

# Attachment A

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**AGREEMENT BETWEEN THE FORT ORD REUSE AUTHORITY AND COUNTY OF  
MONTEREY REGARDING ADMINISTRATIVE AND FINANCIAL MATTERS  
ASSOCIATED WITH FORA DISSOLUTION  
(draft 6.18.20)**

This Agreement Regarding Administrative and Financial Matters Associated with FORA Dissolution (this “Agreement”) is dated for reference purposes June \_\_, 2020 and is entered into by and between the Fort Ord Reuse Authority (“FORA”), a California public agency, and the County of Monterey (the “County”), a political subdivision of the state of California. FORA and the County are sometimes referred to herein each in the singular as a “Party” and collectively as the “Parties.” This Agreement is entered into with reference to the following facts:

**RECITALS**

**A.** The 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, as amended (the “EDC Agreement”).

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

**D.** FORA is proposing to enter into and fund a contract (the “RGS Contract”) with Regional Government Services (“RGS”), a California Joint Powers Authority, to carry out certain administrative and fiscal services to wind up FORA’s business affairs following FORA’s Dissolution. FORA is proposing to assign the RGS Contract to the County before FORA’s Dissolution. Due to the shortness of time before the dissolution of FORA and the sequence of County Board of Supervisors and FORA Board of Directors meetings, the County Board of Supervisors may need to take action to approve this Agreement before FORA’s Board of Directors has approved the RGS Contract. Accordingly, the Parties intend by this Agreement to provide that the County’s acceptance of assignment of the RGS Contract is contingent upon the County’s determination that the terms of RGS Contract are acceptable to the County and approval of the RGS Contract as to form by County Counsel. If the County accepts the assignment of the RGS Contract, a copy of the fully executed RGS Contract shall be attached to this Agreement as Exhibit 1.

**E.** FORA has also proposed transferring all FORA hard copy and electronic records to the County, except records (i) that will transfer to the City of Seaside (the “City”) in the City’s capacity as successor Local Redevelopment Authority under the EDC Agreement (ii) pertaining to FORA’s Environmental Services Cooperative Agreement W9128F 07 2-0162, as amended,

entered into between FORA and the Army (the “ESCA”), which records will transfer to the City as custodian, or (iii) constituting privileged and confidential attorney client communications or attorney work product, which records will transfer to FORA’s Authority Counsel, Kennedy, Archer & Giffen, PC (“Authority Counsel”).

**F.** FORA also has proposed to transfer oversight and facilitation of the Veterans Issues Advisory Committee (the “VIAC”) to the County.

**G.** The County is willing to accept these transfers of administrative matters, on the mutual understanding of the Parties that the transfer of such matters does not render the County liable for any acts or omissions of FORA, its officers, employees, or agents and that FORA will provide funding as set forth herein.

## **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 RECORDS RETENTION AND MANAGEMENT**

**A.** The County shall serve as custodian of the FORA Records (as defined below) after FORA’s Dissolution. Prior to FORA’s Dissolution, FORA shall transfer to the County all records, including personnel files, documents, and meeting records, whether such records are kept by FORA in electronic or hard copy form, except the following categories of records: (i) records transferred to the City under the ESCA; (ii) records transferred to the City in connection with the EDC Agreement; and (iii) records containing privileged attorney-client communications or attorney work product which FORA intends to transfer to Authority Counsel. The records to be transferred to the County shall be referred to herein as the “FORA Records.”

**B.** FORA hereby agrees to transfer \$174,977 to the County to defray the County’s costs for management and storage of the FORA Records. FORA shall make such transfer of funds following both Parties’ execution of this Agreement and no later than June 30, 2020.

**C.** The County’s role with respect to the FORA Records is solely to serve as custodian of the FORA Records due to the dissolution of FORA. Recognizing that the former member jurisdictions of FORA may need access to the FORA Records insofar as such records relate to a matter within the member jurisdiction’s official duties and responsibilities, the County shall develop procedures whereby the County shall, upon that member’s request for a FORA Record, make the FORA Record available to a former member jurisdiction as soon as reasonably feasible and to the fullest extent allowed by law. Before destruction of any FORA Records, the County shall develop procedures requiring notification and consent of the former members of FORA and any such destruction shall follow the same procedures required by law for destruction of the County’s records.

**D.** By becoming the custodian of the FORA Records upon FORA's Dissolution, the County assumes no responsibility for any actions of FORA in connection with management and retention of the FORA Records, or any failure of FORA to manage, retain, or disclose records, and the County shall have no liability for any claim, lawsuit, or proceeding arising from FORA's actions or omissions with respect to the FORA Records.

**E.** To the extent the FORA Records include confidential records, such as certain medical or personnel files of former employees of FORA, the County shall keep such records confidential to the extent required by law, except that the County shall have access to said records to the same extent as FORA would have had access to such records.

## **2.0 ASSIGNMENT AND ASSUMPTION OF RGS CONTRACT**

**A.** FORA intends to enter into the RGS Contract in an amount not to exceed \$150,000, for a term from June 30, 2020 to June 30, 2021, to perform administrative and fiscal services associated with winding up FORA's business affairs after FORA's Dissolution. Due to the dissolution of FORA, it is necessary to assign the RGS Contract to the County, effective July 1, 2020.

**B.** If FORA and RGS enter into the RGS Contract, FORA hereby assigns, conveys, transfers and sets over unto the County, as of July 1, 2020, all of FORA's right, title, and interest as a party in and to the RGS Contract. Provided that the terms of the RGS Contract are acceptable to the County and the RGS Contract is approved as to form by County Counsel, the County agrees to accept such assignment, subject to FORA's transfer of the funds to perform the RGS Contract as provided herein.

**C.** If the County accepts the assignment and assumption of the RGS Contract, FORA hereby agrees to transfer \$150,000 to the County to be utilized for the purpose of payment to RGS for services rendered under the RGS Contract. FORA further agrees to transfer an additional \$15,000 to the County to defray the County's costs for fiscal administration of FORA's funds and management of the RGS Contract. FORA shall make such transfer of funds following both Parties' execution of this Agreement and no later than June 30, 2020.

**D.** If the County accepts the assignment and assumption of the RGS Contract, the County agrees to assume all of FORA's obligations under the RGS Contract, and the County agrees to pay all sums and perform, fulfill, and comply with all covenants and obligations which are to be paid, performed, and complied with under the RGS Contract from and after July 1, 2020, provided, however, that the County assumes no liability for any act or omission of FORA and the County's obligation to make payment under the RGS Contract is limited to the afore-referenced sum transferred by FORA to the County for the RGS Contract (\$150,000), and in no case shall the County be required to utilize other funds of the County, including County General Funds, to make payments under the RGS Contract, unless the County specifically agrees to do so.

### **3.0 FORA'S REMAINING AND LATE DISCOVERED UNPAID CONTRACTUAL OBLIGATIONS**

**A.** The Parties recognize that FORA may have late discovered unpaid contractual obligations as well as unpaid bills for such matters as utilities and FORA consultants, for services rendered or materials supplied prior to July 1, 2020 but for which the vendor will not have provided a final invoice until after June 30, 2020 (hereafter "Unpaid Contractual Obligations"). Unpaid Contractual Obligations do not include any liability, costs, attorneys' fees, damages or other monetary award arising from any claim or litigation that is pending at the time of FORA's Dissolution or that may arise in connection with any action of FORA or its dissolution.

**B.** FORA will transfer to the County the remaining fund balance from FORA's accounts, petty cash, un-deposited checks, and other cash equivalents held by FORA immediately prior to FORA's Dissolution together with any additional funds received prior to the closure of FORA's books (the "FORA Remaining Fund Balance").

**C.** RGS shall review and certify any Unpaid Contractual Obligations for payment and shall prepare any such documentation as required by the County to make payment. The County shall use the FORA Remaining Fund Balance to pay the Unpaid Contractual Obligations in the amounts certified by RGS. If any funds remain in the FORA Remaining Fund Balance after payment of all Unpaid Contractual Obligations, the County shall distribute the funds as follows: Twenty percent (20%) may be retained by the County and twenty percent (20%) shall be distributed to each of the Cities of Del Rey Oaks, Marina, Monterey, and Seaside. To the extent the Unpaid Contractual Obligations exceed the FORA Remaining Fund Balance, the remaining Unpaid Contractual Obligations shall constitute a debt of FORA to be paid from future property tax revenues pursuant to Health and Safety Code section 33492.71. The County shall continue to accrue such property tax revenues in FORA's account until all of FORA's recognized debts have been retired.

### **4.0 VETERANS ISSUES ADVISORY COMMITTEE**

**A.** FORA hereby agrees to transfer \$351,053 to the County to defray the County's costs for facilitating the VIAC. FORA shall make such transfer of funds following both Parties' execution of this Agreement and no later than June 30, 2020.

**B.** In consideration of receipt of this funding, the County assumes responsibility to facilitate the VIAC for so long as the funds transferred by FORA for this purpose are available.

### **5.0 LIMIT OF LIABILITY**

**A.** Nothing in this Agreement is intended nor shall be interpreted to make the County liable or responsible for any error, act, or omission of FORA, its officers, employees or agents.

**B.** Nothing herein is intended nor shall be interpreted to create an independent financial obligation of the County to use the general funds or other sources of revenue of the

County, and the County shall not be required to use its general fund or other revenue, other than the funds transferred from FORA hereunder, to carry out the County's obligations under this Agreement.

## **6.0 MISCELLANEOUS**

**A. Effective Date and Term.** The Effective Date of this Agreement shall be the date this Agreement is fully executed by both Parties. The term of this Agreement shall commence on the Effective Date and continue until FORA or its assignee has transferred all funds as required under this Agreement, has transferred the FORA Records, and has taken all other actions as required by FORA under this Agreement, and the County's obligations under this Agreement shall remain in full force and effect until the funds transferred pursuant to this Agreement have been expended in accordance with the terms of this Agreement.

**B. Assignment of FORA Obligations to RGS.** If FORA is unable administratively to transfer the FORA Records and funds to the County prior to July 1, 2020, FORA shall assign its obligations to RGS prior to July 1, 2020 in order to ensure that all transfers of the FORA Records and funds required by this Agreement are completed.

**C Accounting and Records.** FORA (until FORA's Dissolution) and the County shall each maintain and account for the funds related to this Agreement. Promptly following the execution of this Agreement, FORA will exercise good faith and commercially reasonable efforts to provide the County with copies of available and appropriate documents and records pertaining to this Agreement.

**D. Indemnification.** Each Party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying Party or its agents, employees, contractors, subcontractors, or invitees.

**E. Termination.** If through any cause either Party fails to fulfill in a timely and proper manner its obligations under this Agreement, or violates any of the terms or conditions of this Agreement or applicable Federal or State laws or regulations, the non-breaching Party may terminate this Agreement upon two (2) calendar days' written notice to the breaching Party. In the event that the County has not expended all of the funds under this Agreement within ten (10) years after the Effective Date of this Agreement, then any funds remaining unexpended as of that date shall be distributed as follows: Twenty percent (20%) may be retained by the County and twenty percent (20%) shall be distributed to each of the Cities of Del Rey Oaks, Marina, Monterey, and Seaside.

**F. 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.

**G. Multiple Originals; Counterparts.** This Agreement may be executed in multiple counterparts, each of which is deemed to be an original, and all of which together shall be deemed to be one and the same instrument. The signature pages of each counterpart may be detached and attached to a single copy of this Agreement which shall for all purposes be treated as a single, original document.

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

**I. Interpretation.** This Agreement has been negotiated by and between the representatives of both 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 its 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.

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

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

**L. Waiver.** No waiver of any right or obligation of either Party 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.

**M. 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.

*[signatures appear on following pages]*



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

FORT ORD REUSE AUTHORITY

By: \_\_\_\_\_  
Joshua Metz,  
Executive Officer

Approved as to form:

By: \_\_\_\_\_  
Authority Counsel

Dated: \_\_\_\_\_, 2020

COUNTY OF MONTEREY

By: \_\_\_\_\_  
Chris Lopez, Chair  
Monterey County Board of Supervisors

Approved as to form:

By: \_\_\_\_\_  
County/Deputy County Counsel

**EXHIBIT 1**  
**RGS CONTRACT**  
**(to be attached when fully executed)**