

Attachment A

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TRANSITION PLAN IMPLEMENTING AGREEMENT

This Transition Plan Implementing Agreement (this “Agreement”) is dated for reference purposes _____, 2020 and is entered into by and among:

- (a) County of Monterey (“County”),
- (b) City of Marina (“Marina”),
- (c) City of Seaside (“Seaside”),
- (d) City of Del Rey Oaks (“Del Rey Oaks”), and
- (e) City of Monterey (“Monterey”),
- (f) California Department of Parks and Recreation (“State Parks”),
- (g) Regents of the University of California (“UC”), and
- (h) Board of Trustees of the California State University on behalf of the Monterey Bay campus (“CSUMB” and collectively with County, Marina, Seaside, Del Rey Oaks, Monterey, State Parks, and UC, the “Parties”).

Commented [DW1]: David Willoughby observed that if the section dealing with water allocations is removed from this agreement, there may be no need for these entities to remain parties.

RECITALS

A. The Fort Ord Reuse Authority (“FORA”) was established pursuant to the Fort Ord Reuse Authority Act (California Government Code Section 67650 *et seq.* and referred to herein as the “FORA Act”) as a regional agency to, among other things, plan, facilitate, and manage the transfer of former Fort Ord property from the United States Army (the “Army”) to various municipalities and other public entities or their designees.

B. FORA acquired portions of the former Fort Ord from the Army under an Economic Development Conveyance Memorandum of Agreement between FORA and the Army dated June 20, 2000 (the “EDC Agreement”). FORA has delivered to each of the Parties a complete copy of the EDC Agreement as executed and including all amendments and attachments.

C. Section 67700(a) of the FORA Act provides that the FORA Act will become inoperative, at the latest, on June 30, 2020. Concurrently with the FORA Act becoming inoperative, FORA will dissolve (“FORA’s Dissolution”).

AGREEMENT

NOW, THEREFORE, based on the foregoing and in consideration of the mutual terms, covenants, and conditions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1.0 2001 IMPLEMENTATION AGREEMENTS SUPERSEDED.

Effective as of July 1, 2020, this Agreement supersedes each of the following agreements, which shall be of no further force or effect:

Implementation Agreement between FORA and County dated May 8, 2001 and recorded October 18, 2001 as Document 2001088380 in the Official Records of the Recorder of the County of Monterey.

Implementation Agreement between FORA and Del Rey Oaks dated May 31, 2001 and recorded October 18, 2001 as Document 2001088379 in the Official Records of the Recorder of the County of Monterey.

Implementation Agreement between FORA and Marina dated May 1, 2001 and recorded October 18, 2001 as Document 2001088377 in the Official Records of the Recorder of the County of Monterey as amended by Amendment #1 dated September 13, 2012 and recorded September 14, 2012 as Document 2012054071 in the Official Records of the Recorder of the County of Monterey.

Implementation Agreement between FORA and Monterey dated August 10, 2001 and recorded October 18, 2001 as Document 2001088378 in the Official Records of the Recorder of the County of Monterey.

Implementation Agreement between FORA and Seaside dated May 31, 2001 and recorded October 18, 2001 as Document 2001088381 in the Official Records of the Recorder of the County of Monterey.

2.0 WATER ALLOCATIONS [ENTIRE SECTION MAY BE REMOVED]

Until such time as such allocations may be amended as provided herein, each of the Parties 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 including, but not limited to, the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*) and the Sustainable Groundwater Management Act (Water Code Section 10720 *et seq.*). Each of the Parties listed in Exhibit A shall meet and confer in good faith to cooperatively develop one or more agreements between the Parties and Marina Coast Water District regarding the provision of potable and recycled water services and to establish parameters for amending the allocations in the future, as may be appropriate.

3.0 ROADWAY PROJECTS [ENTIRE SECTION MAY BE REMOVED]

3.1 Local Roads. After FORA's Dissolution, no further funding will be available from FORA for local road improvement projects that may be required to mitigate the adverse impacts of development projects on property at the former Fort Ord owned by or subject to the control or land use approval authority of any of the Parties (each a "Party Property"). Accordingly, if any development project on one but not more than one Party Property requires mitigation in the form of a roadway project or otherwise, the Party undertaking or approving the development project shall have sole responsibility to arrange for the funding of all required mitigation measures from such Party's own resources, from the project developer(s), or from grants or other resources available to such Party.

Commented [DW2]: Wendy Strimling proposed to add the following words here:

“, including any and all amendments thereto.”

FORA staff concurs with her recommendation.

Commented [DW3]: Consistent with Wendy Strimling's proposal described above, FORA staff recommends that the following wording be included here:

“, including any and all amendments thereto.”

Commented [DW4]: Consistent with Wendy Strimling's proposal described above, FORA staff recommends that the following wording be included here:

“, including any and all further amendments thereto.”

Commented [DW5]: Consistent with Wendy Strimling's proposal described above, FORA staff recommends that the following wording be included here:

“, including any and all amendments thereto.”

Commented [DW6]: Consistent with Wendy Strimling's proposal described above, FORA staff recommends that the following wording be included here:

“, including any and all amendments thereto.”

Commented [DW7]: Wendy Strimling questioned whether MCWD is proposing a separate agreement on this issue.

Kendall Flint reported that MCWD is expected to be present at the March 4 meeting of FORA's Administrative Committee to report on the prospects of entering into

Commented [DW8]: Karin Salameh proposed that this be reworded as follows:

Commented [DW9]: Wendy Strimling proposed that this be reworded as follows:

Commented [DW10]: Wendy Strimling commented that Exhibit A needs revision to include recycled water.

Commented [DW11]: Wendy Strimling commented that there is a need to clarify this wording. She also questioned who is making any decision as to future allocation?

Commented [DW12]: David Willoughby commented that based on the discussion that occurred at the last meeting it seems appropriate to remove Section 3 in its entirety.

Commented [DW13]: Wendy Strimling commented that there is a need to define "local road" vs "regional road."

Commented [DW14]: Wendy Strimling proposed that these words be removed.

Commented [DW15]: Wendy Strimling proposed that this be reworded as follows:

3.2 Regional Roads. It is anticipated that effective July 1, 2020, the Transportation Agency for Monterey County will be responsible for the collection of Regional Development Impact Fees for the FORA Zone (Zone 5). Thereafter, for developments within the boundaries of the former Fort Ord that are entitled but not required to pay community facilities district charges after FORA's Dissolution, the Party with permitting authority over such development will either assess the Regional Development Impact Fee or collect a comparable development impact fee equal to the amount of the Regional Development Impact Fee and remit that amount to the Transportation Agency for Monterey County as mitigation for impacts to regional roads.

4.0 HABITAT MANAGEMENT [ENTIRE SECTION MAY BE REMOVED]

After FORA's Dissolution, no further funding will be available from FORA for implementation of the Fort Ord Multispecies Habitat Conservation Plan ("HCP"). All funds accumulated before FORA's Dissolution for the purpose of habitat mitigation shall be transferred in the following order of priority. If before April 1, 2020 a Habitat Conservation Plan Cooperative (the "HCP Cooperative") has been established, all the habitat mitigation funds held by FORA immediately prior to FORA's Dissolution shall be transferred in their entirety to the HCP Cooperative for use in connection with the HCP being administered by the HCP Cooperative. If no HCP Cooperative is in existence, then FORA will prepare a program to distribute the habitat mitigation funds to one or more recipients for long-term management of the area located within the habitat reserve areas, the habitat corridors, and the restricted development parcels pursuant to the revised "Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord" issued by the U.S. Army Corps of Engineers in April 1997.

5.0 RECORDS RETENTION AND MANAGEMENT [ENTIRE SECTION MAY BE REMOVED]

Except for records transferred to (a) FORA's successor-in-interest under Environmental Services Cooperative Agreement W9128F 07 2-0162, as amended, entered into between FORA and the Army or (b) to the local redevelopment authority designated as FORA's successor in connection with that economic development conveyance Memorandum of Agreement entered into between FORA and the Army dated June 23, 2000, as amended, all FORA records, including personnel files, documents, and meeting records will be transferred to County for retention and management.

6.0 COMMUNITY FACILITIES DISTRICT REVENUES

Immediately prior to FORA's Dissolution, any then unexpended community facilities district revenues and unencumbered other fund balances shall be transferred to County. County shall promptly thereafter disburse those community facilities district revenues and other fund balances to the Parties in such amounts and in such reasonable manner as the Parties may collectively agree.

Commented [DW16]: Wendy Strimling commented that legally, land use agencies cannot commit to imposition of new charges on entitled development (unless the developer has already agreed). She also proposed that this be reworded as follows:

"Thereafter, for ~~proposed~~ developments within the boundaries of the former Fort Ord that are ~~not yet entitled as of June 30, 2020, but not required to pay community facilities district charges after FORA's Dissolution,~~ the Party with permitting authority over such development will either assess the Regional Development Impact Fee ~~for Zone 5~~ or collect a comparable development impact fee equal to the amount of the Regional Development Impact Fee to mitigate the ~~proposed development's impact to regional roads~~ and remit that amount to the Transportation Agency for

Commented [DW17]: Karin Salameh commented that it is premature to finalize Section 4.0 related to Habitat Management as the parties continue to discuss a path forward, including modifying the Transition Plan language that this draft includes. As such, she did not propose any markups on this section at this time, but notes that it will likely need to be revised.

Commented [DW18]: Wendy Strimling proposed that this be reworded as follows:

"After FORA's Dissolution, no further funding will be available from FORA ~~for management of habitat on the former Fort Ord, including but not limited to implementation~~

Commented [DW19]: Wendy Strimling proposed that this be reworded as follows:

"All funds accumulated before FORA's Dissolution for the purpose of habitat mitigation shall be transferred in the following order of priority. If before ~~April 1~~ July 1, 2020, a ~~Habitat Conservation Plan Cooperative Joint Powers Agreement~~

Commented [DW20]: Wendy Strimling that there is a need to specify distribution of funds if there is no JPA, rather than giving broad authority to FORA. She suggested that this wording be made consistent with the Habitat Working Group recommendation/FORA decision on this issue.

Commented [DW21]: Wendy Strimling proposed that this be reworded as follows:

"... ~~EDC economic development conveyance Memorandum of Agreement~~ ..."

Commented [DW22]: Wendy Strimling proposed adding the following sentence:

"FORA shall allocate \$ ___ to defray the initial costs to the County of this records management."

Commented [DW23]: Wendy Strimling commented that there is a need to specify parameters for disbursement. Expenditure of CFD funds is constrained by CFD legislation, so add those parameters. Also suggest performance standards as to the distribution among the signatories. Need to add indemnity/hold harmless provision for County (or a

7.0 OUTSTANDING DEBT [ENTIRE SECTION MAY BE REMOVED]

If FORA has any remaining outstanding debt at the time of FORA's Dissolution, property tax revenues shall continue to be paid to County in accordance with subparagraph (D) of paragraph (1) of subdivision (c) of Section 33492.71 of the Health and Safety Code in an amount necessary to pay the principal and interest or other amounts on that debt. Upon the retirement of the debt, any remaining property tax revenues shall be transferred to the auditor-controller of County for appropriate distribution. County may, before disbursing revenues as provided in this section, deduct an amount equal to the reasonable cost of administering this section out of the remaining revenues to be disbursed.

Commented [DW24]: Wendy Strimling commented that the distribution of tax increment is governed by H and S Code sec. 33492.71 and is not governed by this contract. For that reason, she questioned whether Section 7 should be omitted.

8.0 SEVERABILITY

If any term of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, then the remaining terms shall continue in full force unless the rights and obligations of the Parties have been materially altered by such holding of invalidity.

9.0 DISPUTE RESOLUTION [ENTIRE SECTION MAY BE REMOVED]

If any dispute arises between the Parties under this Agreement, the Parties shall resolve the dispute in accordance with this Section 9.

Commented [DW25]: Karin Salameh suggested that the mediation requirement be made a little less onerous (and suggested making that optional to the parties), similar to the arbitration provision.

Wendy Strimling suggested the addition of a mutual indemnity and hold harmless provision.

David Willoughby observed that if the dispute resolution process will be entirely voluntary, there is no need to include any of Section 9 at all.

9.1 Duty to Meet and Confer. The Parties shall first meet and confer in good faith and attempt to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Parties all the information in its possession that is relevant to the dispute, so that all Parties have the information needed to reach agreement. If these negotiations fail to produce agreement after fifteen (15) days from the initial demand, any disputing Party may demand mediation.

Commented [DW26]: Karin Salameh proposed that this be reworded as follows:

“... ~~demand mediation~~ proceed as follows:”

9.2 Mediation. If meeting and conferring do not resolve the dispute, then the matter shall be submitted for formal mediation to the Mediation Center of Monterey County, the American Arbitration Association, the Judicial Arbitration and Mediation Services, or such other mediation service as the Parties may mutually agree upon. Any disputing Party may terminate the mediation if it fails to produce agreement within forty-five (45) days from selection of the mediator. The expenses of such mediation shall be shared equally between the disputing Parties.

Commented [DW27]: Karin Salameh proposed that this be renumbered Section 9.1.

FORA staff recommends that, if Section 9 remains part of this agreement, this should remain numbered as Section 9.2.

9.3 Arbitration. If the dispute has not been resolved by mediation, and if all disputing Parties wish to pursue arbitration, then the dispute shall be submitted to arbitration. The decision of the arbitrator or arbitrators shall be binding, unless within thirty (30) days after issuance of the arbitrator's written decision, any disputing Party files an action in court.

Commented [DW28]: Karin Salameh that the words “and if all disputing Parties wish to pursue mediation,” be added.

(i) Any potential arbitrator must affirmatively disclose all of his or her potential conflicts of interest, and a description of the nature of his or her past and current law practice (if applicable), before the Parties select the arbitrator. A Party may disqualify any potential arbitrator whom the Party subjectively perceives to have a conflict or bias. Any potential arbitrator

must be a qualified professional with expertise in the area that is the subject of the dispute, unless the disputing Parties otherwise agree. The disputing Parties shall jointly select a single arbitrator.

(ii) Before commencement of the arbitration, the disputing Parties may elect to have the arbitration proceed on an informal basis; however, if the disputing Parties are unable so to agree, then the arbitration shall be conducted in accordance with Code of Civil Procedure Section 1280 *et seq.*, and to the extent that procedural issues are not there resolved, in accordance with the rules of the American Arbitration Association. Notwithstanding the foregoing, the requirements of subsection (iii) below shall apply.

(iii) The arbitrator must issue a written decision setting forth the legal basis of the decision, making findings of all relevant facts and stating how the law was applied to the found facts, and the decision must be consistent with and apply the law of the State of California.

9.4 Attorneys' Fees and Costs. Should the dispute of the Parties not be resolved by negotiation or mediation, and in the event it should become necessary for any disputing Party to enforce any of the terms and conditions of this Agreement by means of arbitration, court action or administrative enforcement, the prevailing Party, in addition to any other remedy at law or in equity available to such Party, shall be awarded all reasonable cost and reasonable attorneys' fees in connection therewith, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing Party.

9.5 Judicial Resolution. If the dispute is not or cannot be resolved by mediation, and if there is not agreement between the disputing Parties to pursue arbitration, then any disputing Party may commence an action in the Superior Court of Monterey County. The prevailing Party, in addition to any other remedy at law or in equity available to such Party, shall be awarded all reasonable costs and reasonable attorney's fees, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing Party. For purposes this Section 9.5, "prevailing Party" shall include a Party that dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.

10.0 MISCELLANEOUS

10.1 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof. No other statement or representation by any employee, officer, or agent of any Party, which is not contained in this Agreement, shall be binding or valid.

10.2 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

10.3 Modifications. This Agreement shall not be modified except by written instrument executed by and between the Parties.

Commented [DW29]: Karin Salameh commented that the City would prefer that the attorney's fees provision be entirely removed, if not, at a minimum its scope should be limited. She provided language limiting the scope, but also suggested the entire paragraph be removed.

Commented [DW30]: Karin Salameh proposed that, if this section is not removed entirely, the word "**such**" be substituted for the word "the" here.

Commented [DW31]: Wendy Strimling commented that when all of the parties are governmental entities, it is more appropriate for each party to bear its own fees and costs and suggested that this provision be reworded as follows:

~~"... each Party shall bear its own attorneys' fees and costs. the prevailing Party, in addition to any other remedy at law or in equity available to such Party, shall be awarded all reasonable cost and reasonable attorneys' fees in connection therewith, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing Party."~~

Commented [DW32]: Karin Salameh proposed that the following sentence be added here:

~~"Notwithstanding anything to the contrary herein, this section (sic) 9.4 will not apply to any dispute between the Parties regarding water rights, water infrastructure and/or Section 2.0; in any such dispute, the Parties will bear their own fees and costs."~~

Commented [DW33]: Wendy Strimling commented that when all of the parties are governmental entities, it is more appropriate for each party to bear its own fees and costs and suggested that this provision be reworded as follows:

~~"Each Party shall bear its own attorneys' fees and costs. The prevailing Party, in addition to any other remedy at law or in equity available to such Party, shall be awarded all reasonable costs and reasonable attorney's fees, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing Party. For purposes this Section 9.5, "prevailing Party" shall include a Party that dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding."~~

Although not specifically addressed in Karin Salameh's comments on behalf of the City of Monterey, removal of these provisions would be consistent with the City's preference that the attorneys' fees provision be removed entirely.

Commented [DW34]: Karin Salameh that the City is concerned that this is too broad and may inadvertently supersede agreements not listed in Section 1.0. She believes all parties would benefit from more precise drafting on this point.

10.4 Interpretation. This Agreement has been negotiated by and between the representatives of all Parties, all being knowledgeable in the subject matter of this Agreement, and each Party had the opportunity to have the Agreement reviewed and drafted by their respective legal counsel. Accordingly, any rule of law (including Civil Code Section. 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effectuate the purpose of the Parties and this Agreement.

10.5 Relationship of the Parties. Nothing in this Agreement shall create a joint venture, partnership or principal-agent relationship between the Parties.

10.6 Waiver. No waiver of any right or obligation of any Parties hereto shall be effective unless in writing, specifying such waiver, executed by the Party against whom such waiver is sought to be enforced. A waiver by any Party of any of its rights under this Agreement on any occasion shall not be a bar to the exercise of the same right on any subsequent occasion or of any other right at any time.

10.7 Further Assurances. The Parties shall make, execute, and deliver such other documents, and shall undertake such other and further acts, as may be reasonably necessary to carry out the intent of this Agreement.

10.8 Days. As used in this Agreement, the term “days” means calendar days unless otherwise specified.

[signatures appear on following pages]

Commented [DW35]: Wendy Strimling suggested that the following topics should be added if they are not covered by other agreements:

Funding and management of litigation against or brought by FORA that is pending at time of FORA Dissolution

CALPERS liability, retirement reserve funds

Any remaining funds held by FORA – how distributed? (sec 2.16 of Transition Plan)

Does FORA hold any insurance policy not connected to ESCA or EDC (e.g., prof liability?)

Disposition of FORA furniture and equipment. Address, and, add: County may, before disbursing revenues as provided in this section, deduct an amount equal to the reasonable cost of administering this section out of the remaining revenues to be disbursed.

FORA staff reported that it is anticipated that the CALPERS liability will be satisfied at or before FORA’s dissolution and that it unlikely that there will be any substantial funds remaining at the time of FORA’s dissolution.

David Willoughby commented that to the extent that litigation will be handled, in whole or in part, by LAFCO, any added provisions addressing litigation would need to be addressed with LAFCO (which may be reluctant to become a party to this agreement).

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth beside the signature of each, the latest of which shall be deemed to be the effective date of this Agreement.

Dated: _____, 2020

COUNTY OF MONTEREY

By: _____
County Administrative Officer

Approved as to form:

By: _____
County/Deputy County Counsel

Dated: _____, 2020

CITY OF MARINA

By: _____
City Manager

Approved as to form:

By: _____
City Attorney

Dated: _____, 2020

CITY OF SEASIDE

By: _____
City Manager

Approved as to form:

By: _____
City Attorney

Dated: _____, 2020

CITY OF DEL REY OAKS

By: _____
City Manager

Approved as to form:

By: _____
City Attorney

Dated: _____, 2020

CITY OF MONTEREY

By: _____
City Manager

Approved as to form:

By: _____
City Attorney

Dated: _____, 2020

UNIVERSITY OF CALIFORNIA

By: _____
Secretary to the Regents

Approved as to form:

By: _____
General Counsel

Dated: _____, 2020

CALIFORNIA STATE UNIVERSITY

By: _____
President

Approved as to form:

By: _____
General Counsel

Dated: _____, 2020

CALIFORNIA DEPARTMENT OF PARKS AND
RECREATION

By: _____
Regional Manager

Approved as to form:

By: _____
General Counsel

EXHIBIT A

Water Allocations by Percentage for Additional Army Supply*

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

*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).

Commented [DW36]: Wendy Strimling commented on Exhibit A as follows:

Correct Exhibit A to show recycled water in second column. Does this agreement address future water? If not, remove the column regarding future water allocation.

FORA staff believes that she reviewed and commented on an older and superseded copy of Exhibit A (which now addresses both potable and recycled water).