

## Attachment B



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## **FORT ORD REUSE AUTHORITY ADMINISTRATIVE REPORT**

### **BUSINESS ITEMS**

<b>Subject:</b>	Economic Development Conveyance/ Local Redevelopment Authority Successor Designation	
<b>Meeting Date:</b>	February 5, 2020	<b>INFORMATION</b>
<b>Agenda Number:</b>	7c	

### **RECOMMENDATION(S):**

Receive report from legal counsel regarding the impact of designating the City of Seaside as the Successor Agency to the Ford Ord Reuse Authority ("FORA") under the Economic Development Conveyance ("EDC") Agreement between the United States Army and FORA.

### **BACKGROUND/DISCUSSION:**

The underlying Local Redevelopment Authority ("LRA") / Economic Development Conveyance ("EDC") Agreement issues arise due to the imminent "Sunset" of FORA on June 30, 2020, pursuant to California law, and whether and to what extent, FORA may control or even guide Army property disposal actions under the EDC Agreement following FORA's Sunset. Both Administrative Committee and FORA Board Members wish to understand the future role of the City of Seaside ("Seaside"), should (i) FORA nominate Seaside to be FORA's successor as the Federally recognized LRA for the former Fort Ord, (ii) the Department of Defense ("DOD") Office of Economic Adjustment ("OEA") recognize Seaside as the LRA, and (iii) the Army agree to amend the EDC Agreement such that Seaside assumes FORA's roles and responsibilities under the EDC Agreement.

The EDC Agreement is authorized by Federal law, and is separate and apart from that body of California law that created FORA. Any entity recognized by the DOD-OEA as a successor to FORA with regard to the former Fort Ord, will inherit only those rights and obligations granted by the EDC Agreement, and absent further State legislation, none of the authorities, rights or obligations granted to FORA pursuant to FORA's enabling authorities.

Legal counsel from Kutak-Rock prepared a memo describing the impacts of naming the City of Seaside as successor to the EDC agreement. Staff also prepared a summary document which describes the authority that will carry over to Seaside.

The following points are critical to this discussion:

- 1) The City of Seaside is willing to take over management of the Environmental Services Cooperative Agreement ("ESCA") subject to the following;
  - a. FORA names the City as its successor to the EDC Agreement between FORA and the Army.
  - b. FORA names the City as its successor to the LRA.
- 2) The existing EDC Agreement may not be amended. The Army requires this agreement as a fundamental element to facilitate the transfer of property.



- 3) If no successor is named, the Army would retain the property and possible future water and wastewater capacity and may or may not make it available for sale via General Services Administration.

The DRAFT *Fort Ord Reuse Authority and City of Seaside Environmental Services Cooperative Agreement (ESCA) and Local Redevelopment Authority (LRA) Successor Implementing Agreement (Attachment A)* was updated as of January 31, 2020 to clarify three specific items of concern for Board members:

- i. Water Allocations. Until such time as such allocations may be amended by agreements, Seaside agrees to honor and abide by the allocations of potable and recycled water set forth in Exhibit A attached hereto, subject to compliance with all applicable laws (**Exhibit A is included in Attachment A for reference**).
- ii. Creates No Land-Use Authority. Nothing in the Agreement, nor Seaside's designation as the local redevelopment authority or as FORA's successor under the ESCA or MOA creates in Seaside any land-use decision-making authority with respect to any land not within Seaside's city limits. Further, Seaside shall not require that any land-use decisions of other entities be in compliance with the Fort Ord Base Reuse Plan.
- iii. Third-Party Rights. Each of the Monterey Peninsula Community College District, the Board of Trustees of the California State University (on behalf of the Monterey Bay campus), the County of Monterey, the Cities of Del Rey Oaks, Marina and Monterey, and the Marina Coast Water District are intended third-party beneficiaries of this Agreement and shall have the right to enforce the provisions hereof as if they were direct parties hereto. Nothing in this Agreement is intended to confer upon any individual or entity, other than the parties and the above-identified third-party beneficiaries, any rights or remedies whatsoever.

**FISCAL IMPACT:**

None.

**COORDINATION:**

Authority Counsel, Administrative Committee, Executive Committee, FORA Board, FORA Special Counsel

**ATTACHMENTS:**

- a. Updated DRAFT Fort Ord Reuse Authority and City of Seaside Environmental Services Cooperative Agreement (ESCA) and Local Redevelopment Authority (LRA) Successor Implementing Agreement updated January 31, 2020
- b. Kutak-Rock Memo, January 24, 2020
- c. Memorandum of Agreement between the United States of America and the Fort Ord Reuse Authority for the Sale of Portions of the Former Fort Ord, as amended ("EDC Agreement") with an Execution Date of June 20, 2000

Prepared by and Approved by:

  
Joshua Metz



**FORT ORD REUSE AUTHORITY AND CITY OF SEASIDE  
ENVIRONMENTAL SERVICES COOPERATIVE AGREEMENT (ESCA) AND  
LOCAL REDEVELOPMENT AUTHORITY (LRA) SUCCESSOR  
IMPLEMENTING AGREEMENT**

**RECITALS**

WHEREAS, the Fort Ord Reuse Authority (“FORA”) is a regional agency and a Corporation of the State of California established under California State Law Government Code Sections 67650, et seq., to plan, facilitate and manage the transfer of former Fort Ord property and is acknowledged as the federally recognized local reuse authority for property transfers from the Army, to the governing local jurisdictions or their designees.

WHEREAS Fort Ord, California was placed on the National Priorities List (Superfund) in 1990 due to leaking underground storage tanks, contaminated groundwater and a 150-acre landfill.

WHEREAS, in 1990, the Army executed a Federal Facility Agreement (FFA) under CERCLA Section 120 outlining the Army’s Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) clean up responsibilities with respect to the former Fort Ord. The Army remains responsible for certain actions under that FFA. The FFA was amended on or about July 26, 2007, the effect of which suspends the FFA for FORA’s ESCA obligations so long as FORA or its successors are in compliance with the AOC.

WHEREAS, the former Fort Ord was closed on September 30, 1994 pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101-510; hereinafter referred to as the “Base Closure Act”).

WHEREAS, in accordance with Section 2905(b)(4) of the Base Closure Act, as amended by Section 2821 of the Defense Authorization Act for Fiscal Year 2000, Pub. L. No. 106-65 (1999), and the implementing regulations of the Department of Defense (32 CFR Parts 90 and 91), FORA executed an economic development conveyance agreement and acquired portions of the former Fort Ord consisting of approximately five thousand two hundred (5,200) acres of land, including all buildings, personal property, appurtenances, rights-of-way, and drainage areas upon and subject to the terms and conditions of a June 23, 2000 Memorandum of Agreement (MOA) with the United States of America.

WHEREAS, the MOA provided for transfers of property in accordance with the Army’s clean-up schedule. Subsequent to the MOA execution, FORA and the local communities decided to pursue an early transfer process pursuant to Title 42 United States Code, section 9620(h)(3)(C) in order to expedite the property transfers and ultimate reuse and economic recovery for the communities affected by the Fort Ord closure.

WHEREAS, in furtherance of the early transfer process, the Army, with the approval of the EPA Administrator and the concurrence of the Governor of California, transferred title



of 3,337 acres of munitions impacted Fort Ord property by quitclaim deed to FORA before all action to protect human health and the environment had been completed. Concurrent with this transfer without the otherwise required CERCLA covenant mandated by Title 42 United States Code, section 9620 (h)(3) , FORA accepted title and agreed to perform the Army's environmental remediation with funding from the Army. Excluded from FORA's performance obligation are matters related to the groundwater at the former Fort Ord, as well as other Army responsibilities enumerated in the ESCA and elsewhere.

WHEREAS, in 2007 an *“Administrative Order on Consent (“AOC”) [Docket No. R9-2007-003] [was] entered into voluntarily by the United States Environmental Protection Agency (“EPA”), the California Department of Toxic Substances Control (“DTSC”), and the Fort Ord Reuse Authority. The AOC concerns the preparation and performance of potential removal actions, one or more remedial investigations and feasibility studies (“RI/FS”) and one or more remedial designs and remedial actions (“RD/RA”) for contaminants present on portions of the former Fort Ord located at Monterey, California (“Site”) and the reimbursement for future response costs incurred by EPA and DTSC in connection with such CERCLA response actions.”.*

WHEREAS, in 2007 the Army executed an amendment to the Federal Facilities Agreement.

WHEREAS, in 2007 the Army and FORA executed an Environmental Services Cooperative Agreement W9128F 07 2-0162 (“ESCA”) under the authority of Title 10 United States Code, Section 2701(d)- Environmental Restoration Program (10 U.S.C. 2701) whereby FORA would perform the Army's environmental responsibilities as the Army Response Action Contractor pursuant to Title 42 United States Code, section 9619, with the Army providing funding to perform these services.

WHEREAS, the ESCA has been amended several times, the ESCA Mod 9 amendment in 2017 which provided approximately \$6.8 million for Regulatory Oversight Through 31 December 2019, FORA ESCA Administrative costs during the EPA/DTSC remedial-completion documentation, property transfer process through 30 June 2020 and to perform the required long-term land management tasks, including Munitions and Explosives of Concern (“MEC”) Find Assessments, inspections, enforcement, monitoring and reporting through June 30, 2028.

ESCA Mod. Number	ESCA Contract Line Item Number (CLIN) and Description	Expiration Date	Amount
MOD 09	CLIN 02 – Department of Toxic Substance Control (DTSC) and United States EPA Technical Oversight Services	31 Dec. 2019	\$745,913
	CLIN 03 – FORA ESCA Administrative Funds	30 June 2020	\$1,865,848
	CLIN 04 – Post-Closure MEC Find Assessments	30 June 2028	\$528,651
	CLIN 05 – Long Term/LUCs Management	30 June 2028	\$3,705,792



		<b>Totals</b>	<b>\$6,846,204</b>
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WHEREAS, due to changes and delays in the transfer of properties, modifications were made to the ESCA grant leaving post-June 30, 2020 funds available are ESCA CLIN 0004 Post Closure MEC Find Assessments \$528,651 and ESCA CLIN 0005 for Long-Term Management and Land Use Control (LUC) management are \$3,705,792, (Totaling \$4,234,443 available from June 30, 2020 through June 30, 2028),

<b>ESCA Mod. Number</b>	<b>ESCA Contract Line Item Number (CLIN) and Description</b>	<b>Expiration Date</b>	<b>Amount</b>
MOD 09	CLIN 04 – Post-Closure MEC Find Assessments	30 June 2028	\$528,651
	CLIN 05 – Long Term/LUCs Management	30 June 2028	\$3,705,792
	<b>Totals</b>		<b>\$4,234,443</b>

WHEREAS, in 2018 FORA adopted a Transition Plan as required by State Law that specifies that FORA engage the Successor-in-Interest (“Successor”) provisions of the ESCA contract.

WHEREAS, the Successor assumes responsibility and will be tasked with performing the remaining LTOs under the ESCA, including the recent amendment. It is assumed that all work under the previous \$98,000,000 contract will have been accomplished prior to FORA’s dissolution as evidenced by the 2019 EPA Remedial Action Completion letters, per AOC Section XVII, Certification of Completion, housed in the Army Administrative Record located at: <http://fortordcleanup.com/documents/administrative-record/>.

WHEREAS, the City of Seaside is prepared, subject to funding, to assume ESCA responsibility and attendant local reuse authority status, including the execution of the AOC in order to complete the ESCA obligations and any property-related transfer actions required after June 30, 2020.

\*\*\*\*\*

### **NOW, THEREFORE,**

1. Incorporation of Recitals. The above recitals are hereby incorporated herein by reference.

2. Acknowledgement. FORA agrees to acknowledge Seaside as the ESCA Successor-In-Interest under the 2018 Transition Plan.

3. Insurance Policies. FORA agrees to designate and request the transfer its insurance coverages to Seaside. FORA shall also transfer any self-insured retention funds to Seaside to be used exclusively for ESCA and claim-related obligations. Seaside acknowledges that these coverages will expire in 2022 and 2024, respectively, and that successor designations will be subject to approval by the insurers. Seaside’s successful



1 receipt of insurance coverage through June 30, 2028 is a condition precedent to becoming  
2 FORA's ESCA and local reuse authority successor.

3  
4 4. ESCA LTO Program Evidence of Fiduciary and Technical Capability. FORA  
5 agrees to provide technical and/or financial assistance to Seaside to meet the terms  
6 required by the Army, EPA, and DTSC that the Successor be a single entity and  
7 demonstrate technical and financial competence to complete the work.

8  
9 5. ESCA records and contracts funds. FORA and Seaside shall establish a  
10 mechanism for transfer of all ESCA records, back-up documents, computer files and  
11 accounting records, and contract funds to Seaside for meeting FORA's ESCA obligations.

12  
13 6. Technical Assistance. FORA agrees to request the Army extend the funding  
14 expiration date on any remaining ESCA funds (not dedicated to Post-Closure MEC Find  
15 Assessments and Long Term/LUCs Management) for Seaside to utilize providing technical  
16 assistance and funding to complete the ESCA transfer process through June 30, 2020,  
17 including specialized legal, drafting and other staff or contract support. FORA agrees to  
18 establish and fund a pool of monies to support Seaside's assumption of responsibilities and  
19 obligations of the MOA.

20  
21 7. Obligations. Seaside agrees to assume the Federal local redevelopment  
22 authority "LRA" designation and the remaining reporting, monitoring, and stewardship or  
23 other identified responsibilities associated with (i) the FORA-Army 2007 ESCA as FORA's  
24 Successor through the end of the ESCA Contract June 30, 2028 in order to complete  
25 property transfers and the ESCA to the extent that ESCA performance does not obligate or  
26 put at risk Seaside's municipal non-ESCA funds, and (ii) the MOA, as FORA's successor.  
27 Exhaustion or unavailability of ESCA funds with which to compensate Seaside for the  
28 performance of ESCA obligations will constitute a force majeure under the ESCA and the  
29 AOC, thereby relieving Seaside of its obligations to perform the surviving FORA obligations.

30  
31 8. ESCA LTO Program Evidence of Fiduciary and Technical Capability. Seaside  
32 agrees to provide evidence of its fiduciary and technical capability to comply with the terms  
33 of the ESCA and manage the contract financial assets with associated invoicing and  
34 reporting responsibilities, to assure the Army, EPA and DTSC of continued ESCA fiduciary  
35 capability.

36  
37 a. To assume FORA's ESCA Long Term Obligations Management Program, as  
38 approved by the US Army, EPA and DTSC

39  
40 i. Personnel. Hire (2) full-time qualified staff to manage ESCA as required  
41 under the contract provisions as currently amended through 2028, but with  
42 allowances for indirect administrative overhead to assure the Army, EPA  
43 and DTSC of continued ESCA technical capacity.

44  
45 ii. ESCA Long-Term Obligation Support Services Contract. Enter into  
46 Support Services Contracts through 2028 with specialists Arcadis, Weston



Solutions, Inc. and Westcliffe Engineers, Inc. (or other qualified vendors), including allowances for indirect administrative overhead to assure the Army, EPA and DTSC of continued ESCA technical capacity.

- iii. Representation. Contract with Counsel reasonably qualified on environmental issues with experience in working with state and federal entities (Army, EPA and DTSC) for review and compliance as noted in the ESCA and the AOC.

9. Coordination with other Entities. Seaside agrees to enter into agreements with the Monterey Peninsula Community College District, the Board of Trustees of the California State University (on behalf of the Monterey Bay campus), the County of Monterey, the Cities of Del Rey Oaks, Marina and Monterey, and the Marina Coast Water District or others for the property transfers and other necessary property-related rights to effectuate the reuse and the oversight, reporting, response, and other long-term stewardship obligations listed in and consistent with (a) the ESCA through 2028 on behalf of the Army or (b) the MOA.

- i. Water Allocations. Until such time as such allocations may be amended by agreements, Seaside agrees to honor and abide by the allocations of potable and recycled water set forth in Exhibit A attached hereto, subject to compliance with all applicable laws.

- ii. Creates No Land-Use Authority. Nothing in this Agreement, nor Seaside's designation as the local redevelopment authority or as FORA's successor under the ESCA or MOA creates in Seaside any land-use decision-making authority with respect to any land not within Seaside's city limits. Further, Seaside shall not require that any land-use decisions of other entities be in compliance with the Fort Ord Base Reuse Plan.

10. ESCA Amendment. The parties agree to work cooperatively to successfully receive Army, EPA and DTSC concurrence that Seaside is the formal ESCA Successor and execute the ESCA upon review and approval of terms and conditions. Seaside agrees to execute an ESCA Agreement and to comply to comply with the U.S. Army Corps of Engineers ("USACE") oversight and grant management requirements for funding to Seaside under the ESCA terms, provided however, that the Successor activities are fully funded, including without limitation provision for PLL insurance coverage, funding shall be provided from January 1, 2024 through June 30, 2028 or the completion of the ESCA obligations. Seaside will not pay for Regulatory Oversight unless it is a reimbursement funded by the Army through the end of the ESCA obligations.

11. Administrative Order on Consent. The parties agree to work cooperatively to successfully receive EPA and DTSC approval that Seaside is the formal Successor to execute an AOC upon review of terms and conditions.



12. Amendment. This Agreement or any provision hereof may be changed, waived, or terminated only by a statement in writing signed by the Party against which such change, waiver or termination is sought to be enforced.

13. No Waiver. No delay in enforcing or failing to enforce any right under this Agreement will constitute a waiver of such right. No waiver of any default under this Agreement will operate as a waiver of any other default or of the same default on a future occasion.

14. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Agreement are to any extent declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, the Parties agree to amend the terms in a reasonable manner to achieve the intention of the Parties without invalidity. If the terms cannot be amended, the invalidity of one or several terms will not affect the validity of the Agreement as a whole, unless the invalid terms are of such essential importance to this Agreement that it can be reasonably assumed that the Parties would not have contracted this Agreement without the invalid terms. In such case, the Party affected may terminate this Agreement by written notice to the other Party without prejudice to the affected Party's rights in law or equity.

15. Entire Agreement. This Agreement is intended by the Parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof. Acceptance of or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing Party had knowledge of the nature of the performance and opportunity for objection.

16. Choice of Law. This Agreement will be construed in accordance with the laws of the State of California.

17. Further Assurances. Each Party agrees to execute and deliver all further instruments and documents and take all further action that may be reasonably necessary to complete performance of its obligations hereunder and otherwise to effectuate the purposes and intent of this Agreement.

18. Headings. The headings of the sections hereof are inserted for convenience only and shall not be deemed a part of this Agreement.

19. Notices. Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to this Agreement shall be acknowledged by the Party giving such notice, and shall to the extent reasonably practicable be sent by hand delivery, and if not reasonably practicable to send by hand delivery, then by telecopy, overnight courier, electronic mail, or registered mail, in each case to the other Party at the address for such Party set forth below (Note: A Party may change its place of notice by a notice sent to all other Parties in compliance with this section):



City of Seaside  
Attn. City Manager  
440 Harcourt Avenue  
Seaside, CA 93955

Fort Ord Reuse Authority  
Attn: Executive Officer  
920 2nd Avenue, Suite A  
Marina CA

w/ an email copy to cityattorney@ci.seaside.ca.us

20. Term of Agreement: This Agreement shall be effective on the Effective Date specified at the beginning of the Agreement and shall remain in effect unless and until terminated by mutual agreement of the Parties or upon the legal dissolution of the Fort Ord Reuse Authority.

21. Authorization. Each party affirms that it is fully authorized to enter into this Agreement. The Seaside City Manager is designated on behalf of Seaside, subject to review and approval of documents by the City Attorney, to enter into the terms and conditions of this Memorandum of Agreement, the AOC and the ESCA and sign related ESCA and AOC reporting and financial documents.

22. Third-Party Rights. Each of the Monterey Peninsula Community College District, the Board of Trustees of the California State University (on behalf of the Monterey Bay campus), the County of Monterey, the Cities of Del Rey Oaks, Marina and Monterey, and the Marina Coast Water District are intended third-party beneficiaries of this Agreement and shall have the right to enforce the provisions hereof as if they were direct parties hereto. Nothing in this Agreement is intended to confer upon any individual or entity, other than the parties and the above-identified third-party beneficiaries, any rights or remedies whatsoever.

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IN WITNESS WHEREOF, each Party has executed the Agreement with the approval of its governing body as of the date first written above.

CITY OF SEASIDE:

Date: \_\_\_\_\_

\_\_\_\_\_  
Craig Malin  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY



FORT ORD REUSE AUTHORITY:

\_\_\_\_\_  
Joshua Metz Executive Officer

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
AUTHORITY COUNSEL

DRAFT



## EXHIBIT A

## Current Water Allocations &amp; Potential\* Future Percentage-based Allocations

	Current Potable Water Allocation in Acre Feet	<b>Future Water Allocation Based on Percentage of Current Water Allocation</b>	Current Recycled Water in Acre Feet	<b>Future Recycled Water Allocation Based on Percentage of Current Recycled Water Allocation</b>
City of Marina	1340	<b>29%</b>	345	<b>25%</b>
City of Monterey	65	<b>1%</b>	0	<b>0%</b>
City of Seaside	1012.5	<b>22%</b>	453	<b>33%</b>
County of Monterey	720	<b>15%</b>	134	<b>10%</b>
CSUMB	1035	<b>22%</b>	87	<b>6%</b>
City of Del Rey Oaks	242.5	<b>5%</b>	280	<b>21%</b>
CA State Parks	44.5	<b>1%</b>	0	<b>0%</b>
UCMBEST	230	<b>5%</b>	60	<b>4%</b>

\*In the unlikely event of availability of additional water from the US Army it would be distributed following the percentage-based allocation provide above. These allocations reflect previously agreed water distribution as per FORA Board Resolution No. 07-1 (potable water) and No. 07-10 (recycled water) (2007), and are consistent with the Marina Coast Water District Urban Water Management Plan (2105). They also incorporate the Memorandum of Understanding between the County of Monterey, the City of Seaside, and the FORA allocating 10 acre-feet (af) to the Central Coast Veterans Cemetery (2009), and includes the transference of 15 af to the City of Marina for Veterans Transition Center housing (effective Nov 20, 2017).



## MEMORANDUM

TO: JOSH METZ, EXECUTIVE OFFICER  
FORT ORD REUSE AUTHORITY

FROM: GEORGE SCHLOSSBERG

DATE: JANUARY 24, 2020

RE: REVIEW AND ANALYSIS OF THAT CERTAIN MEMORANDUM OF  
AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE  
FORT ORD REUSE AUTHORITY FOR THE SALE OF PORTIONS OF THE  
FORMER FORT ORD

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### *Introduction:*

This Memorandum is in response to your request that we review, summarize, and analyze the rights and responsibilities of the Fort Ord Reuse Authority (“**FORA**”), as the Federally recognized local redevelopment authority (“**LRA**”) for the former Fort Ord, and a party to that certain *Memorandum of Agreement between the United States of America and the Fort Ord Reuse Authority for the Sale of Portions of the Former Fort Ord*, as amended (“**EDC Agreement**”) with an Execution Date of June 20, 2000.<sup>1</sup> This Memorandum will address the LRA/EDC Agreement issues alone; we will defer discussion of the Environmental Services Cooperative Agreement (“**ESCA**”) at this time.

The underlying LRA/EDC Agreement issues arise due to the imminent “Sunset” of FORA on June 30, 2020, pursuant to California law, and whether and to what extent, FORA may control or even guide Army property disposal actions under the EDC Agreement following FORA’s Sunset. Specifically, we understand that FORA Board Members wish to understand the future role of the City of Seaside (“**Seaside**”), should (i) FORA nominate Seaside to be FORA’s successor as the Federally recognized LRA for the former Fort Ord, (ii) the DOD Office of Economic Adjustment (“**OEA**”) recognize Seaside as the LRA, and (iii) the Army agree to amend the EDC Agreement such that Seaside assumes FORA’s roles and responsibilities under the EDC Agreement.

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<sup>1</sup> The EDC Agreement, together with EDC Amendment No. 1, are attached as an Exhibit to this memorandum.



## REVIEW AND ANALYSIS OF FORT ORD EDC AGREEMENT

### *Discussion:*

#### **I. The EDC Agreement:**

An EDC Agreement permits the Secretary of a Military Department to dispose of surplus property at former military installations closed or realigned pursuant to the Defense Base Closure Act of 1990, as amended (“Base Closure Act”). Unlike other more general Federal disposal authorities, Section 2905(b)(4) of the Base Closure Act permits the United States to dispose of surplus base closure property for no monetary consideration for economic development purposes only to State or local governmental entities recognized as an LRA by OEA. Section 2905(b)(4) was enacted specifically to help communities address the loss of jobs and other economic development challenges brought upon them by base closures.

Following the decision by the Defense Base Closure Commission to realign Fort Ord, and the enactment of appropriate legislation by the State of California creating the Fort Ord Reuse Authority, FORA was recognized by OEA as the LRA for the former Fort Ord. Subsequently, FORA prepared and submitted to the Army an Application for an Economic Development Conveyance dated October 30, 1997. That application, and the subsequent discussions and negotiations, formed the basis for the EDC Agreement.

In simple terms, the EDC Agreement is a “purchase and sale agreement,” that addresses limited obligations relating to the transfer and conveyance of various surplus property interests of the United States to FORA. Although the full document contains dozens of pages, most of which are legal descriptions, form documents, and Army environmental reports, the EDC Agreement itself consists of twenty-five (25) pages describing what, when, and how portions of the former Fort Ord were to be conveyed by the Army to FORA, and FORA’s obligation to report on its activities to the Army.

#### **a. Transfer of Property Interests:**

The heart of the EDC Agreement is contained in Article 2, which states, in material part, as follows:

#### *“2.01. No Cost Economic Development Conveyance.”*

*“A. ...[t]his Agreement represents a contract whereby the Government agrees to convey to the Authority, and the Authority agrees to acquire the Property, by means of a No Cost Economic Development Conveyance, for no monetary consideration. The consideration for the property is the Authority and the Authority member jurisdictions’ agreement to commit proceeds from the sale or lease of the Property toward the economic development of the former Fort Ord for the benefit of the general public in accordance with the terms of this Agreement.”*



## REVIEW AND ANALYSIS OF FORT ORD EDC AGREEMENT

*“B. Following the conveyance of the Property to the Authority, the Authority shall transfer the Property, at no cost, to the Authority member jurisdiction with land use jurisdiction over such portion of the Property. ....”*

*“C. In accordance with appropriate State of California and local redevelopment laws and regulations, the Authority or Authority member jurisdiction in possession of the Property may transfer, sell or lease such parcel(s) of Property to a Bona Fide Purchaser or Lessor except for the parcel(s) of Property that the Authority or Authority member jurisdiction utilizes for governmental purposes, consistent with California law.”*

[Underline added for emphasis]

As indicated by these three subsections, the EDC Agreement (i) imposes on FORA a contractual obligation to accept the surplus Federal EDC property from the United States, (ii) imposes on FORA a contractual obligation to re-convey such property to the underlying land use jurisdiction in which the property resides, and (iii) authorizes the land use jurisdictions or FORA to sell the surplus Federal EDC property or to retain such property for governmental purposes.

[Underline added for emphasis]

b. Water and Wastewater:

(i) Allocation of Water and Wastewater Collection Systems and Rights: Article 5 of the EDC Agreement discusses the disposition of the water and wastewater collection systems on the EDC Property and the Presidio of Monterey Annex, including their respective water rights and wastewater discharge rights (“Water/Wastewater”). Specifically, Section 5.02 provides that the Government reserves out of its controlled interests:

*“ ... 1729 acre feet per year (“afy”) of water exclusively for Government use (“Government Water Rights”). Also, the Government will retain ownership of 1.08 million gallons per day (“mgd”) of wastewater discharge rights (“Government Wastewater Discharge Rights”).”*<sup>2</sup>

Section 5.02 provides further that if the Government does not utilize all of the retained Government Water Rights or Government Wastewater Discharge Rights:

*“ ... the Authority shall have the right to negotiate with the Government for use of the Government Water Rights or Government Wastewater Discharge Rights not*

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<sup>2</sup> EDC Agreement Amendment No. 1 reduces these amounts for specific projects, including SunBay Housing, and Bay View Community/Brostrom Housing Area.



## REVIEW AND ANALYSIS OF FORT ORD EDC AGREEMENT

utilized by the Government (collectively “Unutilized Government Water/Wastewater Rights”). The Government and the Authority agree to meet and confer regarding the Unutilized Government Water/Wastewater Rights two (2) years following the completion of the installation of water meters at the Presidio of Monterey Annex (“POMA”). The Government shall determine the amounts of unutilized Government Water/Wastewater Rights on an annual basis and will consult with the Authority regarding this determination on an annual basis. In the event of a proposed transfer of Government Water Rights or Government Wastewater Discharge Rights to a third party, the Authority shall have the first right of refusal to any such transfer rights.”

[Underline added for emphasis]

With regard to the Water/Wastewater conveyed to FORA pursuant to the EDC Agreement, and for all future Water/Wastewater conveyed to FORA, or its successors or assigns, the EDC Agreement mandates an equitable allocation of such Water/Wastewater, by requiring in Section 5.03 and Section 5.04, the following:

5.03. Equitable Allocation of Water. The Authority, and its successors and assigns, shall cooperate with the Marina Coast Water District, Monterey County Water Resources Agency and grantees of former Fort Ord Property to establish and apply a fair process to ensure that all grantees of former Fort Ord property will be provided an equitable supply of the water at the former Fort Ord.

5.04. Wastewater Discharge Rights. The Authority, and its successors and assigns, shall cooperate with the Marina Coast Water District, the Monterey Regional Water Pollution Control Agency and grantees of former Fort Ord Property to establish and apply a fair process to ensure that all grantees of former Fort Ord property will enjoy equitable utilization of the existing sewage treatment capacity, including existing connections to the former Fort Ord sewage collection system.

We believe the “...fair process...” established and applied by FORA pursuant to Section 5.03 and Section 5.04 of the EDC Agreement to ensure an equitable supply of water and the equitable utilization of the existing sewage treatment capacity at the former Fort Ord can and should be binding on any FORA successor to the EDC Agreement to the extent that additional Water/Wastewater is ever made available to FORA, or a successor LRA, pursuant to the EDC Agreement.

(ii) Disposition of Water and Wastewater Collection Systems and Rights: As of the Effective Date of the EDC Agreement, the United States intended to convey to the Marina Coast Water District (“District”), the water and wastewater collection systems on the EDC Property



## REVIEW AND ANALYSIS OF FORT ORD EDC AGREEMENT

and the Presidio of Monterey Annex, including their respective water rights and wastewater discharge rights (“Water/Wastewater”), pursuant to the District’s “No-Cost Public Benefit Conveyance” application dated August 26, 1997<sup>3</sup>.

Subsequently, pursuant to Article 1.a. of EDC Agreement Amendment No. 1, the Government determined to transfer such Water/Wastewater to FORA, and obligated FORA to transfer such Water/Wastewater to the District, by stating:

*“a. In lieu of the Government transferring the Water and Wastewater Systems and all associated and ancillary rights directly to the District under the PBC ... the Government, ..., shall transfer to the Authority at no-cost, as part of the Economic Development Conveyance, ... the Water and Wastewater Systems on the Property and the Ord Military Community, together with all their respective water rights and wastewater discharge rights and ancillary rights.”*

*“c. Immediately following the transfer of the Water and Wastewater Systems on the Property and the Ord Military Community, together with all their respective water rights and obligations and wastewater discharge rights and obligations and ancillary rights and obligations, from the Government to the Authority, the Authority shall transfer such Water and Wastewater Systems and all associated ancillary rights and obligations to the District.”*

[Underline added for emphasis]

c. Use of Sale or Lease Proceeds and Reporting Obligation:

To guarantee that the surplus Federal EDC property is used to support the region’s economic development, the EDC Agreement further requires in Subsection 2.01.D:

*“D. The Authority agrees that Sale or Lease Proceeds received by the Authority or Authority member jurisdiction during the Reporting Period shall be used or obligated either on-site or off-site to support the economic redevelopment of, or economic development related to, the former Fort Ord, California (“Economic Development Uses”).”*

Pursuant to Amendment No 1, Article 3 to the EDC Agreement, dated October 23, 2001, the EDC Agreement Reporting Period was defined as follows:

*“1.20. Reporting Period. A period of time, beginning with the recordation of the Deed or Lease in Furtherance of Conveyance (“LIFO”) for the initial transfer*

---

<sup>3</sup> See: EDC Agreement, Section 5.01.



## REVIEW AND ANALYSIS OF FORT ORD EDC AGREEMENT

*of property and ending seven (7) years thereafter, within which the Authority will submit annual statements as described in paragraph 2.01(F) of this Agreement.”<sup>4</sup>*

Importantly, the Army and FORA conducted the initial closing and conveyance of surplus Federal EDC property on August 8, 2000, thereby starting FORA’s Reporting Period. Accordingly, FORA’s Reporting Period, and EDC Agreement reporting obligations, ended on or around August 9, 2007.

d. Balance of EDC Agreement:

The balance of the EDC Agreement is procedural in nature, and establishes the general terms and conditions for the transfer of surplus Federal EDC Property from the United States to FORA, as the recognized LRA for the former Fort Ord. Various EDC Agreement sections set forth defined terms (Article 1), describe the timing and pre-conditions for conveyance of property interests (Article 3), the documents to be utilized for various transfers (form Deeds and other Documents set forth as Exhibits), title issues (Article 8), environmental notices and disclosures mandated by law (Articles 15, 16, 17, 18), representations of the Parties (Articles 11, 12), disputes (Article 24), insurance and damage related issues (Article 21), and various clauses mandated by Government Contracts (Articles 20, 26, 27, 28, 31).

Kutak Rock assisted in the negotiation of the EDC Agreement, and the EDC Agreement Amendments, and we remain available to further discuss any of the specific terms and conditions contained therein.

## **II. What is not Required by the EDC Agreement:**

The Fort Ord Reuse Authority is a creature of State law. The EDC Agreement is authorized by Federal law, and is separate and apart from that body of California law that created FORA. Any entity recognized by the DOD Office of Economic Adjustment as a successor to FORA with regard to the former Fort Ord, will inherit only those rights and obligations granted by the EDC Agreement, and absent further State legislation, none of the authorities, rights or obligations granted to FORA pursuant to FORA’s enabling authorities.

While we defer to FORA’s regular counsel as to FORA’s State granted rights, obligations, and authorities, we believe that FORA’s role as the Federally recognized LRA for the former Fort Ord and as a Party to the EDC Agreement gives FORA, and any Federally recognized FORA successor, the ability only to receive surplus Federal EDC property interests from the United States, with the attendant obligation to re-convey those interests to the appropriate land use jurisdiction. Moreover, should additional Water/Wastewater as described in the EDC Agreement ever become available, FORA, and any Federally recognized FORA

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<sup>4</sup> Section 2.01(F) relates to the Authority’s annual financial statement to be certified by an independent Certified Public Accountant.



## REVIEW AND ANALYSIS OF FORT ORD EDC AGREEMENT

successor, may seek to receive such Water/Wastewater, and to transfer such interests to the District with allocations established in accordance with the “Fair” process mandated by Section 5.03 and Section 5.04 of the EDC Agreement.

### **III. Can FORA Control the Designation of an LRA Successor:**

It would be appropriate for FORA to indicate its preference to OEA for how the United States should address the remaining EDC conveyance issues following FORA’s sunset; in fact, both OEA and the Army have expressed an interest in having a designated successor, and in learning how FORA believes the process should play out post July 1, 2020. This FORA preference for a successor, be it Seaside or not, could be expressed to OEA and the Army by simple resolution, or any manner of letter, agreement or other document. However, the United States is not bound by anything FORA decides, or any party it designates, or anything in an agreement arrived at between the various FORA constituents. Should it chose to do so, OEA could recognize as the LRA an entity different from the one designated by FORA, or recognize no entity.

Should FORA decide to designate Seaside as the LRA successor, for purposes of implementing the EDC Agreement, we recommend some form of agreement with the other land use jurisdictions setting forth the ground-rules for what, when, and how Seaside will address property interests conveyed to Seaside as the LRA pursuant to the EDC Agreement. Of course, it should be remembered, that OEA could designate Seaside as the successor LRA, even without FORA’s designation, or such implementing Agreements, with the understanding that Seaside will simply comply with the terms of the EDC Agreement.

### ***Conclusion:***

I trust this Memorandum is responsive to your request for information concerning the limited Federal rights and obligations granted or imposed upon FORA as the federally recognized local redevelopment authority for the former Fort Ord. If you have any questions, please call me directly at 202-828-2418, or call my cell at 202-549-7117, or contact me by email at [George.schlossberg@kutakrock.com](mailto:George.schlossberg@kutakrock.com).

**G.R.S.**

Attached: Memorandum of Agreement between the United States of America and the Fort Ord Reuse Authority for the Sale of Portions of the Former Fort Ord, as amended, together with EDC Agreement Amendment No. 1.



WHEN RECORDED MAIL TO:

FORT ORD REUSE AUTHORITY

100 12th STREET - BUILDING 2880

MARINA, CA 93933

ATTN: MICHAEL HOULEMARD, JR.

0600-BT

CERTIFIED COPY  
ORIGINAL DOCUMENT  
STEWART TITLE

JUN 23 2000

Time: 8:00

Series # 20072040124

THIS SPACE FOR RECORDER'S USE ONLY

TITLE OF DOCUMENT

MEMORANDUM OF AGREEMENT

This instrument filed for record  
by Stewart Title Company as an  
accommodation only. It has not been  
examined as to its execution or as  
to its effect upon the title.



Joseph F. Pitta  
Monterey County Recorder  
Recorded at the request of  
**Stewart Title**

CRKATHLEEN  
6/23/2000  
8:00:00

WHEN RECORDED MAIL TO:

FORT ORD REUSE AUTHORITY

100 12th STREET - BUILDING 2880

MARINA, CA 93933

ATTN: MICHAEL HOULEMARD, JR.

0600-BT

DOCUMENT: **2000040124**

Titles: 1/ Pages: 106



\*2000040124\*

Fees....

Taxes...

Other...

AMT PAID

THIS SPACE FOR RECORDER'S USE ONLY

## TITLE OF DOCUMENT

### MEMORANDUM OF AGREEMENT

This instrument filed for record  
by Stewart Title Company as an  
accommodation only. It has not been  
examined as to it's execution or as  
to it's effect upon the title.



**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE UNITED STATES OF AMERICA,  
ACTING BY AND THROUGH  
THE SECRETARY OF THE ARMY,  
UNITED STATES DEPARTMENT OF THE ARMY  
AND  
THE FORT ORD REUSE AUTHORITY  
FOR THE SALE OF  
PORTIONS OF THE FORMER FORT ORD  
LOCATED IN  
MONTEREY COUNTY, CALIFORNIA**



1 MEMORANDUM OF AGREEMENT  
2 BETWEEN  
3 THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE  
4 SECRETARY OF THE ARMY, UNITED STATES DEPARTMENT OF THE ARMY  
5 AND  
6 THE FORT ORD REUSE AUTHORITY  
7 FOR THE SALE OF PORTIONS OF THE FORMER FORT ORD  
8 LOCATED IN MONTEREY COUNTY, CALIFORNIA  
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# FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

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# FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

## EXHIBITS

### DESCRIPTION OF THE PROPERTY:

PARCEL 1 ..... EXHIBIT A  
PARCEL X..... EXHIBIT A

IT IS CONTEMPLATED THAT THERE WILL BE MULTIPLE PARCELS  
CONVEYED AT MULTIPLE CLOSINGS

EXAMPLE DEED ..... EXHIBIT B

SAMPLE FOST (PARCEL 1)..... EXHIBIT C

### REPRESENTATIONS TO BE PRESENTED AT CLOSING:

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AUTHORITY REPRESENTATIONS ..... EXHIBIT D-2

RESERVED ..... EXHIBIT E

PROGRAMMATIC AGREEMENT ..... EXHIBIT F

BILL OF SALE FOR PERSONAL PROPERTY  
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RIGHT OF ENTRY ..... EXHIBIT J

CONVEYANCE SCHEDULE ..... EXHIBIT K

ENVIRONMENTAL REMEDIATION SCHEDULE..... EXHIBIT L

ACCESS ROADS AND EASEMENTS ..... EXHIBIT M

LIST OF GOVERNMENT REMEDIATION  
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1                                   **MEMORANDUM OF AGREEMENT**  
2                                   **BETWEEN**  
3                   **THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE**  
4                   **SECRETARY OF THE ARMY, UNITED STATES DEPARTMENT OF THE ARMY**  
5                                   **AND**  
6                   **THE FORT ORD REUSE AUTHORITY**  
7                   **FOR THE SALE OF PORTIONS OF THE FORMER FORT ORD**  
8                   **LOCATED IN MONTEREY COUNTY, CALIFORNIA**  
9

10  
11       **THIS MEMORANDUM OF AGREEMENT** ("Agreement") is made as of the 20<sup>th</sup> day  
12 of June, 2000 by and between the **United States of America**, acting by and through the  
13 Secretary of the Army (hereinafter referred to as "Government"), and the **Fort Ord Reuse**  
14 **Authority**, created under Title 7.85 of the California Government Code, Chapters 1 through 7,  
15 inclusive, commencing with Section 67650, *et seq.*, and selected provisions of the California  
16 Redevelopment Law, including Division 24 of the California Health and Safety Code, Part 1,  
17 Chapter 4.5, Article 1, commencing with Section 33492, *et seq.*, and Article 4, commencing with  
18 Section 33492.70, *et seq.*, and recognized as the Local Redevelopment Authority (hereinafter  
19 referred to as "Authority") by the Office of Economic Adjustment on behalf of the Secretary of  
20 Defense (collectively the "Parties").  
21

22  
23                                   **RECITALS:**  
24

25  
26       **WHEREAS:**  
27

28           a.       The Government is the owner of a portion of certain real property, improvements and  
29 other rights appurtenant thereto together with all personal property thereon, located in Monterey  
30 County, California, and commonly referred to as the former Fort Ord, which was utilized as a  
31 military installation.  
32

33           b.       The former Fort Ord was closed on September 30, 1994 pursuant to and in accordance  
34 with the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101-510;  
35 hereinafter referred to as the "Base Closure Act").  
36

37           c.       In accordance with Section 2905(b)(4) of the Base Closure Act, as amended by  
38 Section 2821 of the Defense Authorization Act for Fiscal Year 2000, Pub. L. No. 106-65 (1999), and  
39 the implementing regulations of the Department of Defense (32 CFR Parts 90 and 91), the  
40 Government desires to convey and the Authority desires to acquire portions of the former Fort Ord  
41 consisting of approximately five thousand two hundred (5,200) acres of land, including all buildings,  
42 personal property, appurtenances, rights-of-way, and drainage areas (the "Property" as hereinafter  
43 defined), upon and subject to the terms and conditions set forth herein.  
44



## FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

d. As soon as the Property, or discrete parcels thereof, may be conveyed consistent with the requirements of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"; 42 U.S.C. 9620[h]), as amended, and other legal and policy requirements, the Government intends to convey to the Authority by one or more quitclaim deeds the Property or parcels thereof, subject to any necessary restrictions, reservations, conditions, and exceptions at no cost, as set forth below.

### AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing premises and the respective representations, agreements, covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Government and the Authority agree as follows:

#### ARTICLE 1. DEFINITIONS:

When used herein, the following terms shall have the respective meanings set forth opposite each such term:

1.01. Agreement. This Memorandum of Agreement, including the Exhibits attached hereto which are incorporated herein by reference and made a part of this Agreement.

1.02. Adjusted Gross Proceeds. All revenues received by the Authority or the Authority member jurisdictions from a sale, lease, or equivalent use of the Property (licenses, permits, concession agreements, etc.) or portions of the Property to a Bona Fide Purchaser or Lessor minus Direct Expenses as hereinafter defined.

1.03. Bona Fide Purchaser or Lessor. A non-governmental purchaser or Lessor of the Property from the Authority or an Authority member jurisdiction.

1.04. Claims. Any and all losses, costs, liability, judgment, claims, proceedings, demands, actions, fines, penalties, expenses, damages, or other fees.

1.05. Closing. The transactions during which portions of the Property transfer documents, along with other documents, are executed and delivered by the Government and the Authority, and the Government transfers a portion of the Property to the Authority. The Parties contemplate that there will be multiple closings.

1.06. Closing Documents. Those documents required to be delivered by the Parties at Closing as required herein.



## FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

1  
2 1.07. Deed. A recordable quitclaim deed substantially in the form of Exhibit B-1 and  
3 ~~Exhibit B-2~~, conveying to the Authority all rights and title held by the Government in and to the  
4 Property.  
5

6 1.08. Direct Expenses. Those customary and usual expenses expended directly by the  
7 Authority or by Authority member jurisdictions when selling or leasing the Property or portions of  
8 the Property to a Bona Fide Purchaser or Lessor, including utilities, insurance, and applicable  
9 Federal State and local taxes.  
10

11 1.09. Environmental Baseline Survey. The investigative report entitled Environmental  
12 Baseline Survey ("EBS") for the Property dated April 1992, prepared by the Government and any  
13 supplements or amendments thereto.  
14

15 1.10. FOSET. A Finding of Suitability for Early Transfer that represents a written  
16 determination by the Government that a parcel of the Property containing areas of suspected  
17 Hazardous Substances and contaminants may be transferred by Deed to the Authority before all  
18 necessary remedial action has been taken pursuant to Section 120(h)(3)(C) of CERCLA.  
19

20 1.11. FOSL. A Finding of Suitability to Lease that represents a written determination by  
21 the Government that a parcel of the Property may be leased for the intended purpose to the Authority  
22 in full compliance with all applicable laws and regulations.  
23

24 1.12. FOST. A Finding of Suitability to Transfer that represents a written determination by  
25 the Government that a parcel of the Property may be transferred by Deed to the Authority in full  
26 compliance with Section 120(h)(3) or Section 120 (h)(4) of CERCLA, substantially in the form of  
27 Exhibit C.  
28

29 1.13. Lease. A lease instrument under which the Government agrees to lease the Property,  
30 in whole or in part, to the Authority in accordance with Article 6 of this Agreement.  
31

32 1.14. Lease Property. The portion of the Property, if any, which the Government agrees to  
33 Lease to the Authority in accordance with Article 6 of this Agreement.  
34

35 1.15. Parcel 1. The portion of the Property located on the former Fort Ord as shown on  
36 Exhibit A.  
37

38 1.16. Parcel X. The portion of the Property located on the former Fort Ord as shown on  
39 Exhibit A.  
40



## FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

1.17. Personal Property. The related personal property to be transferred by the Government to the Authority listed in the Bill of Sale for Personal Property Conveyed to the Authority substantially in the form of Exhibit G.

1.18. Property. The Real Property and Personal Property.

1.19. Real Property. Approximately five-thousand one-hundred eighty-eight (5,188) acres of land consisting of a number of parcels of land located in the bounds of the former Fort Ord, Monterey County, California, which has been designated as surplus property, all as more particularly described in Exhibits A, together with:

A. All buildings, facilities, roadways, and other infrastructure, including the storm drainage systems and the telephone system infrastructure, and any other improvements thereon (including all replacements or additions thereto between the date of this Agreement and the date of conveyance of the Property to the Authority),

B. All appurtenant easements and other rights appurtenant thereto, including easements and rights appurtenant thereto, permits, licenses, privileges and not otherwise excluded herein,

C. All hereditaments and tenements therein and reversions, remainders, issues, profits, privileges and other rights belonging or related thereto,

D. Irrevocable non-exclusive access easements over existing roads located on portions of the Property awaiting conveyance to the Authority and contiguous real property owned by the Government, including but not limited to access over North-South Road, Monterey Avenue, Gigling Road, etc., all as set forth in Exhibit M,

E. All Mineral Rights, if approved by the Bureau of Land Management, and

F. All subject to the following reserved rights:

1. Access from the Bureau of Land Management area out Eucalyptus Road, Watkins Gate Road, and Barloy Canyon Road to Reservation Road.

2. Access to public roads from the Presidio of Monterey Annex.

3. During the term of its existing franchise agreement, currently scheduled to expire on November 19, 2005, a reserved right for USA Media Group, LLC (formerly Coastside Cable TV), or its successor in interest, to occupy and use parcel E20c1.2 (their antenna parcel) and a portion of parcel E2d.1 where their existing office trailers are located together with continued access to their cable TV lines. It



## FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

1 is understood by the Parties that any relocation of USA Media Group, LLC, for  
2 development purposes will be accomplished at the sole cost and expense of USA  
3 Media Group LLC.  
4

5 1.20. Reporting Period. A period of time beginning when the Government transfers  
6 Property to the Authority by either deed or Lease in Furtherance of Conveyance and ending seven  
7 (7) years thereafter. For reporting purposes, all reports required of the Authority or an Authority  
8 member jurisdiction in a given year will be given once a year on or before December 31<sup>st</sup> of that  
9 year.  
10

11 1.21. Sale or Lease Proceeds. The Adjusted Gross Leasing Proceeds or Adjusted Gross  
12 Sales Proceeds received by the Authority or Authority member jurisdiction minus the Direct Leasing  
13 Expenses or Direct Selling Expenses, as the case may be.  
14

15 1.22. Title Insurer. Such title insurance company as the Authority shall from time to time  
16 designate.  
17

18 1.23. Title Policy. An owner's title insurance policy and endorsements thereto, subject only  
19 to the Permitted Title Exceptions, insuring the Authority's interest in the Real Property, which shall  
20 be as fee simple owner to the Property conveyed to the Authority by the Deeds.  
21

### 22 ARTICLE 2. NO COST ECONOMIC DEVELOPMENT CONVEYANCE: 23

#### 24 2.01. No Cost Economic Development Conveyance. 25

26 A. In accordance with Section 2905(b)(4) of the Base Closure Act, as amended by Section  
27 2821 of the Defense Authorization Act for Fiscal Year 2000, Pub. L. 106-65 (1999), and the  
28 implementing regulations of the Department of Defense (32 CFR Parts 90 and 91), this Agreement  
29 represents a contract whereby the Government agrees to convey to the Authority, and the Authority  
30 agrees to acquire the Property, by means of a No Cost Economic Development Conveyance, for no  
31 monetary consideration. The consideration for this Property is the Authority and the Authority  
32 member jurisdictions' agreement to commit proceeds from the sale or lease of the Property toward  
33 the economic development of the former Fort Ord for the benefit of the general public in accordance  
34 with the terms of this Agreement.  
35

36 B. Following the conveyance of the Property to the Authority, the Authority shall transfer  
37 the Property, at no cost, to the Authority member jurisdiction with land use jurisdiction over such  
38 portion of the Property. In lieu of transferring such portion of the Property to the Authority member  
39 jurisdictions with land use jurisdiction over such portion of the Property, FORA, with the approval  
40 of such Authority member jurisdiction, may transfer such portion of the Property to an entity  
41 selected and designated by the Authority member jurisdiction in accordance with State and local law.  
42



## FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

1 C. In accordance with appropriate State of California and local redevelopment laws and  
2 regulations, the Authority or Authority member jurisdiction in possession of the Property may  
3 transfer, sell or lease such parcel(s) of Property to a Bona Fide Purchaser or Lessor except for the  
4 parcel(s) of Property that the Authority or Authority member jurisdiction utilizes for governmental  
5 purposes, consistent with California law.  
6

7 D. The Authority agrees that Sale or Lease Proceeds received by the Authority or Authority  
8 member jurisdiction during the Reporting Period shall be used or obligated either on-site or off-site  
9 to support the economic redevelopment of, or economic development related to, the former Fort Ord,  
10 California ("Economic Development Uses"). In the event Congress enacts legislation, regarding the  
11 Reporting Period after the date of this Agreement, the Army will in good faith exercise the authority  
12 granted to modify the terms of this Agreement consistent with the intent thereof. Economic  
13 Development Uses shall include, but are not limited to:

- 14 1. Road construction, operation, and maintenance.
- 15 2. Transportation infrastructure and management facilities construction, operation, and  
16 maintenance.
- 17 3. Storm and sanitary sewer construction, operation, and maintenance.
- 18 4. Police, fire protection, and other public facilities and equipment to include  
19 construction, operation, and maintenance.  
20
- 21 5. Utility infrastructure construction, operation, and maintenance.
- 22 6. Building rehabilitation, including maintenance pending rehabilitation.
- 23 7. Historic property preservation, construction, operation, and maintenance.
- 24 8. Pollution prevention equipment or facilities construction, operation, and maintenance.
- 25 9. Demolition including maintenance of area for safety and health purposes pending  
26 demolition.
- 27 10. Disposal of hazardous materials generated by demolition or rehabilitation.
- 28 11. Landscaping, grading and other site or public improvements to include habitat  
29 management and related costs.
- 30 12. Planning for, or the marketing of, the redevelopment and reuse of the former Fort  
31 Ord, including planning, design, environmental assessments, surveying, related  
32 professional services, and financing costs associated with eligible activities.  
33

34 Other activities related to those listed above would also be considered an appropriate  
35 allowable Economic Development Use. In order for investments to be considered allowable  
36 Economic Development Uses, the Authority or Authority member jurisdiction must demonstrate that  
37 they are related to those listed above and benefit the Authority's economic redevelopment and long  
38 term job generation efforts on the former Fort Ord.  
39

40 E. Notwithstanding any other provision of this Agreement, the Government reserves the  
41 right to recoup from the Authority, Sale or Lease Proceeds not utilized for Economic Development  
42 Uses during the Reporting Period. The Government may challenge the use of the Sale or Lease



## FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

Proceeds in accordance with subsection D only if such challenge is set forth in writing and delivered to the Authority within one hundred and eighty (180) days after the submission to the Government of the certified annual financial statement showing such Economic Development Uses (the "notification"). The Authority shall have sixty (60) days from the date of the Notification to remit the amount due to the Government, unless the Parties agree to other arrangements for the payment of the amount due or the Authority objects to such Notification pursuant to the Contract Disputes Article of this Agreement. These payments must be paid on or before they are due in order to avoid sanctions imposed by the Debt Collection Act of 1982, 31 U.S.C. 371.

F. The Authority shall prepare and submit to the Government the Authority's annual statement and an annual financial statement certified by an independent Certified Public Accountant that identifies the use of the Sale or Lease Proceeds ("Accounting System"). The Authority shall enter into individual agreements with each Authority member jurisdiction ("Implementation Agreements") to insure that Authority member jurisdictions shall use the Accounting System and otherwise comply with this Agreement for all matters related to the Property.

2.02. Conveyance in Phases. The Government will convey and the Authority will accept transfer of the Property in phases, through multiple Closings, as soon as the Army is able to execute a FOST or FOSET, as appropriate, and in accordance with Article 4. As parcels are conveyed, the Cooperative Agreements effective as of the 1<sup>st</sup> day of July, 1999 with the Army shall be null and void as to such parcels.

### 2.03. Environmental Remediation Level.

A. Unless a deferred covenant transfer through a FOSET is requested by the Authority, the Government shall:

1. except for unexploded ordnance, environmentally remediate the Property prior to its conveyance in accordance with the decision documents listed in Exhibit "N" and their supportive documents to a level supportive of the uses delineated in the Final FORA Base Reuse Plan dated July 1997, in accordance with the schedule set forth in Exhibit L; and

2. with regard to unexploded ordnance, use all reasonable effort to remediate the Property to a level supportive of the uses delineated in the Final FORA Base Reuse Plan dated July 1997, in accordance with the schedule set forth in Exhibit L.

B. The Government recognizes the ongoing interest of the Authority in the environmental remediation of the property, and agrees to include the Authority or its designated representative in meetings of the BRAC Clean-Up Team, as appropriate, to ensure the Government is informed of the Authority's concerns prior to the Government making final decisions.



# FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

## ARTICLE 3. CLOSING:

3.01. Closing Schedule. The Parties agree that the Property shall be conveyed in accordance with the schedule for conveyance of the Property as set forth in Exhibit K; should an action described in this section not take place by the date or time frame identified in the appropriate subsection, all subsequent dates or time frames for all subsequent actions, with the agreement of the Parties, shall be deferred on a day-for-day basis.

### 3.02. Requirements for Initial Closing and for All Subsequent Closings.

#### A. Time and Place.

1. Initial Closing. The Parties will use their best efforts to consummate the Initial Closing no later than two (2) months after the later of:

- a. the execution of this Agreement or the completion of a FOST for Parcel 1 by the Government,
- b. such other time as the Parties may mutually agree, or
- c. the execution of the Habitat Management Plan by the Authority and all Authority member jurisdictions.

2. Subsequent Closings. Subsequent Closings shall take place within forty-five (45) days after the Government completes the FOST or FOSET for the portion of Property to be conveyed to the Authority.

3. Place. Closings shall be consummated at the offices of the Title Insurer, or such other place as the Parties may mutually agree.

B. Government Deliveries. The Government shall deliver to the Initial Closing and Subsequent Closings, as appropriate, the following documents reasonably satisfactory to the Authority and in a form previously reviewed and approved by the Authority:

1. Executed Deed(s) conveying fee ownership to the Authority to Parcel 1 and to all other Parcels for which a FOST or FOSET has been executed, substantially in the form set forth in Exhibit B.

2. Final FOST or FOSET, as appropriate, for each Parcel conveyed to the Authority at the Closing.



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1           3. Executed Bill of Sale for the Personal Property to be conveyed to the  
2 Authority at the Closing with the Parcel conveyed to the Authority at the Closing  
3 substantially in the form set forth in Exhibit G.

4           4. Executed Lease in Furtherance of Conveyance, if any, in a manner set  
5 forth in Article 6.

6           5. Any permits, leases or licenses transferred or assigned relating to the  
7 Parcel conveyed to the Authority at the Closing.

8           6. A listing of the location of copies of all existing construction drawings,  
9 reports, and documents concerning as-built conditions of the facilities as well as  
10 identification of the location of the repository for all environmental reports, studies,  
11 tests and records relating to each parcel as provided for in Article 9.03.

12           7. Certificate confirming that the representations and warranties of the  
13 Government set forth in this Agreement are true and correct as of the date of the  
14 Closing in substantially the form set forth in Exhibit D-1.

15           8. Such additional documents as might be required by California law, the  
16 Title Insurer, or the Authority.

17  
18 C. Authority Deliveries. The Authority shall deliver to the Initial Closing and  
19 Subsequent Closings, as appropriate, the following documents reasonably satisfactory to the  
20 Government and in a form previously reviewed and approved by the Government:

21           1. Executed Lease in Furtherance of Conveyance, if any, in a manner set  
22 forth in Article 6.

23           2. A legal opinion stating that the Authority has the legal authority to execute  
24 this Agreement and accept conveyance and transfer of the Property.

25           3. Certificate confirming that the representations and warranties of the  
26 Authority set forth in this Agreement are true and correct as of the date of the Closing  
27 in substantially the form set forth in Exhibit D-2.

28           4. Such additional documents as might be required by California law, the  
29 Title Insurer, or the Government.



# FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

## ARTICLE 4. PERSONAL PROPERTY:

4.01. Personal Property. In addition to the conveyance of the Real Property, the Government shall transfer to the Authority the Personal Property which the Parties agree is related to and necessary to use the Real Property, as specified and identified in and pursuant to the terms and conditions in the Bill of Sale substantially in the form set forth in Exhibit G.

## ARTICLE 5. WATER AND SEWER RIGHTS:

5.01. Marina Coast Water District. Immediately following the execution of this Agreement, the Government shall transfer to the Marina Coast Water District (the "District") the water and wastewater collection systems on the Property and the Presidio of Monterey Annex, including their respective water rights and wastewater discharge rights as defined in and pursuant to a no cost Public Benefit Conveyance ("PBC") in response to the application filed by the District dated August 26, 1997.

5.02. Government. The Authority understands that in the assignment of the water rights to the District, the Government reserves 1729 acre feet per year ("afy") of water exclusively for Government use ("Government Water Rights"). Also, the Government will retain ownership of 1.08 million gallons per day ("mgd") of wastewater discharge rights ("Government Wastewater Discharge Rights"). If the Authority or any other entity, at its own cost and expense, installs water conservation devices on the property not transferred to the Authority, resulting in decreased Government requirements for water or wastewater discharge, or the Government does not utilize all of the Government Water Rights or Government Wastewater Discharge Rights, the Authority shall have the right to negotiate with the Government for use of the Government Water Rights or Government Wastewater Discharge Rights not utilized by the Government (collectively "Unutilized Government Water/Wastewater Rights"). The Government and the Authority agree to meet and confer regarding the Unutilized Government Water/Wastewater Rights two (2) years following the completion of the installation of water meters at the Presidio of Monterey Annex ("POMA"). The Government shall determine the amounts of unutilized Government Water/Wastewater Rights on an annual basis and will consult with the Authority regarding this determination on an annual basis. In the event of a proposed transfer of Government Water Rights or Government Wastewater Discharge Rights to a third party, the Authority shall have the first right of refusal to any such transfer rights.

5.03. Equitable Allocation of Water. The Authority, and its successors and assigns, shall cooperate with the Marina Coast Water District, Monterey County Water Resources Agency and grantees of former Fort Ord Property to establish and apply a fair process to ensure that all grantees of former Fort Ord property will be provided an equitable supply of the water at the former Fort Ord.



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1           5.04. Wastewater Discharge Rights. The Authority, and its successors and assigns, shall  
2 cooperate with the Marina Coast Water District, the Monterey Regional Water Pollution Control  
3 Agency and grantees of former Fort Ord Property to establish and apply a fair process to ensure that  
4 all grantees of former Fort Ord property will enjoy equitable utilization of the existing sewage  
5 treatment capacity, including existing connections to the former Fort Ord sewage collection system.  
6

### 7           **ARTICLE 6. LEASE IN FURTHERANCE OF CONVEYANCE:** 8

9           6.01. Lease. In furtherance of and pending conveyance of the Property, at the Authority's  
10 request and to the extent the Government can honor such request, the Government agrees to lease  
11 the Property, in whole or in part, to the Authority, and the Authority agrees to accept such lease or  
12 leases in furtherance of conveyance, pursuant to the terms, covenants, and conditions mutually  
13 agreed to by the Parties as provided for in the FOSL. The Lease shall be executed by the  
14 Government and the Authority as soon as the Agreement and a FOSL are executed.  
15

### 16           **ARTICLE 7. EFFECT OF TRANSFER OF TITLE AND CONTINUING** 17           **OBLIGATIONS OF THE GOVERNMENT:** 18

19           7.01. Effects of Deeds. The delivery of the executed Deeds pursuant to this Agreement from  
20 the Government to the Authority shall be deemed full performance by the Government of its  
21 obligations hereunder with regard to the portions of the Property conveyed by each Deed other than  
22 any obligations of the Government which are required by this Agreement or by law (including  
23 without limitation any obligations under CERCLA Section 120(h) and under Section 330 of the  
24 Department of Defense Authorization Act of 1993) to be performed after the delivery of each such  
25 Deed.  
26

27           7.02. As-is, Where-is. Except as provided herein, all of the Property conveyed or leased  
28 hereunder will be in an "as-is where-is" condition and without any representation or warranty  
29 whatsoever and without any obligation on the part of the United States of America except as  
30 expressly provided for by law or in this Agreement.  
31

#### 32           7.03. Liabilities. 33

34           A. The Government shall remain responsible for all liabilities, claims, demands, judgments,  
35 suits, litigation, amounts payable (collectively, "Pre-Closing Obligations") against the Government  
36 or the Property attributable to Government activity on the Property, including activities of the  
37 Government's contractors, lessees, licenses and others acting under Government authority, prior to  
38 the conveyance or lease of each parcel of the Property to the Authority. The Authority shall notify  
39 the Government of the existence or occurrence of any such Pre-Closing Obligations and shall  
40 cooperate with the Government in the payment, settlement and disposition thereof.  
1



## FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

B. The Authority agrees to indemnify and hold harmless the Government, its employees and agents for activities conducted by the Authority, its agents, employees or contractors under the Lease or any Right-of-Entry authorized and granted pursuant by the Government to the Authority.

### ARTICLE 8. TITLE:

8.01. Title. The deed for each parcel of Property (the "Deeds") shall convey all right and title held by the United States of America in and to the Property, subject to and free from encumbrances, covenants, conditions, restrictions, limitations on use or notices except those that are imposed under this Agreement (including the Exhibits attached hereto), or which are recorded as a matter of public record in the Recorder of Deeds Office, Monterey County, California, as of the date of execution of this Agreement. The Authority reserves the right to review the title as conveyed by each Deed. Except as otherwise provided for in this Agreement, the Government agrees not to grant, after the date set forth in this section, any encumbrances, covenants, conditions, restrictions, limitations on use or notices concerning the Property without the specific consent of the Authority.

8.02. Title Evidence. Any title insurance that may be desired by the Authority will be procured at its sole cost and expense. The Government will, however, cooperate with the Authority or its authorized agent, and will permit examination and inspection of any documents relating to the title of the Property as it may have available. It is understood that the Government will not be obligated to pay for any expense incurred in connection with title matters. The Authority may, at its sole cost and expense, on or before the conveyance date order such searches as it deems appropriate confirming the absence of Additional Title Exceptions.

### ARTICLE 9. GOVERNMENT'S OBLIGATIONS PRIOR TO CONVEYANCE:

9.01. Restrictions. From the Effective Date of this Agreement to the Closing, the Government shall not do, permit, or agree to do, any of the following:

A. Sell, encumber or grant any interest in the Property or any part thereof in any form or manner whatsoever or otherwise perform or permit any act which will diminish or otherwise affect the Authority's interest under this Agreement or in or to the Property or which will prevent the Government's full performance of its obligations hereunder, unless the Authority is first informed.

B. Remove or alter any fixtures or Personal Property from the Property listed on Exhibit G, unless the Authority is first notified and agrees to such removal or alteration.

C. Knowingly undertake any action, legal or otherwise, that may impact the Government's ability to convey the Property to the Authority, without first notifying the Authority in a timely manner and seeking the Authority's consultation.



## FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

1           9.02. Zoning, Annexation and Assessment. The Government acknowledges the Authority's  
2 beneficial ownership interest in the Property, as outlined in this Agreement, and recognizes the  
3 Authority's role in the economic development of the Property. The Government authorizes the  
4 Authority to take such land use planning activities as the Authority deems necessary to implement  
5 the FORA Base Reuse Plan. The Government agrees that it will not interfere with or protest or  
6 challenge any annexation, zoning petition or application or the imposition of any land-based  
7 financing district over the Property.

8  
9           9.03. Delivery Requirements. Upon the Authority's written request, the Government shall  
10 make available to the Authority, not later than thirty (30) calendar days following the date of this  
11 Agreement, or as soon thereafter as they become available, true, correct and complete copies of the  
12 following, if not previously delivered to the Authority:

13  
14           A. All non-proprietary information in Licenses and Contracts including all  
15 amendments relating to any portion of the Property;

16  
17           B. Plans and specifications for the improvements on the Property;

18  
19           C. Drawings of above and below ground utilities (including gas, sewer, well, septic,  
20 water, telephone and electrical service cables) located under or on the Property, wherever  
21 available;

22  
23           D. Essential records with respect to the Property (including any records relating to  
24 transactions with taxing authorities, governmental agencies, utilities, and others with whom  
25 the Authority may be dealing following its acquisition of the Property);

26  
27           E. The Environmental Baseline Survey and any maps, amendments or  
28 correspondence related thereto;

29  
30           F. The available FOSTs and FOSETs, as appropriate, issued as to the Property; and

31  
32           G. All documents required elsewhere to be delivered pursuant to this Agreement.

33  
34           9.04. Notification of Changes. The Government shall notify the Authority if the  
35 Government becomes aware of any transaction or occurrence prior to the Closing which would make  
36 any of the representations of the Government contained in this Agreement not true in any respect.

37  
38           9.05. Maintenance of the Property. The Government shall maintain or cause to be  
39 maintained the Property in accordance with the Federal Property Management Act and Regulations,  
40 subject to the availability of funds until such time as the Property is conveyed or leased to the  
41 Authority through the full performance of its obligations under the Cooperative Agreements  
42 effective as of July 1, 1999.



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## ARTICLE 10. AUTHORITY'S OBLIGATIONS PRIOR TO CONVEYANCE:

### 10.01. Habitat Management Plan.

A. The Authority shall execute the Installation-Wide Multispecies Habitat Management Plan ("HMP") for the Former Fort Ord, California, dated April 1997, concurrent with the execution of this Agreement.

B. The Authority member jurisdictions shall execute the HMP within ninety (90) days following the execution of this Agreement.

## ARTICLE 11. GOVERNMENT REPRESENTATIONS:

The Government hereby represents to the Authority on and as of the Effective Date of this Agreement and as of the Closing as follows:

11.01. Execution of Agreement. The Government has full capacity, right, power and authority to execute, deliver, and perform this Agreement and all documents to be executed by the Government pursuant hereto, and all required action and approvals therefor have been duly taken and obtained. This Agreement and all documents to be executed pursuant hereto by the Government are and shall be binding upon and enforceable against the Government in accordance with their respective terms.

11.02. Complete Information. To the best of the Government's knowledge, information and belief, the information included in the Exhibits hereto and the documents to be delivered to the Authority pursuant to this Agreement or previously delivered to the Authority are true, correct and complete in all material respects, and the same do not omit any material information required to make the submission thereof fair and complete.

11.03. Possession. To the best of the Government's knowledge, information and belief, the information included in the Exhibits hereto and the documents to be delivered to the Authority pursuant to this Agreement or previously delivered to the Authority acknowledge any leases in existence or persons who have possessory rights or any claims in respect to the Property that will survive Closing.

11.04. Claims. The Government will notify the Authority on or before each Closing and effective at such Closing of any claims, causes of action or other litigation or proceedings pending or threatened with respect to the ownership or operation of the Property or any part thereof (including disputes with mortgagees, governmental authorities, utilities, contractors or adjoining land owners).



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11.05. Notice. To the best of the Government's knowledge, information and belief, the Government has not received any notice of (and is not otherwise aware of) any violations of any legal requirements with respect to the Property which have not been entirely corrected or are in the process of being corrected.

11.06. Environmental Baseline Survey. The Environmental Baseline Survey, and if available, the appropriate FOST, FOSET, and/or FOSL reflects all information in the possession or control of the Government with respect to the presence, or suspected presence, or any condition on or associated with the Property that presents, or could present, a risk to human health or the environment. Further, the Environmental Baseline Survey has been prepared, under the direction of the Government, in full compliance with all material requirements of all applicable directives, guidance documents, and other policies, and is based on thorough and comprehensive investigations and analyses of the historical uses and current conditions of the Property.

11.07. Contracts, Leases or Licenses. To the best of the Government's knowledge, information and belief, the information included in the Exhibits hereto and the documents to be delivered to the Authority pursuant to this Agreement or previously delivered to the Authority acknowledges any contracts, leases or licenses with respect to the Property that will survive Closing.

### ARTICLE 12. AUTHORITY REPRESENTATIONS:

12.01. Representations. The Authority hereby represents to the Government on and as of the date of this Agreement and on and as of the Closing, that the Authority has full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by the Authority pursuant hereto, and all required action and approvals therefor have been duly taken and obtained. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of the Authority shall be duly authorized to sign the same on the Authority's behalf and to bind the Authority thereto. This Agreement and all documents to be executed pursuant hereto by the Authority are and shall be binding upon and enforceable against the Authority in accordance with their respective terms.

### ARTICLE 13. SHARING OF SERVICES, UTILITIES AND ROADS:

13.01. Sharing of Services. The Government and the Authority shall grant to the other at no cost such easements or licenses as may be required (a) for the use of roads, utilities and other services necessary or desirable for the enjoyment and benefit of those portions of the Property owned by the other Party as shown on Exhibit M, and (b) for ingress and egress as may be necessary, as shown on Exhibit M.



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## ARTICLE 14. RIGHT OF ENTRY:

14.01. Right of Entry. From the Effective Date of this Agreement to the Final Closing, the Government agrees to issue a license, right of entry, or other appropriate document to the Authority in the form set forth as Exhibit J, for Authority representatives, agents, employees, lenders, contractors, appraisers, architects and engineers designated by the Authority, access to and entry upon the Property and the improvements thereon to examine, inspect, measure, conduct infrastructure improvements, demolish infrastructure, hazardous and other material disposal and removal, construction of infrastructure and test the Property except where such entry would conflict or jeopardize personal safety or interfere with remediation activities. In exercising the right of entry granted by this section, the Authority shall: 1) provide reasonable notice to the Government of the date, time, and purpose of the entry; 2) obtain the Government's prior written consent to any infrastructure demolition, land-disturbing testing, including the taking of core samples, and hazardous and other material disposal; 3) ensure that any activities on the Property do not interfere with Government operations or activities; and 4) comply with terms and conditions specified by the Government (including reasonable insurance requirements), which the Government agrees it shall not unreasonably impose.

A. Any work and improvements by the Authority shall be subject to terms, conditions, and restrictions deemed necessary by the Government and set forth in the license, Right of Entry, or other appropriate document. The cost of said improvements shall be borne entirely by the Authority, and shall remain the property of the Government if the transfers anticipated herein do not occur. The Authority shall indemnify and hold the Government harmless from all claims, liability, loss, cost, environmental contamination, or damage that may occur as a result of the undertaking by the Authority of said improvements or site preparation, except where such claims, liability, loss, cost, environmental contamination, or damage is the result of the gross negligence or willful misconduct of the Government or its employees, agents, or contractors. It shall be the responsibility of the Authority at its expense to obtain all governmental permits and clearances and complete any environmental analysis or documentation required for the undertaking of said improvements or site preparation, including but not limited to:

1. permits and clearances from the Army, the U.S. Environmental Protection Agency, and the California Department of Toxic Substance Control ("DTSC"), related to the ongoing environmental cleanup required under the Federal Facility Agreement for the former Fort Ord;

2. air quality analysis and documentation; and

3. any permits, analysis, and/or documentation required by the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the Endangered Species Act, the Coastal Zone Management Act, the Clean Air Act



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and Amendments, the Clean Water Act, and other applicable Federal, state and local laws and regulations.

B. The Government shall cooperate with the Authority as necessary to obtain said permits, provided that the Authority shall discharge any expense or liability of the Government in connection therewith.

### ARTICLE 15. ENVIRONMENTAL PROVISIONS:

#### 15.01. Environmental Condition of the Property.

A. For those Parcels where the Government has determined that no further remediation is necessary, the Government and the Authority hereby agree to be bound by the terms and conditions of the Deed, substantially in the form set forth in Exhibit B.

B. For those Parcels to be conveyed with a deferred covenant as permitted by Section 120(h)(3)(C) of the CERCLA, the Government and the Authority hereby agree to be bound by the terms and conditions of a Deed that shall contain, at a minimum, the following (upon the mutual agreement of the Parties, the Deed(s) may be modified as necessary):

1. Government Finding of Suitability: Finding by the Government that the Property is suitable for transfer for the intended use as set forth in the FOSET, and that the Government believes that the requirements of CERCLA Section 120(h)(3)(C) have been satisfied with the supporting evidence being provided in the FOSET package.

2. Property Description: A description of the Real Property to be transferred. A map should also be attached.

3. Nature and Extent of Contamination: A description of the nature and extent of the contamination that impacts the parcel of Property being transferred. The Department of Defense Environmental Condition Category of the Property should also be included. An extract from the EBS or a supplement to the EBS, which accurately delineates the areas of contamination shall be attached to the FOSET packet.

4. Analysis of Future Use: A description of the intended use of the Property and a determination of whether the anticipated reuse is reasonably expected to result in exposure to CERCLA hazardous substances. If it is determined that exposure to hazardous substances is likely, the analysis must discuss restrictive measures contemplated or required (i.e., institutional and other controls), to prevent exposure



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during the remediation of the Property. These restrictions must also be included in the deed for the Property.

5. Response/Corrective Action and Remedial Action-Operations Requirements:

A description of any ongoing or planned remedial or corrective actions. The schedule for such actions, including the dates of certain milestones (e.g., the implementation of the remedy) should be included. The schedule should also contain the dates for the operation and maintenance of the remedy or response action.

6. Deed Language: Environmental remediation information that will be required in either the deed or contract for sale of the parcel of Property for review as follows:

(i). Notice: a copy of the notice language required by CERCLA Section 120(h)(1) and (3) that will be inserted in the deed identifying: the type and quantity of hazardous substances on the Property; the time at which storage, release or disposal took place, and a description of the remedial action taken, if any. This information may be displayed in matrix form for ease of use.

(ii). Covenant: a copy of the covenant language required by CERCLA Section 120(h)(3)(A)(ii)(II) stating, with respect to hazardous substances existing on the Property as of the date of transfer, that: "any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States."

(iii). Right of Access: a copy of the language required by CERCLA Section 120(h)(3)(A)(iii) granting the United States access to the Property if remedial action or corrective action is found to be necessary after the date of Property transfer, as well as providing access to the Property to perform the cleanup for which the deferral is being sought.

(iv). Response Action Assurances: a copy of the response action assurances required by CERCLA Section 120(h)(3)(C)(ii) (listed below) that will be included in the contract for sale of the parcel of Property and the Deed. These assurances are included in the contract for sale of the parcel of Property and the Deed to ensure that the transfer does not delay remedial activities; the reuse does not pose a risk to human health and the environment; and that the Government will request adequate funds to address schedules for investigation and completion of all response actions.

(a) provide for any necessary restrictions on the use of the Property to ensure the protection of human health and the environment;



## FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

(b) provide that there will be restrictions on the use necessary to ensure that required remedial investigations, response action, and oversight activities will not be disrupted;

(c) provide that all necessary response action will be taken and identify the schedules for investigation and completion of all necessary response action as approved by the appropriate regulatory agency; and

(d) provide that the transferring Federal agency responsible for the Property subject to transfer will submit a budget request to the Director of the Office of Management and Budget that adequately addresses schedules for investigation and completion of all necessary response action, subject to congressional authorizations and appropriations.

7. Attachments: To demonstrate that the Government has requested adequate funding for all response activities, a schedule and associated funding profile for response actions shall be attached to the FOSET. Any specific language required to ensure that cleanup activities will not be disrupted, and to implement institutional or other controls or impose use restrictions during the remediation period and that may be required by the final remedy decision, can either be included in or attached to the FOSET.

15.02. Schedule. The Government shall use its best efforts to complete the environmental remediation of the Property in the time schedule set forth in Exhibit L.

15.03. Ordnance and Explosives ("OE"). The former Fort Ord is a former military installation with a history of OE use and, therefore, there is a potential for OE to be present on the Property. In the event the Authority, its successors and assigns, should discover any ordnance on the Property, it shall not attempt to remove or destroy it, but shall immediately notify the local police department and the Directorate of Law Enforcement at the Presidio of Monterey. A competent Government or Government designated explosive ordnance professional will be dispatched promptly to dispose of such ordnance properly at no expense to the Authority, whenever OE may be discovered.

15.04. Covenants Relating to Retention of Environmental Documents. The original administrative record, and all environmental documents relating thereto, concerning the environmental conditions of the Property shall be maintained in an accessible repository so that such records will be available for inspection, review and copying by the Authority and its successors and assigns. The Authority and its successors and assigns, at their own expense, shall have the right to inspect, review and copy such records with twenty-four (24) hour prior notice. The Government shall use its best efforts to locate the repository at or near the Property.



## FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

### ARTICLE 16. LEAD-BASED PAINT (LBP):

16.01. Disclosure. The Lead-Based Paint (hereinafter referred to as "LBP") Disclosure required by 24 CFR Part 35 (FR March 6, 1996) is shown as an Exhibit in the Deed.

16.02. Disclosure Removal. The parties agree that the Authority, or its successors or assigns, will seek approval of a procedure through the California DTSC, whereby once the LBP is removed from the Property in compliance with Federal and State standards, the LBP Disclosure can be removed from the Deeds. The Government agrees to cooperate with such procedure, and sign amended Deeds as necessary, provided, however, that such amendments shall be at no cost to the Government.

16.03. Liability. The Parties agree, that prior to occupancy for residential habitation, of any existing structure, the Authority will comply with the applicable lead based paint inspection and abatement provisions of 24 C.F.R. Part 35. The Government assumes no liability for remediation or damages for personal injury, illness, disability, or death, to the Authority, its successors and assigns, sublessees or to any other person, including members of the general public, arising out of exposure to lead-based paint in connection with the Authority's possession and/or use of any portion of the Property containing lead-based paint. The Authority, its successors and assigns, further agree to indemnify and hold harmless the Government, its officers, agents and employees, from and against all suits, claims, demands or actions liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death or property damage resulting from, related to, caused by or arising out of exposure to lead-based paint or lead-based paint hazards on the Property after the date of the conveyance of the Property, if used for residential purposes.

### ARTICLE 17. ASBESTOS:

17.01. Disclosure. The Authority is hereby informed by the Government and does acknowledge that asbestos or asbestos-containing materials (ACM) have been found on the Property, as described in the Diagnostic Environmental, Inc. (now ATC Environmental, Inc.) report, Asbestos Survey Report, U.S. Army Corps of Engineers - Fort Ord Installation, Fort Ord, California, dated April 26, 1993. Appropriate disclosure statements for each parcel of Property will be included in each Deed.

17.02. Disclosure Removal. The parties agree that the Authority, or its successors or assigns will seek approval of a procedure through the California DTSC, whereby once the ACM is removed from the Property in compliance with Federal and State standards, reference to ACM can be removed from the Deeds. The Government agrees to cooperate with such procedure, and sign amended Deeds as necessary, provided, however, that such amendments shall be at no cost to the Government.



## FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

17.03. Liability. The Government shall be responsible for the remediation of all damaged friable and accessible ACM which exists on the Property at the time of its conveyance to the Authority; the Authority shall be responsible for the remediation of all damaged friable and accessible ACM which becomes damaged friable and accessible ACM after the time of the conveyance of the Property to the Authority. The Authority further agrees to indemnify and hold harmless the Government, its officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, exposure to asbestos on any portion of the Property after this conveyance of the Property to the Authority or any future remediation or abatement of asbestos or the need therefor.

The obligation of the Authority hereunder shall apply whenever the United States incurs costs or liabilities for actions giving rise to liability under this section.

### ARTICLE 18. NOTICE OF HISTORIC PRESERVATION:

18.01. Historic Places. In accordance with an agreement by and between the Department of the Army, the Advisory Council on Historic Preservation, and the California State Historic Preservation Officer ("SHPO") regarding Fort Ord, California ("Programmatic Agreement"; Exhibit F), certain areas of the Property are under consideration for eligibility for listing on the National Register of Historic Places. If a site is determined to be eligible for listing on the National Register of Historic Places, the Authority agrees, on behalf of itself and its successors and assigns, to consult with the SHPO and maintain and preserve the Historic Site as appropriate in accordance with the Programmatic Agreement.

### ARTICLE 19. GOVERNMENT CONSENT TO SUBDIVISION OF PROPERTY/DEDICATION OF ROADS:

19.01. Subdivision of Property. The Government, as permitted by Federal statute, shall not unreasonably delay or withhold its consent to the recording by the Authority or the Authority member jurisdictions, of all documents necessary to subdivide all or portions of the Property, approve assessments, adopt redevelopment project areas, dedicate public roads, easements, and open spaces, and record covenants, conditions and restrictions regarding the future development and use of the Property, in accordance with the FORA Base Reuse Plan, or the recording of any subdivision plat, dedication plat, or declaration of covenants, conditions and restrictions concerning the Property. The Government agrees that it will not interfere with or protest or challenge any subdivision petition or application over the Property. Additionally, the Government acknowledges the Authority's role in the economic development of the Property and, as permitted by Federal statute, authorizes the Authority to vote in any election on the Property or otherwise indicate its views in such matters as the owner or contract purchaser of the Property, as the Authority deems appropriate.



# FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

## ARTICLE 20. BROKERAGE; CONTINGENT FEES:

20.01. Contingent Fees. The Authority warrants that it has not employed or retained any party under an agreement or understanding for a commission, percentage, brokerage, or contingent fee tied to the successful conveyance of the Property from the Government to the Authority. Breach of this warranty shall give the Government the right to recover from the Authority the amount of such commission, percentage, brokerage or contingent fee in addition to the consideration herewith set forth actually paid by the Government to any such party retained by the Authority. This warranty shall not apply to commissions payable by the Authority upon the contract being secured or made through bona fide established commercial agencies maintained by the Authority for the purpose of doing business. A bona fide established commercial agency has been construed to include licensed real estate brokers engaged in the business generally.

## ARTICLE 21. DESTRUCTION OR DAMAGE:

21.01. Destruction or Damage. In the event of significant damage or destruction of all or a portion of the Property prior to the Closing, the Authority retains the right to renegotiate the consideration and terms of this Agreement with regard to such damaged portion of the Property.

## ARTICLE 22. NOTICES:

22.01. Notices. Any notice, request, demand, instruction or other document to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be delivered personally (including by messenger) or sent by United States registered or certified mail, return receipt requested, postage prepaid or by courier, postage prepaid and addressed to the parties at their respective addresses set forth below, and the same shall be effective upon receipt if delivered personally or by messenger or two business days after deposit in the mail if mailed. A party may change its address for receipt of notices by service of a notice of such change in accordance herewith.

If to the Authority:

Michael A. Houlemard, Jr.  
Executive Officer  
Fort Ord Reuse Authority  
100 12th Street, Building 2880  
Marina, California 93933  
Phone: (831) 883-3672  
Facsimile: (831) 883-3675

If to the Government:

U.S. Army Corps of Engineers, Sacramento District  
1325 J Street  
Sacramento, California 95814  
Attn: Kenneth L. Fox, Chief,



# FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

Management and Disposal Branch  
Phone: (916) 557-6870  
Facsimile: (916) 557-7855

## ARTICLE 23. ENTIRE AGREEMENT, AMENDMENTS AND WAIVER:

23.01. Entire Agreement. This Agreement contains the entire agreement and understanding of the Parties in respect to the purchase and sale of the Property, and may not be amended, modified or discharged nor may any of its terms be waived except by an instrument in writing signed by the Party to be bound thereby. The Parties hereto shall not be bound by any terms, conditions, statements, warranties or representations, oral or written, not contained herein.

## ARTICLE 24. CONTRACT DISPUTES:

24.01. Disputes. This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the Parties to this Agreement to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this Agreement shall be a dispute to be resolved in accordance with Federal law. The Authority and the Government shall proceed diligently with performance of this Agreement, pending final resolution of any dispute arising under the Agreement.

## ARTICLE 25. SURVIVAL AND BENEFIT:

25.01. Survival and Benefit. The Authority may not transfer or assign its rights and interests under this Agreement, without the written consent of the Government. All representations, warranties, agreements, obligations and indemnities of the Parties shall, notwithstanding any investigation made by any Party hereto, survive Closing and the same shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties. Nothing in this Agreement otherwise shall be construed as creating any rights of enforcement by any person or entity that is not a Party hereto, nor any rights, interest, or third party beneficiary status for any entity or person other than the Parties hereto.

## ARTICLE 26. INTERPRETATION:

26.01. The headings and captions herein are inserted for convenient reference only and the same shall not limit or construe the paragraphs or sections to which they apply or otherwise affect the interpretation hereof.

26.02. The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms shall refer to this Agreement, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the date of this Agreement.



## FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

1       26.03. Words of the masculine, feminine or neuter gender shall mean and include the  
2       correlative words of other genders, and words importing the singular number shall mean and include  
3       the plural number and vice versa.  
4

5       26.04. Words importing persons shall include firms, associations, partnerships (including  
6       limited partnerships), trusts, corporations and other legal entities, including public bodies, as well  
7       as natural persons.  
8

9       26.05. The terms "include," "including" and similar terms shall be construed as if followed  
10      by the phrase "without being limited to."  
11

12      26.06. This Agreement and any document or instrument executed pursuant hereto may be  
13      executed in any number of counterparts each of which shall be deemed an original, but all of which  
14      together shall constitute one and the same instrument.  
15

16      26.07. Whenever under the terms of this Agreement, the time for performance of a covenant  
17      or condition falls upon a Saturday, Sunday or holiday observed by the performing Party, such time  
18      for performance shall be extended to the next business day. Otherwise, all references herein to  
19      "days" shall mean calendar days.  
20

21      26.08. This Agreement shall be governed by and construed in accordance with Federal law  
22      and the laws of the State of California, as applicable.  
23

24      26.09. Time is of the essence of this Agreement.  
25

26      26.10. If any term or provision of this Agreement or the application thereof to any person  
27      or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement,  
28      or the application of such term or provision to persons or circumstances other than those as to which  
29      it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision  
30      of this Agreement shall be valid and be enforced to the fullest extent permitted by law.  
31

### 32      **ARTICLE 27. OFFICIALS NOT TO BENEFIT:** 33

34      27.01. Officials Not To Benefit. The Authority acknowledges that no member of, or  
35      delegate to the Congress, or resident commissioner, shall be permitted to share any part of the  
36      contract of sale, or to receive any benefit that may arise therefrom. This provision shall not be  
37      construed to extend to the contract of sale if made with a corporation for its general benefit.  
38

### 39      **ARTICLE 28. NON-DISCRIMINATION:** 40

41      28.01. Non-Discrimination. With respect to activities related to the Property, the Authority  
42      hereby agrees that it will comply with the requirements of Title VI of the Civil Rights Act of 1964



## FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

(Public Law 88-352) and all requirements imposed by or pursuant to the regulations issued under that Act and now in effect, to the end that, in accordance with such Act and regulations, no person in the United States shall, on the ground of race, color, national origin, sex or handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the Authority, its successors and assigns.

### ARTICLE 29. FURTHER ASSURANCES:

29.01. Further Assurances. The Government shall, upon the reasonable request of the Authority, execute, cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in order to carry out the intent and purpose of this Agreement.

### ARTICLE 30. NO RIGHT OF RESCISSION:

30.01. No Right of Rescission. There shall be no right of rescission in the Government as to the Property, or any portion thereof, once conveyed to the Authority. The foregoing shall not be interpreted to limit any future exercise of the power of eminent domain by the Government.

### ARTICLE 31. ANTI-DEFICIENCY ACT:

31.01. Anti-Deficiency Act. The Government's obligation to pay or reimburse any money under this Agreement is subject to the availability of appropriated funds, and nothing in this Agreement shall be interpreted to require obligations or payments by the Government in violation of the Anti-Deficiency Act, Public Law 97-258, as amended.

### ARTICLE 32. EFFECTIVE DATE:

32.01. Effective Date. This Agreement shall be final and binding upon the Parties following certification by the Authority that it has complied with the California Environmental Quality Act. Such certification shall be in writing and delivered to the Government no later than sixty (60) days after the execution of the Agreement by the Authority. Following execution of the Agreement by the Parties, the Agreement, and all exhibits thereto, may be released to the public.

[SIGNATURE PAGES FOLLOW]



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June

## 7

By: Paul W. Johnson  
Paul W. Johnson

17 COMMONWEALTH OF VIRGINIA )  
18 ) ss  
19 COUNTY OF ARLINGTON )

On 20 June 2000 before me, the undersigned, a Notary Public in and for said state, personally appeared Paul W. Johnson personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

29 WITNESS my hand and official seal.

31  
32  
33  
34

Yara A. Cooper  
Notary Public, Commonwealth of Virginia

MY COMMISSION EXPIRES  
November 30, 2002



FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

In Testimony Whereof, witness the signature of the Fort Ord Reuse Authority, an organization organized and existing under the laws of the State of California under the Fort Ord Reuse Authority Act created under Title 7.85 of the California Government Code, Chapters 1 through 7, inclusive, commencing with Section 67650, *et seq.*, and selected provisions of the California Redevelopment Law, including Division 24 of the California Health and Safety Code, Part 1, Chapter 4.5, Article 1, commencing with Section 33492, *et seq.*, and Article 4, commencing with Section 33492.70, *et seq.*, this 7<sup>th</sup> day of June, 2000.

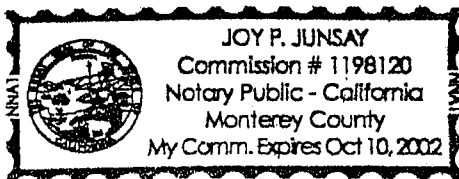
FORT ORD REUSE AUTHORITY  
LOCAL REDEVELOPMENT AUTHORITY

By: Edith Johnsen  
Edith Johnsen  
Chair

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF MONTEREY )

On JUNE 7, 2000 before me, the undersigned, a Notary Public in and for said state, personally appeared Edith Johnsen. personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



[Signature]



DESCRIPTION OF PROPERTY  
EXHIBIT A



EXHIBIT "A"  
DESCRIPTION OF PROPERTIES

Search Results: Click Back Button on Browser to Search Again.

Parcels Database last updated on: 10/4/99 1:54:42 PM

Total Acreage from Query is: 5188.101 Acres

COE Number	Parcel Name	Acreage	Jurisdiction	Recipient	Transfer Status
E11a	Habitat management	154.5	County	EDC	in progress
E11b.1	development / mixed use /ac limit	24.7	County	EDC	in progress
E11b.2	development / mixed use-ac limit	41.7	County	EDC	in progress
E11b.3	sewer treatment facility / development mix	6.2	County	EDC	in progress
E11b.4	water tank 147	0.1	County	EDC	in progress
E11b.6	development / mixed use-aac limit	129.4	County	EDC	in progress
E11b.7	development / mixed use-ac limit	255.3	County	EDC	in progress
E11b.8	ASP / development mixed use	58.8	County	EDC	in progress
E15.1	ROW / retail	49.1	Seaside	EDC	in progress
E15.2	open space	28.7	Seaside	EDC	in progress
E18.1	housing future	73	Seaside	EDC	in progress
E18.2.1	ROW Gigling road	4.9	Seaside	EDC	in progress
E18.2.2	ROW Gigling road	0.1	County	EDC	in progress
E18.3	ROW Normandy/Parker Flats	6.2	Seaside	EDC	in progress
E18.4	water tank	2.2	Seaside	EDC	in progress
E19a.1	housing SFD low density	265.7	County	EDC	in progress



E19a.2	housing SFD low density	218.4	County	EDC	in progress
E19a.3	housing SFD low density	209.3	County	EDC	in progress
E20b	housing Stilwell	101.8	Seaside	EDC	in progress
E20c.1.1.1	housing future	75	Seaside	EDC	in progress
E20c.1.1.2	housing future	113.9	Seaside	EDC	in progress
E20c.1.2	Cable TV area	0.3	Seaside	EDC	in progress
E20c.1.3	ROW N/S road	10.4	Seaside	EDC	in progress
E20c.2.1	housing future	92.5	Seaside	EDC	in progress
E20c.2.2	water tanks/pumps	2.3	Seaside	EDC	in progress
E21a	housing SF low density	138.7	County	EDC	in progress
E21b.1	housing SFD low density	156.7	County	EDC	in progress
E21b.2	housing SFD low density	134.2	County	EDC	in progress
E21b.3	housing SFD low density	58.5	County	EDC	in progress
E23.1	ROW / retail	47.5	Seaside	EDC	in progress
E23.2	ROW / housing future SFD med density	72.6	Seaside	EDC	in progress
E24	ROW / housing future SFD med density	197.1	Seaside	EDC	in progress
E29	BP/LI/O//R&D	34.5	County/Monterey	EDC	in progress
E29a	visitor center / bus park	273.3	Del Rey Oaks	EDC	in progress
E29b.1	ROW future Hwy 68 / habitat	34.5	Del Rey Oaks	EDC	in progress
E29b.2	ROW/BP/LI/O/R&D	30.1	County/Monterey	EDC	in progress



E29b.3	BP/LI/O/R&D	28.4	County/Monterey	EDC	in progress
E29e	ROW/future Hwy 68/OP/R&D	9.5	County/Monterey	EDC	in progress
E2a	development / mixed use	63.7	Marina	EDC	in progress
E2b.1.1.1	development / mixed use	24	Marina	EDC	in progress
E2b.1.1.2	developmemt / mixed use	1.2	Marina	EDC	in progress
E2b.1.2	ROW road	10.6	Marina	EDC	in progress
E2b.1.3	development / mixed use	33.6	Marina	EDC	in progress
E2b.1.4	ROW road	2.2	Marina	EDC	in progress
E2b.1.5	development / mixed use	12.2	Marina	EDC	in progress
E2b.2.1	development / mixed use	71.1	Marina	EDC	in progress
E2b.2.2	ROW road	0.8	Marina	EDC	in progress
E2b.2.3	ROW road	4.4	Marina	EDC	in progress
E2b.2.4	development / mixed use	7.5	Marina	EDC	in progress
E2b.2.5	2/12 Pump and Treat Facility	1.5	Marina	EDC	in progress
E2b.3.1.1	development / mixed use	108.6	Marina	EDC	in progress
E2b.3.1.2	CID Building	1.6	Marina	EDC	in progress
E2b.3.2	ROW 8th St	0.1	Marina	EDC	in progress
E2c.1	development / mixed use	13.2	Marina	EDC	in progress
E2c.2	OU2 Pump and Treat Facility	1.1	Marina	EDC	in progress
E2c.3.1	development / mixed use	10	Marina	EDC	in progress



E2c.3.2	ROW road	13.8	Marina	EDC	in progress
E2c.3.3	development / mixed use	31.7	Marina	EDC	in progress
E2c.4.1.1	ROW road	8.9	Marina	EDC	in progress
E2c.4.1.2	ROW road	2.8	Marina	EDC	in progress
E2c.4.2.1	development / mixed use	13.1	Marina	EDC	in progress
E2c.4.2.2	development / mixed use	2.4	Marina	EDC	in progress
E2c.4.3	ROW road	1.9	Marina	EDC	in progress
E2c.4.4	ROW road	1.1	Marina	EDC	in progress
E2d.1	development / mixed use	15.2	Marina	EDC	in progress
E2d.2	ROW	5.4	Marina	EDC	in progress
E2d.3	development / mixed use	46.6	Marina	EDC	in progress
E2e.1	ROW 6th Ave / 8th St Road	6.1	Marina	EDC	in progress
E2e.2	ROW Intergarrison road	0.2	County	EDC	in progress
E31a	bus park /LI/O/R&D	5.2	Del Rey Oaks	EDC	in progress
E31b	bus park /LI/O/R&D	3.1	Del Rey Oaks	EDC	in progress
E31c	bus park /LI/O/R&D	4.2	Del Rey Oaks	EDC	in progress
E34	ROW / housing future SFD med density	94.7	Seaside	EDC	in progress
E36	bus park /LI/O/R&D	6.3	Del Rey Oaks	EDC	in progress
E4.1.1	housing lower Patton	154	Marina	EDC	in progress
E4.1.2.1	housing lower Patton	13	Marina	EDC	in progress



E4.1.2.2	housing lower Patton	23	Marina	EDC	not started
E4.1.2.3	ROW Booker Str /lower Patton	1	Marina	EDC	not started
E4.2	housing upper Patton	64.2	Marina	EDC	in progress
E4.3.1	housing Abrams	179.6	Marina	EDC	in progress
E4.3.2.1	housing Abrams	43.6	Marina	EDC	in progress
E4.3.2.2	Housing Lexington Court	7.9	Marina	EDC	in progress
E4.4	housing Preston	98.9	Marina	EDC	in progress
E4.5	water treatment facility	2.9	Marina	EDC	in progress
E4.6.1	ROW middle Imjin road	25	Marina	EDC	in progress
E4.6.2	ROW Imjin road	17.3	County	EDC	in progress
E4.7.1	ROW NE Imjin road	5	Marina	EDC	in progress
E4.7.2	ROW Imjin road	3.1	County	EDC	in progress
E5a	development / mixed use	45.7	Marina	EDC	in progress
E5b	development / mixed use	3.2	Marina	EDC	in progress
E8a.1	Landfill, 75 acre development, HMP	304.1	County	EDC	in progress
E8a.2	Landfill carrot, Univ med density residential	4	County	EDC	in progress
L20.10.1	ROW / north Reservation road	26.2	County	EDC	in progress
L20.10.2	ROW / north Reservation road	5.2	County	EDC	in progress
L20.10.3	ROW / north Reservation road	2.2	County	EDC	in progress
L20.11.1	ROW / Blanco road	31.2	County	EDC	in progress



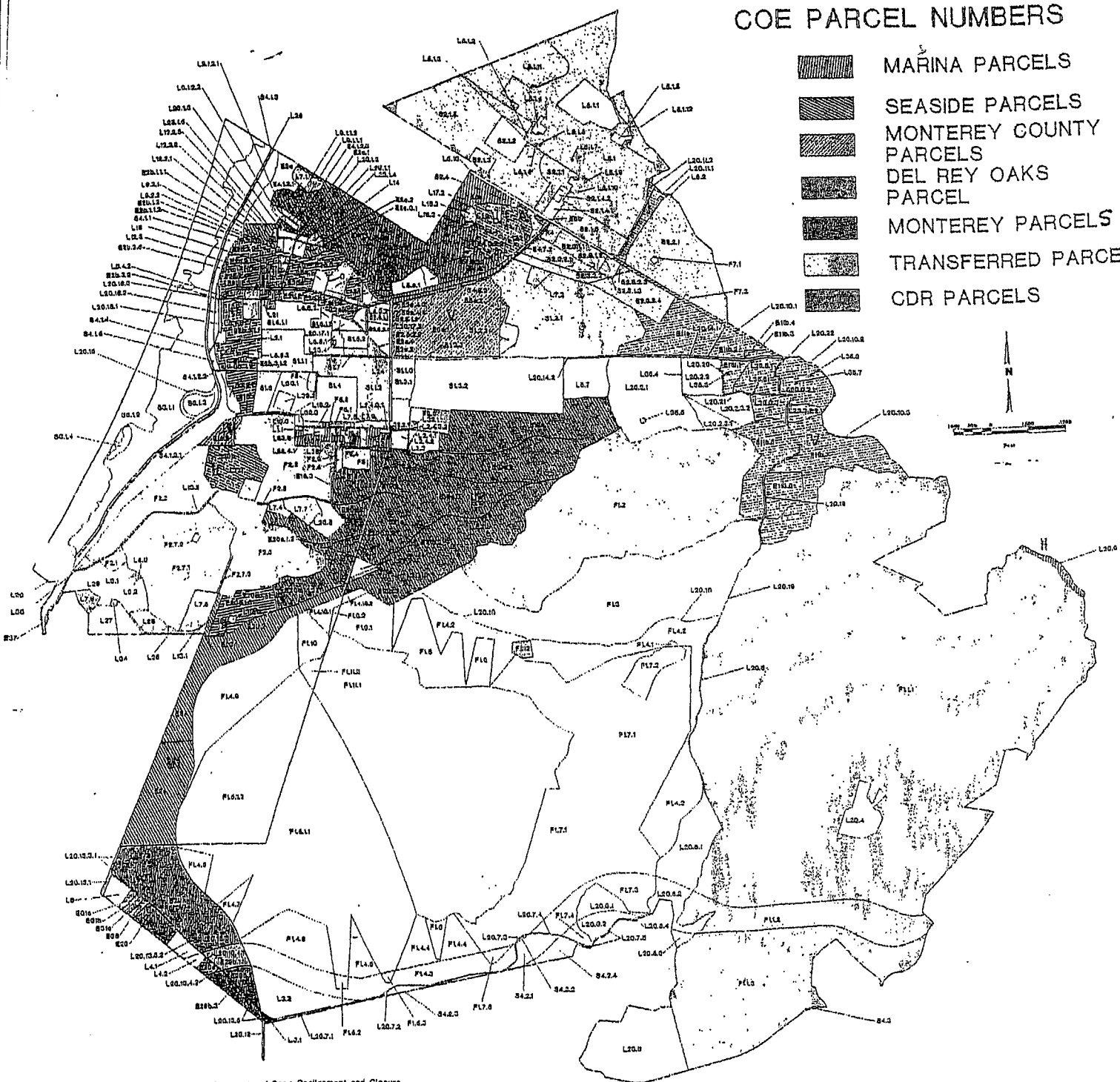
L20.11.2	ROW Blanco road	7.7	Marina	EDC	in progress
L20.13.1	ROW N/S road	2	Del Rey Oaks	EDC	in progress
L20.13.3.1	ROW S Boundary / NS road	7.9	Del Rey Oaks	EDC	in progress
L20.13.3.2	ROW / part S Boundary Road	2.1	County/Monterey	EDC	in progress
L20.13.4.1	ROW S Boundary / future Hwy 68	0.8	Del Rey Oaks	EDC	in progress
L20.13.4.2	ROW / part S Boundary Road	0.8	County/Monterey	EDC	in progress
L20.13.5	ROW / S Boundary / York road	5.9	County/Monterey	EDC	in progress
L20.14.1	ROW / East Intergarrison road	16.2	County	EDC	in progress
L20.14.2	ROW / Mid Intergarrison road	3.2	County	EDC	in progress
L20.18	ROW / Eucalyptus road	7.2	County	EDC	in progress
L20.19	ROW / North Barloy Canyon road	10.3	County	EDC	in progress
L20.20	ROW / west Camp road	2.3	County	EDC	in progress
L20.21	ROW / part Watkins Gate road	4.4	County	EDC	in progress
L20.22	ROW / Chapel Hill road	2.4	County	EDC	in progress
L20.9	ROW / south Reservation road	18.9	County	EDC	in progress
L23.3.1	development mixed use-ac limit	54.5	County	EDC/MPC	not started
L23.3.2.1	development mixed use-ac limit/historic district	83.2	County	EDC/MPC	not started
L23.3.2.2	development mixed use-ac limit	20.1	County	EDC/MPC	not started
L23.3.3	development mixed use-ac limit	36.4	County	EDC/MPC	not started
L31	Esselen Parcel Surplus II	11.7	Seaside	EDC	in progress



L32.1	public facilities/inst Surplus II	2.9	County	EDC	in progress
L32.4.1	development mixed use / retail Surplus II	52.4	Seaside	EDC	in progress
L32.4.2	ROW / development mixed use / Surplus II	4.3	County	EDC	in progress



	MARINA PARCELS
	SEASIDE PARCELS
	MONTEREY COUNTY PARCELS
	DEL REY OAKS PARCEL
	MONTEREY PARCELS
	TRANSFERRED PARCELS
	CDR PARCELS



Prepared by Directorate of Base Realignment and Closure  
Presidio of Monterey, California  
Revised 10-4-88



**EXAMPLE DEED**  
**EXHIBIT B**



PREPARED BY AND  
WHEN RECORDED RETURN TO:

Kutak Rock LLP  
1101 Connecticut Avenue, N.W.  
Washington, D.C. 20306  
Attention: George R. Schlossberg, Esq.

**QUITCLAIM DEED FOR PARCEL X**

THIS DEED, made and entered into between the UNITED STATES OF AMERICA, acting by and through the SECRETARY OF THE ARMY, (hereinafter referred to as the "GRANTOR"), under and pursuant to the power and authority contained in the Defense Base Closure and Realignment Act of 1990, as amended (Public Law No. 101-510, 10 U.S.C. §2687 note; hereinafter "DBCRA"), and the FORT ORD REUSE AUTHORITY ("FORA"), created under Title 7.85 of the California Government Code, Chapters 1 through 7, inclusive, commencing with Section 67650, *et seq.*, and selected provisions of the California Redevelopment Law, including Division 24 of the California Health and Safety Code, Part 1, Chapter 4.5, Article 1, commencing with Section 33492, *et seq.*, and Article 4, commencing with Section 33492.70, *et seq.*, and recognized as the Local Redevelopment Authority for the former Fort Ord, California, by the Office of Economic Adjustment on behalf of the Secretary of Defense (hereinafter referred to as the "GRANTEE").

**WITNESSETH THAT:**

WHEREAS, the Secretary of the Army may convey surplus property to the Local Redevelopment Authority at a closing military installation for economic development purposes pursuant to the power and authority provided by Section 2905(b)(4) of the DBCRA and the implementing regulations of the Department of Defense (32 CFR Part 91);

WHEREAS, GRANTEE, by application, requested an economic development conveyance of portions of the former Fort Ord, California consistent with the redevelopment plan prepared by the GRANTEE;

WHEREAS, GRANTOR and the GRANTEE have entered into a Memorandum of Agreement Between the United States of America Acting By and Through the Secretary of the Army, United States Department of the Army and the Fort Ord Reuse Authority For the Sale of Portions of the former Fort Ord, California, dated the \_\_\_\_ day of \_\_\_\_\_, 2000



## FORT ORD QUITCLAIM DEED FOR PARCEL X

(hereinafter referred to as the "MOA") which sets forth the specific terms and conditions of the sale of portions of the former Fort Ord located in Monterey County, California; and

WHEREAS, the California State Historic Preservation Officer has determined that no structures, monuments, or other property within the subject Property, as hereinafter defined, were identified as having any historical significance; and

WHEREAS, Fort Ord, California, has been identified as a National Priority List Site under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) of 1980, as amended, the GRANTOR has provided the GRANTEE with a copy of the Fort Ord Base Federal Facility Agreement (FFA) and all amendments thereto entered into by EPA Region IX, the State of California, and the Department of the Army that were effective on November 19, 1990; and

WHEREAS, an Installation-Wide Multispecies Habitat Management Plan for former Fort Ord, California (HMP) dated December, 1994 as revised and amended by the "Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord, California" dated April 1997, has been developed to assure that disposal and reuse of Fort Ord lands is in compliance with the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.* Timely transfer of these lands and subsequent implementation of the HMP is critical to ensure effective protection and conservation of the former Fort Ord lands' wildlife and plant species and habitat values while allowing appropriate economic redevelopment of Fort Ord and the subsequent economic recovery of the local communities; and

NOW, THEREFORE, the GRANTOR, for good and valuable consideration does hereby grant, remise, release, and forever quitclaim unto the GRANTEE, its successors and assigns, all such interest, rights, title, and claim as the GRANTOR has in and to the Property known as Parcel X, more particularly described in Exhibit "A" which is attached hereto and made a part hereof.

### I. PROPERTY DESCRIPTION:

The Property includes:

A. All buildings, facilities, roadways, and other, including the storm drainage systems and the telephone system infrastructure, and any other improvements thereon,

B. All appurtenant easements and other rights appurtenant thereto, permits, licenses, privileges and not otherwise excluded herein,

C. All hereditaments and tenements therein and reversions, remainders, issues, profits, privileges and other rights belonging or related thereto, and



## FORT ORD QUITCLAIM DEED FOR PARCEL X

1 D. All Mineral Rights (*to be resolved on a deed by deed basis*).  
2

### 3 II. APPURTENANT EASEMENTS: 4

5 A. GRANTOR hereby declares and grants easements appurtenant to the Property over,  
6 across, under and through the land retained by the GRANTOR for access, utilities and other uses  
7 which easements shall run with the land and be perpetually in full force and effect including, but  
8 not limited to, irrevocable non-exclusive access easements over North-South Road, Monterey  
9 Avenue, and Gigling Road, all as set forth in Exhibit "B".  
10

11 B. The GRANTEE agrees to the following terms and conditions:  
12

13 1. except in the case of an emergency, GRANTEE will provide the fee owner of the  
14 land subject to an easement prior notice of its entry onto the easement area;  
15

16 2. in the utilization of any easement rights granted herein, exercise due care in the  
17 performance of excavations and other work required herein and restore the easement lands  
18 following such work to a safe and usable condition;  
19

20 3. to comply with all applicable federal, state and local laws and regulations;  
21

22 4. to pay the GRANTOR the full value for all damages to the lands or other property  
23 of the United States caused by the GRANTEE or its employees, contractors, or employees of the  
24 contractors arising from its use, occupancy, or operations within the easement areas, provided that  
25 all work done as authorized under this grant of easement shall not be considered as damages to  
26 lands; and to indemnify the United States against any liability for damages to life, person, or  
27 property arising from the occupancy or use of the lands under the easements, except where such  
28 liability arises as a result of acts of the United States, its employees, or contractors, or where the  
29 easements are granted hereunder to a state or other governmental agency which has no legal power  
30 to assume such liability with respect to damages caused by it to lands and property, in which case  
31 such agency in lieu therefore agrees to pay all such damages;  
32

33 5. to allow the occupancy and use by the GRANTOR, its grantees, permittees, or  
34 lessees of any part of the easement areas not actually occupied or required for the purpose of the  
35 full and safe utilization thereof by the GRANTEE, so long as such occupancy and use does not  
36 compromise the ability of the GRANTEE to use the easements for their intended purposes, as set  
37 forth herein;  
38

39 6. that the easements granted shall be for the specific use described and may not be  
40 construed to include the further right to authorize any other use within the easements unless  
41 approved in writing by the fee holder of the land subject to the easement;  
42



## FORT ORD QUITCLAIM DEED FOR PARCEL X

1           7. that any transfer of the easements by assignment, lease, operating agreement, or  
2 otherwise must include language that the transferee agrees to comply with and be bound by the  
3 terms and conditions of the original grant of easement;  
4

5           8. that, unless otherwise provided, no interest granted shall give the GRANTEE any  
6 right to remove any material, earth, or stone for consideration or other purpose except as necessary  
7 in exercising its rights hereunder;  
8

9           9. that a rebuttable presumption of abandonment of any of the easements is raised by  
10 the failure of the GRANTEE to use for any continuous two (2) year period an easement for the  
11 purpose for which it was granted hereby; and that, in the event of such abandonment, the  
12 GRANTOR or its successor will notify the GRANTEE of its intention to terminate the easement  
13 for abandonment sixty (60) days from the date of the notice, unless prior to the end of said sixty  
14 (60) day period the GRANTEE either resumes its use of the easement or demonstrates conclusively  
15 that said resumption of use will occur within a reasonable amount of time thereafter, not to exceed  
16 an additional ninety (90) day period (for purposes of this subparagraph, flow of non-portable water  
17 through the piping system shall constitute continuous use of the easement); and  
18

19           10. to restore any easement area so far as it is reasonably possible to do so upon  
20 abandonment or release of any easement as provided herein, unless this requirement is waived in  
21 writing by the fee owner.  
22

### 23    **III.   EXCLUSIONS AND RESERVATIONS:**

24

25           This conveyance is made subject to the following **EXCLUSIONS** and **RESERVATIONS**:  
26

27           A.   All water allocations derived from the Salinas aquifer shall remain with the  
28 GRANTOR consistent with the MOA. With regard to the ultimate disposition of any water and  
29 water allocation rights, the GRANTOR shall cooperate with the GRANTEE, other grantees of  
30 former Fort Ord property, and the Monterey County Water Resources Agency (MCWRA), in  
31 seeking to ensure that GRANTEE and its successors and assigns, will continue to be provided an  
32 equitable supply of the water at former Fort Ord.  
33

34           B.   With regard to the ultimate disposition of any rights or interests the GRANTOR has  
35 in wastewater discharge rights provided by the Monterey Regional Water Pollution Control Agency  
36 (MRWPCA), the GRANTOR shall cooperate with GRANTEE in accordance with the MOA, other  
37 grantees of property at Fort Ord, and the MRWPCA, in seeking to ensure that GRANTEE and all  
38 other Fort Ord grantees will continue to enjoy equitable utilization of the existing sewerage  
39 treatment capacity, including existing connections to the Fort Ord sewerage collection system.  
40

41           C.   The GRANTOR retains ownership to all Government-owned sewer, and water  
42 utility systems located on the Property. The retention point for the GRANTOR'S retained



## FORT ORD QUITCLAIM DEED FOR PARCEL X

ownership of the water systems will be to the meter location or future meter or utility box location at a point on or near each building or facility. The retention point for the sewer is where the laterals enter the collection lines. The GRANTOR reserves transferable easements and access rights for all GRANTOR-owned utility systems and for utility company owned utility systems:

The GRANTOR reserves assignable non-exclusive easements and rights-of-way, 12 feet in width, in, on, over and across the Property and centered on the existing utility systems owned and retained by GRANTOR at the time of this conveyance and located on the Property. Said easements and rights-of-way shall be for the purpose of locating, constructing, operating, maintaining, altering, repairing and patrolling utility systems together with the right to trim, cut, fell and remove therefrom, consistent with the Installation-Wide Multispecies Habitat Management Plan and applicable law governing protection of endangered species, all trees, underbrush, obstructions and other vegetation, structures, or obstacles within the limits of the easements and right-of-way; reserving, however, to GRANTEE and its successors and assigns, the right to relocate such easements and the rights-of-way at the expense of GRANTEE and its successors and assigns; and reserving the right to the GRANTEE to use and cross such easements and rights-of way; however, such rights of GRANTEE are subject to existing easements and rights-of-way.

D. The GRANTOR reserves an assignable non-exclusive easement, \_\_\_ feet in width, in, on, over and across that portion of the Property lying along \_\_\_\_\_ Road and identified in Exhibit "B" for the purpose of \_\_\_\_\_. GRANTEE does not assume any responsibility for the safety of the use of this easement.

E. Access from the Bureau of Land Management area out Eucalyptus Road, Watkins Gate Road, and Barloy Canyon Road to Reservation Road and access to public roads from the Presidio of Monterey Annex.

F. During the term of its existing franchise agreement, currently scheduled to expire on November 19, 2005, a reserved right for USA Media Group, LLC (formerly Coastside Cable TV), or its successor in interest, to occupy and use parcel \_\_\_\_\_ (their antenna parcel) and a portion of parcel \_\_\_\_ where their existing office trailers are located together with continued access to their cable TV lines all as more particularly described in Exhibit "\_\_\_\_". It is understood by the GRANTOR and GRANTEE that any relocation of USA Media Group, LLC, for development purposes will be accomplished at the sole cost and expense of USA Media Group LLC or its successor in interest.

G. The Property is taken by the GRANTEE subject to any and all valid and existing recorded outstanding liens, licenses, leases, easements, and any other encumbrances made for the



## FORT ORD QUITCLAIM DEED FOR PARCEL X

purpose of roads, streets, utility systems, rights-of-way, pipelines, and/or covenants, exceptions, interests, liens, reservations, and agreements of record.

H. The GRANTOR Reserves a perpetual unassignable right to enter the Property for the specific purpose of treating or removing any unexploded shells, mines, bombs, or other such devices deposited or caused by the GRANTOR.

I. The reserved rights and easements set forth in this Section are subject to the following terms and conditions:

1. to comply with all applicable federal law and lawful existing regulations;

2. to allow the occupancy and use by the GRANTEE, its permittees, or lessees of any part of the easement areas not actually occupied or required for the purpose of the full and safe utilization thereof by the GRANTOR, so long as such occupancy and use does not compromise the ability of the GRANTOR to use the easements for their intended purposes, as set forth herein;

3. that the easements granted shall be for the specific use described and may not be construed to include the further right to authorize any other use within the easements unless approved in writing by the fee holder of the land subject to the easement;

4. that any transfer of the easements by assignment, lease, operating agreement, or otherwise must include language that the transferee agrees to comply with and be bound by the terms and conditions of the original grant;

5. that, unless otherwise provided, no interest granted shall give the GRANTOR any right to remove any material, earth, or stone for consideration or other purpose except as necessary in exercising its rights hereunder; and

6. to restore any easement area so far as it is reasonably possible to do so upon abandonment or release of any easement as provided herein, unless this requirement is waived in writing by the GRANTEE.

**TO HAVE AND TO HOLD** the Property unto the GRANTEE and its successors and assigns forever, provided that this deed is made and accepted upon each of the following notices, covenants, restrictions, and conditions which shall be binding upon and enforceable against the GRANTEE, its successors and assigns, in perpetuity, as follows:

**IV. "AS IS"**



## FORT ORD QUITCLAIM DEED FOR PARCEL X

The Property is conveyed in an "As Is, Where Is" condition without any representation, warranty or guarantee, except as required pursuant to applicable law or as otherwise stated herein, by the GRANTEE as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose for which intended, and no claim for allowance or deduction upon such grounds will be considered. There is no obligation on the part of the GRANTOR to make any alterations, repairs, or additions, and said GRANTOR shall not be liable for any latent or patent defects in the Property.

### V. FEDERAL FACILITIES AGREEMENT (FFA)

By accepting this deed, the GRANTEE acknowledges that the GRANTEE has read the FFA, and recognizes that, should any conflict arise between the terms of the FFA and the terms of this Deed, the FFA will take precedence. Notwithstanding any other provisions of this conveyance, the GRANTOR assumes no liability to the GRANTEE should implementation of the FFA interfere with the GRANTEE'S use of the Property. GRANTOR shall give GRANTEE reasonable notice of its actions required by the FFA and GRANTOR shall, consistent with the FFA, and at no additional cost to the GRANTOR, endeavor to minimize the disruption of the GRANTEE'S, its successors' or assigns' use of the Property. The GRANTEE shall have no claim on account of any such interference against the GRANTOR or any officer, agent, employee, or contractor thereof.

### VI. CERCLA COVENANTS, NOTICE, AND ENVIRONMENTAL REMEDIATION

Pursuant to Section 120(h)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Section 9601 *et seq.* ("CERCLA"), a Finding of Suitability to Transfer (FOST) is attached as Exhibit "C" to the Deed; an Environmental Baseline Survey (EBS) report is referenced in the FOST and sets forth the existing environmental condition of the Property. The FOST sets forth the basis for the Government's determination that the Property is suitable for transfer. The GRANTEE is hereby made aware of the notifications contained in the EBS and the FOST. The GRANTOR represents that the Property is environmentally suitable for transfer to GRANTEE for the purposes identified in the March 1997, Fort Ord Base Reuse Plan approved by the Fort Ord Reuse Authority." If, after conveyance of the Property to GRANTEE, there is an actual or threatened release of a hazardous substance on the Property, or in the event that a hazardous substance is discovered on the Property after the date of the conveyance, whether or not such substance was set forth in the technical environmental reports, including the Environmental Baseline Study (EBS), GRANTEE or its successor or assigns shall be responsible for such release or newly discovered substance unless such release or such newly discovered substance was due to GRANTOR'S activities, ownership, use, presence on, or occupation of the Property, or the activities of GRANTOR'S contractors and/or agents. GRANTEE, its successors and assigns, as consideration for the conveyance, agrees to release GRANTOR from any liability or



## FORT ORD QUITCLAIM DEED FOR PARCEL X

responsibility for any claims arising out of or in any way predicated on release of any hazardous substance on the Property occurring after the conveyance, where such substance was placed on the Property by the GRANTEE, or its agents or contractors, after the conveyance.

### ***"NOTICE OF HAZARDOUS SUBSTANCE ACTIVITY"***

The information contained in this notice is required under the authority of regulations promulgated under Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "Superfund"), 42 U.S.C. Section 9620(h).

### **[APPROPRIATE FOST LANGUAGE TO BE ADDED]**

GRANTOR covenants that all remedial action necessary to protect human health and the environment with respect to any known hazardous substance remaining on the Property has been taken, or is in place and operating to the satisfaction of the States and Federal regulatory agencies, before the date of transfer.

GRANTOR covenants that any additional remedial action due to the former activity on the Property by the GRANTOR found to be necessary after such date of transfer shall be performed by the United States unless the person or entity to whom the property is transferred is a potentially responsible party under CERCLA with respect to the property.

GRANTEE covenants that the GRANTOR, its officers, agents, employees, contractors and subcontractors, in accordance with section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, reserves a right of access to any and all portions of the Property for purposes of environmental investigation, remediation, or other corrective actions found to be necessary after the date of the conveyance of the Property. The GRANTOR and the GRANTEE agree to cooperate in good faith to minimize any conflict between necessary environmental investigation and remediation activities and GRANTEE'S or any Sublessee's operations. Any inspection, survey, investigation, or other response or remedial action will to the extent practicable, be coordinated with representatives designated by GRANTEE. Pursuant to this reservation, the GRANTOR and its officers, agents, employees, contractors, subcontractors shall have the right (upon reasonable notice to the GRANTEE or the then owner and any authorized occupant of the Property) to enter upon the Property, and perform surveys, drillings, testpitting, borings, data and/or record compilation, and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary under applicable authorities, including but not limited to installation of monitoring and extraction wells, and other treatment facility. These rights of access shall include but not be limited to:

### **[APPROPRIATE ACCESS LANGUAGE TO BE ADDED ON A DEED BY DEED BASIS]**



## FORT ORD QUITCLAIM DEED FOR PARCEL X

The GRANTOR covenants that upon completion of any removal or remediation action that removes the risk giving rise to any restriction on future use or any limitation of activities contained in a Deed or lease for the Property or in any other document relating to the Property, the GRANTOR, without any payment of funds by the United States, agrees to cooperate with the GRANTEE, its successors or assigns, in any application, permit, easement or effort to obtain approval from appropriate Federal, state or local authorities for the purpose of removing any such restriction or limitation, which the GRANTEE, its successors or assigns, shall seek to remove or eliminate.

The GRANTOR recognizes its obligation to hold harmless, defend, and indemnify the Authority and any successor, assignee, transferee, lender, or lessee of the Authority or its successors and assigns, as required by Section 330 of the National Defense Authorization Act of 1993, as amended (Pub. L. No. 102-484), and to otherwise meet its obligations under Federal law.

### VII. NOTICE OF THE PRESENCE OF ASBESTOS

A. The GRANTEE is hereby informed and does acknowledge that friable and non-friable asbestos or asbestos-containing materials (ACM) have been found on the following general areas of the Property, as described more fully in the Final EBS and the Asbestos Survey Report of the Former Fort Ord dated \_\_\_\_\_ [LIST OF BUILDING NUMBERS]. To the best of GRANTOR'S knowledge, the ACM on the Property does not currently pose a threat to human health or the environment, all friable asbestos that posed a risk to human health having either been removed or encapsulated prior to this conveyance, *except*

#### (LIST BUILDING TO BE DEMOLISHED, RENOVATED, OR NOT OTHERWISE REMEDIED BY AGREEMENT )

B. The GRANTEE covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos; and that the GRANTOR assumes no liability for future remediation of asbestos or damages for personal injury, illness, disability, or death, to the GRANTEE, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property after the date of this Deed, whether the GRANTEE, its successors or assigns have properly warned or failed to properly warn the individual(s) injured. The GRANTEE assumes no liability for damages or remediation for personal injury, illness, disability, death or property damage arising from (i) any exposure to asbestos or ACM that resulted prior to the GRANTOR'S conveyance of such portion of the Property to the GRANTEE pursuant to this Deed or any leases entered into between the GRANTOR and GRANTEE, or (ii)



## FORT ORD QUITCLAIM DEED FOR PARCEL X

1 any disposal of asbestos or ACM, prior to the GRANTOR'S conveyance of the Property to the  
2 GRANTEE. —

3  
4 C. The GRANTEE acknowledges that it has had the opportunity to inspect the  
5 property as to its asbestos content and condition and any hazardous or environmental conditions  
6 relating thereto. The failure of the GRANTEE to inspect or be fully informed as to the asbestos  
7 condition of all or any portion of the property will not constitute grounds for any claim or  
8 demand against the United States.

9  
10 D. The GRANTEE, its successors and assigns are hereby informed that unprotected  
11 or unregulated exposures to asbestos in product manufacturing, shipyard, building construction  
12 workplaces have been associated with asbestos-related diseases. Both the Occupational Safety  
13 and Health Administration (OSHA) and the EPA regulate asbestos because of the potential  
14 hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have  
15 determined that such exposure increases the risk of asbestos-related diseases, which include  
16 certain cancers and which can result in disability or death.

17  
18 E. The GRANTEE further agrees to indemnify and hold harmless the GRANTOR,  
19 its officers, agents and employees, from and against all suits, claims, demands or actions,  
20 liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon,  
21 exposure to asbestos on any portion of the Property after this conveyance of the Property to the  
22 GRANTEE or any future remediation or abatement of asbestos or the need therefor. The  
23 GRANTEE'S obligation hereunder shall apply whenever the United States incurs costs or  
24 liabilities for actions giving rise to liability under this section.

### 25 26 VIII. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT

27  
28 A. The GRANTEE, and its successors and assigns, are hereby informed and  
29 acknowledge that the following buildings on the Property, constructed or rehabilitated prior to  
30 1978, are presumed to contain lead-based paint: [LIST OF BUILDING NUMBERS].  
31 GRANTEE, its successors and assigns are hereby informed that lead from paint, paint chips, and  
32 dust can pose health hazards if not managed properly. Every purchaser of any interest in  
33 Residential Real Property on which a residential dwelling was built prior to 1978 is notified that  
34 such property may present exposure to lead from lead-based paint that may place young children  
35 at risk of developing lead poisoning. Lead poisoning in young children may produce permanent  
36 neurological damage, including learning disabilities, reduced intelligence quotient, behavioral  
37 problems and impaired memory. Lead poisoning also poses a particular risk to pregnant women.  
38 The seller of any interest in residential real property is required to provide the buyer with any  
39 information on lead-based paint hazards from risk assessments or inspections in the seller's  
40 possession and notify the buyer of any known lead-based paint hazards. "Residential Real  
41 Property" means any housing constructed prior to 1978, except housing for the elderly  
42 (households reserved for and composed of one or more persons 62 years of age or more at the



## FORT ORD QUITCLAIM DEED FOR PARCEL X

time of initial occupancy) or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

B. Available information concerning known lead-based paint and/or lead-based paint hazards, the location of lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces is contained in the Environmental Baseline Survey and (for residential properties) the lead-based paint risk assessment, which have been provided to the GRANTEE. Additionally, the federally-approved pamphlet on lead poisoning prevention and the Finding of Suitability to Transfer (FOST) (FOSET) have been provided to the GRANTEE. The GRANTEE hereby acknowledges receipt of all of the information described in this Paragraph.

C. The GRANTEE, its successors and assigns, covenants and agrees that they shall not permit the occupancy or use of any buildings or structures located on the Property, which were constructed or rehabilitated prior to 1978, as residential real property without complying with this Paragraph C.7. NOTICE OF THE PRESENCE OF LEAD BASED PAINT and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards.

D. The GRANTEE covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on the Property as Residential Real Property without complying with this section and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and /or lead based paint hazards. Prior to permitting the occupancy of Residential Real Property, if required by law or regulation, the GRANTEE, its successors and assigns, at its sole expense, will: (i.) inspect for the presence of lead-based paint and/or lead-based paint hazards; (ii.) abate and eliminate lead-based paint hazards in accordance with all applicable laws and regulations; and (iii.) comply with all applicable notice and disclosure requirements under applicable federal and state law. The GRANTEE agrees to be responsible for all remediation of lead-based paint or lead-based paint hazards found to be necessary on the Property after conveyance to the GRANTEE.

E. The GRANTOR assumes no liability for remediation or damages for personal injury, illness, disability, or death, to the GRANTEE, its successors or assigns, sublessees or to any other person, including members of the general public, arising from or incident to lead-based paint located on the Property. The GRANTEE further agrees to indemnify and hold harmless the GRANTOR, its officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, remediation, personal injury, death or property damage resulting from, related to, caused by or arising out of lead-based paint on the Property. The GRANTEE'S obligation hereunder shall apply whenever the United States of America incurs costs or liabilities for actions giving rise to liability under this section. However, the GRANTEE assumes no liability for (i) remediation or damages for personal injury, illness, disability or death suffered or incurred by the GRANTOR, its officers, agents and employees or by any other person, including members



## FORT ORD QUITCLAIM DEED FOR PARCEL X

1 of the general public, arising from any exposure of any person to lead-based paint on any portion  
2 of the Property occurring prior to the date of conveyance of such portion of the Property to the  
3 GRANTEE, or (ii) any failure of the GRANTOR to comply with any legal requirements  
4 applicable to lead-based paint conditions on any portion of the Property prior to the  
5 GRANTOR'S conveyance of such portion of the Property to the GRANTEE pursuant to the  
6 Agreement, or (iii) any lead-based paint or lead-based paint hazards which were located on the  
7 Property at any time prior to the date of the GRANTOR'S transfer of the applicable portion of  
8 the Property but are no longer located thereon at the time of such lease or transfer, or (iv) any  
9 disposal, prior to the GRANTOR'S transfer of the applicable portion of the Property, of any  
10 lead-based paint or materials contaminated by lead-based paint.

11  
12 F. The GRANTEE'S obligation hereunder shall apply whenever the United States of  
13 America incurs costs or liabilities for actions giving rise to liability under this section.

14  
15 G. The covenants, restrictions, and requirements of this Paragraph shall be binding  
16 upon the GRANTEE, its successors and assigns, and shall be deemed to run with the land.

### 17 18 IX. NOTICE OF THE PRESENCE OF PESTICIDES AND COVENANT

19  
20 A. The GRANTEE is hereby informed that pesticides may be present on the Property,  
21 the presence of pesticides does not currently pose a threat to human health or the environment,  
22 and the use and application of any pesticide product by the GRANTOR was in accordance with  
23 its intended purpose, and in accordance with CERCLA § 107 (i), which states:

24  
25 "No person (including the United States or any State or Indian tribe) may recover  
26 under the authority of this section for any response costs or damages resulting  
27 from the application of a pesticide product registered under the Federal  
28 Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*). Nothing in this  
29 paragraph shall affect or modify in any way the obligations or liability of any  
30 person under any other provision of State or Federal law, including common law,  
31 for damages, injury, or loss resulting from a release of any hazardous substance or  
32 for removal or remedial action or the costs of removal or remedial action of such  
33 hazardous substance."

34  
35 B. Upon request, the GRANTOR agrees to furnish to the GRANTEE any and all  
36 records in its possession related to the use of the pesticides necessary for the continued  
37 compliance by the GRANTEE with applicable laws and regulations related to the use of  
38 pesticides.

39  
40 C. The GRANTEE covenants and agrees that its continued possession, potential use  
41 and continued management of the Property, including any demolition of structures, will be in



## FORT ORD QUITCLAIM DEED FOR PARCEL X

compliance with all applicable laws relating to hazardous substance/pesticides and hazardous wastes.

### X. UNDERGROUND STORAGE TANK *(if applicable)*

There were \_\_\_\_\_ former underground storage tanks within the Property which have been removed; a map showing the location thereof has been provided to the GRANTEE.

### XI. ORDNANCE AND EXPLOSIVES *(if applicable)*

An archival search conducted during compilation of the Fort Ord Comprehensive Environmental Response Facilitation Act (CERFA) Report found there are \_\_\_\_ potential ordnance-related training areas within or immediately adjacent to the Property. In the event GRANTEE, its successors, and assigns, should discover any ordnance on the Property, it shall not attempt to remove or destroy it, but shall immediately notify the local Police Department and the Directorate of Law Enforcement at the Presidio of Monterey and competent GRANTOR or GRANTOR designated explosive ordnance professional will be dispatched promptly to dispose of such ordnance properly at no expense to the GRANTEE, whenever OE may be discovered.

### XII ENDANGERED SPECIES

The GRANTEE, its assigns, or successors shall comply with the requirements, if any and if applicable, of the Installation-Wide Multi-species Habitat Management Plan ("HMP") for Former Fort Ord, California.

A. The Property contains wildlife and plant species listed or proposed for listing as threatened or endangered under ESA. Applicable laws and regulations restrict activities that involve the potential loss of populations and habitat of these listed species. To fulfill the GRANTOR'S commitment in the Fort Ord Disposal and Reuse Environmental Impact Statement Record of Decision, made in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq*, this deed provides for mitigation measures to assure these regulatory requirements and the requirements of the USFWS Biological Opinion for disposal of the former Fort Ord lands in accordance with Section 7 of the ESA do not preclude economic redevelopment of portions of the Property.

B. The GRANTEE acknowledges that it has received a copy of the HMP dated December, 1996. The HMP describes existing habitat and the likely presence of plant and animal species of special concern that are treated as target species in the HMP. Some of the target species presently have status as listed or proposed federal threatened or endangered species. The HMP acts as a prelisting agreement to cover the management requirements relating



## FORT ORD QUITCLAIM DEED FOR PARCEL X

1 the Army disposal and development reuse actions, should any of the target species become  
2 proposed or listed. The GRANTEE agrees to treat each of the HMP target species as if they were  
3 listed as a federally listed species under the ESA. The HMP target species shall be given the  
4 same avoidance, protection, conservation, and restoration considerations and status as would  
5 apply if the species were already listed under the ESA. The GRANTEE will cooperate with  
6 adjacent property owners in implementation mitigation requirements identified in the HMP for  
7 adjacent sensitive habitat areas.

8  
9 C. The HMP provides a basewide framework for disposal and development of  
10 development parcels with trade-offs for target species within other areas of former Fort Ord, to  
11 allow development of the HMP Development areas with respect to the target species. The HMP  
12 describes the Army responsibilities for the Army actions in disposal of former Fort Ord lands  
13 under Section 7 of the ESA. The transfer of the HMP Reserve and HMP Corridor parcels by the  
14 Army and management of the listed parcels to the GRANTEE is being accomplished to satisfy  
15 the Army's federal Endangered Species Act requirements for disposal of these and other lands at  
16 former Fort Ord. The GRANTEE must arrange for management agencies acceptable to USFWS  
17 to manage each required HMP Reserve and HMP Corridor parcel. The GRANTEE agrees to the  
18 conditions for the transfer of the listed HMP Reserve and Corridor parcels. The GRANTEE also  
19 agrees to fund and implement the management of these parcels and to conduct the monitoring  
20 and reporting requirements described in the HMP. Such efforts shall be accomplished by the  
21 GRANTEE or any future assignee by GRANTEE acceptable to USFWS and shall be in  
22 accordance with the HMP at GRANTEE'S expense. The requirements to implement and abide by  
23 the HMP for these HMP Reserve and HMP Corridor parcels will be included in all transfers,  
24 leases or other agreements associated with these lands.

### [THE FOLLOWING PARAGRAPHS OF THIS SECTION MAY BE ADDED ON A DEED BY DEED BASIS, AS APPROPRIATE]

25  
26  
27  
28  
29 D. The GRANTEE or his designated management agent for the HMP Reserve and  
30 Corridor parcels, shall provide for the implementation, monitoring, analysis, and reporting on a  
31 continuing basis for all such parcels and perform any corrective actions or restoration actions for  
32 habitat disturbed or destroyed habitat and for protection, stabilization and salvage of individual  
33 plants and animals affected within subject HMP Reserve and Corridor areas, as described in the  
34 HMP. Annual monitoring reports shall be submitted by or on behalf of the GRANTEE by  
35 November 1 of each year to the BLM as described in the HMP.

36  
37 E. The following HMP parcels are the subject of the management requirements and  
38 development restrictions required by the HMP and will be transferred to and managed by the  
39 GRANTEE:

- 40  
41 (1) Habitat Reserve parcel numbered: \_\_\_\_\_.  
42 (2) Habitat Corridor parcels numbered: \_\_\_\_\_.



## FORT ORD QUITCLAIM DEED FOR PARCEL X

(3) Habitat reserves within the Development with Reserve Areas or Development Restrictions parcels numbered: \_\_\_\_\_.

F. The GRANTEE shall protect and conserve the HMP target species and manage these parcels as described in the HMP to avoid removing vegetation, cutting trees, disturbing soil, undertaking or allowing other actions that would diminish or restrict the full potential of the conservation and restoration of the habitat and target species populations within the parcels. The GRANTEE shall restrict access to the Reserve and Corridor parcels. The GRANTEE shall accomplish the other Resource Conservation Requirements and Management Requirements prescribed for the specific parcels within Chapter 4 of the HMP. The GRANTEE shall arrange for funding adequate to accomplish the required management action, shall budget in the future, and shall take other actions as may be needed to provide for future needs to implement the required HMP requirements.

G. Any transfer or assignment of interest in the HMP Reserve and HMP Corridor parcels shall require the approval, of the U. S. Government (USFWS) whether by deed, lease, right of entry, or other conveyance, and such conveyance, as well as any future conveyance, shall contain all the covenants and restrictions concerning the HMP as this deed.

H. The management responsibility of the parcels may only be transferred, if the arrangements proposed are acceptable to USFWS, as a condition of the right to transfer these parcels. USFWS may require the establishment of a perpetual trust fund to pay for management actions of others as a condition of transfer of management responsibility from the GRANTEE.

I. If the USFWS determines that the management of the Reserve or Corridor areas are not in accordance with the HMP, the GRANTOR herein reserves a reversionary interest in all or part of the real property conveyed by this Quitclaim Deed. In the event those portions of the Property designated as Reserve areas or Corridor areas are not being managed in accordance with the requirements of the HMP, at the option of the FWS, the Property shall revert back to the United States for the purpose of complying with the HMP. In the event of a reversion, the GRANTOR, or its assigns or successor in interest, shall have the immediate right of entry and possession of the Property and the GRANTEE shall execute any and all documentation that the GRANTOR, or its assigns or successor in interest deems necessary to perfect or provide recordable notice of the reversion and for the full and complete transfer and reversion of all right, title, and interest in the those portions of the Property designated as Reserve areas or Corridor areas. The GRANTEE shall be liable for any and all costs incurred by the GRANTOR, or its assigns or successor in interest, in perfecting the reversion and transfer of title, including court costs, recordation fees, and other expenses. Any and all improvements on the those portions of the Property reverting back to the GRANTOR made by the GRANTEE shall become the property of the United States upon reversion, and the GRANTEE shall not be entitled to reimbursement or payment thereof.



## FORT ORD QUITCLAIM DEED FOR PARCEL X

J. Although the USFWS will not require further mitigation if the GRANTEE is in compliance with the HMP, without incidental take authorization, the GRANTEE would be in violation of ESA if any of the GRANTEE'S actions resulted in the take of a listed animal species. The HMP does not authorize incidental take by the GRANTEE of any species listed as threatened or endangered under ESA. Section 9 of the ESA prohibits any taking of a threatened or endangered animal species. The definition of "take" includes to harness, harm, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct. Exemptions to Section 9 can be obtained through Sections 7 and 10 of the ESA. The GRANTEE shall apply to the USFWS for a Section 10(a)(1)(B) incidental take permits for the species covered in the HMP. For the USFWS to issue incidental take permit to the GRANTEE, the GRANTEE must provide all the information required by the USFWS at the time of the application.

K. The GRANTEE covenants for itself, its successors, and assigns that it shall include, and otherwise make legally binding, the restrictions and requirements in this Section and in the HMP in all subsequent leases, transfers, or conveyance documents relating to the Property subject thereto or any portion thereof. The restrictions and projections provided for in this Section and the HMP shall run with the land. The restrictions and protections in this Section and the HMP benefit the lands retained by the United States that formerly comprised Fort Ord, as well as the public generally. The United States shall have the right to enforce the HMP restrictions and requirements by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the parcels to their condition prior to the time of the injury complained of (it being agreed that the GRANTOR may have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the GRANTOR.

### XIII. AIR NAVIGATION RESTRICTION

The Monterey Airport and the former Fritzsche Airfield now known as the Marina Municipal Airport are in close proximity of the subject property. Accordingly, in coordination with the Federal Aviation Administration, the GRANTEE, covenants and agrees, on behalf of it, its successors and assigns and every successor in interest to the Property wherein described, or any part thereof, that, when applicable, there will be no construction or alteration unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration in accordance with Title 14, Code of Federal Regulations, Part 77, entitled, Objects Affecting Navigable Airspace, or under the authority of the Federal Aviation Act of 1968, as amended.

### XIV. ENFORCEMENT AND NOTICE REQUIREMENT

A. The provisions of this Deed benefit the governments of the United States of America, the State of California, acting on behalf of the public in general, the local governments, and the lands retained by the GRANTOR and, therefore, are enforceable, by resort to specific performance or legal process by the United States, the State of California, the local Governments,



## FORT ORD QUITCLAIM DEED FOR PARCEL X

1 and by the GRANTEE, and its successors and assigns. Enforcement of this Deed shall be at the  
2 discretion of the parties entitled to enforcement hereof, and any forbearance, delay or omission to  
3 exercise their rights under this Deed in the event of a breach of any term of this Deed, shall not be  
4 deemed to be a waiver by any such party of such term or of any subsequent breach of the same or  
5 any other terms, or of any of the rights of said parties under this Deed. All remedies available  
6 hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA.  
7 The enforcement rights set forth in this deed against the GRANTEE, or its successors and assigns,  
8 shall only apply with respect to the Property conveyed herein and held by such GRANTEE, its  
9 successor or assign, and only with respect to matters occurring during the period of time such  
10 GRANTEE, its successor or assign, owned or occupied such Property or any portion thereof.

11  
12 B. The GRANTEE, its successors or assigns, shall neither transfer the Property, or any  
13 portion thereof, nor grant any interest, privilege, or license whatsoever in connection with the  
14 Property without the inclusion, to the extent applicable to the Property or any portion thereof, of the  
15 environmental protection provisions contained in Paragraphs *[as applicable]*, Exclusions and  
16 Reservations, CERCLA Covenants, Notices and Environmental Remediation, Notice Of The  
17 Presence Of Asbestos and Lead-Based Paint; Underground Storage Tanks, Ordnance and  
18 Explosives; Endangered Species, Air Navigation Restriction, and shall require the inclusion, to the  
19 extent applicable, of such environmental protection provisions in all further deeds, transfers, leases,  
20 or grant of any interest, privilege, or license.

21  
22 C. The obligations imposed in this Paragraph upon the successors or assigns of  
23 GRANTEE shall only extend to the property conveyed to any such successor or assign.

### 24 25 XV. NOTICE OF NON-DISCRIMINATION

26  
27 With respect to activities related to the Property, the GRANTEE covenants for itself, its  
28 successors and assigns, that the GRANTEE, and such successors and assigns, shall not discriminate  
29 upon the basis of race, color, religion, sex, age, handicap, or national origin in the use, occupancy,  
30 sale or lease of the Property, or in their employment practices conducted thereon in violation of the  
31 provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. Section 2000d); the  
32 Age Discrimination Act of 1975 (42 U.S.C. Section 6102); and the Rehabilitation Act of 1973, as  
33 amended (29 U.S.C. Section 794). The GRANTOR shall be deemed a beneficiary of this covenant  
34 without regard to whether it remains the owner of any land or interest therein in the locality of the  
35 Property hereby conveyed, and shall have the sole right to enforce this covenant in any court of  
36 competent jurisdiction.

### 37 38 XVI. ANTI-DEFICIENCY ACT STATEMENT



## FORT ORD QUITCLAIM DEED FOR PARCEL X

1  
2 The Army's obligation to pay or reimburse any money under this Quitclaim Deed of  
3 Conveyance is subject to the availability of appropriated funds to the Department of the Army, and  
4 nothing in this Quitclaim Deed of Conveyance shall be interpreted to require obligations or  
5 payments by the United States in violation of the Anti-Deficiency Act.  
6

### 7 XVII. GENERAL PROVISIONS

8  
9 A. LIBERAL CONSTRUCTION. Any general rule of construction to the contrary  
10 notwithstanding, this Deed shall be liberally construed to effectuate the purpose of this Deed and  
11 the policy and purpose of CERCLA. If any provision of this Deed is found to be ambiguous, an  
12 interpretation consistent with the purpose of this Deed that would render the provision valid shall  
13 be favored over any interpretation that would render it invalid.  
14

15 B. SEVERABILITY. If any provision of this Deed, or the application of it to any  
16 person or circumstance, is found to be invalid, the remainder of the provisions of this Deed, or the  
17 application of such provisions to persons or circumstances other than those to which it is found to  
18 be invalid, as the case may be, shall not be affected thereby.  
19

20 C. NO FORFEITURE. Nothing contained herein will result in a forfeiture or reversion  
21 of title in any respect.  
22

23 D. CAPTIONS. The captions in this Deed have been inserted solely for convenience  
24 of reference and are not a part of this Deed and shall have no effect upon construction or  
25 interpretation.  
26

27 E. RIGHT TO PERFORM. Any right which is exercisable by the GRANTEE, and its  
28 successors and assigns, to perform under this Deed may also be performed, in the event of default  
29 by the GRANTEE, or its successors and assigns, by a lender of the GRANTEE and its successors  
30 and assigns.  
31

### 32 XVIII. THE CONDITIONS, RESTRICTIONS, AND COVENANTS

33  
34 The conditions, restrictions, and covenants set forth in this deed are a binding servitude on  
35 the herein conveyed Property and will be deemed to run with the land in perpetuity. Restrictions,  
36 stipulations and covenants contained herein will be inserted by the GRANTEE verbatim or by  
37 express reference in any deed or other legal instrument by which it divests itself of either the fee  
38 simple title or any other lesser estate in the Property or any portion thereof. All rights and powers  
39 reserved to the GRANTOR, and all references in this deed to GRANTOR shall include its  
40 successor in interest. The GRANTOR may agree to waive, eliminate, or reduce the obligations  
41 contained in the covenants, **PROVIDED, HOWEVER**, that the failure of the GRANTOR or its  
42 successor to insist in any one or more instances upon complete performance of any of the said



## FORT ORD QUITCLAIM DEED FOR PARCEL X

1 conditions shall not be construed as a waiver or a relinquishment of the future performance of any  
2 such conditions, but the obligations of the GRANTEE, its successors and assigns, with respect to  
3 such future performance shall be continued in full force and effect.  
4  
5  
6

[Signature Pages Follow]



**FORT ORD QUITCLAIM DEED FOR PARCEL X**

1  
2 IN WITNESS WHEREOF, the GRANTOR, the UNITED STATES OF AMERICA,  
3 acting by and through the SECRETARY OF THE ARMY, has caused these presents to be  
4 executed this \_\_\_\_\_ day of \_\_\_\_\_, 2000.  
5  
6

7 UNITED STATES OF AMERICA  
8  
9

10 By \_\_\_\_\_  
11 Paul W. Johnson  
12 Deputy Assistant Secretary of the Army  
13 For Installations and Housing (I&H)  
14  
15

16 **ACKNOWLEDGMENT**

17 COMMONWEALTH OF VIRGINIA )  
18 ) ss  
19 )  
20 COUNTY OF ARLINGTON )  
21

22 On \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said  
23 state, personally appeared Paul W. Johnson personally known to me (or proved to me on the basis  
24 of satisfactory evidence) to be the person whose name is subscribed to the within instrument and  
25 acknowledged to me that he executed the same in his authorized capacity, and that by his signature  
26 on the instrument the person, or the entity upon behalf of which the person acted, executed the  
27 instrument.  
28

29 WITNESS my hand and official seal.  
30  
31

32 \_\_\_\_\_  
33 Notary Public, Commonwealth of Virginia  
34  
35



**ACCEPTANCE:**

FORT ORD REUSE AUTHORITY  
LOCAL REDEVELOPMENT AUTHORITY

By: \_\_\_\_\_  
Michael A. Houlemard, Jr.  
Executive Officer

## ACKNOWLEDGMENT

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF MONTEREY )

On \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said state, personally appeared Michael A. Houlemard, Jr. personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public, State of California



SAMPLE FOST  
EXHIBIT C



FINDING OF SUITABILITY TO TRANSFER (FOST)  
BUILDING 1021 PARCEL  
FORMER FORT ORD, CALIFORNIA

On the basis of the Community Environmental Response Facilitation Act (CERFA) Report for Fort Ord, I have determined that the Building 1021 Parcel (the Property), at former Fort Ord, California, is suitable for transfer to Monterey County for emergency management purposes. The Property to be transferred (Parcel E38) includes 1 building and comprises approximately 2 acres (Plate 1).

A determination of the environmental condition of the Property was made by the United States Army by reviewing existing environmental documents and making associated visual site inspections (4/18/96; 11/6/96). The documents reviewed included the final CERFA Report (April 1994), U.S. EPA Region IX's concurrence to the CERFA Report (Memorandum, 19 April 1994), and various remedial investigation/feasibility study documents. The results of this document review indicate that the Property is environmentally suitable for transfer to Monterey County. The results are as follows:

- There is one structure (Building 1021) located on the Property. The building was previously used by the Criminal Investigation Command (CID) for law enforcement purposes.
- An asbestos survey was completed for Building 1021 as part of a facility-wide asbestos survey. The survey shows the building contains nonfriable asbestos-containing materials (ACM). The nonfriable ACM (floor tile mastic) was rated 13 (of lowest concern) with a recommended 2-year (biannual) inspection cycle. The Army does not intend to remove the ACM in this building, but rather only discloses its condition. The recommended inspection of ACM present in this building is the responsibility of the recipient.
- Lead-acid batteries, used as a backup power source for lighting, are present in the building. They are in good condition with no signs of deterioration or release.
- Building 1021 was constructed in 1986, and is therefore not considered to contain lead-based paint.
- No radon levels above 4 picocuries per liter (pCi/L) were detected in the building during a 1990 survey at Fort Ord.
- No radiological surveys were conducted within the building because radioactive commodities were reportedly not used or stored in the building.
- There have been no reported releases of PCB-contaminated dielectric fluids from any transformers in the vicinity of the Property.
- Ordnance and explosives (OE) investigations, consisting of the Archive Search Report and Supplement No. 1 (December 1993 and November 1994, respectively), Site 39 Data Summary and Work Plan (February 1994), OE contractor after-action reports (December 1994, November 1995), working maps, Fort Ord Training Facilities Map, and associated interviews from various ordnance-related community relations activities, show no OE locations within or immediately adjacent to the Property. However, because OE were used throughout the history



of Fort Ord, the potential for OE to be present on the Property exists. This notice will be included in the deed.

- No underground or aboveground storage tanks or solid waste management units are present on the Property, and no studies associated with them have been conducted by the Army for this Property.
- No Installation Restoration Program (IRP) sites are located on the Property.
- The final CERFA report identifies the Property as being within CERFA Parcel 211.
- No groundwater monitoring wells are present on the Property.

National Environmental Policy Act (NEPA) requirements for this transfer were satisfied by a Record of Consideration based on analysis conducted in the June 1993 Fort Ord Disposal and Reuse Environmental Impact Statement (EIS).

Clean Air Act General Conformity Rule requirements for this transfer were satisfied by a Record of Non-Applicability based upon an exemption for property transfers where the proposed action is a transfer of ownership, interest and title in the land, facilities, and associated real and personal property.

On the basis of the above information, certain terms, conditions, reservations, restrictions, and notifications are required. Disclosure of conditions and use restrictions are described below and will be included in the deed.

#### NOTICE OF THE PRESENCE OF ASBESTOS

- A. The Grantee is hereby informed and does acknowledge that nonfriable asbestos or asbestos-containing materials (ACM) have been found on the Property, as described in the Diagnostic Environmental Inc. report, *Asbestos Survey Report, U.S. Army Corps of Engineers - Fort Ord Installation, Fort Ord, California*, dated April 26, 1993.
- B. The Grantee covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos; and that the Grantor assumes no liability for damages for personal injury, illness, disability, or death, to the Grantee, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property described in this transfer, whether the Grantee, its successors or assigns have properly warned or failed to properly warn the individual(s) injured.

#### NOTICE OF THE POTENTIAL FOR THE PRESENCE OF ORDNANCE AND EXPLOSIVES

Ordnance and explosives (OE) investigations indicate that OE is not likely on this Property. However, because this is a former military installation with a history of OE use there is a potential for OE to be present on the property. In the event Grantee, its successors, and assigns, should discover any ordnance on the Property, it shall not attempt to remove or destroy it, but shall immediately notify the local Police Department and the Directorate of Law Enforcement at the Presidio of Monterey. Competent

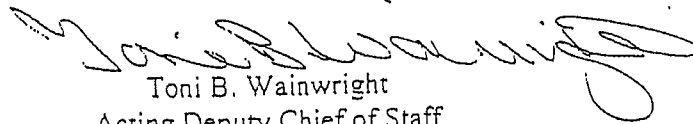


U.S. Army Explosive Ordnance personnel will be dispatched promptly to dispose of such ordnance properly at no expense to the Grantee.

On the basis of the above information, I conclude that the Building 1021 Parcel should be assigned Department of Defense (DoD) Environmental Condition Category 1 (area where no release or disposal of hazardous substances or petroleum products has occurred [including no migration of these substances from adjacent areas]) and is transferable under CERCLA Section § 120(h)(4). The deed for this transaction will contain:

- The covenant under CERCLA § 120(h)(4)(D)(i) warranting that any response action under CERCLA or corrective action found to be necessary after the date of transfer shall be conducted by the United States.
- The covenant under CERCLA § 120(h)(4)(D)(ii) granting the United States access to the Property in any case in which response action or corrective action is found to be necessary after the date of transfer.

12 JUN 1997



Toni B. Wainwright  
Acting Deputy Chief of Staff  
for Base Operations Support  
United States Army Training and Doctrine Command



T-172

T-1701

T-1702

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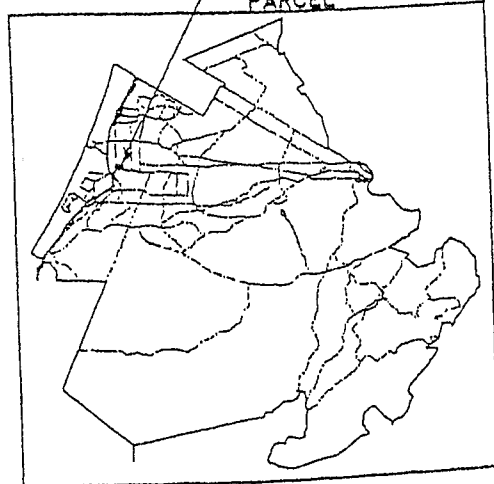
T-1023

### EXPLANATION

----- PARCEL BOUNDARY  
E38 PARCEL NUMBER

0 100 200  
SCALE IN FEET

BUILDING 1021  
PARCEL



KEY MAP

PROPERTY BOUNDARIES INDICATED ARE APPROXIMATE AND ARE NOT INTENDED  
REPRESENT THE LEGAL DESCRIPTION OF THE PARCEL(S).



**Harding Lawson Associates**  
Engineering and  
Environmental Services

Parcel Map  
Building 1021 Parcel  
Finding of Suitability to Transfer  
Former Fort Ord, California

DRAWN  
BWH

JOB NUMBER  
25894 0017616

APPROVED

DATE  
3/97

REVISED DATE

PLATE

1

25894334 100.0



## UNRESOLVED AGENCY COMMENTS

### US EPA 8 DECEMBER 1995 COMMENT:

Public Law 102-484, as amended by Public Law 103-160, provides for indemnification by the military services when property on closing military bases is transferred. This law provides that the military indemnify persons and entities acquiring ownership or control of property at a closing military base from liability for personal injury and property damage resulting from the release or threatened release of a hazardous substance (such as asbestos), unless the person or entity acquiring the property contributed to the release. It is unclear whether the FOST's statements on the Army not assuming liability for the transferee's contact with asbestos are consistent with the indemnification required by law. To avoid confusion over the indemnification that the Army is required to provide, EPA recommends that the mention of future liability be deleted and that the statutory language be relied on to determine any future liability.

### Army Response:

Army believes that the standard Army indemnification language is legally sufficient.



**GOVERNMENT REPRESENTATIONS AND WARRANTIES**  
**EXHIBIT D-1**



**EXHIBIT D-1**

**[GOVERNMENT REPRESENTATIONS AND WARRANTIES]**

[insert date]

Mr. Michael A. Houlemard, Jr.  
Executive Officer  
Fort Ord Reuse Authority  
100 12<sup>th</sup> Street, Building 2880  
Marina California 93933

Dear Mr. Houlemard:

I have reviewed the Memorandum of Agreement Between the United States of America Acting by and through the Secretary of the Army ("Government") and the Fort Ord Reuse Authority for the Sale of Portions of the former Fort Ord Located in Monterey County, California, dated the \_\_\_\_ day of \_\_\_\_\_, 2000 ("Memorandum Agreement").

To the best of the Government's information, knowledge and belief, I certify that all of the representations and warranties of the Government set forth within the Memorandum of Agreement are true and correct as of [insert date], the date of the Property Closing.

Sincerely,

\_\_\_\_\_  
Keneth L. Fox, Chief  
Management and Disposal Branch  
U.S. Army Corps of Engineers  
Sacramento District



**AUTHORITY REPRESENTATIONS AND WARRANTIES**  
**EXHIBIT D-2**



**EXHIBIT D-2**

**[AUTHORITY REPRESENTATIONS AND WARRANTIES]**

[insert date]

Mr. Kenneth L. Fox, Chief  
Management and Disposal Branch  
U.S. Army Corps of Engineers  
1325 J Street  
Sacramento, California 95814

Dear Mr. Fox:

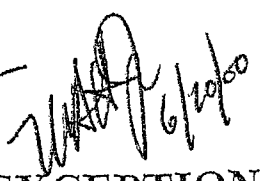
I have reviewed the Memorandum of Agreement Between the United States of America Acting by and through the Secretary of the Army and the Fort Ord Reuse Authority for the Sale of Portions of the former Fort Ord Located in Monterey County, California, dated the \_\_\_\_ day of \_\_\_\_\_, 2000 ("Memorandum Agreement").

To the best of the Fort Ord Reuse Authority's information, knowledge and belief, I certify that all of the representations and warranties of the Fort Ord Reuse Authority set forth within the Memorandum of Agreement are true and correct as of [insert date], the date of the Property Closing.

Sincerely,

Michael A. Houlemard, Jr.  
Executive Officer  
Fort Ord Reuse Authority



RESERVED  6/20/00  
~~PERMITTED TITLE EXCEPTIONS~~  
(TO BE INSERTED AT A LATER TIME)  
EXHIBIT E



PROGRAMMATIC AGREEMENT  
EXHIBIT F



PROGRAMMATIC AGREEMENT  
AMONG  
THE DEPARTMENT OF THE ARMY  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER  
REGARDING  
BASE CLOSURE AND REALIGNMENT ACTIONS AT  
FORT ORD, CALIFORNIA

WHEREAS, the Department of the Army (Army) has determined that the closure, interim lease, and transfer of certain portions of Fort Ord, California under the authority of the Defense Base Closure and Realignment Act of 1990 (P.L. 101-510), commonly known as BRAC 91, may have an effect on properties eligible for inclusion in the National Register of Historic Places (historic properties); and

WHEREAS, the Army has consulted with the Advisory Council on Historic Preservation (Council) and the California State Historic Preservation Officer (SHPO) pursuant to 36 Code of Federal Regulations Part 800.13 of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and Section 110 (16 U.S.C. 470h-2) of the same Act; and

WHEREAS, the Area of Potential Effect (APE) for this undertaking is understood to be those lands within the contiguous boundaries of Fort Ord; and

WHEREAS, the terms of this agreement are to apply to those Fort Ord lands that are being disposed of as part of the BRAC 91 action; and

WHEREAS, the Army in consultation with the SHPO has designed and completed a Phase I Archeological Survey for prehistoric sites on land to be transferred out of Federal ownership and located no historic properties; and

WHEREAS, the Army, in accordance with the provisions of a Programmatic Memorandum of Agreement among the United States Department of Defense, the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers regarding the Demolition of World War II Temporary Buildings, effective June 7, 1986, as amended, has completed all mitigation required prior to the transfer of World War II temporary buildings (1939-1946); and

WHEREAS, the definitions for Archeological Survey, notice/notification, Archeologist, Architectural Historian and Historic Architect given in Appendix A are applicable throughout this Programmatic Agreement; and

WHEREAS, interested members of the public and Native Americans have been provided an opportunity to comment on the effects BRAC 91 may have on historic properties at Fort Ord.



NOW, THEREFORE, the Army, the Council and the SHPO, agree that the BRAC 91 closure, lease, and transfer of certain portions of Fort Ord shall be administered in accordance with the following stipulations, in order to satisfy the Army's Section 106 and 110 responsibilities for all individual undertakings included in this Programmatic Agreement.

#### STIPULATIONS

The Army will ensure that the following measures are carried out.

##### I. IDENTIFICATION AND EVALUATION of HISTORIC PROPERTIES:

The Army will provide the SHPO with recommendations of National Register eligibility for properties within the APE on lands that will be transferred out of Federal ownership. Based upon the information obtained from testing and evaluation, the Army will determine, in consultation with the SHPO, the eligibility of the properties for inclusion in the National Register in accordance with 36 CFR 800.4(c). If the Army and the SHPO fail to agree upon the National Register eligibility of the property, the Army will obtain a determination from the Secretary of the Interior pursuant to 36 CFR 800.4 (c)(4).

##### II. TRANSFER OR INTERIM LEASE OF REAL PROPERTY AND IMPROVEMENTS THAT DO NOT INCLUDE HISTORIC PROPERTIES:

The Army will transfer and/or lease real property and improvements that do not include historic properties identified under Stipulation I, above, without further action under this Agreement.

##### III. TRANSFER OF REAL PROPERTY AND IMPROVEMENTS BY THE ARMY TO ANOTHER FEDERAL AGENCY THAT WILL ASSUME LAND MANAGEMENT RESPONSIBILITIES:

The Army will provide notification to the signatories of this agreement within forty-five (45) calendar days after the transfer of Fort Ord real property to Federal agencies that plan to assume land management responsibilities and use the land for purposes no more likely to adversely affect historic properties than those for which the lands were used by the Army prior to BRAC 91.

##### IV. TRANSFER OF HISTORIC PROPERTIES IDENTIFIED UNDER STIPULATION I:

###### A. Transfer to Another Federal Agency for Subsequent Transfer to Non-Federal Entities Under Federal Surplus Property Programs:

1. Transfer Under the Surplus Property Program for Historic Monuments: The Army will notify the signatories of this



agreement within forty-five (45) calendar days after the transfer of historic properties under the provisions of An Act to Facilitate the Preservation of Historic Monuments and Other Purposes (86 Stat. 503, 40 U.S.C. 484(k)(3) & (k)(4)), August 4, 1972, as amended, which require the preservation of those properties as Historic Monuments.

2. Transfer Under All Other Surplus Property Programs: With the exceptions noted in Stipulation V, separate preservation covenants enforceable under California State law and/or Federal Case law, if applicable, for each historic property will be developed jointly by the signatories to this agreement and attached to the transfer documents prior to the transfer of that property by the Army. The covenants will be enforced by the Federal Agency administering the surplus property program (sponsoring agency), the California State Office of Historic Preservation, or another entity acceptable to all the signatories of this agreement. If the sponsoring agency transfers the property without modifying the covenant(s) drafted by the signatories to this agreement and registers the deed in the proper office(s) in accordance with state and local law, no further actions under Section 110 or 106 of the National Historic Preservation Act will be required prior to transfer of the property. If the sponsoring agency proposes to modify the covenants, the proposed modifications will be considered a separate undertaking and the sponsoring agency shall comply with 36 CFR Part 800.4.

B. Transfer by the Army to Non-Federal Entities: With the Exceptions noted in Stipulations IV and V., separate preservation covenants enforceable under California State law and/or Federal Case law, if applicable, for each historic property identified under Stipulation I, above, will be developed jointly by the signatories to this agreement and attached to the deed prior to the transfer of that parcel by the Army and the deed will be registered in the proper office (s) in accordance with state and local law. The covenant(s) will be enforced by the California State Office of Historic Preservation or another entity acceptable to all of the signatories of this agreement. The Army will make every reasonable effort to configure the boundaries of parcels that include historic properties in accordance with the purposes of the covenants.

#### V. TRANSFER WITHOUT MANAGEMENT COVENANTS:

The Army will make a good faith effort to transfer each historic property with a preservation covenant. If such efforts fail and following consultation between the parties to this agreement, the properties may be transferred without a preservation covenant.



## VI. LEASE OF HISTORIC PROPERTIES:

If the Army determines that the lease of real property that includes historic properties identified in Stipulation I, is required, the Army will, in consultation with the SHPO and the Council, develop and include clauses in the lease that require the management of the identified historic property or properties.

The Army or other entity acceptable to all parties to this agreement will enforce the lease. If agreement on the provisions of a lease cannot be reached, the Army will treat that lease as a separate undertaking and comply with 36 CFR Part 800.5 prior to leasing the parcel in question.

## VII. ENVIRONMENTAL TESTING AND CLEANUP:

A. With the exception of Archeological and Architectural Monitoring stipulated in paragraph VII.C., the Army will proceed with environmental testing and cleanup, to include the disposal of unexploded ordnance, without further consultation under this Agreement.

B. Prior to initiating testing, cleanup, or unexploded ordnance disposal, the work crew(s) will be made aware of the potential for currently unlocated archaeological sites.

C. When the Army determines that archeological monitoring of an environmental cleanup site will not pose a risk to human health or safety, all ground disturbing activities inside National Register eligible sites, previously identified unevaluated sites, and sites discovered during the course of the work will be monitored by an archeologist. In the event that an archeological site(s) is located, a reasonable effort will be made to avoid or reduce adverse effects on the site(s). When testing and cleanup has the potential to affect historic building materials, the Army will ensure that the work plans and specifications are reviewed by an Historic Architect or Architectural Historian and consider their recommendations to avoid or reduce adverse effects on the historic materials. The Army will provide the SHPO and the Council with copies of a report(s) documenting these actions within ninety (90) calendar days after monitoring at each property is completed.

D. If, during the process of conducting environmental testing and cleanup and/or disposal of unexploded ordnance, a previously unidentified archeological site is discovered, the Army will, after the cleanup/disposal is complete but prior to the transfer from Federal ownership, evaluate the site and consult with the SHPO to determine if it is eligible for inclusion in the National Register.

E. If Native American cultural items, as defined in Section 2(3) of the Native American Graves Protection and Repatriation Act (NAGPRA) are encountered during the process of conducting



environmental testing and cleanup and/or disposal of unexploded ordnance, these activities will cease in the immediate vicinity of the discovery and the procedures in NAGPRA Section 3(d) will be followed. Headquarters Department of the Army (Army Environmental Center) and relevant Native American groups will be notified of the discovery.

#### VIII. HISTORIC RECORDS:

A. All maps, drawings, prints, studies, and other written documentation that relate to Fort Ord historic properties and are currently located at the Fort Ord Directorate of Public Works and Public Affairs Offices, or are produced by the Army in connection with the implementation of this Agreement, will be transferred to, and retained by, the Presidio of Monterey Command Historian. An inventory of documents transferred under this stipulation will be provided to the SHPO, the U.S. Army Center for Military History, the Monterey County Public Library System, the Monterey County Historical Society and the Monterey History and Art Association.

B. All materials and records resulting from archeological survey/data recovery conducted during the implementation of this Agreement shall be curated in accordance with 36 CFR Part 79, except for those items transferred pursuant to the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(c)).

#### IX. ANNUAL REPORT:

The Army will prepare an annual report first due on April 30, 1995 on its implementation of this Programmatic Agreement and last due ninety (90) days after this implementation is complete. The report will be provided concurrently to the SHPO and the Council for review, comment, and consultation as needed. The annual report shall include information on the undertakings implemented under this Agreement. If the Council and/or the SHPO do not object within thirty (30) days of receiving such report, it will be assumed that they concur with the implementation of this Agreement.

#### X. DISPUTE RESOLUTION:

Should the SHPO and/or Council object in writing within twenty (20) calendar days to any actions, plans, specifications, or reports provided for review pursuant to this PA, the Army shall consult with the objecting party or parties to resolve the objection; if it cannot be resolved, the Army shall forward relevant documentation, the Council will either:

1. Inform the Army that the Council intends to comment pursuant to 36 CFR 800.6(b), or



2. Provide the Army with recommendations that the Army shall take into account prior to a final decision

The Army's responsibility to carry out all actions under this agreement that are not subjects of the dispute will remain unchanged.

XI. SHPO/COUNCIL MONITORING AND REVIEW:

The Council and SHPO may review activities carried out pursuant to this agreement and will review such activities if so requested. The Army will cooperate with the Council and SHPO in carrying out their monitoring and review responsibilities.

XII. PUBLIC OBJECTION:

At any time during implementation of the measures stipulated in this Agreement, should an objection to any such measure or its manner of implementation be raised by any member of the public, the Army shall take the objection into account and consult as needed with the objecting party, the Council and SHPO to resolve the objection.

XIII. AMENDMENTS:

Any party to this agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR Part 800.13 to consider such an amendment. No amendment to this agreement shall be effective until it has been executed by all consulting parties.

XIV. TERMINATION:

Any party to this Agreement may terminate it by providing thirty (30) days notice to the other parties, provided the parties consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the Army will comply with 36 CFR Part 800.4 through 800.6 with regard to individual undertakings covered by this Agreement.

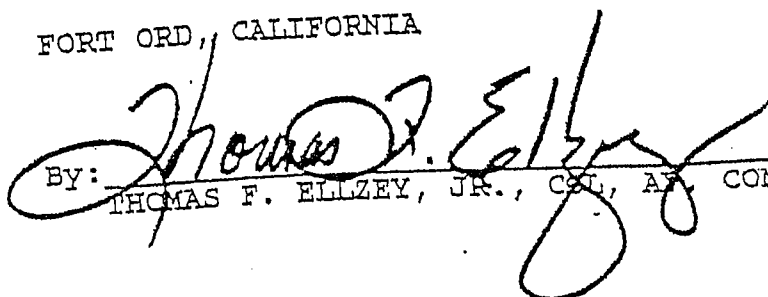
XV. FAILURE TO EXECUTE THIS AGREEMENT: In the event the Army does not carry out the terms of this Programmatic Agreement, the Army will comply with 36 CFR 800.4 through 800.6 with regard to individual undertakings covered by this agreement.



Execution and Implementation of this Programmatic Agreement  
evidences that the Army has satisfied its Sections 106 and 110  
responsibilities for all individual undertakings of the Base  
closure and Realignment of Fort Ord.

FORT ORD, CALIFORNIA

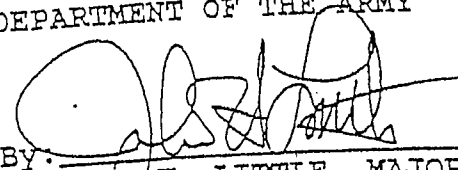
BY:

  
THOMAS F. ELLZEY, JR., COL, AF, COMMANDING

Date: 18 April 1994

DEPARTMENT OF THE ARMY

BY:

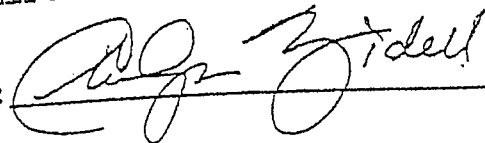
  
JOHN H. LITTLE, MAJOR GENERAL, USA,  
ASSISTANT CHIEF OF STAFF FOR INSTALLATION  
MANAGEMENT

Date:

3 May 94

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

BY:

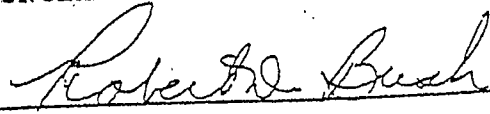


Date:

April 19, 1994

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY:



Date:

5/5/94



## APPENDIX A

### DEFINITIONS OF TERMS USED IN THIS AGREEMENT

In addition to the terms defined here, and unless otherwise indicated, all definitions given in 36 CFR Part 800.2 will be accepted for the purpose of this Agreement.

1. Archeological Survey: Systematic identification of surface or subsurface evidence of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archeological value regardless of the value of any existing structure.

2. Notice/Notification: Includes, as appropriate, a map, a legal description of the property transferred, a description of the intended use of the land, a letter from the receiving Federal agency stating that it will carry out the requirements of Section 110(a)(2) of the National Historic Preservation Act on the lands it receives, a list of historic properties transferred, the name and address of the entity to whom the property has been transferred, or the name and address of the Entity responsible for enforcement of preservation covenants.

3. Archeologist/Architectural Historian/Historic Architect: A professional who meets the minimum standards listed in Archeology and Historic Preservation, Secretary of Interior's Standards and Guidelines (Federal Register Vol. 48, No. 190 pp 44717 - 44742) in the appropriate field.



BILL OF SALE OF PERSONAL PROPERTY  
EXHIBIT G



## EXHIBIT G

### BILL OF SALE FOR RELATED PERSONAL PROPERTY

The UNITED STATES OF AMERICA, acting by and through the Secretary of the Army, (hereinafter referred to as the "Vendor"), pursuant to the authority provided in Section 2905(B)(4) of the Defense Base Closure and Realignment Act of 1990, as amended, does hereby sell, grant and convey to the Fort Ord Reuse Authority, (hereinafter referred to as the "Vendee"), in accordance with the terms of the Memorandum of Agreement (MOA) between the Vendor and Vendee, dated \_\_\_\_\_ 2000, for good and valuable consideration, all of the Vendor's right, title, and interest in and to the following described related personal property listed in Exhibit "A" attached hereto and located within the parcel boundaries of the real property described in the quitclaim deed for conveyance for Fort Ord, Monterey County, California, dated \_\_\_\_\_ 2000, to the Vendee, subject to the following terms and conditions:

1. This Bill of Sale is for the specific purpose of conveying personal property related to, designed for, or specifically adapted to the productive reuse of the real property described in the aforesaid quitclaim deed in accordance with the Final Fort Ord Base Reuse Plan.

2. All related personal property is conveyed as is, where is, and without any warranty or representation whatsoever.

3. This Bill of Sale is effective when the deed of conveyance for Parcel(s) \_\_\_\_\_, Fort Ord, to the Vendee has been executed.

IN TESTIMONY WHEREOF, witness the signature of the Vendor, acting by and through the authority of the Secretary of the Army, United States Department of the Army, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

UNITED STATES OF AMERICA

BY: \_\_\_\_\_

Col. Daniel Devlin  
Installation Commander



ACKNOWLEDGMENT

STATE OF CALIFORNIA )  
                                  ) ss  
COUNTY OF MONTEREY )

On \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said state, personally appeared Col. Daniel Devlin personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public, State of California



In Testimony Whereof, witness the signature of the Fort Ord Reuse Authority, the Vendee, an organization organized and existing under the laws of the State of California under the Fort Ord Reuse Authority Act created under Title 7.85 of the California Government Code, Chapters 1 through 7, inclusive, commencing with Section 67650, *et seq.*, and selected provisions of the California Redevelopment Law, including Division 24 of the California Health and Safety Code, Part 1, Chapter 4.5, Article 1, commencing with Section 33492, *et seq.*, and Article 4, commencing with Section 33492.70, *et seq.*, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ does hereby accept and approve this Bill of Sale and agree to all of the terms and conditions therein.

By: Michael A. Houlemard, Jr.  
Executive Officer

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF MONTEREY)

WITNESS my hand and official seal.

03-4791.01  
03-41586.01  
03-41586.01



**EXHIBIT H**

**(RESERVED)**



**EXHIBIT I**  
**(RESERVED)**



FORT ORD REUSE AUTHORITY  
EXHIBIT J



**EXHIBIT J**  
**RIGHT OF ENTRY**

[Date]

TO: Fort Ord Reuse Authority

Dear \_\_\_\_\_:

You may consider this letter as a right-of-entry for the purpose of ingress, egress and operation and maintenance of \_\_\_\_\_ as identified in Exhibit "A" attached hereto and made a part hereof, located at Fort Ord, California. This right-of-entry is subject to the following terms and conditions:

1. The Grantee, the Local Redevelopment Authority, shall be responsible for any and all utility service, security and operation/maintenance of \_\_\_\_\_.
2. The Grantee shall comply with all applicable Federal, state, county, and municipal laws, ordinances and regulations wherein the property is located.
3. The Grantee will use all reasonable means available to protect the environment, historic and cultural resources and, where damage nonetheless occurs from activities of the Grantee, the Grantee shall be liable to restore the damaged resources.
4. Within the limits of their respective legal powers, the parties to this right-of-entry shall protect the premises against pollution of its air, ground, and water. The specific requirements are defined in the Record of Environmental Consideration as identified in Exhibit "B", attached hereto and made a part hereof. The Grantee shall comply with any laws, regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instruction in effect or prescribed by said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this right-of-entry. The Grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.
5. For such period as the Grantee is in possession of the premises pursuant to the terms and conditions of this right-of-entry, the Grantee shall procure and maintain at the Grantee's cost a standard fire and extended coverage insurance policy on the premises to the full insurable value thereof, unless a lesser value is approved by the Secretary. The Grantee shall procure such insurance from a reputable company. The insurance policy shall provide that, in the event of loss thereunder, the proceeds or the policy, at the election of the United States, shall be payable to the Grantee to be used solely for the repair, restoration or replacement of the



## Fort Ord Right of Entry

property damaged or destroyed, and any balance of the proceeds not required for such shall be paid to the United States. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore or replace the premises or any part hereof. The United States shall waive procurement of an insurance policy if a self-insured certificate can be provided to the United States.

6. The United States shall not be responsible for injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or injuries to the person of the Grantee's officers, agents, or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the Grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

7. The Grantee shall not discriminate against any person or persons because of race, color, sex, national origin, handicap, age or religion in the conduct of operations on the premises.

8. This right-of-entry is issued prior to the conveyance of the described land pursuant to \_\_\_\_\_. Because of the urgency requiring the Grantee to proceed with use of said property in advance of the completion, execution and delivery of the formal transfer, the Grantee agrees to accept and be bound by the terms and conditions of the right-of-entry.

Please indicate your acceptance of the terms and conditions of this right-of-entry by signing all copies where indicated, and returning the original and one copy to this office.

Sincerely,

Keneth Fox  
Chief, Real Estate Division

The terms and conditions of this right-of-entry are hereby accepted on behalf of the Fort Ord Reuse Authority this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

FORT ORD REUSE AUTHORITY  
LOCAL REDEVELOPMENT AUTHORITY

Michael A. Houlemard, Jr.  
Executive Officer



CONVEYANCE SCHEDULE  
ENVIRONMENTAL REMEDIATION SCHEDULE  
EXHIBIT K & L



COE Number	Parcel Name	Category <sup>1</sup>	OE Site	Track <sup>1</sup>	OE RI/FS Completion Date <sup>2</sup>	Transfer Documentation
E4.1.2.3	ROW Booker Str /lower Patton	B		0	02/25/2000	08/23/2000
E11b.1	development / mixed use /ac limit	B	none	0	02/25/2000	08/23/2000
E11b.2	development / mixed use-ac limit	B	none	0	02/25/2000	08/23/2000
E11b.3	sewer treatment facility / development mix	B	none	0	02/25/2000	08/23/2000
E11b.4	water tank 147	B	none	0	02/25/2000	08/23/2000
E15.1	ROW / retail	B	none	0	02/25/2000	08/23/2000
E2b.1.1.1	development / mixed use	B	none	0	02/25/2000	08/23/2000
E2b.1.1.2	development / mixed use	B	none	0	02/25/2000	08/23/2000
E2b.1.2	ROW road	B	none	0	02/25/2000	08/23/2000
E2b.1.3	development / mixed use	B	none	0	02/25/2000	08/23/2000
E2b.1.4	ROW road	B	none	0	02/25/2000	08/23/2000
E2b.1.5	development / mixed use	B	none	0	02/25/2000	08/23/2000
E2b.2.1	development / mixed use	B	none	0	02/25/2000	08/23/2000
E2b.2.2	ROW road	B	none	0	02/25/2000	08/23/2000
E2b.2.3	ROW road	B	none	0	02/25/2000	08/23/2000
E2b.2.4	development / mixed use	B	none	0	02/25/2000	08/23/2000
E2b.2.5	2/12 Pump and Treat Facility	B	none	0	02/25/2000	08/23/2000
E2b.3.1.1	development / mixed use	B	none	0	02/25/2000	08/23/2000
E2c.1	development / mixed use	B	none	0	02/25/2000	08/23/2000
E2c.2	OU2 Pump and Treat Facility	B	none	0	02/25/2000	08/23/2000
E2c.3.1	development / mixed use	B	none	0	02/25/2000	08/23/2000
E2c.3.2	ROW road	B	none	0	02/25/2000	08/23/2000
E2c.3.3	development / mixed use	B	none	0	02/25/2000	08/23/2000
E2c.4.1.1	ROW road	B	none	0	02/25/2000	08/23/2000 <sup>r</sup>



# EDC Parcels OE RI/FS estimated completion dates

COE Number	Parcel Name	Category <sup>1</sup>	OE Site	Track <sup>1</sup>	OE RI/FS Completion Date <sup>2</sup>	Transfer Documentation
E2c.4.2.1	development / mixed use	B	none	0	02/25/2000	08/23/2000
E2d.1	development / mixed use	B	none	0	02/25/2000	08/23/2000
E2d.2	ROW	B	none	0	02/25/2000	08/23/2000\
E2e.1	ROW 6th Ave / 8th St Road	B	none	0	02/25/2000	08/23/2000
E2e.2	ROW Intergarrison road	B	none	0	02/25/2000	08/23/2000
E4.1.1	housing lower Patton	B	none	0	02/25/2000	08/23/2000
E4.1.2.1	housing lower Patton	B	none	0	02/25/2000	08/23/2000
E4.2	housing upper Patton	B	none	0	02/25/2000	08/23/2000
E4.3.1	housing Abrams	B	none	0	02/25/2000	08/23/2000
E4.5	water treatment facility	B	none	0	02/25/2000	08/23/2000
E5a	development / mixed use	B	none	0	02/25/2000	08/23/2000
E8a.1	Landfill, 75 acre development, HMP	B	none	0	02/25/2000	08/23/2000
E8a.2	Landfill carrot, Univ med density residential	B	none	0	02/25/2000	08/23/2000
L20.10.1	ROW / north Reservation road	B	none	0	02/25/2000	08/23/2000
L20.10.2	ROW / north Reservation road	B	none	0	02/25/2000	08/23/2000
L20.10.3	ROW / north Reservation road	B	none	0	02/25/2000	08/23/2000
L20.14.1	ROW / East Intergarrison road	B	none	0	02/25/2000	08/23/2000
L20.14.2	ROW / Mid Intergarrison road	B	none	0	02/25/2000	08/23/2000
L20.9	ROW / south Reservation road	B	none	0	02/25/2000	08/23/2000
L23.3.1	development mixed use-ac limit	B	none	0	02/25/2000	08/23/2000
L23.3.2.1	development mixed use-ac limit/historic district	B	none	0	02/25/2000	08/23/2000
L23.3.2.2	development mixed use-ac limit	B	none	0	02/25/2000	08/23/2000
L32.1	public facilities/inst Surplus II	B	none	0	02/25/2000	08/23/2000



# EDC Parcels OE RI/FS estimated completion dates

COE Number	Parcel Name	Category <sup>1</sup>	OE Site	Track <sup>1</sup>	OE RI/FS Completion Date <sup>2</sup>	Transfer Documentation
L32.4.1	development mixed use / retail Surplus II	B	none	0	02/25/2000	08/23/2000
L32.4.2	ROW / development mixed use / Surplus II	B	none	0	02/25/2000	08/23/2000 \
E4.1.2.2	housing lower Patton	C	1	1	01/01/2002	06/30/2002
E2c.4.1.2	ROW road	C	2	1	01/01/2002	06/30/2002
E2c.4.2.2	development / mixed use	C	2	1	01/01/2002	06/30/2002
E2c.4.3	ROW road	C	2	1	01/01/2002	06/30/2002
E2c.4.4	ROW road	C	2	1	01/01/2002	06/30/2002
E2d.3	development / mixed use	C	2	1	01/01/2002	06/30/2002
L23.3.3	development mixed use-ac limit	C	5	1	01/01/2002	06/30/2002
E15.2	open space	C	20	1	01/01/2002	06/30/2002
E29	BP/LI/O/R&D	C	43	1	01/01/2002	06/30/2002
E31a	bus park /LI/O/R&D	C	43	1	01/01/2002	06/30/2002
E31b	bus park /LI/O/R&D	C	43	1	01/01/2002	06/30/2002
E31c	bus park /LI/O/R&D	C	43	1	01/01/2002	06/30/2002
E36	bus park /LI/O/R&D	C	43	1	01/01/2002	06/30/2002
E2a	development / mixed use	C	1, 6	1	01/01/2002	06/30/2002
E4.3.2	housing Abrams	C	13A	1	01/01/2002	06/30/2002
E4.6.1	ROW middle Imjin road	C	13A	1	01/01/2002	06/30/2002
E4.6.2	ROW Imjin road	C	13A	1	01/01/2002	06/30/2002
E18.4	water tank	C	4A	2	09/01/2003	02/28/2004
E11a	Habitat management	C	TS-25 (27-Y)	1	01/01/2002	06/30/2002
E11b.8	ASP / development mixed use	E	42	3	06/01/2005	11/28/2005
L31	Esselen Parcel Surplus II	E	49	3	06/01/2005	11/28/2005
E21b.2	housing SFD low density	E	53	3	06/01/2005	11/28/2005



# EDC Parcels OE RI/FS estimated completion dates

COE Number	Parcel Name	Category <sup>1</sup>	OE Site	Track <sup>1</sup>	OE RI/FS Completion Date <sup>2</sup>	Transfer Documentation
E11b.6	development / mixed use-aac limit	E	59	3	06/01/2005	11/28/2005
E11b.7	development / mixed use-ac limit	E	11, 23, 33	3	06/01/2005	11/28/2005
E19a.1	housing SFD low density	E	13B, 45	3	06/01/2005	11/28/2005
E19a.2	housing SFD low density	E	13B, TS-1, TS-2, TS-3	3	06/01/2005	11/28/2005
E29a	visitor center / bus park	E	15DRO.1	3	06/01/2005	11/28/2005
E29b.1	ROW future Hwy 68 / habitat	E	15DRO.2	3	06/01/2005	11/28/2005
E29b.2	ROW/BP/LVO/R&D	E	15MOCO.1	3	06/01/2005	11/28/2005
E21b.3	housing SFD low density	E	15MOCO.2	3	06/01/2005	11/28/2005
E24	ROW / housing future SFD med density	E	15SEA.1	3	06/01/2005	11/28/2005
E23.2	ROW / housing future SFD med density	E	15SEA.2	3	06/01/2005	11/28/2005
E34	ROW / housing future SFD med density	E	15SEA.2	3	06/01/2005	11/28/2005
E23.1	ROW / retail	E	15SEA.3	3	06/01/2005	11/28/2005
E20c.1.1.2	housing future	E	24A, 44	3	06/01/2005	11/28/2005
E20c.1.2	Cable TV area	E	24A, 44	3	06/01/2005	11/28/2005
E21b.1	housing SFD low density	E	3, 37, 52, 54, 55	3	06/01/2005	11/28/2005
E21a	housing SF low density	E	40, 44, 50, 53	3	06/01/2005	11/28/2005
E20c.2.1	housing future	E	44,49,50	3	06/01/2005	11/28/2005
E19a.3	housing SFD low density	E	4A, 4B, 51, 55	3	06/01/2005	11/28/2005
E18.1	housing future	E	4A, 50	3	06/01/2005	11/28/2005



## EDC Parcels OE RI/FS estimated completion dates

COE Number	Parcel Name	Category <sup>1</sup>	OE Site	Track <sup>1</sup>	OE RI/FS Completion Date <sup>2</sup>	Transfer Documentation
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<sup>1</sup> - As defined on 8/2/99. As removal actions proceed, sites could change Categories and Track depending on information and evaluation conducted during the OE RI/FS.

Completion dates are also subject to change as the OE RI/FS proceeds.

<sup>2</sup> Date is based on either ROD signature or remediation completion.



ACCESS ROADS AND EASEMENTS  
EXHIBIT M



1.	North-South Road	140 ft. wide easement
2.	North-South Road Realignment	140 ft. wide easement
3.	Gigling Road	122 ft. wide easement
4.	Monterey Road	122 ft. wide easement
5.	Monterey Road Realignment	122 ft. wide easement
6.	Coe Avenue	122 ft. wide easement
7.	Normandy Road	60 ft. wide easement
8.	Parker Flats Cutoff	60 ft. wide easement

Note: All easements are centered on existing roadway centerlines for existing roads. On realignment segments, all easements are centered on proposed centerlines of proposed roadways.



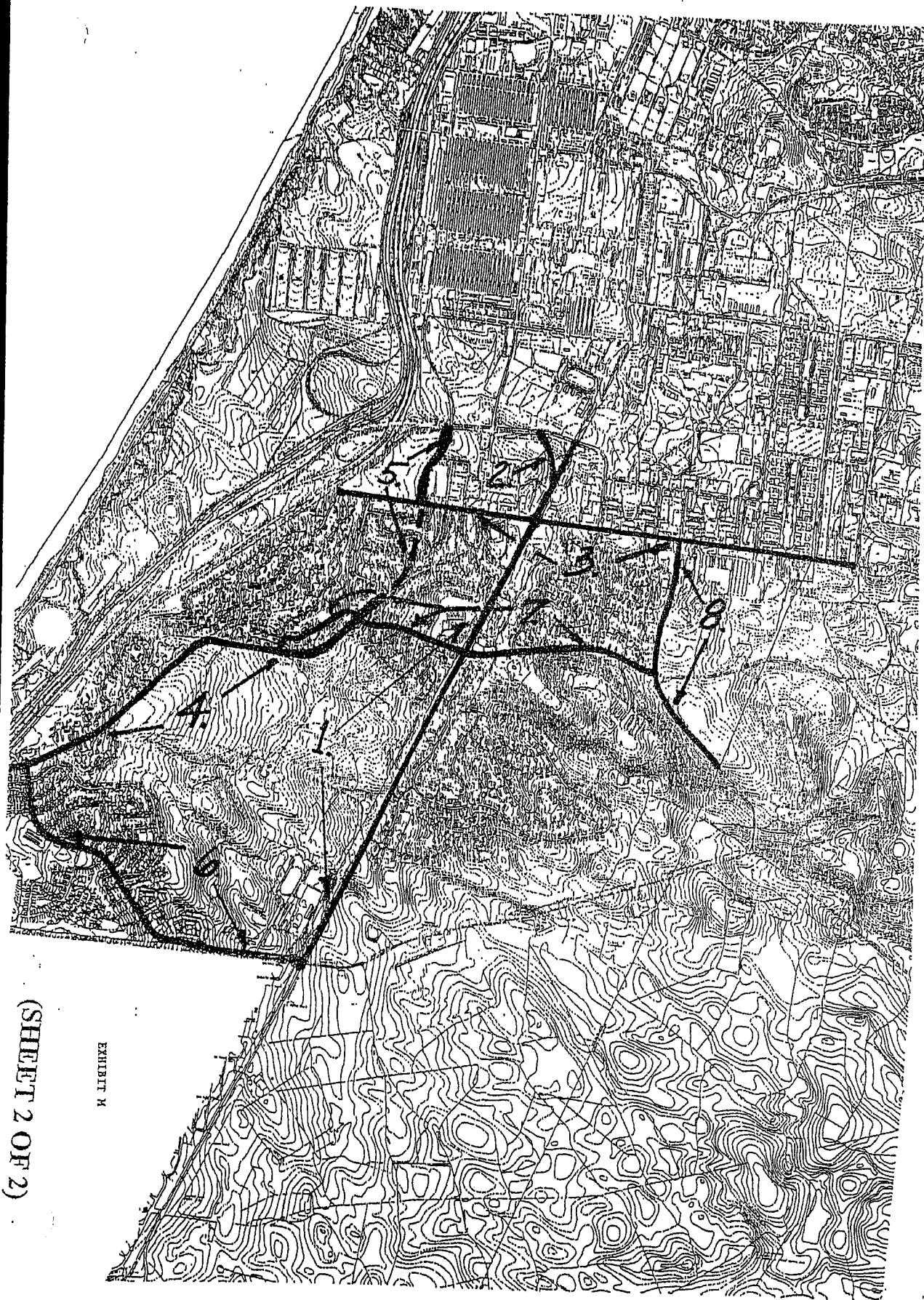


EXHIBIT M



LIST OF GOVERNMENT ENVIRONMENTAL  
REMEDIATION DECISION DOCUMENTS  
EXHIBIT N



## **Exhibit N**

### **List of Government Remediation Decision Documents**

#### **Government Environmental Remediation Decision Documents**

No Action Plug-In Record of Decision, Fort Ord, California, February 1995.

Record of Decision, Basewide Remedial Investigation Sites , Fort Ord, California, January 13, 1997.

Interim Record of Decision, Site 3 Beach Trainfire Ranges, Fort Ord, California, January 13, 1997.

Record of Decision, Operable Unit 2, Fort Ord Landfills, Fort Ord, California, July 15, 1994.

#### **Decision Documents Relating to Clean Up of Ordnance and Explosives:**

Explosive Safety Submission, Ordnance Removal Prior to Land Disposal, Inland Ranges, Fort Ord, California, November 17, 1994.

Land Disposal Site Plan (LDSP) for Base Realignment and Closure of Fort Ord, CA, February 17, 1994.

Amendment to the 1994 Land Disposal Site Plan (LDSP) for Base Realignment and Closure of Fort Ord, CA, March 2, 1998.

Amendment 2 to the 1994 Land Disposal Site Plan (LDSP) for Base Realignment and Closure of Fort Ord, California, August 4, 1998.

Explosive Safety Submission Ordnance Removal Prior to Land Disposal 5.9 Acres Within the Wolf Hill Parcel Former Fort Ord, California, 19 May 1995.

Engineering Evaluation/Cost Analysis – Phase I Former Fort Ord, Monterey County, California, September 1997.

Action Memorandum 1 Phase 1 engineering Evaluation/Cost Analysis Twelve Ordnance and Explosives Sites Former Fort Ord, Monterey, County, California, April 23, 1998.

Engineering Evaluation/Cost Analysis – Phase 2 Former Fort Ord Monterey County, California, April 1998.

Final Action Memorandum Phase 2 Engineering Evaluation/Cost Analysis Ordnance and Explosives Sites Former Fort Ord, Monterey County, California, June 28, 1999.



AMENDMENT NO. 1  
TO THE  
MEMORANDUM OF AGREEMENT  
BETWEEN  
THE UNITED STATES OF AMERICA  
ACTING BY AND THROUGH  
THE SECRETARY OF THE ARMY  
UNITED STATES DEPARTMENT OF THE ARMY  
AND  
THE FORT ORD REUSE AUTHORITY  
FOR THE SALE OF  
PORTIONS OF THE FORMER FORT ORD  
LOCATED IN MONTEREY COUNTY, CALIFORNIA

THIS AMENDMENT NO. 1 to the *Memorandum of Agreement between the United States of America acting by and through the Secretary of the Army, United States Department of the Army, and the Fort Ord Reuse Authority for the Sale of Portions of the Former Fort Ord Located in Monterey County, California dated June 20, 2000* ("Agreement") is entered into on this 23<sup>rd</sup> day of October, 2001 by and between **THE UNITED STATES OF AMERICA**, acting by and through the Department of the Army ("Government"), and **THE FORT ORD REUSE AUTHORITY** ("Authority"), recognized as the local redevelopment authority by the Office of Economic Adjustment on behalf of the Secretary of Defense. Government and Authority are sometimes referred to herein collectively as the "Parties."

RECITALS

WHEREAS, the Parties did enter into the Agreement for the "No Cost" Economic Development Conveyance ("EDC") to the Authority of a portion of the former Fort Ord, California ("Property") pursuant to Section 2905(b)(4) of the Defense Base Closure and Realignment Act of 1990, as amended, and the implementing regulations of the Department of Defense (32 CFR Part 175);

WHEREAS, subsequent to the execution and delivery of the Agreement, the Parties determined that in accordance with the Reuse Plan and in order to facilitate the economic redevelopment of the Property, it is desirable and necessary to include within the scope of the Agreement the Water and Wastewater Systems at the former Fort Ord ("Water Systems"), more particularly described in the Quitclaim Deed attached as Exhibit A to this Amendment No. 1, for transfer through the Authority to the Marina Coast Water District ("District") in lieu of a direct transfer of the Water Systems from the Government to the District under a Public Benefit Conveyance ("PBC");



**WHEREAS**, subsequent to the execution and delivery of the Agreement, Section 2905(b)(4) of the Defense Base Closure and Realignment Act of 1990 was amended by Section 2821 of the National Defense Authorization Act for Fiscal Year 2001 (Pub. L. No. 106-398) to change certain requirements regarding the use of proceeds from the sale or lease of the Property transferred under the Agreement.

## AGREEMENTS

a. In lieu of the Government transferring the Water and Wastewater Systems and all associated and ancillary rights directly to the District under the PBC dated August 26, 1997, as described in paragraph 5.01 of the Agreement, the Government, pursuant to paragraph 2.01 of the Agreement, shall transfer to the Authority at no-cost, as part of the Economic Development Conveyance, simultaneously with the execution of this Amendment No. 1, the Water and Wastewater Systems on the Property and the Ord Military Community, together with all their respective water rights and wastewater discharge rights and ancillary rights.

c. Immediately following the transfer of the Water and Wastewater Systems on the Property and the Ord Military Community, together with all their respective water rights and obligations and wastewater discharge rights and obligations and ancillary rights and obligations, from the Government to the Authority, the Authority shall transfer such Water and Wastewater Systems and all associated and ancillary rights and obligations to the District.

2



## FORT ORD MOA AMENDMENT NO. 1

### Article 2. Bay View Community/Brostrom Housing Area Water and Wastewater Systems

a. In the event the Government conveys the real property underlying the Bay View Community/Brostrom Housing Area ("Bay View") to The RINC Organization, then and upon the happening of that event, and notwithstanding Article 5.02 of the MOA, the Government and the Authority agree that the water rights reserved to the Government shall be reduced by 38 afy for a total reservation of water rights for the Government of 1691 afy. The Government and the Authority agree further that the Government shall then, and upon the happening of that event, convey such 38 afy of water rights to the Authority by quitclaim deed in a form substantially similar to the Deed attached as Exhibit A to this Amendment No. 1 for a total conveyance of water rights to the Authority of 4,909 afy.

b. In the event the Government conveys the real property underlying the Bay View Community/Brostrom Housing Area ("Bay View") to The RINC Organization, and simultaneously with the conveyance of the aforementioned 38 afy of water rights to the Authority, the Authority, through allocation instructions to the District, the Authority selected water purveyor, agrees to provide water service to the Bay View Community/Brostrom Housing Area ("Bay View"), in an amount equal to .21 afy per residential housing unit times 223 residential housing units, plus 38 afy  $[(.21 \text{ afy} \times 223) + 38 \text{ afy}]$  as follows:

1. Under the same terms and conditions of any other existing residential development in the City of Seaside, California ("Seaside").
2. Bay View residents will have three years to reduce consumption at Bay View to meet Seaside's .21 afy per unit conservation requirement without penalty.
3. Bay View residents will be charged at the then District rate as any other user will be charged for similar water services.
4. The same level of water service (.21 afy per residential housing unit times 223 residential housing units, and 38 afy) shall be available for future residential development on the Bay View site when and if a project is approved in conformity with Seaside's General Plan and Zoning requirements.
5. If a future development on the Bay View site can achieve a more efficient use of this amount of water service, credit for such conservation may be applied to an increase in units on the Bay View property in conformity with Seaside's General Plan and Zoning requirements if and when a project is approved.

### Article 3. Reporting Period

In accordance with Section 2821 of the National Defense Authorization Act for Fiscal Year 2001 (Pub. L. No. 106-398) and the Agreement, the Agreement is hereby amended as follows:



## FORT ORD MOA AMENDMENT NO. 1

1 a. In paragraph 1.20 of the Agreement, delete the definition of Reporting Period in  
2 its entirety and substitute the following:

3  
4 "A period of time, beginning with the recordation of the Deed or Lease in  
5 Furtherance of Conveyance ("LIFOC") for the initial transfer of property and  
6 ending seven (7) years thereafter, within which the Authority will submit annual  
7 statements as described in paragraph 2.01(F) of this Agreement."  
8

9 b. In paragraph 2.01(F) of the Agreement delete the first sentence and substitute the  
10 following:

11  
12 "The Authority shall prepare and submit to the Government an annual financial  
13 statement certified by an independent certified public accountant. The statement  
14 shall cover the Authority's use of proceeds it receives from the sale, lease, or  
15 equivalent use of the Property. The first such statement shall cover the 12 month  
16 period beginning on the date of recordation of the first Deed or LIFOC and shall  
17 be delivered to Government within 60 days of the end of that period and annually  
18 thereafter. The seven-year period will commence with the recordation of the  
19 Deed or LIFOC for the initial transfer of property. The last such statement shall  
20 cover the 12 month period beginning on the date seven years following the  
21 recordation of the Deed or LIFOC for the initial transfer of property. The  
22 financial statements shall cover all parcels of property that have been conveyed  
23 during the seven-year period."  
24

### 25 Article 4. Survival and Benefit

26  
27 a. Unless defined separately, the terms used in this Amendment No. 1 shall be the  
28 same as used and defined in the Agreement.

29  
30 b. Except as set forth herein, and unless modified specifically by this Amendment  
31 No. 1, the terms and conditions contained in the Agreement shall remain binding upon the  
32 Parties and their respective successors and assigns as set forth in the Agreement.  
33  
34  
35

U36

37  
38  
39  
40 [Signature Page Follows]  
41



**FORT ORD MOA AMENDMENT NO. 1**

1     **In Witness whereof**, the Parties, intending to be legally bound, have caused their duly  
2 authorized representatives to execute and deliver this Amendment No. 1 as of the date first above  
3 written.  
4

5  
6                     **UNITED STATES OF AMERICA,**  
7                     Acting by and through the Department of the Army  
8  
9

10  
11  
12                     By: 

13                     Joseph W. Whitaker  
14                     Acting Deputy Assistant Secretary of the Army  
15                     Installations and Housing  
16  
17

18                     **FORT ORD REUSE AUTHORITY**  
19                     **LOCAL REDEVELOPMENT AUTHORITY**  
20

21  
22  
23  
24                     By: 

25                     MICHAEL A. HOULEMARD, JR.  
26                     Executive Officer  
27  
28



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Monterey } ss.

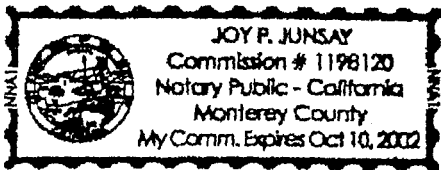
On Oct 12, 2001, before me, Joy P. Junsay Notary Public

personally appeared Michael A. Houlemerd

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

Name(s) of Signer(s)

- ☒ personally known to me  
☐ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

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