



# Fort Ord Reuse Authority

920 2<sup>nd</sup> Avenue, Suite A, Marina, CA 93933

Phone: (831) 883-3672 • Fax: (831) 883-3675 • [www.fora.org](http://www.fora.org)

## ADMINISTRATIVE COMMITTEE MEETING

8:15 A.M. WEDNESDAY, January 2, 2012

920 2<sup>nd</sup> Avenue, Suite A, Marina CA 93933 (FORA Conference Room)

### AGENDA

1. **CALL TO ORDER AT 8:15 AM**
2. **PLEDGE OF ALLEGIANCE**
3. **ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE**
4. **PUBLIC COMMENT PERIOD:**  
Members of the audience wishing to address the Fort Ord Reuse Authority (FORA) Administrative Committee on matters within the jurisdiction of FORA, but not on this agenda, may do so during the Public Comment Period. Public comments are limited to a maximum of three minutes. Public comments on specific agenda items will be heard at the time the matter is under Committee consideration.
5. **APPROVAL OF MEETING MINUTES**
  - a. December 19, 2012 Administrative Committee Minutes ACTION
6. **REVIEW JANUARY 11, 2012 FORA BOARD MEETING AGENDA** INFORMATION/ACTION
7. **OLD BUSINESS**
  - a. Master Resolution/Settlement Agmt Compliance – Deed Notifications Update INFORMATION
  - b. Post Reassessment Policy Options Consideration - Workshop/Retreat INFORMATION/ACTION
    - i. Scheduling
    - ii. Format
8. **NEW BUSINESS**
  - a. CIP Review – Phase II Study
    - i. Implementing Formulaic Approach – Update ACTION
  - b. Regional Urban Design Guidelines – Proposed Work Program ACTION
9. **ITEMS FROM MEMBERS**
10. **ADJOURNMENT**

**NEXT SCHEDULED MEETING: JANUARY 16, 2012**

*Information about items on this agenda or persons requesting disability related modifications and/or accommodations can contact the Deputy Clerk at: 831-883-3672 \* 920 2<sup>nd</sup> Avenue, Suite A, Marina, CA 93933 by 5:00 p.m. one business day prior to the meeting. Agendas can also be found on the FORA website: [www.fora.org](http://www.fora.org).*



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## ADMINISTRATIVE COMMITTEE MEETING

8:15 A.M. WEDNESDAY, DECEMBER 19, 2012

920 2<sup>nd</sup> Avenue, Suite A, Marina CA 93933 (FORA Conference Room)

### MINUTES

#### 1. CALL TO ORDER

Co-Chair Houlemard called the meeting to order at 8:19 a.m. The following were present, as indicated by signatures on the roll sheet:

Doug Yount, City of Marina\*  
Elizabeth Caraker, County of Monterey\*  
John Dunn, City of Seaside\*  
Carl Holm, County of Monterey\*  
Diana Ingersoll, City of Seaside  
Tim O'Halloran, City of Seaside  
Heidi Burch, City of Carmel  
Graham Bice, UC MBEST  
Mike Zeller, TAMC

Bob Rench, CSUMB  
Rob Robinson, BRAC  
Bob Schaffer, MCP  
Chuck Lande, Marina Heights  
Vicki Nakamura, MPC  
Scott Hilk, MCP  
Beth Palmer, Monterey Downs  
Brian Boudreau, Monterey Downs

FORA Staff:  
Michael Houlemard  
Steve Endsley  
Jonathan Garcia  
Stan Cook  
Jim Arnold  
Crissy Maras  
Lena Spilman

\* Voting Members

#### 2. PLEDGE OF ALLEGIANCE

Carl Holm led the Pledge of Allegiance.

#### 3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

Co-Chair Houlemard discussed an upcoming land transfer to Monterey Peninsula College and ongoing munitions and explosives removal.

#### 4. PUBLIC COMMENT PERIOD

Beth Palmer inquired as to the upcoming December 21, 2012 Executive Committee meeting.

#### 5. APPROVAL OF NOVEMBER 7, 2012 MEETING MINUTES

**MOTION:** Carl Holm moved, seconded by John Dunn, to approve the December 5, 2012 Administrative Committee meeting minutes as presented.

**MOTION PASSED:** unanimous

#### 6. DECEMBER 14, 2012 FORA BOARD MEETING – FOLLOW UP

Mr. Houlemard provided a summary of the December 14, 2012 Board meeting.

#### 7. OLD BUSINESS

##### a. Master Resolution/Settlement Agreement Compliance – Deed Notifications Update

Real Property and Facilities Manager Stan Cook provided a status update regarding outstanding deed notifications required to be completed by the jurisdictions.

##### b. Capital Improvement Program Review – Phase II Study

i. Consider adopting Resolution 12-XX, which adds clarifying language to previously adopted resolution 12-5 under sections 1.2.1 and 2.1.2

ii. Consider authorizing the Executive Officer to execute Amendment #1 to the FORA-jurisdictions Implementation Agreements with additional clarifying language under sections 1.2.1 and 2.1.2

Senior Planner Jonathan Garcia presented the language amendments proposed by Supervisor Parker. The Committee discussed the amendments and received comments from members of the public.

**MOTION:** Doug Yount moved, seconded by Carl Holm, to reaffirm the Committee's previous approval of the current language, absent the proposed amendments, as the proposed language would not add to the already adopted and recorded amendments.

**MOTION PASSED:** unanimous

**iii. Schedule for implementing the FORA formulaic developer fee process**

Mr. Garcia presented the item.

**MOTION:** Doug Yount moved, seconded by John Dunn, to recommend the FORA Board move as quickly as possible to implement the previously approved formulaic developer fee process.

**MOTION PASSED:** unanimous

**c. Review Jurisdictions' "Guiding Principles in Implementing Policy Options Following the Base Reuse Plan (BRP) Reassessment" Document**

Co-Chair Houlemard presented the item and communicated Board member concerns regarding the document. The Committee discussed the post BRP Reassessment process for 2013.

**MOTION:** Doug Yount moved, seconded by Elizabeth Caraker, to recommend that; 1) FORA staff to prepare a framework for Board review of the proposed policy issues that surfaced in the Base Reuse Plan Reassessment process, 2) FORA staff provide the Board with options for a facilitated public retreat or workshop on the range of BRP policy alternatives - emphasizing consensus building and utilizing the guiding principles reviewed at the December 14, 2012 Board meeting.

**MOTION PASSED:** unanimous

**8. ADJOURNMENT**

Co-Chair Houlemard adjourned the meeting at 10:00 a.m.

*Minutes Prepared by:  
Lena Spilman, Deputy Clerk*

*Approved by:*

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*Michael A. Houlemard, Jr., Executive Officer*

**START**

**January 11, 2013**

**Draft Board Packet**



# Fort Ord Reuse Authority

920 2<sup>nd</sup> Avenue, Ste. A, Marina, CA 93933  
Phone: (831) 883-3672 • Fax: (831) 883-3675 • [www.fora.org](http://www.fora.org)

## BOARD OF DIRECTORS MEETING Friday, January 11, 2013 at 3:00 p.m. 910 2<sup>nd</sup> Avenue, Marina, CA 93933 (Carpenter's Union Hall)

### AGENDA

1. **CALL TO ORDER AND ROLL CALL** (Carpenters Union Hall)
2. **CLOSED SESSION** (FORA Conference Room)
  - a. Conference with Legal Counsel - Existing Litigation, Gov Code 54956.9(a) – Four Cases
    - i. Keep Fort Ord Wild v. Fort Ord Reuse Authority, Case Numbers: M114961, M116438, M119217
    - ii. The City of Marina v. Fort Ord Reuse Authority, Case Number: M118566
  - b. Public Employee Performance Evaluation – Authority Counsel, Gov Code 54957
3. **ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION** (Carpenters Union Hall)  
*Open session will begin at the later of: a) 3:30 p.m. or b) immediately following closed session.*
4. **PLEDGE OF ALLEGIANCE**
5. **ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE**
  - a. Adopt Resolution Acknowledging Gail Youngblood ACTION
6. **CONSENT AGENDA**
  - a. Approval of the December 14, 2012 Board Meeting Minutes ACTION
  - b. Denise Duffy & Associates Contract Amendment #6 ACTION
7. **OLD BUSINESS**
  - a. Post Reassessment Policy Options Consideration – Workshop/Retreat INFORMATION/ACTION
    - i. Scheduling
    - ii. Format
  - b. Capital Improvement Program Review – Phase II Study ACTION
    - i. Consider Additional Clarifying Language to Resolution 12-5
    - ii. Consider Additional Clarifying Language to Amendment #1 to the FORA-Jurisdictions Implementation Agreements
    - iii. Implementing Formulaic Approach - Update
8. **NEW BUSINESS**
  - a. Elect 2013 FORA Board Officers
    - i. Receive Nominating Committee Report INFORMATION/ACTION
    - ii. Conduct Election ACTION
  - b. Veterans Issues *Ad Hoc* Task Force ACTION
  - c. Presentation – Local Business/Employment INFORMATION/ACTION
  - d. Approve Veterans Cemetery Record of Survey Budget ACTION
  - e. Approve Preston Park Management Contract with Alliance INFORMATION/ACTION

*Persons seeking disability related accommodations should contact FORA 24 hours prior to the meeting.*

This meeting is recorded by Access Monterey Peninsula (AMP) to be televised Sundays at 9:00 a.m./Sundays at 1:00 p.m. on Marina/Peninsula Chanel 25. The video and full Agenda packet are available online at [www.fora.org](http://www.fora.org).

**9. PUBLIC COMMENT PERIOD**

*Members of the audience wishing to address the Fort Ord Reuse Authority (“FORA”) Board on matters within the jurisdiction of FORA, but not on this agenda, may do so during the Public Comment Period. Public comments are limited to a maximum of three minutes.*

**10. EXECUTIVE OFFICER’S REPORT**

- a. Outstanding Receivables
- b. Administrative Committee
- c. Habitat Conservation Plan Update
- d. Travel Report
- e. Public Correspondence to the Board

INFORMATION  
INFORMATION  
INFORMATION  
INFORMATION  
INFORMATION

**11. ITEMS FROM MEMBERS**

**12. ADJOURNMENT**

*Persons seeking disability related accommodations should contact FORA 24 hours prior to the meeting.*

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# **Placeholder for Item 5a**

*Resolution Acknowledging*

*Gail Youngblood*

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This information is not yet available, but will be included in the final Board packet.

# **Placeholder for Item 6a**

*December 14, 2012 Board Minutes*

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This information is not yet available, but will be included in the final Board packet.



# FORT ORD REUSE AUTHORITY BOARD REPORT

## CONSENT AGENDA

**Subject:** Denise Duffy & Associates Contract Amendment #6

**Meeting Date:** January 11, 2013

**Agenda Number:** 6b

**ACTION**

### RECOMMENDATION(S):

Authorize the Executive Officer to execute contract amendment #6 (**Attachment A**) with Denise Duffy & Associates (DD&A) for completion of additional take analysis tasks required by California Department of Fish Game (CDFG) for California Tiger Salamander; no increase in contract budget is authorized through this amendment.

### BACKGROUND/DISCUSSION:

FORA staff, FORA's Habitat Conservation Plan consultant (ICF), and FORA's National Environmental Policy Act/California Environmental Quality Act consultant (DD&A) held several recent meetings with CDFG staff to address CDFG's comments on the draft HCP. One of CDFG's comments was a requirement to conduct an alternative take analysis for California Tiger Salamander that would allow CDFG to make their 2081 permit findings for this state and federal-listed species on former Fort Ord. Staff notes that USFWS is not requiring this alternative take analysis for California Tiger Salamander. Therefore, both the original and alternative take analyses would be included in the HCP and the HCP environmental clearance documents.

### FISCAL IMPACT:

Reviewed by FORA Controller \_\_\_\_\_

Contracts with ICF and DD&A (NEPA/CEQA consultants to FORA and USFWS) have been funded through FORA's annual budgets to accomplish HCP preparation and environmental review. Staff time for this item is included in the approved FORA budget.

### COORDINATION:

Executive Committee, Administrative Committee, USFWS, CDFG, ICF, and DD&A.

Prepared by \_\_\_\_\_ Reviewed by \_\_\_\_\_  
Jonathan Garcia Steve Endsley

Approved by \_\_\_\_\_  
Michael A. Houlemard, Jr.



**Denise Duffy & Associates, Inc.**

PLANNING AND ENVIRONMENTAL CONSULTING

## MEMORANDUM

**Date:** December 5, 2012

**To:** Steve Endsley, Assistant Executive Officer, FORA  
Jonathan Garcia, Senior Planner, FORA

**cc:** Michael Houlemard, Executive Officer, FORA

**From:** Erin Harwayne, Project Manager, Denise Duffy & Associates, Inc.

**Subject:** Request for Contract Amendment (#6) – Reallocate budget from existing tasks to cover additional tasks related to the Take Assessment for the Fort Ord Habitat Conservation Plan (HCP) and EIS/EIR

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**Message:** Denise Duffy & Associates, Inc. (DD&A) is currently under contract with the Fort Ord Reuse Authority (FORA) and the U.S. Fish and Wildlife Service (Service) to prepare the environmental documentation (EIS/EIR) for the Fort Ord Habitat Conservation Plan (HCP).

It has been requested by the California Department of Fish and Game (DFG) to include additional information related to the take assessment for the California Tiger Salamander (CTS) for the HCP and EIS/EIR. Specifically, DFG has provided ICF and DD&A “Alternative methodology for determining the significance of impacts to CTS on the former Fort Ord” (“Alternative Methodology”), and is requesting that this methodology be implemented and included in the take assessment for the HCP and EIS/EIR. DFG has stated that this methodology will provide needed further detail on the quality of CTS habitat that would be preserved and impacted. DFG has stated that this additional information is necessary to issue a Section 2081 Incidental Take Permit (ITP) for this species as it will allow for the agency to determine whether the implementation of the HCP fully mitigates for the proposed impacts to CTS.

DD&A has identified a list of tasks required to implement the Alternative Methodology, and are as follows:

- Review Alternative Methodology/Discuss with HCP team (completed November 2012);
- Conduct GIS analysis/Calculate Acreages;
- Prepare New Impact Spreadsheets and Calculate Impacts;
- Revise and/or Prepare New HCP and EIS/EIR Tables and Figures;
- Compile and Provide Qualitative Road and Adjacent Pond Information to ICF; and
- Provide Draft Results to ICF and DFG/Revise, as needed, and Provide Final Results to ICF.

*Tel: (831) 373-4341  
Fax: (831) 373-1417  
947 Cass Street, Suite 5  
Monterey, CA 93940*

These additional tasks were not included in the original scope of work or budget. As a result, DD&A is requesting that the budget from existing tasks be reallocated to cover these tasks. Therefore, DD&A is requesting that our original contract be amended to include both the previously completed and upcoming additional tasks within our existing budget authority. The estimated cost for these tasks is \$5,106.00, and the cost per task is identified in the attached spreadsheet. Therefore, some tasks in our current scope will be removed or adjusted until the next anticipated contract amendment (currently anticipated after January 1, 2013). If you are in agreement with the terms of this amendment request, please sign the attached authorization to proceed and fax or email back to our office as soon as possible. As always, please call me with any questions or comments.

**AUTHORIZATION TO PROCEED**

*Note: If the scope, fee, terms of payment and conditions described in the Denise Duffy & Associates, Inc. attached memorandum are acceptable, please sign and return a copy of this authorization form for our files. Thank you.*

**Project Name: REVISED SERVICES (AMENDMENT #6) FOR THE FORT ORD HABITAT CONSERVATION PLAN EIR/EIS PROJECT**

**Accepted by (signature): \_\_\_\_\_ Dated: \_\_\_\_\_**

**Print Name: \_\_\_\_\_**

**Title: \_\_\_\_\_**

**On Behalf of: \_\_\_\_\_**

**Mailing Address: \_\_\_\_\_**

**Fee/Scope Confirmation:**

**ADJUSTMENT TO ORIGINAL CONTRACT BUDGET FOR REVISED SERVICES OF \$5,106.00, AS DESCRIBED IN THE MEMORANDUM DATED DECEMBER 5, 2012.**

**Existing Contract Date, if applicable: FEBRUARY 1, 2005.**

**If invoice should be sent to a different person or location, please complete below:**

**Mailing Address: \_\_\_\_\_**

**Attention: \_\_\_\_\_**

**Return to: Denise Duffy & Associates, Inc.  
947 Cass Street, Suite 5  
Monterey, CA 93940**

**DD&A Cost Estimate for Amendment #6**  
**December 5, 2012**  
**Fort Ord Habitat Conservation Plan**  
**Environmental Impact Statement/Environmental Impact Report**

	Billing Title	Principal	Project Manager	Senior Planner	Assoc Planner or Biologist	GIS Specialist	Graphics	Hours Per Task	Cost Per Subtask	Cost Per Task
1	Review Alternative Methodology/Discuss with HCP Team	1	6		2			9	\$ 1,139	\$ 1,139
2	Conduct GIS analysis/Calculate Acreages			1		24		25	\$ 2,265	\$ 2,265
3	Prepare New Impact Spreadsheets and Calculate Impacts			4				4	\$ 420	\$ 420
4	Revise and/or Prepare New HCP and EIS/EIR Tables and Figures			2			2	4	\$ 346	\$ 346
5	Compile and Provide Qualitative Road and Adjacent Pond info to ICF			2				2	\$ 210	\$ 210
6	Provide Draft and Final Results to HCP Team		2	2		2		6	\$ 640	\$ 640
	<b>Total Hours</b>	1	8	11	2	26	2	50		
	<b>Hourly Rate</b>	\$ 205	\$ 125	\$ 105	\$ 92	\$ 90	\$ 68			
	<b>Total Labor</b>	\$ 205	\$ 1,000	\$ 1,155	\$ 184	\$ 2,340	\$ 136		\$ 5,020	\$ 5,020
<b>Expenses:</b>										
	Printing/Xerox								\$ 50	
	Miscellaneous								\$ 25	
								<b>SUBTOTAL</b>	\$ 75	
								<b>15% Admin Fee</b>	\$ 11	
								<b>TOTAL EXPENSES</b>	\$ 86	\$ 86
								<b>TOTAL</b>		\$ 5,106

# FORT ORD REUSE AUTHORITY BOARD REPORT

## OLD BUSINESS

**Subject:** "Post-Reassessment" Policy Options Consideration – Workshop/Retreat

**Meeting Date:** January 11, 2013

**Agenda Number:** 7a

**INFORMATION/ACTION**

### RECOMMENDATION

Provide regarding scheduling/format direction for a future "post-reassessment" Board workshop/retreat

### BACKGROUND

On December 14, 2012, the Board voted unanimously to formally receive the final Base Reuse Plan (BRP) Reassessment Report prepared by EMC Planning Group. The Reassessment Report identified a "menu" of policy options and potential BRP modifications for the FORA Board's consideration. The report grouped its main findings into five categories:

- I. Modifications and Corrections (i.e., typos, outdated references in the BRP, minor clarifications),
- II. Prior Board Actions and Regional Plan Consistency,
- III. Implementation of Policies and Programs,
- IV. Policy and Program Modifications, and
- V. FORA Procedures and Operations

The five categories are briefly described beginning on page 1-4 of the final report, and are explored in depth in Chapter 3. The final report as received by the Board, integrating all previously identified corrections and revisions, is available on FORA's web site: <http://www.fora.org/resources.htm>. A summary of the policy topics identified in the final Reassessment Report is appended to this Board report (**Attachment A**).

The December 14 agenda also included an information item regarding proposed post-reassessment "guiding principles" developed by the five former Fort Ord land-use jurisdictions (**Attachment B**). On December 19, the Administrative Committee voted unanimously to recommend that FORA staff: 1) prepare a framework for Board review of the proposed policy issues that surfaced in the Base Reuse Plan Reassessment process; and 2) provide the Board with options for a facilitated public retreat or workshop on the range of BRP policy alternatives, emphasizing consensus building and utilizing the guiding principles reviewed at the December 14, 2012 Board meeting.

### DISCUSSION

Policy options: For each category (I-V) of policy issues in the Reassessment Report, the report identifies and discusses one or more specific topics regarding potential future BRP modifications. The topics were derived from public input and a detailed review of the BRP during the scoping phase of the reassessment process by the consultants and FORA staff. For each overall category (I, III), or for individual topic areas within categories (II, IV, and V), one or more potential options for future Board action are identified. The options lists are intended to be representative of the information gathered through the scoping process but are not necessarily exhaustive of all potential options. Additional options could be identified by the Board during consideration of potential BRP modifications in 2013 and beyond.

Next steps: Establishing near-term and longer-term programs for prioritizing post-reassessment action items will be a key task in early 2013. A Board study session or retreat would be an advantageous "next step" toward structuring a more specific approach to post-reassessment action items. FORA staff is seeking Board members' input to:

- i. Schedule a Board study session/retreat in late January or in February, and
- ii. Format, i.e., the generally preferred setting (a regular Board meeting, special/dedicated Board meeting, regular venue or an alternate location, etc.) and time allotment for this discussion.

There are various approaches, or blends of approaches, that could be utilized to structure a post-reassessment preliminary work plan schedule. As examples, the Board could opt to:

1. Provide early direction to implement or take action on specific potential options for BRP modifications, such as the "Category I" revisions and corrections, that do not appear to require significant staff resources or Board deliberation;
2. Prioritize action items that:
  - a. were previously highlighted during the reassessment process as "yet-to-be-completed" obligations, e.g., regional urban design guidelines for areas other than the Highway 1 corridor;
  - b. closely align with the land-use jurisdictions' proposed guiding principles;
  - c. received the greatest amount of public interest during the reassessment process (e.g., issues relating to the Veterans' Cemetery, promotion of policies focusing future development on previously developed/blighted areas of former Fort Ord);
  - d. make the greatest use of recent changes (e.g., exploration of marketing and outdoor recreational tourism opportunities related to the National Monument designation in 2012);
  - e. would be most cost-effective to implement because of a relatively short timeline and/or less need to obtain outside expertise in order to complete the action (*note: FORA staff will develop and provide preliminary cost estimates in early 2013 for a range of potential policy actions for future Board consideration*);
3. Identify/discuss potential additional policy topics/options beyond those discussed in the Reassessment Report;
4. Seek consensus on a preferable policy option for each identified topic area, prior to laying out a tentative work program schedule;
5. Formulate a mix of selected near-term and longer-term action item goals; and/or
6. Explore which post-reassessment action items could be efficiently grouped together based on probability of requiring the same level of California Environmental Quality Act (CEQA) clearance, with the three basic levels being exemption, negative declaration, and environmental impact report. Various BRP modifications (policy options) that the Board may wish to consider implementing will be subject to the appropriate level of CEQA clearance at such time as they are undertaken. Category I of the report would likely be exempt, as would some of the items in each of Categories II through V. However, within those categories there are also substantive policy considerations—for example, consideration of Capital Improvement Program modifications under Category II—that might require additional CEQA review and clearance.

### **FISCAL IMPACT**

Reviewed by FORA Controller \_\_\_\_\_

Staff time for this item is included in the approved FY12-13 budget.

### **COORDINATION**

Administrative Committee, Executive Committee

Prepared by \_\_\_\_\_ Reviewed by \_\_\_\_\_  
Darren McBain Steve Endsley

Approved by \_\_\_\_\_  
Michael A. Houlemard, Jr.

Cat.	Topics/Policies	FINAL Reassess. Report page ref.
<b>I</b>	<b>BRP Corrections and Updates</b> (typographical errors, minor clarifications, etc) Text corrections	3-3
	Figure corrections	3-13
<b>II</b>	<b>Prior Board Actions and Regional Plan Consistency</b> Land Use Concept Map Modifications Based on Prior FORA Board Consistency Determinations (map "republication" based on prior approvals)	3-19
	Land Use Concept Map Modifications Based on Other Actions	3-22
	Modify Circulation Related Maps and Text in the BRP and Modify Capital Improvement Program	3-24
	BRP Modifications Regarding Consistency with Regional and Local Plans	3-25
<b>III</b>	<b>Implementation of "Incomplete"/Yet-to-Be-Completed BRP Policies and Programs</b> Land Use, Circulation, Recreation & Open Space, Conservation, Noise, and Safety BRP elements	3-32
	Jurisdictional implementation responsibilities	3-33
	FORA implementation responsibilities	3-33
<b>IV</b>	<b>Policy and Program Modifications</b> <u>Land Use/General</u> <ol style="list-style-type: none"> <li>1. BRP Visions and Goals</li> <li>2. Evaluation of Land Use Designations Related to the East Garrison-Parker Flats Land Swap Agreement</li> <li>3. Specific Applicability of Programs/Policies to Del Rey Oaks and Monterey</li> <li>4. Support for the Needs of Disadvantaged Communities</li> <li>5. Refinement of Integrated Mixed Use Concepts</li> <li>6. Promotion of Green Building</li> <li>7. Climate Action and Greenhouse Gas Reduction</li> <li>8. Policy on Development/Habitat Interfaces</li> <li>9. Prioritization of Development within Army Urbanized Areas</li> <li>10. Policy on Land Use Compatibility Adjacent to CSUMB Campus</li> <li>11. Issues Relating to Gambling</li> </ol>	3-71



	<u>Economic Development and Jobs</u> 12. Reversal of the Loss of Middle Class Job and Housing Opportunities 13. Constraints and Uncertainties for Development on Fort Ord 14. Promotion of Economic Development through Outdoor Recreational Tourism/Ecotourism 15. Capitalization on Existing Regional Strengths to Promote Expansion of Office and Research Sectors 16. Establishment and Marketing of a Brand for Fort Ord	3-83
	<u>Urban Blight and Cleanup</u> 17. Prioritization of Funding for and Removal of Blight 18. Evaluation of Base Clean-up Efforts and Methods	3-89
	<u>Aesthetics</u> 19. Prioritization of Design Guidelines	3-92
	<u>Housing</u> 20. Effects of Changes in Population Projections 21. Policy Regarding Existing Residential Entitlements Inventory 22. Cost of Housing and Targeting Middle-income Housing Types	3-93
	<u>Transportation</u> 23. Re-evaluation of Transportation Demands and Improvement Needs 24. Capitalization on Existing Infrastructure – Consider Costs/Benefits/Efficiencies of Capital Improvement Program 25. Policy on Through Traffic at CSUMB 26. Prioritization of Multimodal (Bicycle, Pedestrian, and Transit) Transportation	3-96
	<u>Water</u> 27. Re-evaluation of the Salinas Valley Groundwater Basin Water Supply 28. Prioritization of Water Augmentation 29. Prioritization of Water Conservation	3-101
	<u>Fort Ord National Monument</u> 30. Potential for the National Monument and Tourism to be a Catalyst to Economic Growth in the Region 31. Policy on Land Use Adjacent to the National Monument 32. Integrated Trails Plan 33. Fort Ord Nat'l Monument – Fort Ord Dunes State Park Trail Connection	3-106

	34. Access Points and Trailhead Development for the Fort Ord National Monument	
	<u>Cultural Resources</u> 35. Site for a Native American Cultural Center 36. Additional Policy on Historic Building Preservation	3-111
	<u>Veterans' Cemetery</u> 37. Veterans' Cemetery Location 38. Veterans' Cemetery Land Use Designation 39. Policy Regarding the Veterans' Cemetery	3-112
<b>V</b>	<b>FORA Procedures and Operations</b> 1. FORA Board composition, representation, and voting process 2. Oversight of the land use/development implementation decisions of local jurisdictions 3. Regularly track and report on the status of BRP policy and program implementation 4. Clarify the methodology for making consistency determinations and track and report results of consistency determinations 5. Provide regular updates on modifications to the BRP Land Use Concept map 6. Regularly monitor, update and report on status of BRP build-out constraint variables and other measures of BRP implementation status 7. Improve access to and disclosure of FORA Board decisions and fundamental data regarding the status of base reuse 8. Periodically Assess the BRP 9. Prepare a FORA Phase-Out Plan 10. Assess Infrastructure Maintenance Cost Issues	3-118

**RETURN TO  
AGENDA**

**FORT ORD REUSE AUTHORITY BOARD REPORT  
NEW BUSINESS**

<b>Subject:</b>	Review Jurisdictions' "Guiding Principles in Implementing Policy Options Following the Base Reuse Plan (BRP) Reassessment" document	
<b>Meeting Date:</b>	December 14, 2012	<b>INFORMATION</b>
<b>Agenda Number:</b>	8b	

**RECOMMENDATION**

Receive a staff report regarding the land use jurisdictions' list of proposed post-reassessment "Guiding Principles."

**BACKGROUND**

Building on the information gathered in the Scoping Report phase, the BRP Reassessment Report (Item 7b on the current, December 14, 2012 agenda) identifies a "menu" of policy options and potential BRP modifications for the FORA Board's post-reassessment consideration in 2013 and beyond. In a parallel process, as described in a City of Marina staff report, "staff felt it important to develop a set of guiding principles which reflect the priority interests of the land use jurisdictions who have primary responsibility for the implementation of the BRP." To that end, staff representatives from the five land use jurisdictions within the former Ford Ord (Cities of Marina, Seaside, Monterey, and Del Rey Oaks, and County of Monterey) have collaborated to prepare a list of proposed "Guiding Principles in Implementing Policy Options Following the Base Reuse Plan (BRP) Reassessment."

It is FORA staff's understanding that the Monterey City Council will consider adopting a resolution in support of the proposed list of guiding principles later this month. The other four jurisdictions have already adopted similar resolutions (**Attachment A**)<sup>1</sup>. FORA staff was not involved in developing this list of proposed guiding principles but, as discussed in previous Board meetings, intends to present to the Board an outline of post-reassessment approaches and potential study session dates in early 2013.

The attached list has not yet been fully evaluated for compatibility with the FORA legislation or FORA's master resolution, but the principles are compatible with a wider discussion of post-reassessment options for the Board to consider. At its December 5 meeting the FORA Administrative Committee recommended that the Executive Committee add this item as an information item to the December 14, 2012 Board agenda and return the item for action at the next Board meeting at which post-reassessment policy matters are agendaized. The Executive Committee endorsed the Administrative Committee's recommendations. Administrative Committee members expressed support for the Board adopting proposed Guiding Principles in early 2013, at the beginning of the process of selecting and deliberating on any post-reassessment action items.

**FISCAL IMPACT**

Reviewed by FORA Controller *W.F. for I.B.*

Staff time associated with documenting this item is included in the approved FORA budget.

**COORDINATION**

Administrative Committee, Executive Committee.

Prepared by *Darren McBain* Reviewed by *Steve Endsley*  
Darren McBain Steve Endsley

Approved by *Michael A. Houlemard, Jr.*  
Michael A. Houlemard, Jr.

<sup>1</sup> Note: There are minor differences between the versions of the list as adopted by the different jurisdictions. Members of the Administrative Committee have offered to be present at the FORA Board meeting to discuss this item.

## **Guiding Principles in Implementing Policy Options Following the Base Reuse Plan (BRP) Reassessment**

- 1. Achieve the purpose of existing BRP before adding or supplanting with new purpose**
  - a. Replenish job and population loss that occurred with base closure
  - b. Move "economy" to top of priority of BRP objectives, equal with education and environment
  - c. Focus on job creation of middle income earners or higher
  - d. Ensure sustainable funding for all obligations including long-term obligations beyond Fort Ord Reuse Authority (FORA)
  
- 2. Limit Land Use decisions to Land Use Jurisdictions**
  - a. Work within framework of existing BRP and its Environmental Impact Report
  - b. Work within framework of existing Agreements & Memorandum of Understanding (MOUs) in place now between FORA and jurisdictions
  - c. Voting structure on FORA Board should reflect land use decisions i.e. only Land Use Jurisdictions would vote on land use matters
  - d. BRP modifications/amendments should reflect and be consistent with jurisdiction General Plans that have previously been found consistent
  
- 3. Begin now to plan for future FORA dissolution by accomplishing remaining tasks under BRP**
  - a. Dedicate staff and funding to assisting jurisdictions in implementing BRP within FORA lifetime
  - b. Continue to monitor Salinas Valley Ground Water Basin vs. reopen or reevaluate Basin
  - c. Demolish barracks/building removal as priority
  - d. Implement Capital Improvement Program (CIP) prior to FORA dissolution
  - e. Develop augmented water source
  - f. Complete Environmental Services Cooperative Agreement (ESCA) and Munitions and Explosives of Concern (MEC) Cleanup
  - g. Complete Habitat Conservation Plan (HCP)
  - h. Complete roadways/transportation systems

# FORT ORD REUSE AUTHORITY BOARD REPORT

## OLD BUSINESS

<b>Subject:</b>	Capital Improvement Program Review – Phase II Study	
<b>Meeting Date:</b>	January 11, 2013	<b>ACTION</b>
<b>Agenda Number:</b>	7b	

### RECOMMENDATION(S):

- i. Consider adopting Resolution 12-XX, which adds clarifying language to previously adopted resolution 12-5 under sections 1.2.1 and 2.1.2 (**Attachment A**).
- ii. Consider authorizing the Executive Officer to execute Amendment #1 to the FORA-jurisdictions Implementation Agreements (Amendment #1 to the IA) with additional clarifying language under sections 1.2.1 and 2.1.2 (**Attachment B**).
- iii. Receive an update on Economic and Planning Systems' (EPS) progress in completing their fee calculation for the FORA Community Facilities District Special Tax.

### BACKGROUND:

At its August 29, 2012 meeting, under item 8a "Capital Improvement Program Review – Phase II Study," the FORA Board of Directors adopted resolution 12-5 and authorized the Executive Officer to execute Amendment #1 to the IA. At its October 12, 2012 meeting, Mayor Bachofner withdrew his request for reconsideration of item 8a in lieu of future Board consideration of amendments proposed by Supervisor Parker and other Board members. The proposed amendments are described in **Attachments A and B**.

### DISCUSSION:

After the August 29, 2012 FORA Board meeting, FORA's five member jurisdictions (County of Monterey, Cities of Seaside, Marina, Del Rey Oaks, and Monterey) brought Amendment #1 to the IA to their respective decision makers for consideration. If the FORA Board approves the proposed clarifying language, this would mean that FORA's five member jurisdictions would have to bring the proposed clarifying language to their respective decision makers for reconsideration. The intent of the proposed new language is to clarify that the FORA Board can add new projects to be funded by sources other than the FORA Development Fee and Community Facilities District special tax, and to clarify that FORA may modify its CIP in the future, and has the right to modify the FORA Development Fee and Community Facilities District special tax to fund such changes, provided this is done under the existing provisions of the CFD and State law. At its December 19, 2012 meeting, the Administrative Committee discussed the proposed language additions and recommended that the FORA Board sustain its August 29, 2012 action without additional changes. The Administrative Committee did not find that the proposed clarifying language improved the resolution or Amendment #1 to the IA.

EPS is completing its Capital Improvement Program Review – Phase II study work, including running the formula that calibrates the FORA Development Fee and CFD Special Tax. EPS is planning to complete this work for review by the FORA Administrative Committee in late January and for FORA Board consideration at its February meeting.

**FISCAL IMPACT:**

Reviewed by FORA Controller \_\_\_\_\_

Staff time for this item is included in the approved annual budget.

**COORDINATION:**

Administrative Committee, Executive Committee, and Authority Counsel.

DRAFT

Prepared by \_\_\_\_\_ Reviewed by \_\_\_\_\_  
Jonathan Garcia Steve Endsley

Approved by \_\_\_\_\_  
Michael A. Houlemard, Jr.

Resolution 13-\_\_

Resolution of the Fort Ord Reuse )  
 Authority (FORA) Board establishing a )  
 formula to determine FORA's annual )  
 basewide development fee schedule and )  
 Community Facilities District (CFD) )  
 Special Tax rates )

THIS RESOLUTION is adopted with reference to the following facts and circumstances:

- A. FORA has adopted a Basewide Community Facilities District ("CFD" or "CFD Special Tax") to fund, together with other revenues, the FORA CIP. Section 7 (ii) of the Implementation Agreement provides that the FORA development fee and CFD Special Tax to fund CEQA Mitigation Measures ("FORA CIP") are limited to the difference between the revenues needed for such purposes and the revenues otherwise reasonably available to achieve those purposes; and
- B. FORA and its member Jurisdictions have twelve years of experience with the Basewide Development Fee Policy ("Policy") and CFD Special Tax; and
- C. FORA and the Army have executed an Environmental Services Cooperation Agreement ("ESCA") providing for FORA to manage base-wide environmental remediation (including ordnance removal) funded by the Army; and
- D. The Policy and CFD Special Tax provide resources to fund CEQA Mitigation Measures (FORA CIP) identified in the 1997 FORA Base Reuse Plan and CEQA Documents; and
- E. FORA and its member Jurisdictions agree that land sales and lease proceeds, FORA property tax revenues, grant funds and the Policy and CFD Special Tax continue to be the appropriate sources to fund CEQA Mitigation Measures and Board-determined base-wide obligations in FORA's CIP as identified in Section 1.1; and
- F. FORA recognizes the importance of calibrating the Policy and CFD Special Tax by incorporating all available resources to fund CEQA Mitigation Measures and Board-determined basewide obligations in FORA's CIP identified in Section 1.1; and
- G. FORA and its member Jurisdictions acknowledge the Policy and CFD Special Tax must be fair and equitable; and
- H. FORA has 1) achieved cost savings; 2) secured grants and other contributions to the base-wide mitigation measures from federal and state sources; and 3) loaned

monies to fund required projects that have reduced or deferred the demand for the original Policy and CFD Special Taxes; and

- I. The Base Reuse Plan emphasized the importance of job-creation and build-out of a balanced mix of community uses including commercial, residential and public facilities to achieve a desired jobs-housing balance; and
- J. FORA and its member Jurisdictions seek refinement to the list of authorized facilities that must be funded by proceeds from land sales and lease proceeds, grants, FORA property tax revenues, the Policy and CFD Special Tax; and
- K. Stakeholders recognize, given inherent uncertainties prevalent in Base Reuse Projects, that appropriate and reasonable cost contingencies are necessary and fiscally responsible; and
- L. FORA and its member Jurisdictions acknowledge the importance of adopting a formula to establish the Policy and CFD Special Tax rates. These revenue sources will fund, or partially fund, the CIP Program. That formula must account for all potential revenue sources and costs; and
- M. FORA and its member Jurisdictions agree that such a formula would reduce uncertainty to developers, increase efficiency in the FORA CIP process, and provide flexibility for FORA's fee program.

NOW THEREFORE the Board hereby resolves as follows:

1. Adjustment to the Policy and CFD special taxes.

I.1 The list of authorized CIP improvements (subject to escalation of costs through the San Francisco Construction Cost Index reported in the Engineering News Record, unless otherwise noted) to be funded by the Policy and CFD Special Taxes, after first applying all available FORA property tax revenues, grant funds, and land sales and lease proceeds, shall be limited to the following CEQA Mitigation Measures and corresponding base-wide obligations in FORA's CIP:

I.1.1 Transportation/Transit improvements, including regional improvements, off-site improvements, on-site improvements, and transit capital improvements identified in the Transportation Agency of Monterey County ("TAMC") FORA Fee Reallocation Study, dated April 8, 2005, or as subsequently updated by TAMC consistent with the FORA Fee Reallocation Study, in an amount not to exceed \$112,698,595 (as escalated) unless the obligation is otherwise reduced by TAMC and FORA.

I.1.2 Water Augmentation, which includes FORA's CEQA obligation for the approved water augmentation project and FORA's voluntary contribution to help offset water capacity charge increases. FORA's CEQA obligation is subject to annual escalation, while the voluntary contribution is not.



I.1.3 Habitat Management endowment requirements anticipated in the future Fort Ord Habitat Conservation Plan excluding costs related to an open space management plan or costs related to a regional trails system program.

I.1.4 Fire Fighting equipment (“Rolling Stock”) lease-purchase of four fire engines and one water tender.

I.1.5 Other Costs and Contingencies shall be evaluated on a periodic basis in the same manner as other CIP costs and revenues. Other Costs and Contingencies are currently limited to the following:

- A contingency amount not to exceed 15% of the costs of Transportation/Transit improvements for MEC construction support, soil management plans, right of way acquisition, CEQA/CESA/NEPA mitigations, unknown subsurface conditions, self insurance retention amounts and transportation/transit improvement phasing.
- Additional Utility and Storm Drainage Costs which provide for restoration of storm drainage sites in State Parks land and relocation of utilities.
- Other Costs for PLL insurance costs.
- CFD Administration Expenses (including staff and consultant costs).

I.2 FORA will periodically adopt a formula to monitor and update the Policy and CFD Special Tax, as follows

I.2.1 The Policy and CFD Special Tax were originally designed to fund specific CIP improvements serving the overall base and local jurisdictions based upon mitigation measures required by the California Environmental Quality Act (CEQA). These mitigation measures are described in the Base Reuse Plan Environmental Impact Report (EIR) as well as the 1998 Settlement Agreement with the Ventana Chapter of the Sierra Club. This Resolution does not limit FORA’s right or duty, or that of its member jurisdictions to raise sufficient funds to construct those CEQA Mitigation Measures. Furthermore, the Base Reuse Plan Reassessment Process may result in changes to FORA’s CIP. This Resolution does not limit FORA’s right to fund such changes through the Policy and CFD Special Taxes.

I.2.2 The FORA Board will consider adjustments to the Policy and CFD Special Tax after a comprehensive review of all potential costs and revenues. The process to consider such adjustments will be defined, predictable and transparent to all stakeholders. Adjustments to the Policy and CFD Special Tax will be approved only if they are demonstrated to be fiscally prudent and do not expose FORA or its member jurisdictions to unreasonable risk.

I.2.3 In accordance with the process set forth in part II of this resolution, commencing with Section 2.1, the FORA Board will update anticipated construction costs and revenues available to fund the facilities identified in section 1.1 above, which are eligible to be funded by the Policy and CFD Special Taxes, and corresponding adjustments to the Policy and CFD Special Taxes within 90 days of the effective date of FORA and its member Jurisdictions adopting Implementation Agreement Amendment #1, Spring 2014 as the second evaluation period, and thereafter every two years, or when an economic or other event causes a material change to a CIP cost or revenue assumption, in coordination with FORA CIP updates.

I.2.4 Adjustments to the Policy and CFD Special Tax shall be made upon receipt by the FORA Board of satisfactory, factual documentation describing the basis for the adjustment.

I.2.5 To expedite this review procedure, adjustments to the Policy and CFD Special Tax shall maintain the same relationship among land uses as the maximum annual special taxes originally documented in the CFD.

## II. PROCESS

II.1 FORA shall review and update the CIP periodically to apply the formula described in this Resolution and proposed Implementation Agreement Amendment #1 and any resulting Policy and CFD Special Tax adjustments. That procedure must ensure that FORA's revenue sources, including the Policy and CFD Special Tax revenues, are adequate to carry out the Base Reuse Plan and complete required CEQA Mitigation Measures and Board-determined base-wide obligations in FORA's CIP identified in Section 1.1 above. The periodic process will include the following steps:

II.1.1 Determine total remaining CIP costs (including required contingencies) consistent with section 1.1 above.

II.1.2 Determine the source and amount of funds, including, without limitation: a) Fund balances; b) Grant money; c) CSU Mitigation fees; d) Loan proceeds; e) Land sales revenues/proceeds net of a required credit/offset equal to the amount of monies advanced to construct CIP improvements (this amount shall ultimately be reduced to zero once the full credit/offset has been recognized) in excess of remaining building removal program estimated costs, and lease revenues (not required for other obligations); and f) FORA property tax revenue as calculated below. FORA retains its discretion to add new projects or obligations to be paid from these sources of funds. The following assumptions and formula shall be used to calculate the FORA property tax revenues, if available:

Assumptions:

- a. Current FORA CIP build-out assumptions as shown to estimate CFD special tax revenue

b. Current market data assumptions to estimate assessed values for each land use type.

Formula:

- a. Calculate the net present value (NPV) of 90% of the FORA property tax revenue stream for all new assessed value after July 1, 2012.
- b. The term on the FORA property tax stream shall be from the date of the current CIP (e.g., upcoming fiscal year) through the anticipated end date of FORA (or the proposed FORA extension end date if applicable).
- c. The NPV calculation shall assume a discount rate equal to the annual average Bond Buyer Revenue Bond Index plus 50 basis points using the prior fiscal year end date (e.g., use 2012 year to date annual average at the end of FY 2011-12 for the FY 2012-13 calculation) as published in The Bond Buyer.
- d. Allocate the NPV as calculated above to reduce/offset costs of CIP.
- e. Allocate 10% of the actual property tax revenues collected by FORA from all new assessed value after July 1, 2012 and generated from parcels in the Fort Ord area of the member jurisdiction to the City or County for economic development to support the reuse of Fort Ord land within the relevant City or County.

II.1.3 Subtract sources of funds available under Section 2.1.2 from CIP costs to determine net cost to be funded by the Policy and CFD Special Tax.

II.1.4 Calculate Policy and CFD Special Tax revenues using the prior year Policy and CFD Special Tax Rates and the same land use assumptions used to estimate FORA property tax revenues shown above in Section 2.1.2.

II.1.5 Compare 2.1.4 with 2.1.3 and determine the amount of adjustment, if any, to the Policy and CFD Special Tax rates. In no event shall the adjusted CFD Special Tax rates exceed the Maximum CFD Special Tax rates (as escalated annually per the special tax formula).

Upon motion by \_\_\_\_\_, seconded by \_\_\_\_\_, the foregoing Resolution was passed on this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by the following vote:

AYES:  
NOES:  
ABSTENTIONS:  
ABSENT:

I, Supervisor Dave Potter, Chair of the Board of Directors of the Fort Ord Reuse Authority in the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of the said Board of Directors duly made and entered under Item \_\_\_, Page \_\_\_, of the Board meeting minutes of \_\_\_\_\_, 2013 thereof, which are kept in the Minute Book resident in the offices of the Fort Ord Reuse Authority.

DRAFT

DATED \_\_\_\_\_

BY \_\_\_\_\_

Dave Potter  
Chair, Board of Directors  
Fort Ord Reuse Authority

# Amendment #1 to the Implementation Agreement between the Fort Ord Reuse Authority and its Member Jurisdictions

## RECITALS

- A. The Fort Ord Reuse Authority ("FORA") and the *member jurisdiction* have entered into an Implementation Agreement dated as of May 1, 2001 ("Implementation Agreement") to, among other purposes, identify and provide for distribution of land sale and lease revenues, FORA property tax revenues (formerly tax increment revenues), and basewide assessments or development fees as the primary sources of funding to implement the Basewide Mitigation Measure (as defined) and to pay Basewide Costs (as defined), collectively referred to as the FORA Capital Improvement Program ("CIP"); and
- B. FORA has adopted a Base-wide Community Facilities District ("CFD" or "CFD Special Tax") to fund, together with other revenues, the FORA CIP. Section 7 (ii) of the Implementation Agreement provides that the FORA development fee and CFD Special Tax to fund CEQA Mitigation Measures ("FORA CIP") are limited to the difference between the revenues needed for such purposes and the revenues otherwise reasonably available to achieve those purposes; and
- C. FORA and the *member jurisdiction* have twelve years of experience with the Basewide Development Fee Policy ("Policy") and CFD Special Tax; and
- D. FORA and the Army have executed an Environmental Services Cooperation Agreement ("ESCA") providing for FORA to manage base-wide environmental remediation (including ordnance removal) funded by the Army; and
- E. The Policy and CFD Special Tax provide resources to fund CEQA Mitigation Measures (FORA CIP) identified in the 1997 FORA Base Reuse Plan and CEQA Documents; and
- F. FORA and the *member jurisdiction* recognize that land sales and lease proceeds, FORA property tax revenues, grant funds and the Policy and CFD Special Tax continue to be the appropriate sources to fund CEQA Mitigation Measures and Board-determined base-wide obligations in FORA's CIP as identified in Section 1.1; and
- G. FORA and the *member jurisdiction* recognize the importance of calibrating the Policy and CFD Special Tax by incorporating all available resources to fund CEQA Mitigation Measures and Board-determined basewide obligations in FORA's CIP identified in Section 1.1.; and

- H. FORA and the *member jurisdiction* acknowledge the Policy and CFD Special Tax must be fair and equitable; and
- I. FORA has 1) achieved cost savings; 2) secured grants and other contributions to the base-wide mitigation measures from federal and state sources; and 3) loaned monies to fund required projects that have reduced or deferred the demand for the original Policy and CFD Special Taxes; and
- J. The Base Reuse Plan emphasized the importance of job-creation and build-out of a balanced mix of community uses including commercial, residential and public facilities to achieve a desired jobs-housing balance; and
- K. FORA and the *member jurisdiction* seek refinement to the list of authorized facilities that must be funded by proceeds from land sales and lease proceeds, grants, FORA property tax revenues, the Policy and CFD Special Tax; and
- L. Stakeholders recognize, given inherent uncertainties prevalent in Base Reuse Projects, that appropriate and reasonable cost contingencies are necessary and fiscally responsible; and
- M. FORA and the *member jurisdiction* acknowledge the importance of adopting a formula to establish the Policy and CFD Special Tax rates. These revenue sources will fund, or partially fund, the CIP Program. That formula must account for all potential revenue sources and costs; and
- N. FORA and the *member jurisdiction* agree that such a formula would reduce uncertainty to developers, increase efficiency in the FORA CIP process, and provide flexibility for FORA's fee program.

## AGREEMENTS

Now therefore, FORA and the *member jurisdiction* hereby agree as follows:

### I. ADJUSTMENT TO THE POLICY AND CFD SPECIAL TAXES.

I.1 The list of authorized CIP improvements (subject to escalation of costs through the San Francisco Construction Cost Index reported in the Engineering News Record, unless otherwise noted) to be funded by the Policy and CFD Special Taxes, after first applying all available FORA property tax revenues, grant funds, and land sales and lease proceeds, shall be limited to the following CEQA Mitigation Measures and corresponding base-wide obligations in FORA's CIP:

I.1.1 Transportation/Transit improvements, including regional improvements, off-site improvements, on-site improvements, and transit capital improvements identified in the Transportation Agency of Monterey County ("TAMC") FORA Fee Reallocation Study, dated April 8, 2005, or as subsequently updated by

TAMC consistent with the FORA Fee Reallocation Study, in an amount not to exceed \$112,698,595 (as escalated) unless the obligation is otherwise reduced by TAMC and FORA.

I.1.2 Water Augmentation, which includes FORA's CEQA obligation for the approved water augmentation project and FORA's voluntary contribution to help offset water capacity charge increases. FORA's CEQA obligation is subject to annual escalation, while the voluntary contribution is not.

I.1.3 Habitat Management endowment requirements anticipated in the future Fort Ord Habitat Conservation Plan excluding costs related to an open space management plan or costs related to a regional trails system program.

I.1.4 Fire Fighting equipment ("Rolling Stock") lease-purchase of four fire engines and one water tender.

I.1.5 Other Costs and Contingencies shall be evaluated on a periodic basis in the same manner as other CIP costs and revenues. Other Costs and Contingencies are currently limited to the following:

A contingency amount not to exceed 15% of the costs of Transportation/Transit improvements for MEC construction support, soil management plans, right of way acquisition, CEQA/CESA/NEPA mitigations, unknown subsurface conditions, self insurance retention amounts and transportation/transit improvement phasing.

Additional Utility and Storm Drainage Costs which provide for restoration of storm drainage sites in State Parks land and relocation of utilities.

Other Costs for PLL insurance costs.

CFD Administration Expenses (including staff and consultant costs).

I.2 FORA will periodically adopt a formula to monitor and update the Policy and CFD Special Tax, as follows

I.2.1 The Policy and CFD Special Tax were originally designed to fund specific CIP improvements serving the overall base and local jurisdictions based upon mitigation measures required by the California Environmental Quality Act (CEQA). These mitigation measures are described in the Base Reuse Plan Environmental Impact Report (EIR) as well as the 1998 Settlement Agreement with the Ventana Chapter of the Sierra Club. This agreement does not limit FORA's right or duty, or that of its member jurisdictions to raise sufficient funds to construct those CEQA Mitigation Measures. Furthermore, possible future FORA Board actions following on the Base Reuse Plan Reassessment Process may result in changes to FORA's CIP. This Agreement does not limit FORA's right to fund such changes through the Policy and CFD Special Taxes.

I.2.2 The FORA Board will consider adjustments to the Policy and CFD Special Tax after a comprehensive review of all potential costs and revenues. The process to consider such adjustments will be defined, predictable and transparent to all stakeholders. Adjustments to the Policy and CFD Special Tax will be approved only if they are demonstrated to be fiscally prudent and do not expose FORA or its member jurisdictions to unreasonable risk.

I.2.3 In accordance with the process set forth in part II of this Agreement, commencing with Section 2.1, the FORA Board will update anticipated construction costs and revenues available to fund the facilities identified in Section 1.1, above, which are eligible to be funded by the Policy and CFD Special Taxes, and corresponding adjustments to the Policy and CFD Special Taxes within 90 days of the effective date of this Agreement, Spring 2014 as the second evaluation period, and thereafter every two years, or when an economic or other event causes material change to a CIP cost or revenue assumption, in coordination with FORA CIP updates.

I.2.4 Adjustments to the Policy and CFD Special Tax shall be made upon receipt by the FORA Board of satisfactory, factual documentation describing the basis for the adjustment.

I.2.5 To expedite this review procedure, adjustments to the Policy and CFD Special Tax shall maintain the same relationship among land uses as the maximum annual special taxes originally documented in the CFD.

## II. PROCESS

II.1 FORA shall review and update the CIP periodically to apply the formula described in this Implementation Agreement amendment and any resulting Policy and CFD Special Tax adjustments. That procedure must ensure that FORA's revenue sources, including the Policy and CFD Special Tax revenues, are adequate to carry out the Base Reuse Plan and complete required CEQA Mitigation Measures and Board-determined base-wide obligations in FORA's CIP identified in Section 1.1 above. The periodic process will include the following steps:

II.1.1 Determine total remaining CIP costs (including required contingencies) consistent with Section 1.1 above.

II.1.2 Determine the source and amount of funds, including, without limitation: a) Fund balances; b) Grant money; c) CSU Mitigation fees; d) Loan proceeds; e) Land sales revenues/proceeds net of a required credit/offset equal to the amount of monies advanced to construct CIP improvements (this amount shall ultimately be reduced to zero once the full credit/offset has been recognized) in excess of remaining building removal program estimated costs, and lease revenues (not required for other obligations); and f) FORA property tax revenue as calculated below. FORA retains its discretion to add new projects or obligations to be paid from these sources



of funds. The following assumptions and formula shall be used to calculate the FORA property tax revenues, if available:

Assumptions:

- a. Current FORA CIP build-out assumptions as shown to estimate CFD special tax revenue.
- b. Current market data assumptions to estimate assessed values for each land use type.

Formula:

- a. Calculate the net present value (NPV) of 90% of the FORA property tax revenue stream for all new assessed value after July 1, 2012.
- b. The term on the FORA property tax stream shall be from the date of the current CIP (e.g., upcoming fiscal year) through the anticipated end date of FORA (or the proposed FORA extension end date if applicable).
- c. The NPV calculation shall assume a discount rate equal to the annual average Bond Buyer Revenue Bond Index plus 50 basis points using the prior fiscal year end date (e.g., use 2012 year to date annual average at the end of FY 2011-12 for the FY 2012-13 calculation) as published in The Bond Buyer.
- d. Allocate the NPV as calculated above to reduce/offset costs of CIP.
- e. Allocate 10% of the actual property tax revenues collected by FORA from all new assessed value after July 1, 2012 and generated from parcels in the Fort Ord area of the *member jurisdiction* to the City or County for economic development to support the reuse of Fort Ord land within the relevant City or County.

II.1.3 Subtract sources of funds available under Section 2.1.2 from CIP costs to determine net cost to be funded by the Policy and CFD Special Tax.

II.1.4 Calculate Policy and CFD Special Tax revenues using the prior year Policy and CFD Special Tax Rates and the same land use assumptions used to estimate FORA property tax revenues shown above in Section 2.1.2.

II.1.5 Compare 2.1.4 with 2.1.3 and determine the amount of adjustment, if any, to the Policy and CFD Special Tax rates. In no event shall the adjusted CFD Special Tax rates exceed the Maximum CFD Special Tax rates (as escalated annually per the special tax formula).

### III. ENFORCEMENT

III.1 This agreement is entered into for the benefit of FORA and the *member jurisdiction* subject to the Policy and CFD Special Tax, and may be subject

to dispute resolution and enforced by FORA or the *member jurisdiction* subject to the Policy and CFD Special Taxes in the same manner and process set forth for dispute resolution and under Section 17 of the Implementation Agreement.

III.2 The original Implementation Agreement will prevail when this Amendment #1 conflicts with the Implementation Agreement.

[Add signature pages]

[Add acknowledgments for recordation]

# **Placeholder for Item 8a**

*Elect 2013 FORA Board Officers*

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This item listed above will be included in the final Board packet

# FORT ORD REUSE AUTHORITY BOARD REPORT

## NEW BUSINESS

<b>Subject:</b> Veterans Issues <i>Ad Hoc</i> Task Force	
<b>Meeting Date:</b> January 11, 2013 <b>Agenda Number:</b> 8b	<b>INFORMATION/ACTION</b>

### RECOMMENDATION:

Veterans Issues *Ad Hoc* Task Force - Concur in Establishment and Member Appointments.

### BACKGROUND/DISCUSSION:

On July 13, 2012 the United Veterans Council (UVC) forwarded a letter to the Board of Directors regarding FORA Board Membership in order to better communicate crucial upcoming issues concerning veterans. At the November and December Executive Committee meetings, UVC members asked consideration by the Executive Committee in making a recommendation to the full FORA Board. The Executive Committee took these concerns under advisement and concurred that since there were obviously significant issues (Army/Veterans Clinic/Central Coast Veterans Cemetery) that would be heard in the coming year that heightened representation would be beneficial. However, membership to the Board required state law changes and Ex-Officio membership is also defined by terms of State Law. FORA staff suggested that the unique circumstances might warrant consideration of setting forth an Ad Hoc committee made up of Board members, local military appointees, and UVC members. The UVC had discussed the creation of an *Ad-Hoc* Veterans Subcommittee, to meet on a quarterly basis over the course of the next calendar year, and agreed it would accomplish their goal of increased representation. The Executive Committee directed staff to agendize the item for consideration at this Board meeting.

### FISCAL IMPACT:

Reviewed by FORA Controller \_\_\_\_\_

None. Staffing support can be absorbed by current employees.

### COORDINATION

Executive Committee, UVC

Prepared/Approved by \_\_\_\_\_  
Michael A. Houlemard, Jr.

# **Placeholder for Item 8c**

*Presentation –*

*Local Business Employment*

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**This item will be included in  
the final Board packet.**

# Placeholder for Item 8d

## *Approve Veterans Cemetery Record of Survey Budget*

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FORA staff is in the process of receiving estimate/proposals for preparation of the Record of Survey map, filing, and preparation of approximately 18 plats and legal descriptions for the various areas of the Veterans' Cemetery. Staff's objective is to prepare have a comprehensive land survey performed suitable for all aspects of the Veterans' Cemetery transfer process by creating a "once through" map to cover all anticipated property transfer actions regarding the Veterans' Cemetery. The survey will include a Record of Survey and legal descriptions for transfer of Veterans' Cemetery ownership to the state Department of Veterans Affairs; identification of ESCA parcels for regulatory closure (once cleared of Munitions and Explosive of Concern), the Veterans' Cemetery site, Veterans' Cemetery ancillary-use parcels, the Endowment Parcels and isolation of the adjacent road parcels in both the Seaside and County portions of the Veterans' Cemetery.

This item will be included in the final Board packet.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## NEW BUSINESS

**Subject:** Approve Preston Park Management Contract with Alliance

**Meeting Date:** January 11, 2013

**Agenda Number:** 8e

**INFORMATION/ACTION**

### RECOMMENDATION(S):

- i. Authorize the Executive Officer to execute a New Alliance/FORA Preston Park Management Agreement (*Attachment A*),

### BACKGROUND/DISCUSSION:

The previous 2-Party (FORA and Alliance) Preston Park Management Agreement expired on December 31, 2012. The agreement terms will be the same as approved in the 2011-12 agreement with Alliance Management.

### FISCAL IMPACT:

Reviewed by FORA Controller \_\_\_\_\_

Costs associated with Preston Park disposition including legal, mediation, and Capital Program costs are included in the approved FY 12-13 operating budget.

### COORDINATION:

Executive Committee, Authority Counsel, and Alliance.

Prepared by \_\_\_\_\_  
Robert J Norris, Jr.

Reviewed by \_\_\_\_\_  
Steve Endsley

## PRESTON PARK MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT ("Agreement") is dated for reference on \_\_\_\_\_, 2012. It is made by and between the Fort Ord Reuse Authority, a California public entity, ("Owner") and Alliance Communities, Inc., a Delaware corporation, ("Operator").

### RECITALS

1. Owner holds exclusive title to certain improved real property commonly known as Preston Park consisting of 354 units ("Units") at 682 Wahl Court, Marina, CA 93933 (the "Property").
2. Owner requires the services of a professional management company to perform administrative and financial services. Owner has determined that Operator has the requisite skill, training experience and legal authority, including a California real estate brokerage license, needed to manage the Property.
3. The purpose of this Agreement is to articulate the terms under which Owner and Operator will share responsibilities for the Property.

### AGREEMENT

In consideration of the promises in this Agreement and for other good and valuable consideration, the receipt of which is hereby acknowledged, Operator and Owner agree as follows:

1. APPOINTMENT OF OPERATOR. Owner appoints Operator and Operator hereby accepts appointment as Owner's exclusive agent to manage, operate, supervise, and lease the Property and to perform those actions necessary to fulfill Operator's obligations to the Owner except as provided herein.

#### 2. TERM

2.1 TERM. This Agreement shall commence on January 1, 2013, and shall continue to midnight, December 31, 2013 or until the Fort Ord Reuse Authority ("FORA") transfers title to the Property except as provided in section 2.2., whichever occurs first.

2.2 EARLY TERMINATION. This Agreement is terminable on the occurrence of any of the following:

(a) If Owner fails to comply, after notice and an opportunity to cure, with any rule, order, determination, ordinance or law of any federal, state, county, or municipal authority. In that event, Operator may terminate this Agreement upon thirty (30) days written notice to Owner unless Owner is in good faith contesting same, under Section 4.2(g).



(b) If either party defaults in the performance of a material obligation and such default continues for thirty (30) days after written notice from the non-defaulting party to the defaulting party specifying such default. Notwithstanding the above, if a cure has commenced and the defaulting party is diligently pursuing said cure within said 30-day period then the party not in default shall not affect the termination.

(c) Owner or Operator may terminate this Agreement with cause upon sixty (60) days written notice to the other party. It is understood that the respective rights and obligations of the parties shall continue to be governed by this Agreement until the effective date of such termination.

2.3 DUTIES UPON TERMINATION. Upon the effective date of termination of this Agreement for any reason:

(a) Operator shall have no further right to act on behalf of Owner or to disburse any of Owner's funds;

(b) Operator will immediately deliver to Owner all Books, Records, and Documents (as herein defined) maintained under this Agreement and do all that is reasonably necessary to facilitate the orderly transition of Property management;

(c) Operator shall render to Owner an accounting of all funds (i. e. bank accounts) of Owner held by Operator relating to property and shall immediately cause such funds to be paid to Owner; and

(d) Operator shall perform all reporting and accounting functions hereunder for the period from the date of the last report or accounting to the date of termination.

### 3. COMPENSATION

3.1 Management Fee. In addition to other reimbursements to Operator provided for in this Agreement, Owner shall pay Operator a monthly management fee equal to 2.5% of the Gross Revenue, as defined in Section 3.2. Owner shall pay Management Fees in monthly installments at the beginning of each month. These fees shall be paid from the Trust Account as part of the operating expenses of the Property.

3.2 Gross Revenue. For purposes of computing the Management Fee, the term "Gross Revenue" means all revenue derived from the Property, determined on a cash basis, from (a) tenant rentals for each month during the Term of this Agreement; excluding tenant security deposits (except as provided below); (b) forfeited cleaning, security and damage deposits; (c) laundry and vending machines receipts; (d) other revenue from the operation of the Property received during the Term of this Agreement; (e) proceeds from rental interruption insurance, but not any other insurance proceeds or proceeds from third-party damage claims, and (f) charges collected in connection with termination of the tenant's right of occupancy. Gross Revenue does not include the proceeds of (i) sale, exchange, refinancing, condemnation, or other disposition of all or any part of the Property, (ii)

any loans to Owner whether or not secured by all or any part of the Property, (iii) any capital expenditures or funds deposited to cover costs of operations made by Owner, and (iv) any insurance policy (other than rental interruption insurance or proceeds from third-party damage claims).

3.3 Distribution of net profits to City of Marina and FORA. As provided in Government Code section 67678(b)(2), Operator shall distribute net profit from operation of the Property as follows

Fifty percent (50%) to the City of Marina, and

Fifty percent (50%) to FORA.

3.4 Capital Improvement Management Fee *On or before March 31, 2012* Operator shall submit to Owner an annual Capital Improvement Program ("CIP"). The CIP shall describe recommended capital improvements. The Owner shall approve in writing the Capital improvement projects to be undertaken each year. Owner will pay to Operator a construction management fee for Capital Improvements managed by Operator. That fee shall be equal to six percent (6%) of the total project cost as set forth in an executed written proposal or agreement. Each project must be approved in writing by Owner. Operator's fee will be increased or decreased by all change orders approved by Owner. Operator's CIP management fee shall be computed and paid based on monthly construction invoices. Such fees and capital projects will be paid from Reserve Account. 3.5. Definitions For Section 3

3.5.1. Capital Improvements and Maintenance. For purposes of this Section 3.4, a capital item is distinguished from maintenance in that a capital improvement is intended to extend the useful life of a fixed asset, whereas repairs and maintenance keep the asset in its customary state of operating efficiency. Minor improvements to structures or site involving a total expenditure of less than Five Thousand Dollars (\$5,000) are not capital improvements. Replacement of structural elements, even costing more than Five Thousand Dollars (\$5,000), caused by normal wear and tear, are maintenance and not a capital improvement. "Extraordinary maintenance," referring to those emergency items that need immediate replacement prior to the capital planned schedule for replacement, are provided for in the annual budget so that urgent replacements or repairs may be addressed immediately.

3.5.2. Routine maintenance: Simple, small-scale activities (usually requiring only minimal skills or training) associated with regular (daily, weekly, monthly, etc.) and general upkeep of a building, equipment, machine, plant, or system against normal wear and tear. Examples: Those items listed in the budget classified as general Repairs and Maintenance.

3.5.3. Non-routine maintenance: Activities that require specialized skills or training that are associated with irregular or out of the ordinary upkeep of a building, equipment, machine, plant, or system. Examples: Slurry seal, carpet and flooring replacements, appliance replacements,

minor roof and gutter repairs, dryer vent cleaning.

3.5.4. Capital items/construction: Complex or larger scale activity associated with buildings, structures, or other improvements including alterations, painting, remodeling, transportation of construction and furnishing goods and material etc. Examples: Replacement of windows, exterior building repaint, interior unit remodeling or remediation, re-plumbing projects, signage development, roof replacement.

#### 4. DUTIES AND RESPONSIBILITIES

4.1 OPERATOR'S RESPONSIBILITIES. Operator is responsible for management of the Property in accordance with the standards of practice of professional managers of similar properties in the Monterey Peninsula area. Operator will provide other customary management services related to the ordinary business affairs of the Property consistent with the standards of management, operation, leasing, and maintenance of similar property in the area. Those services shall include but not be limited to the Scope of Services described in Exhibit "A.". Operator shall also establish and implement a mutually agreeable business plan and shall operate within the annual budget as approved by Owner. Operator acknowledges and shall continue, unless given new instructions, the commingling of staff, space for maintenance and administrative staff, and equipment and supplies for property management of the Preston Park (FORA-owned property) and Abrams B (City of Marina-owned property) on a 60/40 basis.

4.2 SPECIFIC DUTIES AND RESPONSIBILITIES OF OPERATOR. Operator agrees and is hereby granted authority to undertake the functions described in this section.

4.2.1 Collections Practice. Operator shall use commercially reasonable efforts and means to collect rents and other charges due from tenants. When deemed a sound business practice, Operator will institute legal proceedings on behalf of Owner to collect unpaid debts. Owner hereby authorizes Operator to request, demand, collect, and receive funds for collection thereof in accordance with all applicable laws, regulations, ordinances or administrative grievance procedures and for the lawful dispossession of tenants, guests, and other persons from Property. Owner agrees to reimburse Operator's expenses of collection, provided such expenditures have been approved in writing by Owner.

#### 4.2.2 Books, Records, and Documentation.

4.2.2.1. Operator shall maintain at its principal office or on the Property, complete and separate books, records and documents relating to the management and operation of the Property, including without limitation contracts, leases, amendments, extensions and agreements relating to contracts and leases, annual contributions contracts, files, correspondence with tenants and prospective tenants, documentation of tenant eligibility, computations of rental adjustments, maintenance and preventive maintenance programs, schedules and logs, tenant finish and construction records, inventories of personal property and equipment, correspondence with vendors,

job descriptions, business correspondence, brochures, and accounts held or maintained by Operator (all such books, records, and documents being referred to herein as "Books, Records, and Documentation"). Operator shall maintain all financial books and records in conformance with generally accepted accounting principles at Operator's sole expense. Owner shall have the right to examine, audit and take originals and copies of said Books, Records and Documents at Operator's principal office with two day's written advance notice to Operator.

4.2.2.2. Upon request, Operator shall make financial books and records available for examination, audit, inspection and copying by public officials with regulatory authority over the Operator or Property to the extent required by law. Since the City of Marina obtains 50% of the proceeds, the City of Marina will have the same inspection rights as FORA.

4.2.2.3. On or before fifteen (15) days following the end of each calendar month, Operator shall deliver or cause to be delivered to Owner a standard Financial Reporting Package. The Financial Reporting Package shall include an unaudited financial statements and various reports as follows: Summary of Management Activities including summary of tenant comments and complaints, and a summary of any Tenant's Association meeting that occurs during the period in question, Variance Analysis, Market Survey, Income statement showing the results of operation of the Property for the preceding calendar month and the Fiscal Year to date, and comparison of actual income and expenses with the income and expenses projected in the Budget, Balance Sheet, Trial Balance, General Ledger detail report of all transactions in all accounts, summary of Account Receivable and Account Payable, Bank Reconciliation and Bank Statements for all three bank accounts, Capital Expenditures Statement, and Request for Reserves Withdrawal. All reporting will use Operator's standard chart of accounts and the Yardi software unless otherwise stipulated and as agreed to by Owner and Operator in writing.

4.2.3. Annual Audit. At the end of the term as described in Section 2.1 herein and as of the date of termination, Operator shall arrange and coordinate an audit of the books and records of the Property made by a firm of certified public accountants as approved by Owner. Operator shall also have said accountants prepare for execution by Owner all forms, reports, and returns required by any federal, state, county, or municipal authority relating to the Property. The cost of said audit is a cost of the Property that shall be reflected in the annual budget approved by Owner. To the extent feasible, FORA shall coordinate with City of Marina to conduct an audit of Preston Park in conjunction with City of Marina's audit of Abrams B.

4.2.4. Repairs and Maintenance. Operator will use commercially reasonable efforts to maintain the condition of the Property in the condition prescribed by Owner, will regularly inspect the readily accessible areas of Property, will take commercially reasonable efforts against fire, vandalism, burglary and trespass on the Property, and will arrange to make all necessary repairs. Operator's maintenance duties shall include making all necessary repairs for the Property and trash removal. Consistent with provisions of FORA and FORA ordinances and policies on local hire, Operator may employ independent contractors and other employees necessary to properly maintain, manage and operate the Property. Any contract over \$20,000 per year for an item which is not covered within the approved annual budget shall be presented to Owner for approval in advance of

the execution of such a contract by Operator, unless the expenditure is for emergency repairs that are immediately necessary for the preservation or safety of the Property, repairs for the health, safety or welfare of people or property, repairs to avoid suspension of necessary services to the Property, or to avoid criminal or civil liability to Owner or Operator. Furthermore, approval shall be required to incur any Property expense pertaining to operations that exceeds the budgeted annual amount for that line item, unless the expenditure is for emergency repairs that are immediately necessary for the preservation or safety of the Property, repairs for the health, safety or welfare of people or property, repairs to avoid suspension of necessary services to the Property, or to avoid criminal or civil liability to Owner or Operator. Notwithstanding the foregoing, any increase in a Property expense which does not increase the budgeted amounts for such expense by more than 5% and which, when combined with any decreases in budgeted amounts made by Operator, does not cause an increase in the overall budget, shall not require approval. Any expense which does require approval shall be either put out to bid by Operator or Operator shall have obtained at least three quotes for the cost of such item, unless the expenditure is for emergency repairs that are immediately necessary for the preservation or safety of the Property, repairs for the health, safety or welfare of people or property, repairs to avoid suspension of necessary services to the Property, or to avoid criminal or civil liability to Owner or Operator.

4.2.5 Rental of Housing Units. Operator's renting of the Units shall conform to this Agreement and the following policies:

4.2.5.1. The Units shall be rented on a six-month lease term or month-to-month.

4.2.5.2 Rents established Exhibit "B" will be applied until changed by Owner. Any amendment to the rental rate schedule shall be approved in advance in writing by Owner.

4.2.5.3. Applicants for the Units must qualify based upon the applicant's ability to pay and maximum occupancy guidelines published by the State of California at the time of renting and applicable occupancy standards for the Units. Fifty one (51) of the Units are to be rented at below market rate affordable rents ("Affordable Rents") of which thirty two (32) of the Units shall be considered low and nineteen (19) of the units shall be considered very low, as defined in the Regulatory Agreement. The Affordable Rents are set forth in Exhibit B and may be amended annually. Any increase in the Affordable Rents shall be subject to the approval of Owner and in accordance with the terms of the Regulatory Agreement. Applicants of units to be rented at the Affordable Rents must meet the same requirements as above, as well as qualify based upon maximum income limits and minimum occupancy guidelines according to rules and regulations promulgated by the State of California.

4.2.5.4. Operator shall select tenants for available units as follows:

(A) Operator shall first offer and rent available units to applicants on the basis of the following preferences, which have been determined by Owner and for which an applicant must qualify at the time of initial occupancy of a unit. No more than a total of 35% of the housing

units shall be offered for lease at any one time on the basis of the preferences listed in (B) – (E) below. Owner shall indemnify, defend and hold Operator, its officers, agents and employees, harmless from any cost, damage, claim, liability, suit, cause of action or other legal proceedings which may be brought or claimed against Operator as a result of implementing Owner's tenant selection criteria set forth below and as may be amended by Owner. Owner agrees to promptly notify Operator of any changes to the tenant selection criteria. For all preferences, a letter from the applicant's employer verifying the applicant's eligibility will be required when submitting the application. Incomplete applications will not be accepted.

(B) **FIRST PREFERENCE:** People who work at least twenty five (25) hours per week in a business or agency with a physical location within the City of Marina. Sales people or consultants who do business in Marina, but who do not have a physical location in Marina will not be considered as working in Marina.

(C) **SECOND PREFERENCE:** Employees of public safety departments, including police, fire, and public works employees of government jurisdictions in Monterey County.

(D) **THIRD PREFERENCE:** Employees of public or private education facilities, including colleges and universities located in Marina, on the former Fort Ord, and employees of the Monterey Peninsula Unified School District.

(E) **FOURTH PREFERENCE:** Employees of entities located on property known as "the former Fort Ord." A letter from the employer stating that the physical location where the applicant works is in this area must be provided."

(F) **Affordable Units.** Notwithstanding the foregoing, preferences (B), (C), (D) and (E) will be subordinate to the affordability requirements contained in paragraph (iii) above. In addition, said preferences will be subordinate to the requirement that, on average, twenty percent (20%) of the housing units at the Property will be affordable units."

(G) **Rental Agreements.** The prior Operator prepared and submitted to Owner for its approval and Owner has approved said rental agreements which shall be used by Operator for the property. If Operator desires to change the approved rental agreements, Operator shall seek Owner's comments and approval of the terms and conditions thereof. Owner's approval of the proposed rental agreements shall not be unreasonably withheld.

#### 4.2.6. Insurance.

4.2.6.1 Fire Coverage. Operator shall obtain and keep in force fire and extended coverage insurance and other customary property insurance for the Property, the cost of insurance to be paid out of the Trust Account as approved by the Budget.

4.2.6.2. Comprehensive General Liability Coverage. Operator shall obtain and keep in force a Comprehensive General Liability (CGL) insurance policy to cover Owner

and Operator, in amounts no less than \$1,000,000 per occurrence of bodily injury and property damage, and not less than \$2,000,000 policy general aggregate and an excess or umbrella liability policy in an amount not less than \$10,000,000 per occurrence basis, the cost of insurance to be paid out of the Trust Account as approved by the Budget. Such insurance shall name Owner as a named insured and shall provide Owner and Lender with 30-day prior written notice of cancellations or material change in coverage. Operator shall be named as an additional insured on such CGL policy.

4.2.6.3. E and O Coverage. Operator shall obtain and keep in force Error and Omission insurance in amount of at least \$1,000,000 per wrongful act and \$1,000,000 in the aggregate. Operator shall obtain such insurance within 30 days of the date of this Agreement, and notwithstanding any other provision herein, all costs of insurance under this Section 4.2(f)(iii) shall be at the expense of Operator.

4.2.6.4 Automobile Coverage. Operator shall obtain and keep in force commercial automobile liability insurance (where applicable) in an amount not less than \$1,000,000 (combined single limit), coverage shall include leased, hired and non-owned vehicles, the cost of insurance to be paid out of the Trust Account as approved by the Budget.

4.2.6.5 Minimizing Insurance Cost. Operator shall not knowingly permit the use of the Property for any purpose which might void any policy of insurance relating to the Property, increase the premium otherwise payable or render any loss there under uncollectible.

4.2.6.6 Workers' Comp. Operator shall cause to be placed and kept in force workers' compensation insurance up to the statutory limit, including broad form, all-states coverage and employer's liability of at least \$500,000. Such insurance shall provide Owner with 30-day prior written notice of cancellations or material change in coverage. Workers' compensation insurance expenses associated with employees employed for the direct benefit of Owner or the Property shall be included in the approved budget for the Property.

4.2.6.7 Selection of Carrier. All of the insurance policies required by this Agreement shall (a) be written by insurance companies which are licensed to do business in California, or obtained through a duly authorized surplus line insurance agent or otherwise in conformity with the laws of California, with a rating of not less than the third (3rd) highest rating category by anyone of the Rating Agencies or with an A.M. Best Company, Inc. rating of "A-" or higher and a financial size category of not less than VI; (b) specifically identify the Owner and Operator as insureds and Lender as an additional insured; mortgagee; loss payee and additional insured with the Owner as the named insured; and (c) include a provision requiring the insurance company to notify the Lender and the Owner in writing no less than thirty (30) days prior to any cancellation, non-renewal or material change in the terms and conditions of coverage. In addition, the Operator shall provide the Owner and Lender with certificates of insurance and certified copies of all insurance contracts required by this Agreement within thirty (30) days of their inception and subsequent renewals.

#### 4.2.7 Taxes and Assessments.

4.2.7.1 Operator shall process payments of all taxes, impositions, or assessments relating to the ownership or operation of the Property, including, without limitation, improvement assessments, possessory interest and real estate taxes, personal property taxes, taxes on income or rents, or any charges similar to or in lieu of any of the foregoing. Prior to payment, Operator shall verify bills for possessory interest and real estate, personal property or other taxes, improvement assessments, and other similar charges which are due or may become due against the Property on the basis of ownership or operation of the Property. If requested by Owner, Operator shall render advice and assistance to Owner in the negotiation and prosecution of all claims for the reduction or equalization of property tax assessments and other tax assessments affecting the Property. The parties agree, however, that such advice and assistance goes beyond the ordinary management responsibilities contemplated by this Agreement and, as such, if Operator provides such services, they shall be at an additional cost to Owner.

4.2.7.2 Operator shall annually review, and submit to Owner a report on, real estate, personal property and other taxes and all assessments affecting the Property.

4.2.8 Compliance with Legal Requirements. Operator shall use reasonable means to become aware of, and shall take such actions as Operator deems prudent and necessary to comply with any laws, orders, public housing agency plans or requirements affecting the use or operation of the Property by any federal, state, county or municipal agency of authority, including but not limited to compliance with and participation in administrative grievance procedures, provided that if the cost of compliance in any instance exceeds \$10,000.00, Operator shall not expend funds for compliance without Owner's prior written consent. Operator shall promptly notify Owner in writing of all such orders, notices, plans or requirements requiring expenditure of non-budgeted amounts. Operator, however, shall not take any action as long as Owner is contesting, or has affirmed its intention to contest and promptly institutes proceedings contesting any law, order, plan or requirement. Operator shall prepare, execute, and after obtaining the written approval of Owner, thereby file any customary and standard reports and documents required by an applicable governmental authority. The filing of any special report or document shall not be included as part of this Agreement and shall be an additional cost to Owner. Operator covenants and agrees to obtain and maintain all licenses and permits necessary for the conduct of its business as Operator of the Property. Amounts expended by Operator for use of non-employee consultants or experts, including attorneys, in the performance of these duties shall be reimbursed by Owner provided that such amounts are approved in writing by Owner prior to Operator incurring such expenses. Operator shall comply with the terms of the Regulatory Agreement, a copy of which has been provided previously to Operator. Owner shall indemnify, defend and hold Operator, its officers, agents and employees, harmless from any cost, damage, claim, liability, suit, cause of action or other legal proceedings which may be brought or claimed against Operator based on said compliance provided that Operator is in compliance with the Regulatory Agreement.

4.2.9 Energy and Water Conservation. Operator shall use prudent and customary means to use and control utilities and water use at the Property in a manner to minimize total costs and satisfy Owner's obligations to tenants.



4.2.10 Advertising. Operator shall advertise the Property for rent at such times and by use of such media as it deems necessary subject to the annual budget approved or Owner's prior written approval.

4.2.11 Employment of Personnel.

4.2.11.1. Operator will hire, train, supervise, direct the work of, pay, and discharge all personnel necessary for operation of the Property. Such personnel shall in every instance be employees of Operator and not of Owner. Owner shall have no right to supervise or direct such employees. All costs associated with the employment of personnel necessary for the on-site operation of the Property, including, but not limited to, salaries, wages, the costs of hiring, termination, training, uniforms, educational and motivational programs, other compensation and fringe benefits will be included in the approved budget for the Property. The term "fringe benefits" as used herein shall mean and include the employer's contribution of employment taxes, worker's compensation, group life and accident and health insurance premiums, 401K contributions, performance bonuses, and disability and other similar benefits paid or payable by Operator to its employees in other apartment properties operated by Operator subject to the annual budget approved by the Owner. The expenses of the Executive personnel of Operator who are assigned to on-site Property management for twenty percent (20%) of their time or more may also be included in the approved budget. Any litigation costs or expenses, including reasonable attorneys' fees and costs and wage penalties relating to the employment of on-site personnel are reimbursable to Operator by Owner, unless Operator has been negligent in its employment practices. Operator will not discriminate against any employee or applicant for employment in violation of any applicable law. The terms "employees" or "personnel" shall be deemed to mean and include employment of a casual, temporary, or part-time nature.

4.2.11.2. Operator may treat Property-related expenses of on-site, field, or maintenance as compensable business expenses. These expenses include worker's compensation insurance, travel and training. Such management expenses must be included in the approved budget for the Property. The property related expenses of Executive personnel of Operator who are assigned to on-site Property management for twenty percent (20%) of their time or more may also be included in the approved budget. Operator shall provide to Owner, at Owner's request, payroll and time sheets for all such employees. Notwithstanding the foregoing, employee compensation of workers performing services for Operator at properties other than the Property, shall be reimbursed to Operator *pro rata* based on the portion of working hours involved in services to the Property and such other properties; provided that Operator shall be reimbursed for any roving maintenance supervisor providing services to the Property at the rate of \$50 per hour for such services (or such amount as may reflected in the approved Budget). Operator shall solicit and receive approval from Owner to use the services of a roving maintenance supervisor prior to services being rendered.

4.2.11.3. Non-compensable Salaries. The salaries, wages, other compensation, benefits, travel, entertainment, and other expenses of Operator's executive personnel charged with general administration of this Agreement and off-site record-keeping personnel are

non-reimbursable expenses of Operator.

4.2.11.4. Leasing. Operator shall make diligent efforts to secure and/or retain tenants for the Property consistent with the character and status of the Property as outlined in the established Resident Selection Criteria. Operator shall make diligent efforts to assure that all leases and leasing practices conform to all laws, ordinances, regulations, public housing agency plans or annual contributions contracts applicable to the Property. Prior to the execution of a new lease by a tenant, Operator shall in good faith conduct such investigations of the financial responsibility and general reputation of the prospective tenant as are ordinarily and customarily performed by the managers of similar properties in the location of the Property.

4.2.11.5 Management Structure. Operator has previously provided an oral description of its management structure, roles and assurances as to the frequency of management visits to the Property and said description is attached as Exhibit "C" hereto.

4.2.11.6. Tenant Grievance Procedure. Operator has previously provided an oral description of its tenant grievance procedure and said procedure is attached as Exhibit "D."

## 5 OWNER'S EXPENSES

5.1 Except as otherwise provided in this Agreement, all reasonable expenses incurred by Operator in performance of its obligations under this Agreement described as reimbursable shall be reimbursed by Owner such expenses and reimbursables shall be paid with funds drawn from the Trust Account. Owner's responsibility for such expenses and reimbursables, including future attorneys' fees and costs relating to issues which arose during the term of this Agreement survive termination of this Agreement. Owner's expenses shall be limited to the amount included in the annual budget as approved by the Owner.

5.2 Operator may pay the following expenses directly from the Trust Account subject to other conditions in this Agreement:

a) Reasonable Administrative expenses of the Owner devoted to oversight of the Agreement limited to the amount included in the approved annual budget.

## 6. OPERATOR'S EXPENSES

6.1 Operator agrees to pay all salaries, wages and other compensation and benefits of personnel described in Section 4.2.11 of this Agreement as an Operator's expense without reimbursement by Owner, except as otherwise provided therein. Operator shall pay other expenses which are expressly (a) payable by Operator or (b) not reimbursable hereunder. Operator shall also pay (without reimbursement) any costs of providing corporate office facilities and supplies for such off-site corporate personnel and other expenses incurred by Operator which are not incurred in the performance of duties and obligations required by this Agreement.

## 7. BANK ACCOUNTS

### 7.1 ESTABLISHMENT OF ACCOUNTS.

7.1.1 Trust Account. Operator shall establish a separate bank account for the Property in such Name as Owner shall designate and at a bank selected by Operator (the "Trust Account"). Operator shall promptly deposit all rents and other funds collected by Operator at least monthly in respect of the Property, including, without limitation, any and all advance rents, into the Trust Account and shall not deposit funds attributable to any other property into the Trust Account. Operator shall inform such bank in writing that the funds deposited in the Trust Account are held in trust for Owner. Operator shall use funds in the account to pay the operating expenses of the Property and any other payments relative to the Property as allowed by the terms of this Agreement. Operator shall establish a working capital reserve equal to \$20,000 to be retained within the Trust Account to make up for operating shortfalls.

7.1.2 Security Deposit Trust Account. Operator shall establish a separate bank account for tenant security deposits at a bank designated by Operator (the "Security Deposit Trust Account") into which such security deposits shall be deposited. The Security Deposit Trust Account will be (a) maintained in accordance with applicable law and (b) used only for maintaining tenant security deposits for the Property. Operator shall inform the bank in writing that the funds are held in trust for Owner. Operator shall maintain detailed records of all security deposits deposited in the Security Deposit Trust Account, and such records will be open for inspection by Owner's employees or appointees.

7.1.3. Reserve Account. Operator shall establish a separate bank account ('Reserve Account') at a depository selected by Operator as agent for Owner, for the purpose of depositing funds for the Property in amounts Owner shall instruct and in such name as Owner shall designate. Deposits shall conform in all respects to depository and security requirements pertaining to Local Agency cash contained in California Government Code Title 5., Division 2., Part 1., Chapter 4., Article 2., Sections 53630 to 53686. To the extent sufficient funds are available, Operator shall promptly deposit funds in amounts instructed by Owner into the Reserve Account, and shall not deposit funds belonging or attributable to any other party or property into the Reserve Account. Operator shall execute and submit to Owner copies of bank documents demonstrating that funds deposited in the Reserve Account are held in trust for Owner. Operator shall not withdraw funds from the Reserve Account without express written consent of Owner.

7.1.4. Cash. Operator may also maintain a petty cash fund from money in the Trust Account and make payments therefrom in a manner consistent with the usual course of dealing with such funds in the property management business.

7.1.5. Distributions from Trust Account. Provided sufficient funds are available in the Trust Account, Operator will, on or about the fifteenth (15<sup>th</sup>) of each month, disburse funds via wire transfer to Owner to an account as stipulated by Owner to Operator in writing. On the 15<sup>th</sup> of the month, Operator will also

wire disbursement of Marina's 50% share to the City of Marina , as a continuation of current practice of simultaneous distribution.

7.1.6. Broker / Insurance. The designated broker for Operator shall be an authorized signer on the Trust Account, the Security Deposit Trust Account, and the Reserve Account. In addition, the designated broker may authorize any person who qualifies as an authorized signatory on such accounts. The name of the designated broker shall be communicated by Operator to Owner in writing. Authorized signatories on such accounts shall have authority to make disbursements from such accounts for the purpose of fulfilling Operator's obligations hereunder. Funds over Five Thousand Dollars (\$5,000.00) may be withdrawn from such accounts only upon the signature of at least two (2) individuals who have been granted that authority by Operator. Authorized signatories or persons who handle funds for the Property, whether on or off site, shall be insured for dishonesty in the minimum amount of Three Million Dollars (\$3,000,000.00) per occurrence or loss with not more than a Twenty Five Thousand Dollars (\$25,000.00) deductible. A certificate confirming such insurance naming Operator and Owner as named insureds and confirming that it will not be modified or cancelled without at least thirty (30) days prior written notice to Owner shall be delivered to Owner prior to the Fee Commencement Date."

7.2 FUNDS PROVIDED BY OWNER. If the funds collected by Operator from operation of the Property are not sufficient to pay authorized expenses incurred in operation of the Property and to make all reimbursements to Operator pursuant hereto, Operator shall submit to Owner a statement showing such shortfall and identifying the bills and charges requiring payment, and Owner shall release reserve funds sufficient to pay same to the Operator.

## 8. ANNUAL BUDGETS

8.1 SUBMISSION OF BUDGETS. Operator shall prepare and submit to Owner by March 31 for Owner's approval proposed budgets of (a) the estimated income and expenses of the Property and (b) the estimated capital expenditures for the Property for the next fiscal year or other operating period as may be agreed by the parties. The proposed budgets will be maintained under accrual accounting procedures or such basis as prescribed, in writing, by Owner. Operator will provide an explanation for the numbers used in such budgets. Operator shall make available executive personnel to discuss the proposed budget at a minimum of one meeting of FORA Board of Directors and other meetings as requested.

8.2 SUBMISSION OF OTHER REPORTS. When submitting such proposed budgets, Operator shall also include: rental rate recommendations with analysis if appropriate; a listing of all capital improvement and all repair, maintenance, renovation and replacement expenditures (together with estimated costs for each item) anticipated to be made in the upcoming operating period; a payroll analysis including a salary or wage description for every on-site employee, including any fringe benefits reimbursable hereunder, of Operator whose compensation is reimbursable hereunder;

8.3 APPROVAL OF BUDGETS. If Operator submits a timely budget recommendation, and Owner does not disapprove it in writing before July 1, Operator's proposed budget is deemed approved. If an annual budget has not been approved by that date, Operator shall continue to operate the Property under the approved budget for the previous year until Operator and Owner can agree on the new budget or the termination of this Agreement.

8.4 COMPLIANCE WITH BUDGETS. Approved budgets shall be used by Operator as a guide for the actual operation of the Property. Approval shall be required to exceed any expense which exceeds the budgeted annual amount for that line item. Notwithstanding the foregoing, any increase in a Property expense which does not increase the budgeted amounts for such expense by more than 5% and which, when combined with any decreases in budgeted amounts made by Operator, does not cause an increase in the overall budget, shall not require approval.

8.5 SUBJECT TO IMPLEMENTATION AGREEMENT. Owner and Operator acknowledge that lease revenues from the Property are subject to the Implementation Agreement dated May 1, 2001 ("Implementation Agreement") by and between FORA and the City of Marina. Operator acknowledges the previous receipt of a copy of the Implementation Agreement. Operator shall notify Owner of changed financial conditions to allow Owner to determine compliance with the Implementation Agreement. Owner shall indemnify, defend and hold Operator, its officers, agents and employees, harmless from any cost, damage, claim, liability, suit, cause of action or other legal proceedings which may be brought or claimed against Operator as a result of the Implementation Agreement as set forth in this Section 8.5.

## 9. GENERAL PROVISIONS

9.1 RELATIONSHIP. Contracts entered into by Operator with respect to the Property as provided for, and consistent with, this Agreement shall be the obligations of Owner. Owner agrees to indemnify, defend and hold harmless Operator from any liability or claims arising from such contracts. Operator agrees that to the extent Operator deems it necessary or prudent to have separate counsel from that of Owner, Operator shall bear all fees, costs, and expenses associated therewith.

Operator and Owner shall not be construed as joint venturers or partners, and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Operator understands and agrees that the relationship with Owner is that of independent contractor working on behalf of Owner and that it will not represent to anyone that its relationship to Owner is other than that of independent contractor. Notwithstanding the foregoing, Operator acknowledges and understands that it is acting as agent of Owner and as such owes Owner the duties a reasonable investor would expect if managing his own property.

9.2 ASSIGNMENT. This agreement shall not be assigned by Operator without the prior written approval of Owner which approval may be withheld in Owner's sole and absolute discretion.

9.3 BENEFITS AND OBLIGATIONS. Subject to the provisions of Section 9.2 above, the covenants and agreements herein contained shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, successors, and assigns.

9.4 INDEMNIFICATION.

9.4.1 Operator shall indemnify, hold harmless and defend Owner, its officers, and employees, with counsel reasonably satisfactory to Owner, for, from and against any and all liabilities, claims, causes of action, losses, demands and expenses whatsoever including, but not limited to attorneys' fees, court costs and other litigation expenses and costs arising out of or in connection with the maintenance or operation of the Property or this Agreement (collectively the "Claims"), except to the extent arising directly from the gross negligence or willful misconduct of Owner and the loss of use of property following and resulting from damage or destruction. The indemnification by Operator contained in this Section 9.4 is in addition to any other indemnification obligations of Operator contained in this Agreement. Owner shall approve the liability insurance coverage procured by Operator, and, once approved, Owner shall not be entitled to assert the inadequacy, in any respect, of the coverage. Operator's defense and indemnity obligation set forth in this Section 9.4.1 shall not apply to Claims that are not covered under the commercial general liability insurance policy procured by Operator pursuant to Section 4.2.6.2 of this Agreement unless Operator has engaged in gross negligence or willful misconduct.

9.4.2 Owner shall indemnify Operator (and Operator's affiliates, partners, directors, shareholders, officers, employees and agents) with counsel for, from and against any and all Claims which arise out of the gross negligence or willful misconduct of Owner.

9.4.3 The indemnification and hold harmless obligations of the parties in this Section 9.4 shall survive the expiration or earlier termination of this Agreement.

9.5 NOTICES. All notices provided for in this Agreement shall be in writing and served by registered or certified mail, postage prepaid, at the following addresses until such time as written notice of a change of address is given to the other party:

TO OWNER: FORT ORD REUSE AUTHORITY  
Attention: Executive Officer  
920 2<sup>nd</sup> Ave., Suite A  
Marina, California 93933

TO OPERATOR: ALLIANCE RESIDENTIAL, LLC  
Attn: James M. Krohn  
2415 East Camelback Road, Suite 600  
Phoenix, Arizona 85016

9.6 ENTIRE AGREEMENT. This Agreement represents the entire agreement between the parties with respect to the subject matter hereof. No alteration, modification, or interpretation of

this Agreement shall be binding unless in writing and signed by both parties. Titles of articles, sections and paragraphs are for convenience only and neither limit nor amplify the provisions of this Agreement.

9.7 SEVERABILITY. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to any person or circumstance, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

9.8 DISPUTE RESOLUTION. Disputes arising under this agreement shall be resolved as follows:

9.8.1. *Prevention of Claims: Meet and confer* (10 days)

The parties agree that they share an interest in preventing misunderstandings that could become claims against one another under this agreement. The parties agree to attempt to identify and discuss in advance any areas of potential misunderstanding that could lead to a dispute. If either party identifies an issue of disagreement, the parties agree to engage in a face-to-face discussion of the matter within ten calendar days of the initial written request. If the parties are unable to amicably resolve such disagreements or misunderstandings, they agree to enlist the informal assistance of a third party (who is mutually acceptable to both parties) to help them reach an accord. The cost of engaging any third party for the informal assistance described in the preceding sentence shall be shared equally by the parties. If any disagreement remains unresolved for ten days after delivery of the written request to engage in face-to-face discussions, the parties agree to submit it to mediation in accordance with the provisions set forth in Section 9.8.2.

9.8.2. *Mediation* (60 days)

Either party may demand, and shall be entitled to, mediation of any dispute arising under this agreement at any time after completing the meet and confer process described in subsection (a). Mediation shall commence not more than thirty (30) days after the initial mediation demand and must be concluded not more than sixty (60) days after the date of the first mediation demand. If mediation is not concluded within that time, then either party may demand arbitration.

Mediation shall be submitted first to a mediator with at least ten years experience in real estate management or related field. The mediator shall be selected by mutual agreement of the parties. Failing such mutual agreement, a mediator shall be selected by the presiding judge of the Monterey County Superior Court. The cost of the mediator shall be shared equally by the parties. In the interest of promoting resolution of the dispute, nothing said, done or produced by either party at

the mediation may be discussed or repeated outside of the mediation or offered as evidence in any subsequent proceeding. The parties acknowledge the confidentiality of mediation as required by Evidence Code 1152.5.

No mediator shall submit, and no arbitrator or court shall consider, any mediator recommendations, declarations, or findings unless the parties give their written consent to the proposed mediator statement.

### 9.8.3. Arbitration (90 days)

If mediation fails to resolve the dispute, the mediator shall become the arbitrator, and shall proceed to dispose of the case under such rules or procedures as he or she shall select. If the mediator is unable or unwilling to serve as arbitrator, the parties shall select an arbitrator by mutual agreement. Failing such agreement, the arbitrator shall be selected by the Presiding Judge of the Superior Court. The decision of the arbitrator shall be final and not subject to judicial litigation. The cost of the arbitrator shall be shared equally by the parties.

Arbitration shall be commenced within sixty (60) days of the arbitration demand and concluded within ninety (90) days of arbitration demand.

With respect to monetary disputes only, arbitration shall follow the so-called "baseball arbitration" rule in which the arbitrator is required to select an award from among the final offers presented by the contending parties. The arbitrator may not render an award that compromises between the final offers.

Unless the arbitrator selects another set of rules, the arbitration shall be conducted under the J.A.M.S. Endispute Streamlined Arbitration Rules and Procedures, but not necessarily under the auspices of J.A.M.S. Upon mutual agreement, the parties may agree to arbitrate under an alternative scheme or statute. The Arbitrator may award damages according to proof. Judgment may be entered on the arbitrator's award in any court of competent jurisdiction.

**NOTICE: IN AGREEING TO THE FOREGOING PROVISION, YOU ARE WAIVING YOUR RIGHT TO HAVE YOUR RIGHTS UNDER THIS AGREEMENT TRIED IN A COURT OF LAW OR EQUITY. THAT MEANS YOU ARE GIVING UP YOUR RIGHT TO TRIAL BY JUDGE OR JURY. YOU ARE ALSO GIVING UP YOUR RIGHT TO DISCOVERY AND APPEAL EXCEPT AS PROVIDED IN THE ARBITRATION RULES. IF YOU REFUSE TO ARBITRATE YOUR DISPUTE AFTER A PROPER DEMAND FOR ARBITRATION HAS BEEN MADE, YOU CAN BE FORCED TO ARBITRATE OR HAVE AN AWARD ENTERED AGAINST YOU BY DEFAULT. YOUR AGREEMENT TO ARBITRATE IS VOLUNTARY.**



BY INITIALING THIS PROVISION BELOW, THE PARTIES AFFIRM THAT THEY HAVE READ AND UNDERSTOOD THE FOREGOING ARBITRATION PROVISIONS AND AGREE TO SUBMIT ANY DISPUTES UNDER THIS AGREEMENT TO NEUTRAL BINDING ARBITRATION AS PROVIDED IN THIS AGREEMENT.

ALLIANCE'S' INITIALS \_\_\_\_\_

FORA'S: INITIALS \_\_\_\_\_

9.8.4. *Attorney's Fees.*

If arbitration or suit is brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover as an element of costs of suit, and not as damages, a reasonable attorneys' fee to be fixed by the arbitrator or Court. The "prevailing party" shall be the party entitled to recover costs of suit, whether or not the suit proceeds to arbitrator's award or judgment. A party not entitled to recover costs shall not recover attorneys' fees. No sum for attorneys' fees shall be counted in calculating the amount of an award or judgment for purposes of determining whether a party is entitled to recover costs or attorneys' fees.

If either party initiates litigation without first participating in good faith in the alternative forms of dispute resolution specified in this agreement, that party shall not be entitled to recover any amount as attorneys' fees or costs of suit even if such entitlement is established by statute.

9.9 APPLICABLE LAW. This agreement shall be construed and enforced in accordance with the laws of the State of California. Venue shall take place in the County of Monterey, State of California.

9.10 OPERATOR. The term "Operator" as used in this Agreement shall include any corporate subsidiaries or affiliates of Operator who perform service, in, on or about the Property in connection with this Agreement.

9.11 NON-WAIVER. No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided in this Agreement.

9.12 HEADINGS. All headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

9.13 INTERPRETATION. This Agreement has been negotiated by and between representatives of the parties hereto and their staffs, all persons knowledgeable in the subject matter

of this Agreement, which was then reviewed by the respective legal counsel of each party. Accordingly, any rule of law (including Civil Code §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 effect the purpose of the parties and this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

FORT ORD REUSE AUTHORITY

---

Michael A. Houlemard Jr.  
Executive Officer

Alliance Residential, LLC, an Arizona Limited Liability Company

---

By

DRAFT

**EXHIBIT A**  
Preston Park Management Agreement

**SCOPE OF SERVICES**

Manage, direct and supervise using commercially reasonable efforts, all aspects of property management for Preston Park which includes, but is not limited to:

- 1 Placement of residents in residential apartment homes with appropriate leases and addendums as prudent or required by law.
- 2 Collect all monthly rents and fees. Institute legal action for the collection of monies owed. Administer rent increases in close cooperation with FORA.
- 3 Maintain community standards of physical and social environment, while keeping within budget guidelines. Respond to requests for maintenance by tenants and FORA promptly. Schedule and conduct annual unit inspections and follow-up annual inspections with corrective work where required.
- 4 Hire, train and supervise all staff needed to effectively manage the community and provide a description of the staffing plan to Owner. Maintain access to multilingual resources to assist with applicants and tenants of Limited English Proficiency, said access may be accomplished through a "language hotline" or similar service so long as it's responsive to the needs of Owner, applicants and tenants.
- 5 Develop and maintain a list of qualified prospective renters. Develop and maintain a list of backup renters. Accept applications for apartment homes and maintain eligibility standards. Maintain preference lists as specified. Seek to maintain full occupancy with a minimum of vacancies.
- 6 Prepare an affirmative fair housing marketing plan. Prepare and circulate marketing materials, e.g. advertisements, brochures, displays, disclosure documents, contracts and program web site. Participate in community meetings as requested.
- 7 Analyze and review financial requirements for operations with Owner; prepare annual budget recommendations for Owner. Work within the approved budget; obtain Owner authorization for variances from the budget. Analyze and prepare multi-year capital improvements plan and make recommendations to Owner about financing and implementation of the plan.
- 8 Develop and implement written office procedures; train and supervise office and leasing personnel.
- 9 Maintain financial records including, but not limited to, the tracking of receipts and deposits, journal entries, bank deposits, accounts payable and accounts receivable.

Generate monthly financial reports. Prepare required periodic reports to Owner.

- 10 Report periodically to Owner to ensure that Owner is properly informed (through regular contact and periodic formal meetings) as to the current status of all operations so that the Owner may make proper and timely decisions on all strategic matters.
- 11 Manage the selection process for outside contractors including landscaping, trash removal, pest control, custodial, etc; prepare recommendations for Board approval. Continually inspect property, recording deficiencies and taking necessary action within budgetary allocations.
- 12 Prepare tenant handbook and circulate written communications to tenants periodically, such as quarterly newsletter, in format and content approved by the Owner. Participate in meetings and events with tenants as requested.
- 13 Explore opportunities for coordination/joint programs with housing developments at California State University-Monterey Bay.
- 14 Other duties as needed.

DRAFT

**EXHIBIT B**

**AFFORDABLE RENTAL RATES**

Rates may be established each year.

DRAFT

EXHIBIT "C"

Preston Park Management Agreement

MANAGEMENT STRUCTURE

Every year on June 1, Alliance will provide the names of the people associated with the management positions as described on the organization chart.

**The Senior Management Team for Preston Park:**

**Corinne Carmody, Regional Manager**

**Steve Keller, Regional Maintenance Supervisor**

**Amy Corcoran, Regional Training Manager**

**Jennifer Barrett, Regional Marketing Manager**

**Annette Thurman, Vice President of Operations**

**Corinne Carmody**, Regional Manager, has an office in Walnut Creek, California. She will be at the communities at least two days a week or to the extent mutually agreed upon by Owner and Operator. Corinne will be responsible for all compliance training related to the approved below market rate rental program.

**Steve Keller**, Regional Maintenance Supervisor, will perform monthly site inspections in addition to overseeing any capital projects that require completion. Steve will spend no less than one day per month at the community and possibly more depending on the capital project requirements.

**Amy Corcoran and Jennifer Barrett**, Regional Training Manager and Regional Marketing Manager, shall provide leasing and customer service training and marketing resources. Amy and Jennifer are also available on an as-needed basis for one-on-one training.

**Annette Thurman**, Vice President of Operations, will be at the site no less than once per month.

The team above is available to meet with FORA as needed. Owner is to provide operator with an annual calendar of expected meetings during transition period.

## EXHIBIT D

### Preston Park Management Agreement

#### TENANT GRIEVANCE PROCEDURE

Note: All resident issues will be resolved within the guidelines set by FORA, Alliance Communities Inc., and State and Federal Fair Housing Laws.

**12-15-10**

**PRESTON PARK**

#### **GRIEVANCE PROCEDURE**

##### **I. Definitions applicable to the grievance procedure**

- A. Grievance: Any dispute pertaining to a lease violation, maintenance charge or other disagreements with respect to Management's action or failure to act in accordance with the individual Tenant's lease or Management's Policies or regulations that adversely affects the individual Tenant's rights, duties, welfare or status.
- B. Elements of due process: An eviction action or a termination of tenancy in a State court in which the following procedural safeguards are required:
  - 1. Adequate notice to the Tenant of the grounds for terminating the tenancy and for eviction;
  - 2. Right of the Tenant to be represented by counsel;
  - 3. Opportunity for the Tenant to refute the evidence presented by Management, including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the Tenant may have;
  - 4. A decision on the merits of the case.
- C. Hearing Officer: A neutral party selected by FORA to hear grievances and render a decision. FORA has selected the Conflict Resolution and Mediation Center of Monterey County to be the Hearing Officer for grievances at Preston Park. If the Mediation Center of Monterey County is not available for the Grievance Hearing, FORA shall choose another Hearing Officer who is a neutral third party not involved in the management decisions at Preston Park and has experience and knowledge of management practices and procedures for comparable properties and has experience in mediation.
- D. Tenant: The adult person (or persons other than a live-in aide) who resides in the unit at Preston Park and who executed the lease with Alliance Residential or its predecessor(s).
- E. Management: The property management company for Preston Parks is Alliance Residential.
- F. Management Policies: Rules and/or regulations contained within the Tenant's valid and most

recent lease and any subsequent amendments thereto.

- G. Working days: For the purpose of these procedures, working days means the scheduled working days of FORA.
- H. Tenant's designated representative: A person that the Tenant has designated in writing to represent him/her in this grievance procedure or a legal document naming a person that represents the Tenant in such matters. The written designation along with the address and contact information for designated representative shall be placed in the Tenant's file. All correspondence related to this grievance procedure shall be distributed to both the Tenant and the designative representative.

## ***II. Applicability of this grievance procedure***

The purpose of this Grievance Procedure is to set forth the requirements, standards and criteria to assure that Tenants of Preston Parks have a procedure to dispute an act or failure to act by Management (see above for definition of grievance). The Grievance Procedure only applies to grievances lodged by Tenants who lived at Preston Park at the time the alleged dispute occurred.

This grievance procedure shall be applicable to all individual grievances (as defined in Section I above) between a Tenant and Management. The right to a grievance shall apply to disputes over the application of Management's policies to the detriment of a Tenant but shall not apply to the Management policies, class action lawsuits or evictions. Management policies may be discussed with the designated FORA staff representative. Class action lawsuits and evictions are heard in a court of law and receive due process in that manner.

The grievance procedure may not be used as a forum for initiating or negotiating policy changes between a group or groups of tenants and FORA. Such requests may be made to the designated FORA staff representative.

## ***III. Filing a Grievance and Informal Meeting***

Any grievance must be made in writing at the Alliance Residential Management Office, located at 682 Wahl Court, Marina, CA 93933, **within twenty (20) working calendar days after the grievable event.**

As soon as the grievance is received it will be reviewed by Management to be certain that neither of the exclusions in Paragraph II applies to the grievance. Should one of the exclusions apply, the Tenant or designated representative will be notified in writing that the matter raised is not subject to this grievance procedure, with the reason(s), that the grievance is dismissed and appropriate venue for the Tenant or designated representative to contact.

If neither of the exclusions cited above apply, the Tenant or designated representative will be contacted **within ten (10) working days** to arrange a mutually convenient time to meet so the grievance may be discussed informally and resolved. Management will assign a Staff Representative



(usually the Business Manager) to meet with Tenant or designated representative to discuss the grievance informally and attempt to resolve the matter without a further hearing. At this informal meeting the Tenant or designated representative will present the grievance and the Staff Representative will attempt to resolve the grievance to the satisfaction of both parties.

Within **five (5) working days following the informal meeting**, Management shall prepare and either hand deliver or mail to the Tenant or designated representative a summary of the discussion that must specify: the names of the Tenant(s) and all participants at the meeting, the date(s) of meetings, the nature of the grievance, the proposed disposition of the grievance and the specific reasons, and the Tenant's rights to a Grievance Hearing, and, if not satisfied with the disposition of the grievance, the procedure to either respond and have comments placed in the Tenants file or request a Grievance Hearing. A copy of this summary shall also be placed in the Tenant's file. A receipt signed by the Tenant or designated representative or return receipt for delivery of certified mail, whether signed or unsigned, will be sufficient proof of time of delivery for the summary of the informal discussion.

#### ***IV. Grievance Hearing***

If the Tenant is dissatisfied with the proposed disposition of the grievance arrived in the informal meeting, the Tenant or designated representative may submit a written request for a Grievance Hearing **no later than ten (10) working days after the summary of the informal meeting is received.**

A Tenant's request for a Grievance Hearing shall be addressed to the Regional Manager c/o Alliance Residential, 682 Wahl Court, Marina, CA 93933. The written request shall specify:

- The factual basis for the grievance, including any sections of the Tenant's lease or written Management policies allegedly violated;
- The action of relief sought from Management; and
- Several dates and times **in the following fifteen (15) working days** when the Tenant or designated representative can attend a grievance hearing.

If the Tenant or designated representative requests a Grievance Hearing in a timely manner, Management shall schedule a hearing on the grievance at the earliest time possible for the Tenant or designated representative, Management and the Hearing Officer. A written notice specifying the time, place and procedures governing the hearing will be either hand delivered or mailed to the Tenant or designated representative.

If the Tenant or designated representative fails to request a Grievance Hearing **within ten (10) working days** after receiving the proposed disposition of the grievance, Management's decision rendered at the informal meeting becomes final and Management is not obligated to offer the Tenant or designated representative a Grievance Hearing unless the Tenant or designated representative can show good cause why s/he failed to proceed in accordance with the procedure. Failure to request a Grievance Hearing does not affect the Tenant's right to contest the Management's decision in court.

## ***V. Scheduled hearing***

When a or designated representative submits a timely request for a grievance hearing, Management will, **within three (3) working days**, contact the Hearing Officer to schedule the hearing on one of the dates and times indicated by the Tenant or designated representative. If the Hearing Officer is not available for one or more of the times provided by the Tenant or designated representative during those ten working days, Management will schedule a convenient time for the Grievance Hearing for all parties as soon as possible.

## ***VI. Procedures governing the Grievance Hearing***

The Tenant shall be afforded a fair hearing, which shall include:

- A. The opportunity to examine before the hearing any Management documents, including records and regulations, that are directly relevant to the hearing.
- B. The Tenant or designated representative shall be allowed to copy any such documents. If Management does not make the document available for examination, Management cannot rely on such document at the grievance hearing.
- C. The Tenant may be represented by counsel or other person chosen as the Tenant's representative, at the Tenant's expense. Management may be represented by counsel. The Tenant, or the designated representative, must be present at the scheduled hearing.
- D. The right to present evidence and arguments in support of the Tenant's complaint and to controvert evidence relied on by Management and to confront and cross examine all witnesses upon whose testimony or information Management relies; and
- E. A decision based solely and exclusively upon the facts presented at the hearing.

The hearing shall be conducted informally by the Hearing Officer. Oral or documentary evidence pertinent to the facts and issues raised by the Tenant may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings provided that such information is the kind of evidence on which reasonable persons are accustomed to rely on in the conduct of serious affairs.

The Hearing Officer shall require Management, the Tenant or designated representative, counsel and other participants to conduct themselves in an orderly fashion. Failure to comply with the directions of the Hearing Officer to maintain order may result in exclusion from the proceedings.

The Hearing Officer will hear evidence provided by both the Tenant or designated representative and Management and will review appropriate policies, regulations, lease, etc.

**VII. Failure to appear at the hearing**

If either the Tenant or designated representative or Management fails to appear at the scheduled hearing, the Hearing Officer may postpone the hearing **for another date not to exceed five (5) working days**. In the event that Management fails to appear at the re-scheduled hearing, the Hearing Officer shall make his/her decision based on the record including anything submitted by the Tenant or designated representative. In the event that the Tenant or designated representative fails to appear at the re-scheduled hearing, the Tenant is deemed to have waived his/her right to a hearing.

Both the Tenant or the designated representative and Management shall be notified of the determination by the Hearing Officer; provided, that a determination that the Tenant has waived his/her right to a hearing shall not constitute a waiver of any right the Tenant may have to contest Management's disposition of the grievance in court.

**VIII. Decision of the Hearing Officer**

The Hearing Officer shall prepare a written decision, together with the reasons for the decision **within fifteen (15) working days after the hearing**. Any delay on the part of the Hearing Officer in submitting the written decision will not invalidate this process. A copy of the decision shall be sent to the Tenant or designated representative, Management and FORA. Management shall retain a copy of the decision in the Tenant's folder.

The decision of the Hearing Officer shall be binding on Management, which shall take all actions, or refrain from actions, necessary to carry out the decision unless FORA determines **within ten (10) working days** after receiving the written decision, and promptly notifies the Tenant or the designated representative of its determination that:

- A. The grievance does not involve Management's action or failure to act in accordance with the Tenant's lease or the property's policies, which adversely affect the Tenant's rights, duties, welfare or status.
- B. The decision of the Hearing Officer is contrary to applicable Federal, State or local law or FORA policy or regulation.

A decision by the Hearing Officer or FORA which denies the relief requested by the Tenant in whole or in part shall not constitute a waiver of, nor affect in any way, the rights of the Tenant to judicial review in any court proceedings which may be brought in the matter later.

This Grievance Procedure does not preclude the Tenant from exercising his/her rights, including those rights pertaining to alleged discrimination on the basis of race, color, creed, religion, sex, age, disability, sexual orientation, familial or marital status, ancestry or national origin.

I acknowledge that I have received a copy of this Grievance Procedure.

\_\_\_\_\_ Date \_\_\_\_\_ Signature

Print Name Address

**END**

**January 11, 2013**

**Draft Board Packet**

# FORT ORD REUSE AUTHORITY ADMINISTRATIVE COMMITTEE REPORT

## NEW BUSINESS

**Subject:** Regional Urban Design Guidelines – Proposed Work Program

**Meeting Date:** January 2, 2013

**Agenda Number:** 8b

**ACTION**

**RECOMMENDATION(S):**

- i. Receive a report on a proposed tentative work program schedule for the Regional Urban Design Guidelines (**Attachment A**).
- ii. Designate the FORA Administrative Committee as the advisory group to recommend FORA Board actions during the proposed work program.

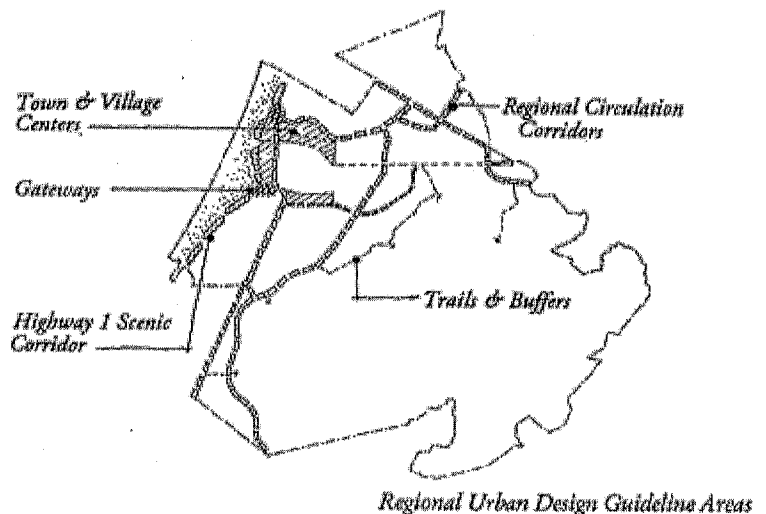
**BACKGROUND:**

In 2005, the FORA Board adopted “Highway 1 Scenic Corridor Design Guidelines,” which addressed the State Highway 1 Scenic Corridor portion of the Regional Urban Design Guidelines. The remaining areas of regional importance that have not yet been adopted by the FORA Board for Regional Urban Design Guidelines include:

- Areas bordering the public accessible habitat-conservation areas,
- Major through roadways such as Reservation Road and Blanco Road, and
- Other areas to be determined.

The 1997 Base Reuse Plan (BRP) describes the Regional Urban Design Guidelines in more detail under Design Principle 6 on page 61. This BRP text and map are included below.

*Design Principle 6: Adopt Regional Urban Design Guidelines.* The visual character of the Monterey Peninsula plays a major role in supporting the area’s attractiveness as a destination for many visitors every year. The location of the Fort Ord property is such that it functions much like a gateway to Peninsula attractions such as the beach and dunes area which will be a state park; the communities of Monterey, Pacific Grove, Carmel; and the Carmel Valley, Big Sur and points south. Maintaining the visual quality of this gateway to the Peninsula and where necessary enhancing it is of regional importance to ensure the economic vitality of the entire Peninsula.



Regional urban design guidelines will be prepared and adopted by FORA as a separate implementation action to govern the visual quality of the following areas of regional importance. The guidelines will address the State Highway 1 Scenic Corridor, the freeway entrances to the former Fort Ord area from State Highway 1 (12th Street/Imjin Parkway and the Main Gate/Lightfighter areas) and from the east, areas bordering the public accessible habitat-conservation areas, major through roadways such as Reservation Road and Blanco Road, as

well as other areas to be determined. The urban design guidelines will establish standards for road design, setbacks, building height, landscaping, signage, and other matters of visual importance. The generic principles for such a design guideline program were worked out in detail and accepted by the Board at the time the Highway Scenic Corridor Design Guidelines were adopted. It is expected that the new work to be done will be based on this prior work.

**DISCUSSION:**

A number of approaches could be used to conduct the proposed work program. Staff recommends that the FORA Administrative Committee or a working group of the FORA Administrative Committee make recommendations to the FORA Board as the Regional Urban Design Guidelines are developed. Another possible framework might include designating the FORA Planners working group to fulfill the advisory role.

**FISCAL IMPACT:**

Reviewed by FORA Controller \_\_\_\_\_

Staff time for this item is included in the approved annual budget.

**COORDINATION:**

Authority Counsel

**Regional Urban Design Guidelines**

**Attachment A to Item 8b  
Admin. Com., 01-02-13**

<b>Task</b>	<b>Jan.-Feb.</b>	<b>Mar.-Apr.</b>	<b>May-June</b>	<b>July-Aug.</b>
Advisory Group recommends areas of regional importance to the FORA Board for inclusion in the Regional Urban Design Guidelines	X			
FORA Board considers Advisory Group's recommendations		X		
Advisory Group reviews 1st administrative draft Regional Urban Design Guidelines and provides feedback to staff			X	
Advisory Group reviews 2nd administrative draft Regional Urban Design Guidelines and recommends FORA Board approval			X	
FORA Board considers draft Regional Urban Design Guidelines				X
Final Regional Urban Design Guidelines made available on the FORA website				X