- 2) NORTH 00°40'37" WEST 73.68 FEET,
- 3) SOUTH 56°04'56" EAST 225.68 FEET,
- 4) SOUTH 36°20'16" EAST 39.45 FEET,
- 5) SOUTH 57°36'50" EAST 1,135.76 FEET,
- 6) SOUTH 21°35'29" WEST 41.64 FEET, AND
- 7) SOUTH 57°53'16" EAST 1442.38 FEET TO SAID POINT OF BEGINNING.

CONTAINING 244.43 ACRES MORE OR LESS.

ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION, AND BY THIS REFERENCE MADE A PART HEREOF.

**END OF DESCRIPTION**

EXHIBIT C  
MAP OF DEVELOPMENT

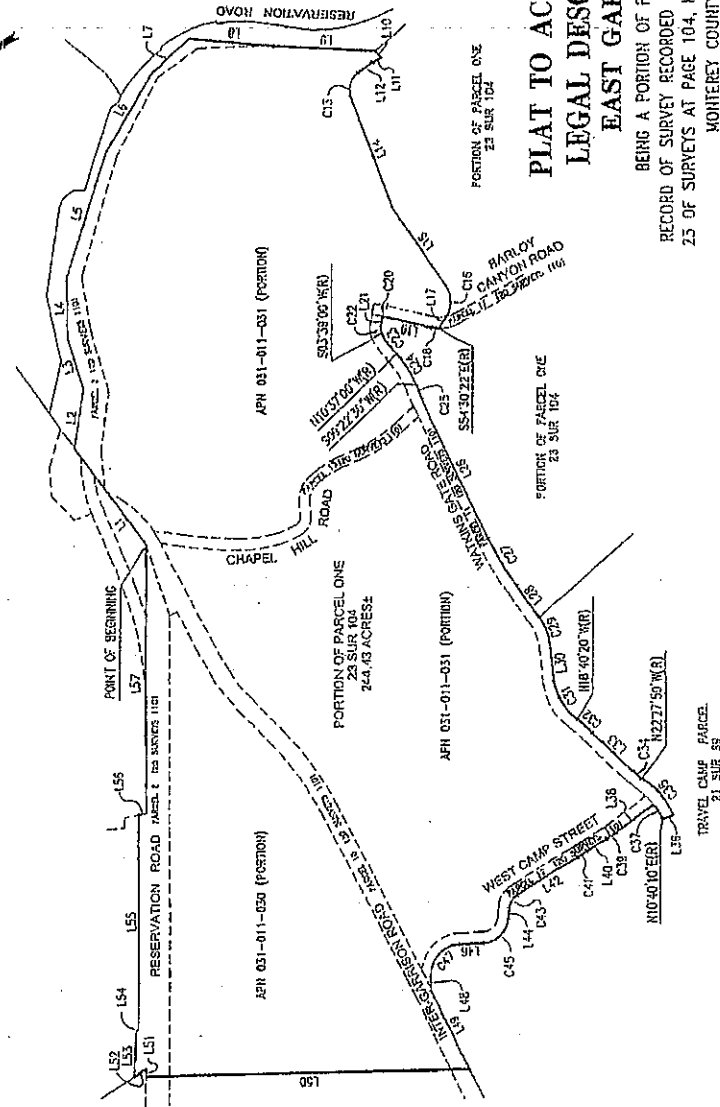
TANGENT TABLE		
NO.	BEARING	LENGTH
L1	N85°10'27"E	647.50'
L2	N85°10'27"E	317.97'
L3	N85°10'27"E	281.64'
L4	N85°10'27"E	324.17'
L5	N85°10'27"E	324.17'
L6	N85°10'27"E	324.17'
L7	N85°10'27"E	324.17'
L8	N85°10'27"E	324.17'
L9	N85°10'27"E	324.17'
L10	N85°10'27"E	324.17'
L11	N85°10'27"E	324.17'

TANGENT TABLE		
NO.	BEARING	LENGTH
L12	N85°10'27"E	324.17'
L13	N85°10'27"E	324.17'
L14	N85°10'27"E	324.17'
L15	N85°10'27"E	324.17'
L16	N85°10'27"E	324.17'
L17	N85°10'27"E	324.17'
L18	N85°10'27"E	324.17'
L19	N85°10'27"E	324.17'
L20	N85°10'27"E	324.17'
L21	N85°10'27"E	324.17'

TANGENT TABLE		
NO.	BEARING	LENGTH
L22	N85°10'27"E	324.17'
L23	N85°10'27"E	324.17'
L24	N85°10'27"E	324.17'
L25	N85°10'27"E	324.17'
L26	N85°10'27"E	324.17'
L27	N85°10'27"E	324.17'
L28	N85°10'27"E	324.17'
L29	N85°10'27"E	324.17'
L30	N85°10'27"E	324.17'
L31	N85°10'27"E	324.17'

TANGENT TABLE		
NO.	BEARING	LENGTH
L32	N85°10'27"E	324.17'
L33	N85°10'27"E	324.17'
L34	N85°10'27"E	324.17'
L35	N85°10'27"E	324.17'
L36	N85°10'27"E	324.17'
L37	N85°10'27"E	324.17'
L38	N85°10'27"E	324.17'
L39	N85°10'27"E	324.17'
L40	N85°10'27"E	324.17'
L41	N85°10'27"E	324.17'

CURVE TABLE		
NO.	RADIUS	DELTA
C1	115.00'	75°21'05"
C2	150.00'	71°15'31"
C3	200.00'	60°28'32"
C4	250.00'	50°32'15"
C5	300.00'	40°32'15"
C6	350.00'	30°32'15"
C7	400.00'	20°32'15"
C8	450.00'	10°32'15"
C9	500.00'	00°32'15"
C10	550.00'	00°32'15"
C11	600.00'	00°32'15"
C12	650.00'	00°32'15"
C13	700.00'	00°32'15"
C14	750.00'	00°32'15"
C15	800.00'	00°32'15"
C16	850.00'	00°32'15"
C17	900.00'	00°32'15"
C18	950.00'	00°32'15"
C19	1000.00'	00°32'15"
C20	1050.00'	00°32'15"
C21	1100.00'	00°32'15"
C22	1150.00'	00°32'15"
C23	1200.00'	00°32'15"
C24	1250.00'	00°32'15"
C25	1300.00'	00°32'15"
C26	1350.00'	00°32'15"
C27	1400.00'	00°32'15"
C28	1450.00'	00°32'15"
C29	1500.00'	00°32'15"
C30	1550.00'	00°32'15"
C31	1600.00'	00°32'15"
C32	1650.00'	00°32'15"
C33	1700.00'	00°32'15"
C34	1750.00'	00°32'15"
C35	1800.00'	00°32'15"
C36	1850.00'	00°32'15"
C37	1900.00'	00°32'15"
C38	1950.00'	00°32'15"
C39	2000.00'	00°32'15"
C40	2050.00'	00°32'15"
C41	2100.00'	00°32'15"
C42	2150.00'	00°32'15"
C43	2200.00'	00°32'15"
C44	2250.00'	00°32'15"
C45	2300.00'	00°32'15"
C46	2350.00'	00°32'15"
C47	2400.00'	00°32'15"
C48	2450.00'	00°32'15"
C49	2500.00'	00°32'15"
C50	2550.00'	00°32'15"

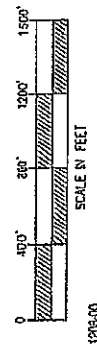


# PLAT TO ACCOMPANY LEGAL DESCRIPTION EAST GARRISON

BEING A PORTION OF PARCEL 1 OF THE  
RECORD OF SURVEY RECORDED JUNE 26, 2000, IN VOLUME  
23 OF SURVEYS AT PAGE 104, MONTEREY COUNTY RECORDS.

MONTEREY COUNTY, CALIFORNIA

CARLSON, BARBEE AND GIBSON, INC.  
ENGINEERS - SURVEYORS - PLANNERS  
SAN RAMON, CALIFORNIA  
DATE: JUNE 2005



## EXHIBIT D

### INDEMNIFICATION AGREEMENTS INSURANCE REQUIREMENTS

Provide the appropriate form of Insurance, Consulting Services or Contractor, for the portion of the work being performed.

#### CONSULTING SERVICES

**Workers' Compensation Insurance** - By his/her signature hereunder, Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing the performance of the work of this contract.

**Indemnification** To the fullest extent permitted by law, Consultant, at Consultant's own cost, will defend, and will indemnify and hold harmless the Marina Coast Water District (District), its directors, officers, employees and each of them from and against:

- a. When the law establishes a professional standard of care for Consultant's services, all claims and demands of all persons arising out of the performance (or actual or alleged non-performance) of the professional services, for damages to persons or property to the extent caused by Consultant's willful misconduct or its negligent acts, errors or omissions. Consultant shall defend itself against any and all liabilities, claims, losses, damages, and costs arising out of or alleged to arise out of Consultant's performance or non-performance of the work hereunder, and shall not tender such claims to District nor to its directors, officers, or employees for defense or indemnity;
- b. Other than in the performance of professional services, any and all claims, demands, causes of action, damages, costs, expenses, losses or liabilities for, but not limited to, injury to or death of any person including District and/or Consultant, or any directors, officers, or employees of District or Consultant, and damages to or destruction of property of any person, including but not limited to, District and/or Consultant or their directors, officers, or employees arising out of or in any manner directly or indirectly connected with the work to be performed under this agreement, however caused, except as arising out of the sole negligence or willful misconduct or active negligence of District or its directors, officers, or employees.
- c. Any and all actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, arising out of, resulting from, or on account of the violation due to Consultant's willful misconduct or negligence of any applicable governmental law or regulation, compliance with which is the responsibility of Consultant.

- d. Consultant acknowledges and understands that the area in and around which the work will be performed has been identified as a possible location of munitions and explosives of concern ("MEC"). All indemnification obligations of Consultant under this Agreement shall specifically include claims and demands involving, arising out of or related to MEC.

Consultant shall reimburse District and its directors, officers, employees or authorized volunteers, for any reasonable legal expenses and costs incurred by each of them in connection with, in any way, all such aforesaid suits, actions or other legal proceedings or in enforcing the indemnity herein provided, to the extent that they are covered by the above obligations to indemnify.

Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the District, or its directors, officers, employees or authorized volunteers.

## GENERAL CONDITIONS

**Laws, Regulations and Permits** - The Consultant shall endeavor to give all notices required by law and comply with all laws, ordinances, rules and regulations pertaining to the conduct of the work. The Consultant shall be liable for all violations of the law in connection with work furnished by the Consultant. If the Consultant performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, the Consultant shall bear all costs arising there from.

**Safety** - The Consultant shall use due care to provide its services so as to avoid injury or damage to any person or property.

In carrying out his/her work, the Consultant shall at all times, use due care regarding the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed, and use due care to be in compliance with all federal, state and local statutory and regulatory requirements including State of California, Division of Industrial Safety (Cal/OSHA) regulations, and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act (as applicable).

**Liability Insurance** - The Consultant shall provide and maintain at all times during the performance of this agreement, the following commercial general liability, professional liability and automobile liability insurance:

**Coverage** - Coverage shall be at least as broad as the following:

1. Coverage for *Professional Liability* appropriate to the Consultant's profession covering Consultant's negligent actions, errors or omissions. The retroactive date (if any) is to be no later than the effective date of this agreement.
2. Insurance Services Office Commercial *General Liability* Coverage (Occurrence Form CG 0001)

3. Insurance Services Office *Automobile Liability* Coverage (Form CA 0001), covering Symbol 1 (any auto) (owned, non-owned and hired automobiles)

**Limits** - The Consultant shall maintain limits no less than the following:

1. *Professional Liability* - Five hundred thousand dollars (\$500,000) per claim and annual aggregate. [NOTE: THIS VALUE SHOULD BE ADJUSTED BASED ON VALUE OF PROJECT. UPPER RANGE IS ESTIMATED AT \$5,000,000 WHICH WOULD BE FOR LARGER CONSTRUCTION PROJECTS, E.G., STORAGE TANKS, TREATMENT FACILITIES, LARGE PUMP/LIFT STATIONS.]
2. *General Liability* - Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit or products-completed operations aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to the District) or the general aggregate limit and products-completed operations aggregate limit shall be twice the required occurrence limit.

3. *Automobile Liability* - Two million dollars (\$2,000,000) for bodily injury and property damage each accident limit.

**Required Provisions** - The general liability and automobile liability policies is to contain, or be endorsed to contain the following provisions:

1. The District, its directors, officers, employees, or authorized volunteers are to be given additional insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of the Consultant; and premises owned, occupied or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the District, its directors, officers, employees, or authorized volunteers.
2. For any claims related to this project, the Consultant's insurance shall be primary insurance as respects the District, its directors, officers, employees, or authorized volunteers. Any insurance, self-insurance, or other coverage maintained by the District, its directors, officers, employees, or authorized volunteers shall not contribute to it.
3. The policies specified above are to state or be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days (10 days for non-payment of premium) prior written notice by U.S. mail has been given to the District.
4. In the event any change is made in the insurance carrier, scope of coverage

or retroactive date of professional liability coverage required under this agreement, Consultant shall notify the District prior to any changes.

5. All of the insurance shall be provided on a policy forms satisfactory to the District. All insurance correspondence, notations, certificates, or other documents from the insurance carrier or agent/broker shall each separately reference the District project number.

**Workers' Compensation and Employer's Liability Insurance** - The Consultant and all sub-consultants shall cover or insure under the applicable laws relating to workers' compensation insurance, all of their employees employed directly by them or through sub-consultants in carrying out the work contemplated under this contract, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof. The Consultant shall provide employer's liability insurance in the amount of, at least, \$1,000,000 per accident for bodily injury and disease.

**Deductibles and Self-Insured Retentions** - Any deductible or self-insured retention exceeding \$50,000 must be declared to and approved by the District.

**Acceptability of Insurers** - Insurance is to be placed with insurers having a current A.M. Best rating of no less than A-VII or equivalent or as otherwise approved by the District.

**MEC Coverage:** All insurance maintained by Consultant shall include coverage for services, work in or around MEC, or claims, damage or injury related in any way to this Agreement which arise from MEC. The Marina Coast Water District, its officers, directors and employees and any of its authorized representatives and volunteers shall be named as additional insureds under all insurance maintained by Consultant related in any way to work performed by it on behalf of the Marina Coast Water District.

**Evidences of Insurance** - Prior to execution of the contract, the Consultant shall file with the District a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative. Such evidence shall include an original copy of the additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include Required Provisions 1-5.

The Consultant shall, upon demand of the District, deliver to the District such policy or policies of insurance and the receipts for payment of premiums thereon.

All insurance correspondence, certificates, binders, etc., shall be mailed to:

Marina Coast Water District  
11 Reservation Road  
Marina, CA 93933  
Attn: Administrative Services Manager

**Sub-Consultants** - In the event that the Consultant employs other consultants (sub-consultants) as

part of the services covered by this Agreement, it shall be the Consultant's responsibility to require and confirm that each sub-consultant meets the minimum insurance requirements specified above.

### **CONSTRUCTION CONTRACTORS**

**Workers' Compensation Insurance** - By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing the performance of the work of this contract.

**Indemnification** - To the fullest extent permitted by law, Contractor shall indemnify and hold harmless and defend District, its directors, officers, employees, or authorized volunteers, and each of them from and against:

- a. Any and all claims, demands, causes of action, damages, costs, expenses, losses or liabilities, in law or in equity, of every kind and nature whatsoever for, but not limited to, injury to or death of any person including District and/or Contractor, or any directors, officers, employees, or authorized volunteers of District or Contractor, and damages to or destruction of property of any person, including but not limited to, District and/or Contractor or their directors, officers, employees, or authorized volunteers, arising out of or in any manner directly or indirectly connected with the work to be performed under this agreement, however caused, regardless of any negligence of District or its directors, officers, employees, or authorized volunteers, except the sole negligence or willful misconduct or active negligence of District or its directors, officers, employees, or authorized volunteers;
- b. Any and all actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Contractor;
- c. Any and all losses, expenses, damages (including damages to the work itself), attorneys' fees, and other costs, including all costs of defense, which any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the work and all of the Contractor's obligations under the contract. Such costs, expenses, and damages shall include all costs, including attorneys' fees, incurred by the indemnified parties in any lawsuit to which they are a party.
- d. Consultant acknowledges and understands that the area in and around which the work will be performed has been identified as a possible location of munitions and explosives of concern ("MEC"). All indemnification obligations of Consultant under this Agreement shall specifically include claims and demands involving, arising out of or related to MEC.

Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against District or

District's directors, officers, employees, or authorized volunteers.

Contractor shall pay and satisfy any judgment, award or decree that may be rendered against District or its directors, officers, employees, or authorized volunteers, in any such suit, action or other legal proceeding.

Contractor shall reimburse District or its directors, officers, employees, or authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

Contractor agrees to carry insurance for this purpose as set out in the specifications. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the District, or its directors, officers, employees or authorized volunteers.

**Commercial General Liability and Automobile Liability Insurance** - The Contractor shall provide and maintain the following commercial general liability and automobile liability insurance:

**Coverage** - Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:

1. Insurance Services Office *Commercial General Liability* Coverage (Occurrence Form CG 0001)
2. Insurance Services Office *Automobile Liability* Coverage (Form CA 0001), covering Symbol 1 (any auto) (owned, non-owned and hired automobiles)

**Limits** - The Consultant shall maintain limits no less than the following:

1. **General Liability** - Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit or products-completed operations aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to the District) or the general aggregate limit and products-completed operations aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability** - One million dollars (\$1,000,000) for bodily injury and property damage each accident limit.

**Required Provisions** - The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

1. The District, its directors, officers, employees, or authorized volunteers are to be given insured status (via ISO endorsement CG 2010, CG 2033, or insurer's

equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of the Contractors; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the District, its directors, officers, employees, or authorized volunteers.

2. For any claims related to this project, the Contractor's insurance shall be primary insurance as respects the District, its directors, officers, employees, or authorized volunteers. Any insurance, self-insurance, or other coverage maintained by the District, its directors, officers, employees, or authorized volunteers shall not contribute to it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the District, its directors, officers, employees, or authorized volunteers.
4. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall state or be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days (10 days for non-payment of premium) prior written notice by U.S. mail has been given to the District.

Such liability insurance shall indemnify the Contractor and his/her sub-contractors against loss from liability imposed by law upon, or assumed under contract by, the Contractor or his/her sub-contractors for damages on account of such bodily injury (including death), property damage, personal injury and completed operations and products liability.

The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, underground excavation and removal of lateral support.

The automobile liability policy shall cover all owned, non-owned, and hired automobiles.

All of the insurance shall be provided on policy forms and through companies satisfactory to the District.

**Deductibles and Self-Insured Retentions** - Any deductible or self-insured retention must be declared to and approved by the District. At the option of the District, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.

**Acceptability of Insurers** - Insurance is to be placed with insurers having a current A.M. Best rating of no less than A:-VII or equivalent or as otherwise approved by the District.

MEC Coverage: All insurance maintained by Contractor shall include coverage for services, work in or around MEC, or claims, damage or injury related in any way to this Agreement which arise from MEC. The Marina Coast Water District, its officers, directors and employees and any of its authorized representatives and volunteers shall be named as additional insureds under all insurance maintained by Consultant related in any way to work performed by it on behalf of the Marina Coast Water District.

**Workers' Compensation and Employer's Liability Insurance** - The Contractor and all sub-contractors shall insure (or be a qualified self-insured) under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the construction site, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof. The Contractor shall provide employer's liability insurance in the amount of at least \$1,000,000 per accident for bodily injury and disease.

**Responsibility for Work** - Until the completion and final acceptance by the District of all the work under and implied by this Agreement, the work shall be under the Contractor's responsible care and charge. The Contractor shall rebuild, repair, restore and make good all injuries, damages, re-erections, and repairs occasioned or rendered necessary by causes of any nature whatsoever.

The Contractor shall provide and maintain builder's risk insurance (or installation floater) covering all risks of direct physical loss, damage or destruction to the work in the amount specified in the General Conditions, to insure against such losses until final acceptance of the work by the District. Such insurance shall include explosion, collapse, underground excavation and removal of lateral support. The District shall be a named insured on any such policy. The making of progress payments to the Contractor shall not be construed as creating an insurable interest by or for the District or be construed as relieving the Contractor or his/her subcontractors of responsibility for loss from any direct physical loss, damage or destruction occurring prior to final acceptance of the work by the District.

The insurer shall waive all rights of subrogation against the District, its directors, officers, employees, or authorized volunteers.

**Evidences of Insurance** - Prior to execution of the contract, the Contractor shall file with the District a certificate of insurance (Acord Form 25-S or equivalent) signed by the insurer's representative. Such evidence shall include an original copy of the additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include Required Provisions 1-5.

The Contractor shall, upon demand of the District, deliver to the District such policy or policies of insurance and the receipts for payment of premiums thereon.

All insurance correspondence, certificates, binders, etc., shall be mailed to:

Marina Coast Water District

11 Reservation Road  
Marina, CA 93933  
Attn: Administrative Services Manager

**Sub-Contractors** - In the event that the Contractor employs other contractors (sub-contractors) as part of the work covered by this agreement, it shall be the Contractor's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above.

EXHIBIT E

NOTICE TO HOMEOWNERS  
OF  
WATER & SEWER SURCHARGE PAYMENTS

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