



# 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, March 18, 2015

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

### AGENDA

**1. CALL TO ORDER**

**2. PLEDGE OF ALLEGIANCE**

**3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE**

**4. PUBLIC COMMENT PERIOD**

Individuals wishing to address the Committee on matters within its jurisdiction, but not on this agenda, may do so during this period for up to three minutes. Comments on specific agenda items are heard under that item.

**5. FOLLOW UP - MARCH 13, 2015 BOARD MEETING** INFORMATION/ACTION

a. Marina Coast Water District Proposed Water Augmentation Project

b. FORA Economic Development Program

c. Prevailing Wage Enforcement

**6. BUSINESS ITEMS**

a. Fort Ord Pollution Legal Liability Insurance Policy –  
Review Draft Cross Border Claim Agreement INFORMATION/ACTION

b. Capital Improvement Program Development Forecast Updates INFORMATION/ACTION

**7. ITEMS FROM MEMBERS**

**8. ADJOURNMENT**

Next Meeting Date: April 1, 2015

*For information regarding items on this agenda or to request disability related modifications and/or accommodations please contact the Deputy Clerk 48 hours prior to the meeting. Agendas are available on the FORA website at [www.fora.org](http://www.fora.org).*



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## MEMORANDUM

TO: Monterey Peninsula College (MPC), Monterey-Salinas Transit (MST), Transportation Agency for Monterey County (TAMC), County of Monterey, Cities of Monterey, Marina, and Seaside

FROM: Jonathan Garcia, Senior Planner

RE: March 4, 2014 Administrative Committee Item 7a – Fort Ord Pollution Legal Liability Insurance Policy – Review Draft Cross Border Claim Agreement

DATE: February 27, 2015

FORA recently purchased a 10-year PLL Insurance Policy from Chubb Custom Insurance Company for period 12/31/2014 to 12/31/2024 with \$50 million in coverage limits. FORA is the first-named insured under the policy. MPC, MST, TAMC, County of Monterey, Cities of Monterey, Marina, and Seaside are named insureds under the policy.

Special FORA counsel Barry Steinberg advised FORA that a Cross Board Claim Agreement would benefit FORA and the named insureds in the event of a cross border insurance claim. The following FORA weblink includes a Word document of the draft Cross Border Claim Agreement for review and editing by the proposed Parties (a hard copy is included with this memo):

<http://fora.org/Admin/2015/Additional/FORA%20PLL%20Cross%20Border%20Agreement.doc>

If you have any questions on the PLL policy or draft Cross Border Claim Agreement, please contact me at (831) 883-3672 or [jonathan@fora.org](mailto:jonathan@fora.org).

Enclosure (1)

## **AGREEMENT REGARDING POLLUTION AND LEGAL LIABILITY INSURANCE CROSS BORDER CLAIMS**

This Agreement Regarding Pollution and Legal Liability Insurance Cross Border Claims (this “Agreement”) is made and entered into effective \_31 December, 2015 (the “Effective Date”) by and among the **FORT ORD REUSE AUTHORITY**, a public corporation of the State of California (“FORA”), the **CITY OF MARINA**, the **CITY OF MONTEREY**, the **CITY OF SEASIDE**, the **COUNTY OF MONTEREY**, the **MONTEREY PENINSULA COMMUNITY COLLEGE DISTRCT**, a California community college district, the **MONTEREY-SALINAS TRANSIT DISTRICT**, a California special district, and the **TRANSPORTATION AGENCY FOR MONTEREY COUNTY**, a local area agency (each a “Party” and collectively, the “Parties”) with reference to the following facts.

**A.** FORA entered into a substantially similar Agreement Regarding Allocation of Pollution and Legal Liability Insurance Premium (the “PLL Agreement”) with each of the other Parties to this Agreement in or about December, 2014.

**B.** Pursuant to the PLL Agreement, a policy of Pollution and Legal Liability Insurance, policy number 37314351, has been obtained from Chubb Custom Insurance Company, which policy is effective for a ten (10) year term commencing December 31, 2014 and under which each of the Parties is a named insured (the “PLL Policy”).

**C.** The Parties desire by this Agreement to clarify how the Self Insured Retention and risk allocation aspects of coverage under the PLL Policy will be managed.

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

**1. Sharing of Self Insured Retention.** Each Party agrees that, in the event of claims under the PLL Policy under circumstances in which more than one insured suffers loss, damage or cost from the same Pollution Incident or Potential Incident (as defined in the Policy), the affected Parties who make claims under the PLL Policy will share the Self Insured Retention equally, without regard to causation or proportion of loss, damage, or cost.

**2. Applicable Solely to Claims under PLL Policy.** This Agreement applies solely to claims made under the PLL Policy. Each Party retains any right of cost recovery or to pursue any contribution action against any other Party without regard to this Agreement.

**3. Additional Insureds.** Any entity that seeks to be added to PLL Policy as an additional insured shall, as a condition precedent, execute, prior to being added to the PLL Policy as an additional insured, an agreement for the benefit of all other named and present or future additional insureds that adopts and accepts the provisions of this Agreement.

**4. Notices.** All notices and other communications given pursuant to this Agreement shall be in writing and shall be personally delivered or given by mailing the same by certified or registered mail, return receipt requested, postage prepaid or by United States express mail, by a commercially recognized courier service, or by facsimile transmission provided that a true copy of the facsimile transmission is sent on the same day by United States express mail or a commercially recognized courier service for delivery no later than the next business day. Any such notice or other communication shall be deemed to have been given on the earlier of (i) personal delivery, (ii) the date of delivery or refusal to accept delivery as shown on the return receipt, or (iii) when received by the Party to whom such notice or other communication is addressed if addressed as follows (or to such other or further addresses as a Party may designate by like notice, similarly sent):

Fort Ord Reuse Authority  
ATTN: Michael A. Houlemard, Jr.,  
Executive Officer  
100 12th Street, Bldg. 2880  
Marina, California 93933

City of Marina  
ATTN: Layne Long  
City Manager  
211 Hillcrest Avenue  
Marina, California 93933

City of Monterey  
ATTN: Mike McCarthy  
City Manager  
580 Pacific Street  
Monterey, California 93940

City of Seaside  
ATTN: John Dunn  
City Manager  
440 Harcourt Avenue  
Seaside, California 93955

County of Monterey  
ATTN: Steve Mauck  
Risk Manager  
168 West Alisal Street, 3rd Floor  
Salinas, California 93901

Monterey Peninsula Community College District  
ATTN: Dr. Walter Tribley  
President/Superintendent  
980 Fremont Street  
Monterey, California 93940

Monterey-Salinas Transit District  
ATTN: Carl Sedoryk  
General Manager/CEO  
1 Ryan Ranch Road  
Monterey, California 93940

Transportation Agency for Monterey County  
ATTN: Debbie Hale  
Executive Director  
55-B Plaza Circle  
Salinas, California 93901

**5. Cooperation.** Each of the Parties agrees to use reasonable and good faith efforts to take, or cause to be taken, all action to do, or cause to be done, and to assist and cooperate with any and all other Parties in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement including signing, acknowledging, and delivering any instruments and documents as may be necessary, expedient, or proper, to carry out the intent and purpose of this Agreement. Each Party agrees to exercise good faith and fair dealing in the performance of its obligations under this Agreement.

**6. Assignment.** Except as otherwise provided in this Agreement, no Party shall have the right, power, or authority to assign or encumber any rights or interest in this Agreement or any portion of this Agreement, or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily, or by operation of law, without the prior written consent of all other Parties.

**7. Third-Party Rights.** This Agreement has been made and is made solely for the benefit of the Parties. Nothing in this Agreement, express or implied, is intended to confer upon any individual or entity, other than the Parties, any rights or remedies, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any Party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any Party to this Agreement.

**8. Complete Agreement; Amendment.** This Agreement is a full and complete statement of the Parties' understanding with respect to the matters set forth in this Agreement. This Agreement supersedes and replaces any and all prior or contemporaneous agreements, discussions, representations, or understandings between the Parties relating to the subject matter of this Agreement, whether oral or written. No addition, alteration, amendment, change, or

modification to this Agreement shall be binding upon the Parties, or any of them, unless reduced to writing and signed by each and all of the named insured Parties.

**9. No Reliance.** The Parties represent and acknowledge that in signing this Agreement they have not relied upon any course of conduct, representation, or statement made by any other Party with regard to the subject matter of this Agreement, other than those representations that are specifically stated in this Agreement.

**10. Interpretation.** This Agreement shall be construed as a whole and in accordance with its fair meaning. The organization and format of this Agreement (including the numbering of, or the captions, headings, or titles to, any sections or paragraphs of this Agreement) are intended solely for convenience of reference and shall not be used to construe the scope, meaning, intent, or interpretation of any part of this Agreement. Whenever used in this Agreement, the word “including” shall be deemed to be followed by the words “but not limited to.” Each number, tense, and gender used in this Agreement shall include any other tense, number, or gender where the context and references so require. Any pronoun used in this Agreement shall be read in the singular or plural number and in such gender as the context may require. It is understood and agreed by the Parties that this Agreement has been arrived at through negotiation and deliberation by the Parties, with each Party having had the opportunity to review and revise this Agreement and to discuss the terms and effect of this Agreement with counsel of its choice. Accordingly, any rule of law 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. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. Any provision of this Agreement held to be void or unenforceable under applicable law shall be deemed stricken and all remaining provisions of this Agreement shall continue to be valid and binding upon the Parties.

**11. Attorneys’ Fees.** In the event of any action or proceeding in law or in equity arising out of or in connection with this Agreement or to enforce or interpret any of the terms of this Agreement, the prevailing Party or Parties in such action shall be entitled to have and recover from the non-prevailing Party or Parties reasonable attorneys’ fees, including fees on appeal, in addition to such other relief as may be granted. Each Party shall bear its own attorneys’ fees and costs incurred in the negotiation and implementation of this Agreement.

**12. Authority.** Each person signing this Agreement on behalf of a Party expressly represents and warrants that he or she has received full and complete authority to sign this Agreement on behalf of that Party, whether the Party is an individual or an entity, by the exercise of any necessary powers governing the execution of contracts by that Party and that no further approval of any kind is necessary to bind that Party to this Agreement.

**13. Counterparts.** This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same complete instrument. The signature page of each counterpart may be detached from such counterpart and attached to a single document which shall for all purposes be treated as an original.

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective on the date first above written.

**FORT ORD REUSE AUTHORITY**

**CITY OF MARINA**

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

By: \_\_\_\_\_  
Layne Long,  
City Manager

**CITY OF MONTEREY**

**CITY OF SEASIDE**

By: \_\_\_\_\_  
Mike McCarthy,  
City Manager

By: \_\_\_\_\_  
John Dunn,  
City Manager

**COUNTY OF MONTEREY**

**MONTEREY-SALINAS TRANSIT DISTRICT**

By: \_\_\_\_\_  
Steve Mauck,  
Risk Manager

By: \_\_\_\_\_  
Carl Sedoryk,  
General Manager/CEO

**MONTEREY PENINSULA COMMUNITY COLLEGE DISTRICT**

By: \_\_\_\_\_  
Dr. Walter Tribbley,  
President/Superintendent

**TRANSPORTATION AGENCY FOR MONTEREY COUNTY**

By: \_\_\_\_\_  
Debra L. Hale,  
Executive Director