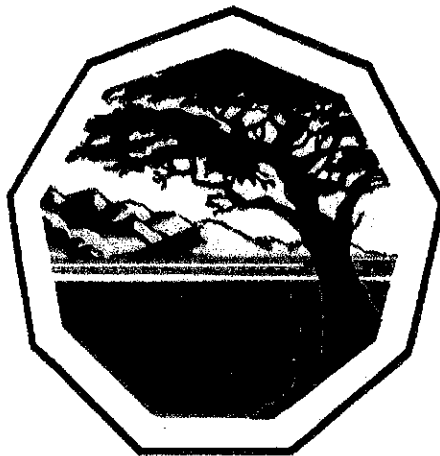


Fort Ord
Reuse Authority



Board Packet
For
Board Meeting
December 16, 2011



Fort Ord Reuse Authority

920 2nd Avenue, Ste. A, Marina, CA 93933
Phone: (831) 883-3672 • Fax: (831) 883-3675 • www.fora.org

BOARD OF DIRECTORS MEETING

Friday, December 16, 2011 - 3:30 p.m.

910 2nd Ave, Marina (on the former Fort Ord)

AGENDA

1. **CALL TO ORDER AND ROLL CALL**
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") 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. Public comments on specific agenda items will be heard at the time the matter is under Board consideration.
5. **CONSENT AGENDA** ACTION
 - a. November 18, 2011 FORA Board meeting minutes
6. **OLD BUSINESS**
 - a. Preston Park – disposition update ACTION
 - i. Authorize staff to secure updated appraisal
 - ii. Execute agreement with Alliance for management services
 - iii. Authorize staff to offer Preston Park for public sale
 - b. California Central Coast Veterans Cemetery INFORMATION
 - i. Status report
 - ii. FORA funding of cemetery design/construction
 - c. FORA's contracting, contractor development, and regional job training efforts INFORMATION
 - d. Salary survey – consultant recommendations ACTION
 - i. Adopt recommended salary range adjustments
 - ii. Approve longevity policy adjustment
7. **NEW BUSINESS**
 - a. Fiscal Year 10-11 Annual Financial Report (Audit Report) ACTION
8. **EXECUTIVE OFFICER'S REPORT**
 - a. Outstanding Receivables INFORMATION
 - b. Administrative Committee – report INFORMATION
 - c. Finance Committee – report INFORMATION
 - d. Habitat Conservation Plan – status report INFORMATION
 - e. Executive Officer's Travel Report INFORMATION
9. **ITEMS FROM MEMBERS** INFORMATION
10. **ADJOURNMENT**



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BOARD OF DIRECTORS MEETING

Friday, November 18, 2011
3:30 p.m. Carpenters Union Hall
910 2nd Ave, Marina (on the former Fort Ord)

MINUTES

- 1. CALL TO ORDER AND ROLL CALL** Chair Potter called the November 18, 2011, Board of Directors meeting to order at 3:37 p.m.

Fort Ord Reuse Authority Board of Directors:

Voting members present (quorum present at call to order)

Chair/Supervisor Potter (County of Monterey)
1st Vice Chair/Mayor Edelen (City of Del Rey Oaks)
Mayor Pendergrass (City of Sand City)
Mayor Pro-Tem Kampe (City of Pacific Grove)
Supervisor Parker (County of Monterey)
Mayor Donohue (City of Salinas)

Councilmember Selfridge (City of Monterey)
2nd Vice Chair/Mayor Pro-Tem O'Connell
(City of Marina)
Mayor McCloud (City of Carmel-by-the-Sea)
Councilmember Oglesby (City of Seaside)
Jim Cook (County of Monterey)

Arriving after the roll: Mayor Bachofner (City of Seaside). Absent: Councilmember Brown (City of Marina)

Ex-Officio members present:

Nicole Charles (27th State Assembly District)
Justin Wellner (California State University Monterey Bay ("CSUMB"))
Dr. Doug Garrison (Monterey Peninsula College ("MPC"))
Debbie Hale (Transportation Agency for Monterey County ("TAMC"))
Gail Youngblood (Base Realignment and Closure ("BRAC"))
Graham Bice (University of California Santa Cruz ("UCSC"))
Kenneth Nishi (Marina Coast Water District ("MCWD"))

Arriving after the roll: Hunter Harvath (Monterey Salinas Transit), Hans Poschner (15th State Senate District), and Alec Arago (17th Congressional District).

Absent: Dr. Shepard (Monterey Peninsula Unified School District) and COL Joel Clark (United States Army).

- 2. PLEDGE OF ALLEGIANCE** - Chair Potter led the Pledge of Allegiance.

3. ANNOUNCEMENTS, ACKNOWLEDGEMENTS, CORRESPONDENCE

Chair Potter announced that former Seaside City Manager, Tim Brown passed away recently. Chair Potter also announced that vandalism threats of violence on the former Fort Ord have been reported and measures will be taken to aggressively pursue legal remedy. ESCA Program Manager Stan Cook reported that there has been an increase in vandalism in the areas of munitions, and physical threats have been made to people working on the former Fort Ord. Mr. Cook also informed the Board that there are infrared cameras strategically located throughout those areas. Senior Planner Jonathan Garcia reported that the former Fort Ord was selected for a Feasibility Study under the Environmental Protection Agency's "RE-Powering America's Land Initiative." Executive Officer Houlemard announced the recruitment for a Principal Analyst. The position will serve as external affairs liaison and will replace the former Director of Planning and Finance position previously held by Assistant Executive Officer Endsley.

4. **PUBLIC COMMENT PERIOD** - Pastor Stone asked about the location of the Veterans (VA) Clinic. He said that the public should have some say about where it is, when development will happen and asked when jobs would become available.

5. **CONSENT AGENDA**

- a. October 14, 2011 FORA Board meeting minutes
- b. 2012 Fort Ord Reuse Authority board meeting dates
- c. Budget adjustment to Creegan + D'Angelo construction inspection services contract
Supervisor Parker asked that Items 5a and 5c be pulled for further comment. Discussion clarifying the Creegan + D'Angelo contract ensued. **MOTION to approve the Consent Agenda as corrected was made by Supervisor Parker, seconded by Mayor McCloud and carried.**

6. **OLD BUSINESS**

- a. Preston Park – Mr. Houlemard gave an update on the disposition of Preston Park and informed the board that the negotiating committee was engaging in the mediation process with the City of Marina and will report back any progress. The report was received without exception.
- b. California Central Coast Veterans Cemetery – Senior Planner, Jonathan Garcia gave an update stating that Assembly Bill 629 will go into effect January 2012, deeming FORA the contractor for the state cemetery. He said that FORA and Seaside staff are working together with the State Department of Finance.

7. **NEW BUSINESS**

- a. **Motion to approve City of Seaside Housing Element Consistency Determination made by Mayor Edelen seconded by Councilmember Oglesby and carried.**
- b. Executive Officer Houlemard provided a PowerPoint presentation to the Board outlining the Fort Ord Reuse Authority 2012 Legislative Agenda/Work Plan. **Motion to approve made by Mayor Edelen and seconded by Mayor McCloud, motion carried.**

8. **EXECUTIVE OFFICER'S REPORT**

Executive Officer Houlemard highlighted the items for information and the Board took action on the following: Item 8a ii: Outstanding Receivables – **A motion was made by Supervisor Parker, seconded by Councilmember Oglesby, authorizing the FORA Executive Officer to negotiate a FY 07-08 tax increment payment agreement with the City of Marina. Motion carried unanimously.** Item 8c: Mr. Houlemard reported that the Finance Committee met on both October 28 and November 16th. **Motion to receive the October 28th meeting minutes and approve modifications to the Fort Ord Reuse Authority Board Policy regarding outstanding receivables late fees, was made by Mayor McCloud, seconded by Mayor Edelen and carried.**

9. **ITEMS FROM MEMBERS** – none

10. **CLOSED SESSION** – The order of Item 10 was changed so the City of Marina representative could participate in Item 10c.

- a. Potential Litigation – City of Marina
 - i. Tax Increment Revenue
- b. Preston Park Mediation – instructions to Counsel
- c. Conference with Authority Counsel: Pending Litigation - pursuant to subdivision (b) of California Government Code Section 54956.9: one case

11. REPORT OUT OF CLOSED SESSION - Item 10 a. -The Board gave authority for the Executive Officer to execute an agreement indemnifying Alliance against claims. **Item 10b.** - The Board authorized the Executive Officer to take appropriate action. **Item 10c.** – The Board gave instructions to counsel.

12. ADJOURNMENT – There being no further business, Chair Potter adjourned the meeting at 5:38 p.m.

Minutes prepared by Daylene Alliman, Deputy Clerk

Approved by _____

Michael A. Houlemard, Jr., Executive Officer/Clerk

DRAFT

FORT ORD REUSE AUTHORITY BOARD REPORT

OLD BUSINESS

Subject:	Preston Park – disposition update	
Meeting Date:	December 16, 2011	ACTION
Agenda Number:	6a	

RECOMMENDATION(S):

- i. Authorize staff to secure an updated appraisal for Preston Park.
- ii. Authorize the Executive Officer to execute a Preston Park Management Agreement with Alliance substantially similar to **Attachment A** and reviewed by Authority Counsel.
- iii. Authorize staff to sell Preston Park.

BACKGROUND/DISCUSSION:

The Fort Ord Reuse Authority (“FORA”) and the City of Marina (“Marina”) initiated Preston Park sale negotiations over two years ago. An appraisal jointly commissioned by FORA and Marina and conducted by CB Richard Ellis, Inc. was carried out in August 2010 and established a value for Preston Park. Earlier this year, FORA and Marina agreed to conduct mediation meetings in an attempt to conclude negotiations. Marina and FORA representatives attended a mediation meeting with retired judge Richard Silver on August 2, 2011. Significant progress was made. A second mediation session was held on October 6, 2011. Judge Silver spoke to the Board in closed session on October 14, 2011. As of this writing, Marina and FORA have continued to participate in the mediation process.

Since FORA is currently set to sunset on June 30, 2014, FORA has a fiduciary responsibility to its members and to the public to obtain fair market value for Preston Park and use its portion of the proceeds to meet Capital Improvement Program obligations. FORA’s options are either to obtain fair market value from Marina or from a third party. Since the most recent appraisal was completed in August 2010, securing an updated appraisal with updated market assumptions would be the next step in moving forward with the sale of Preston Park. Board approval of recommendations i. and iii. would provide staff direction to begin marketing Preston Park for sale. This direction would not prevent continued negotiations with Marina. However, it would give the Board a more defined timeline for obtaining fair market value for Preston Park.

The current Preston Park Management Agreement will expire on December 31, 2011. Board approval of recommendation ii. would allow FORA to execute a contract with Alliance directly for management of Preston Park until December 31, 2012 or until FORA sells Preston Park. FORA sent Alliance a copy of the draft management agreement contract for their review. If any substantial changes to the contract need to be made resulting from Alliance’s review, staff will bring the revised contract back to the Board. During closed session at its November 18, 2011 meeting, the Board authorized the Executive Officer to enter into an interim management agreement with Alliance for up to 90 days should the proposed management agreement described in **Attachment A** take longer to finalize. This will allow continued professional management of the facility until the property is sold. Staff recommends continuing to hold the rents constant at the prior July 2012 levels and using the Board approved FY 10-11 budget for the balance of FY 11-12. All capital improvements will continue to be evaluated by FORA on a

case-by-case basis with priority given to tenant health and safety. Staff notes that the Marina City Council met on Tuesday December 6th, 2011 and discussed Preston Park under closed session. As of this writing, staff is not aware of any outcomes from this meeting.

FISCAL IMPACT:

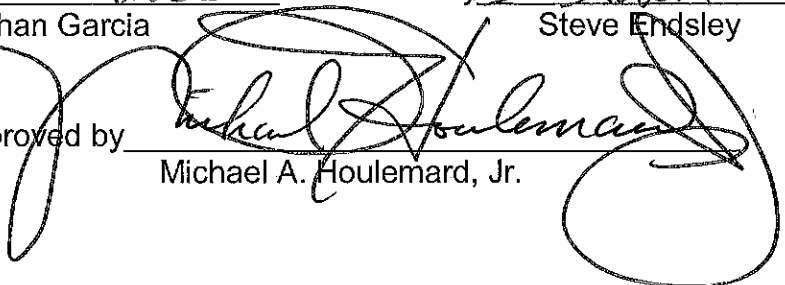
Reviewed by FORA Controller 

Costs associated with Preston Park disposition including legal and mediation costs are included in the approved FY 11-12 operating budget. An updated appraisal of Preston Park is expected to cost approximately \$5,000. Costs associated with staff oversight of Alliance can be absorbed in the FY 11-12 operating budget.

COORDINATION:

Marina, Executive Committee, Authority Counsel, special legal counsel, Judicial Arbitration and Mediation Services, Inc. ("JAMS"), Preston Park ad hoc Negotiating Committee, and Alliance.

Prepared by  Reviewed by 
Jonathan Garcia Steve Endsley

Approved by 
Michael A. Houlemard, Jr.

PRESTON PARK MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT ("Agreement") is dated for reference on December __, 2011. 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, 2012, and shall continue to midnight, December 31, 2012 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

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.

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.

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.

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"). 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. 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 and 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.

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 be 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 Except as otherwise provided in this Agreement, all contractual obligations incurred by Operator to third parties in the course of managing the Property shall be obligations of Operator. 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.

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 (15th) of each month, disburse funds via wire transfer to Owner to an account as stipulated by Owner to Operator in writing.

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(a) shall not apply to Claims that are not covered under the commercial general liability insurance policy procured by Operator 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 2nd 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 (3 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 three calendar days of the initial request. If the parties are unable to amicably resolve such disagreements or misunderstandings, they agree to enlist the informal assistance of a third party to help them reach an accord. If any disagreement remains unresolved for ten days, the parties agree to submit it to mediation.

9.8.2. *Mediation (30 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 ten days after the initial mediation demand and must be concluded not more than thirty (30) 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. 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 (60 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.

Arbitration shall be commenced within thirty days of the arbitration demand and concluded within 60 days of arbitration demand.

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

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:

- Regina Leachman, Regional Manager**
- Greg Beeler, Regional Maintenance Supervisor**
- Kelly Ogan, Regional Training Manager**
- Amy Guerrero, Regional Marketing Manager**
- Annette Thurman, Vice President of Operations**

Regina Leachman, Regional Manager, has an office at Schoonover Park. She will be at the communities at least two days a week and will have the capacity to spend additional time as needed. Regina will be responsible for all compliance training related to the approved below market rate rental program.

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

Kelly Ogan and Amy Guerrero, Regional Training Manager and Regional Marketing Manager, will spend no less than one day each month at the site providing leasing and customer service training and marketing resources. Kelly and Amy 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

FORT ORD REUSE AUTHORITY BOARD REPORT

OLD BUSINESS

Subject: California Central Coast Veterans Cemetery – update

Meeting Date: December 16, 2011

Agenda Number: 6b

INFORMATION

RECOMMENDATION(S):

- i. Receive an update on the California Central Coast Veterans Cemetery ("CCCVC").
- ii. Receive a report regarding funding

BACKGROUND/DISCUSSION:

The State Assembly and Senate passed AB 629 earlier this summer. Governor Brown signed AB 629 into law on September 7, 2011, allowing the California Department of Veterans Affairs ("CDVA") to contract directly with FORA to conduct veterans cemetery design, potentially reducing the Endowment Fund requirement by \$500,000. AB 629 will go into effect in January 2012.

FORA, Seaside, and County staff are currently reviewing FORA's most recent estimate for conducting the cemetery design work in two phases. If there are any changes to the estimate, FORA will provide them to CDVA. CDVA will work with the California Department of Finance ("CDF") with the goal of obtaining their sign-off to use FORA's estimate instead of the California Department of General Services' ("CDGS") higher estimate as a basis for the endowment funding requirement needed to allow cemetery design to proceed. There is no specific deadline, but, depending on whether FORA's or CDGS's estimate is used by CDF, either \$560,000 or \$1,006,000 would need to be deposited into the State's Veterans Cemetery Endowment in order for phase I design (called Preliminary Plans) to begin. Another \$948,000 to \$960,000 would be needed to begin phase II design (called Working Drawings).

At the October FORA Board meeting, Supervisor Parker requested that FORA staff address the question: Is there a means for FORA to fund the Veterans Cemetery? FORA staff researched this question and found a March 13, 2006 memorandum from Authority Counsel Jerry Bowden to then Chair Ila Mettee-McCutchon (**Attachment A**) addressing the question of whether or not FORA could provide financing for the Veterans Cemetery. The memo concludes that FORA cannot do so directly unless the FORA act is amended and it is agreed to by the jurisdictions in which the cemetery property is located (Seaside and County of Monterey).

FISCAL IMPACT:

Reviewed by FORA Controller 

Staff time related to this item is included in FORA's annual budget.

COORDINATION:

City of Seaside, County of Monterey, CDVA, CDF, CDGS, Executive Committee, and Administrative Committee.

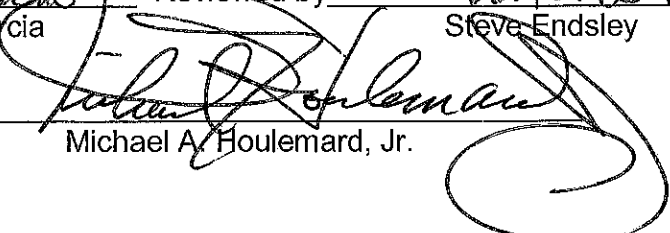
Prepared by


Jonathan Garcia

Reviewed by


Steve Endsley

Approved by


Michael A. Houlemard, Jr.

DAWSON, PASSAFUIME, BOWDEN & MARTINEZ

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A LAW CORPORATION
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Scotts Valley, California 95066-4291

(831) 438-1221
FAX (831) 438-2812

March 13, 2006

Ila Mettee-McCutchon

Michael A. Houlemard, Jr.
Fort Ord Reuse Authority
100 12th Street, Building 2880
Marina, CA 93933



Re: Veterans Cemetery

Dear Ms. Mettee-McCutchon and Mr. Houlemard:

This letter responds to inquiries about the Fort Ord Reuse Authority's (FORA) authority to sponsor or support a veterans cemetery on the former Fort Ord. The answer is *FORA lacks such authority.*

1. FORA has Limited Powers

FORA is not like a city or a county because it is not a general purpose entity. FORA has only those powers given to it by the legislature. FORA's authority is spelled out in the FORA Act, (Government Code sections 67650-67700).

Section 67657 (a) of the FORA Act reads in pertinent part:

"The authority is a public corporation of the State of California. ... [T]he powers and duties of [FORA] are those granted or imposed by this title."

FORA's "powers and duties" are specifically enumerated in the FORA Act. They refine and elaborate on the statement of FORA's mission given in section 67658:

"67658. The authority's purpose is to plan for, finance, and manage the transition of the property known as Fort Ord from military to civilian use."

FORA lacks authority to perform or sponsor enterprise functions normally performed by local government, including establishment of cemeteries.

2. FORA has Three Primary Goals

FORA's statutory mission is to :

- a. adopt a Reuse Plan, Gov. C 67675 (a),
- b. finance or build roads and similar public works. Gov. C 67679 (a), and
- c. transfer land from the Army to FORA's member agencies 67678 (a).

The FORA Act does not confer authority to build, maintain or operate an enterprise of any sort, including a cemetery.

3. FORA has Limited Power to Retain Land

FORA would need to retain land received from the Army if it were to establish a cemetery. FORA has limited authority to retain real property. That authority is found in Gov. C. 67678 (b) (4):

S

“... the board may retain real ... property ... [only if]:
(i) ... retention of the property is necessary or convenient to carry out the authority's responsibilities ...
(ii) ...retention of the property will not cause significant financial hardship to the city or county with jurisdiction over the property.”

The first finding *can not* be made. Operating a cemetery is not among FORA's statutory responsibilities. The second finding can not be made either. Operating a cemetery would “cause significant financial hardship to the city or county with jurisdiction over the property” when FORA sunsets.

4. FORA Sunsets in Eight Years

FORA will go out of existence on June 30, 2014. That is a mere eight years away. When FORA ceases to exist, the city or county with jurisdiction over the land will become responsible of the cemetery by default. Even if FORA had the authority to found and operate a cemetery, it lacks authority to impose a continuing financial burden on the member agency with jurisdiction over the land where the cemetery would be situated.

5. Financial Support for a Veterans Cemetery

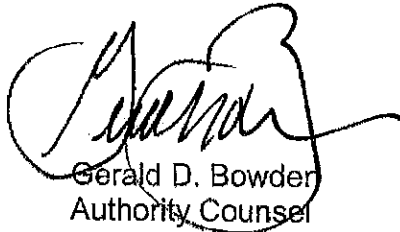
You have also asked whether FORA has authority to finance a veterans' cemetery if another agency accepts responsibility for its construction, operation and maintenance. The answer to that question is also No. Gov. C 67679 (a) limits FORA's spending power its core mission. That means FORA may use its revenue to transfer property, build roads and other infrastructure to advance the reuse plan. FORA lacks the authority to pay the capital or operation costs of a Veteran's Cemetery or any similar project.

6. Conclusion

From a legal perspective, three things would need to happen if the FORA Board were to sponsor (or provide financing for) a veterans cemetery on the former Fort Ord:

- a. The FORA Act would need to be amended to permit it;
- b. The city/county with jurisdiction over the land would need to agree to it; and
- c. A permanent sponsor would need to be found to assume responsibility for the operation after FORA's sunset date.

Sincerely,



Gerald D. Bowder
Authority Counsel

FORT ORD REUSE AUTHORITY BOARD REPORT

OLD BUSINESS

Subject: FORA's contracting, contractor development, and regional job training efforts

Meeting Date: December 16, 2011

Agenda Number: 6c

INFORMATION

RECOMMENDATION:

- Receive a report regarding the Fort Ord Reuse Authority's ("FORA's") historical efforts in contractor development, local employment, and regional job training; and
- Receive a status report on jobs created on the former Fort Ord to date.

BACKGROUND:

FORA was created to execute broad based reuse of the former Fort Ord with the expectation of economic recovery from regional impacts of the military installation's closure. As was broadly described in the federal disposition work in the early 1990s, the US military operated a full complement of activities which employed thousands of civilians and more than 15,000 soldiers. That activity produced well in excess of \$500M of direct economic contribution to the Monterey regional economy. Further, the former Fort Ord economic contribution had secondary and tertiary impacts for hospitality, tourism and entertainment for the whole region. In early planning stages, the community based Fort Ord Task Force and Fort Ord Reuse Group emphasized job creation and economic recovery through educational and environmentally-sensitive economic development programs.

When FORA was created, the number of jobs on the former Fort Ord had dwindled to a few hundred, primarily the remaining US Army uniformed and civilian employees working on the disposal, clean-up and property management activities of the former base. Under the terms of the FORA Base Reuse Plan ("BRP"), as drafted in 1996 and adopted in 1997, plans called for creating between 15K and 18K jobs, protecting the best environmental resources on the former base and providing new linkages between the former base and the adjacent impacted communities. Implementing that plan through the creation of California State University Monterey Bay ("CSUMB"), the University of California Monterey Bay Education Science and Technology Center, Monterey Peninsula College satellite campus, Monterey College of Law, expansion of military presence, and other educational and economic programs has generated nearly 3,000 new jobs for the region. In addition, FORA, the US Army and new developments on the base have attempted to contract for services with local agencies – with varying success.

DISCUSSION:

Through several Economic Development Agency ("EDA") grant funded roadway projects, FORA has helped to create and / or retain hundreds of permanent and temporary construction jobs. Approximately \$70M in capital improvements have been completed on the former base through the Capital Improvement Program. A large majority of the \$70M was invested locally, through the hiring of local contractors, sub-contractors, laborers and suppliers to complete the projects. For example, during Phase V of General Jim Moore Boulevard construction, approximately 100 temporary and permanent local jobs were created and / or retained and about \$7M was invested through construction of the roadway. With every EDA grant funded project, FORA enters into a contract and requires that the construction contractor pay the higher of California Prevailing Wages or Federal Davis-Bacon wages. Further, Union contractors must comply with Union rules for employment of apprentices and trainees.

Additionally, the BRP outlines future opportunities for FORA and its land use jurisdictions to continue to create jobs in the local community through the development of the former Fort Ord. By 1) implementing projects which have the potential for hiring local community residents, 2) providing new training and / or coordinating with external agencies who are providing training, and 3) formulating a human resources development plan there is the potential to replace the 18,000 jobs that were lost when the base was closed. The BRP anticipates

that most of these jobs will be created in the business and light industry sector, visitor and retail service sector, and recreation and entertainment industry.

In addition, FORA invested considerable revenues in upgrades and improvements at Preston Park – including the construction of facilities that created the recreational area that serves local citizens. All of Preston Park work has been accomplished through focusing on local hiring and contracting through joint efforts with the City of Marina.

FORA has also sponsored a number of training activities over its history – including several local efforts for hazardous waste abatement in building removal activities as well as sub-contractor business skill, bidding, and marketing through the Contractors' Academy that was begun and operated by FORA for five years before being turned over to the Builders Exchange. This effort ensured that construction contracts at CSUMB were appropriately sized to allow successful bidding by local contractors. FORA continues to support work of the various contractor training efforts in the region.

Most recently, FORA partnered with the US Environmental Protection Agency and Fort Ord Environmental Justice Network ("FOEJN") in the Superfund Job Training Initiative ("Super JTI"). This job readiness program provided training for 20 underserved citizens impacted by the closure of the former Fort Ord. Those selected for the program were trained in life skills (such as getting to work on time), hazardous materials handling including asbestos and lead-based paint remediation, and a pre-apprenticeship program designed by the Building Construction Trades Council. Upon completion of the Super JTI program, trainees receive mentoring and support for an additional year.

Ultimately, the creation of jobs is hinged largely on development of the former Fort Ord. The current economic downturn has indefinitely stalled development, causing a sluggish pace of job growth. As economic conditions improve nationally, local benefits will be realized through the collection of development fees and land sales revenue, providing FORA with the resources to complete its mission of economic recovery through educational and environmentally-sensitive development programs.

FISCAL IMPACT:

Reviewed by FORA Controller 

Staff time for this item is included in the approved FY 11-12 budget.

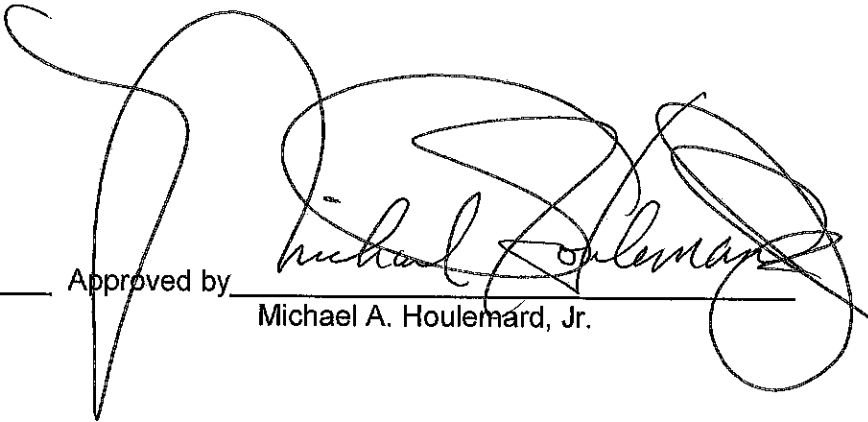
COORDINATION:

Executive committee, FOEJN

Prepared by


Crissy Maras

Approved by


Michael A. Houlehard, Jr.

FORT ORD REUSE AUTHORITY BOARD REPORT

OLD BUSINESS

Subject: Salary survey – consultant recommendations

Meeting Date: December 16, 2011

Agenda Number: 6d

ACTION

RECOMMENDATION(S):

- i. Adopt recommended salary range adjustments (**Attachment A**)
- ii. Approve longevity policy adjustment (**Attachment B**)

BACKGROUND/DISCUSSION:

As part of the FY 11-12 budget process the Board requested that a salary study be performed and those recommendations by the consultant be considered by the FC, after which certain implementation actions by the Executive Officer could proceed.

The Finance Committee ("FC") met on November 16, 2011 and continued its discussion of the salary survey review item from the October 28 meeting. During the October meeting, FC members had requested that the consultant add four additional entities to the salary survey. FC members 1) accepted the consultant's report, which had some adjustments from the added agency salaries, 2) recommended the adoption of proposed salary ranges with the effective date of January 1, 2012 and 3) scheduled a December 14 review of the budget impact of the salary ranges/Longevity Policy adjustment implementation. The Executive Committee ("EC") met on November 30 and reviewed the recommendations provided by the Finance Committee, since the EC is tasked with making any recommendations to the Board regarding salary adjustment/policy. The EC approved the staff recommendation to request Board approval of the proposed salary ranges and Longevity Policy revision, pending FC concurrence and review of the budget impact. The Executive Committee asked the Finance Committee to consider, at a future meeting, the issue of longevity adjustments for employees hired after January 1, 2012.

It is important to note that the Board approved budget authority to support these actions in June, and provided the Executive Officer with authority to implement all appropriate step, merit, longevity increases and/or stipends pending the salary survey conclusions. What remains is to receive Board approval of the consultants' recommendations, which can be considered as one motion with two parts to accept: 1) the consultants' recommendation that all employees begin to be brought toward equity by adoption of new salary ranges, and 2) the EC recommendation to treat all FORA employees, including contract employees, (excluding the Executive Officer who is on a performance contract) equally and as at-will employees, eliminating employment contracts and providing all employees comparable benefits.

Additionally, the Consultant recommended an amendment to the existing FORA Longevity Policy to simplify and remove ambiguity by stating that longevity pay should be awarded for length of service with the organization rather than length of time in a classification, irrespective of the individual's current salary step.

On December 14th the FC reviewed an analysis of the budgetary effect of a) proposed equity adjustments and, b) the revised Longevity Policy. The FC will present their conclusions/recommendations at this Board meeting.

FISCAL IMPACT:

Reviewed by FORA Controller 

Staff time for this item is included in the approved FY 11-12 budget. The Consultant's services were limited to \$12,000 in the FY 11-12 budget and were accomplished within this authority.

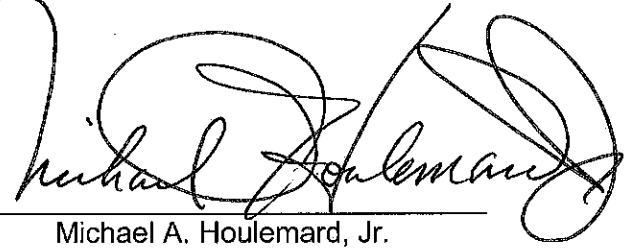
COORDINATION:

Finance Committee, Executive Committee, Shellie Anderson (Bryce Consulting)

Prepared by


Daylene Alliman

Approved by


Michael A. Houlemard, Jr.

RECOMMENDED SALARY SCHEDULE & LONGEVITY POLICY										LONGEVITY	
Classification	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	L1	L2			
1 Accountant (Accounting Officer)	57,720	60,606	63,636	66,818	70,159	73,667					
2 Grants Analyst (Administrative Coordinator)	63,127	66,284	69,598	73,078	76,732	80,568					
3 Assistant Executive Officer*	112,424	118,045	123,947	130,144	136,651	143,484					
4 Associate Planner - New hire	61,883	64,978	68,227	71,638	75,220	78,981					
5 Information Technology Technician (Communications Coordinator)	53,303	55,968	58,767	61,705	64,790	68,030			After 10 years	After 13 years	
6 Finance Manager (Controller)	93,057	97,710	102,596	107,726	113,112	118,767					
7 ESCA Program Coordinator	62,502	65,627	68,909	72,354	75,972	79,771					
8 Executive Assistant/Deputy Clerk	61,883	64,978	68,227	71,638	75,220	78,981					
9 Administrative Assistant (Principal Office Assistant)	39,547	41,524	43,601	45,781	48,070	50,473					
10 Principal Analyst (Quality Control Coordinator) - New Hire	86,796	91,136	95,693	100,478	105,501	110,777					
11 Real Property/Facilities Manager (ESCA PM)	98,782	103,721	108,908	114,353	120,071	126,074					
12 Senior Planner	68,358	71,776	75,365	79,133	83,089	87,244					
13 Senior Project Manager*	81,766	85,854	90,147	94,654	99,387	104,357					

*No range adjustment for current employees

CURRENT SALARY SCHEDULE & LONGEVITY POLICY										LONGEVITY		
Classification	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	L1 - Step 7	L2 - Step 8				
1 Accounting Officer	48,063	50,466	52,989	55,638	58,420	62,568	65,697	68,981				
2 Administrative Coordinator	49,762	52,251	54,863	57,606	60,487	63,511	66,686	70,021				
3 Assistant Executive Officer	121,789	127,878	134,272	140,986	148,035	155,437	163,208	171,369				
4 Associate Planner	New Classification											
5 Communications Coordinator	41,686	43,770	45,958	48,256	50,669	53,202	55,863	58,656				
6 Controller	83,273	87,437	91,809	96,399	101,219	106,280	111,594	117,174				
7 ESCA Program Coordinator	59,280											
8 Executive Assistant/Deputy Clerk	59,838	62,830	65,971	70,655	74,188	77,897	81,792	85,882				
9 Principal Office Assistant	34,336	36,053	37,856	39,748	41,736	44,699	46,934	49,281				
10 Quality Control Coordinator	New Classification											
11 Real Property/Facilities Manager (ESCA PM)	83,680	87,864	92,257	96,870	101,713	108,935	114,382	120,101				
12 Senior Planner	58,514	61,440	64,086	67,790	71,680	75,763	80,052	84,554				
13 Senior Project Manager	82,352	86,470	90,793	95,333	100,100	105,105	110,360	115,878				

Recommended Policy

FORA LONGEVITY PAY POLICY

*Effective January 1, 2012, the following longevity pay will be provided to full-time employees of FORA in "good standing."**

Employees who have completed ten (10) years of continuous full-time service, a 5.0% of salary longevity pay will be awarded.

Employees who have completed thirteen (13) years of continuous full-time service, an additional 5.0% longevity pay will be awarded.

*Good Standing includes applicable awards of merit based on performance.

- Longevity pay amounts are computed by multiplying the employee's annual base salary rate (as of the eligibility date) by the appropriate percentage.
- Longevity pay is not considered a part of annual base nor is it represented in employee and payroll records as part of annual base salary.
- Longevity pay is not awarded where there are breaks in service.

Current Policy

E 2007

Salary/ Longevity Steps

This policy adds two additional steps to existing salary range of eligible personnel. One longevity step is 5 (five) percent.

ELIGIBILITY REQUIREMENTS:

- Eligible personnel are full-time employees employed with FORA for at least 10 years.
- The employee has been at the maximum salary step in the current salary range for at least one year.
- The employee received a performance evaluation of successful or higher within the 12-month period preceding the longevity step increase.
- Employees in longevity are not eligible for any other salary step increase (such as merit increase), but are eligible for the cost of living adjustment authorized for all other employees.
- Employees enter the first longevity step as soon as eligibility criteria are attained.
- After step L1 has been attained, the second longevity step L2 is awarded in three years.

FORT ORD REUSE AUTHORITY BOARD REPORT

NEW BUSINESS

Subject:	Fiscal Year 10-11 Annual Financial Report (Audit Report)	
Meeting Date:	December 16, 2011	ACTION
Agenda Number:	7a	

RECOMMENDATION:

Accept the Marcello & Company, Certified Public Accountants (Auditor) Fort Ord Reuse Authority (FORA) Fiscal Year 10-11 Annual Financial Report (Audit Report).

BACKGROUND:

Each fall, FORA staff and Auditor present the Audit Report to the Finance Committee (FC) for review and to the FORA Board for acceptance. Every three to five years the financial consultant that provides the requisite opinion has changed by direction of the Board. Since the first audit in 1995, the financial consultants have expressed unqualified opinions that the financial statements present fairly, in all material respects, the financial position of the Fort Ord Reuse Authority.

Pursuant to GASB-34 provisions, the Audit Report includes a management discussion and analysis (MD&A) in conjunction with the new financial statement reporting. The MD&A introduces the financial statements and provides an analytical overview of FORA's fiscal year financial activities; it begins on page 3 of the Audit Report.

DISCUSSION:

The audit work began in mid-October and was completed by mid-November. FC reviewed the draft Audit Report on November 16, 2011. The Auditor presented the draft Audit Report conclusions and recommended adding/editing several notes to the financial statements. He noted that FORA's internal controls produced financial statements that fairly represent FORA's financial position at June 30, 2011. He did not report any findings or improvements in the internal controls. The FC suggested several edits and minor adjustments to the draft. The FC unanimously voted to recommend that the FORA Board accept the FY 10-11 Audit Report pending the recommended modifications.

The Auditor's letter expresses the unqualified opinion that the financial statements present fairly, in all material respects, FORA's financial position as of June 30, 2011. Further, Mr. Marcello asserted that the results of FORA operations for the year concluded in conformity with GAAP. There were no findings or questioned expenditures.

The Audit Report is available on-line at www.fora.org.

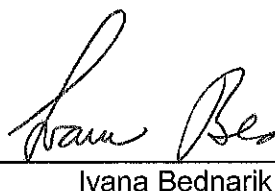
FISCAL IMPACT:

Cost for the audit services is included in the approved operating budget.

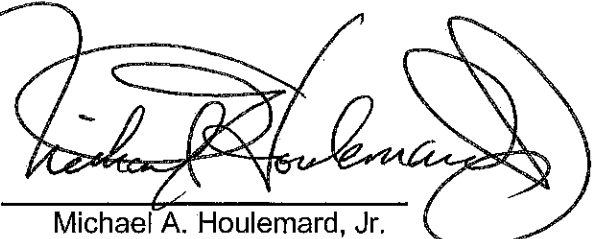
COORDINATION:

Finance Committee, Executive Committee, Marcello & Company.

Prepared by:


Ivana Bednarik

Approved by:


Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject:	Outstanding Receivables	
Meeting Date:	December 16, 2011	INFORMATION
Agenda Number:	8a	

RECOMMENDATIONS:

Receive a Fort Ord Reuse Authority (FORA) outstanding receivables update as of November 30, 2011.

BACKGROUND/DISCUSSION:

FORA has several significant outstanding receivables. The Late Fee policy adopted by the FORA Board requires receivables older than 90 days be reported to the Board.

	Item Description	Amount Owed	Amount Paid	Amount Outstanding
1 City of Del Rey Oaks	PLL Loan Payment 09-10	182,874	-	182,874
	PLL Loan Payment 10-11	256,023	-	256,023
	PLL Loan Payment 11-12	256,023	-	256,023
	<i>DRO Total</i>			
2 City of Marina	Tax Increment 08-09	108,862	108,862	-
	Tax Increment 07-08	111,246	-	111,246
	Preston Park Excess Revenue	230,000	230,000	-
	<i>Marina Total</i>			
3 City of Seaside	Tax Increment 03-10	358,830	180,000	178,830
4 Monterey County	Lease revenue 10-11 (Ord Market)	25,000 *	-	25,000
	<i>*Amount to be determined</i>			
	Total Outstanding Receivables			\$ 1,009,996

1. City of Del Rey Oaks (DRO)

- **PLL insurance annual payments:** In 2009, DRO cancelled agreement with its project developer who previously made the PLL loan payments. The FORA Board approved a payment plan for DRO and the interim use of FORA funds to pay the premium until DRO finds a new developer (who will be required by the City to bring the PLL Insurance coverage current). DRO agreed to make interest payments on the balance owed until this obligation is repaid, and they are current.

Payment status: First Vice Chair Mayor Edelen informed both the Board and Executive Committee that DRO will borrow or secure funds from a new developer to pay off this obligation in this FY.

2. City of Marina (Marina)

- **Tax increment (TI):** In the fall of 2010, as directed by the FORA Board during the Capital Improvement Program review, FORA conducted an audit of TI revenue that FORA collects from Seaside, Marina and County of Monterey. The results indicated that FORA was owed property TI payments from Seaside and Marina. Both cities acknowledged the debt.

Marina retained a portion of FORA's tax increment in FY 07-08 and FY 08-09. At the July 2011 meeting, FORA Board approved an MOA with Marina for a phased (2 payments) repayment of the FY 08-09 tax increment obligation and this underpayment has been paid off in November 2011.

Regarding the FY 07-08 underpayment, after lengthy communications between FORA and Marina, the City attorney advised FORA that Marina agrees to pay the FY 07-08 TI underpayment and proposes payment plan pursuant to an MOA similar to the one for the FY 08-09 underpayment. At its November 18, 2011 meeting, the FORA Board authorized the Executive Officer Houlemard to negotiate a FY 07-08 tax increment payment agreement with Marina. Per the Executive Committee ("EC") direction, the first payment was to be due on January 1, 2012 given that this amount has been due for over two years. The draft MOA for a phased (2 payments) was forwarded to Marina on November 21; they requested the first payment be due on February 1, 2012 to allow sufficient time for the Council's approval and payment processing following the Christmas/Holiday break. The EC authorized the Executive Officer to execute this agreement with this minor change requested by Marina.

Payment status: The MOA (Attachment A) was approved by Marina City Council on December 6th. The first installment is due February 1, 2012, the second (last) installment is due June 30, 2012.

- Preston Park Excess Revenue: At the August 12, 2011 meeting, the FORA Board assigned staff to direct Alliance (the Preston Park management company) to distribute accumulated FY 08-11 excess revenue. FORA staff formally transmitted this direction to Alliance, but were informed by Alliance that Marina instructed them to withhold the distribution. At the November 18, 2011 meeting, the FORA Board, at the closed section, directed the FORA Counsel to execute an indemnity agreement with Alliance and request an immediate disbursement of the undistributed revenue (50% to FORA and 50% to Marina).

Payment status: FORA received full payment on November 22, 2011.

3. City of Seaside (Seaside)

- Tax increment: Please see paragraph 2 above regarding Seaside tax increment underpayment. At the February 2011 meeting, the FORA Board approved an MOA with Seaside for a phased (4 payments) repayment of this obligation.

Payment status: Seaside paid the first and second installment on time. The next (third) installment payment is due January 31, 2012.

4. County of Monterey (County)

- Lease revenue: FORA was notified last week by County staff that the Ord Market Lessee may owe County/FORA in lease revenue. Under the Lease terms, the Lessee pays the larger of basic rent or 3% of gross monthly sales; the Lessee has been paying the basic rent, submitted financial documents set forth underpaid rent for 2010 of about \$50K.

Payment status: County is working with the Lessee to determine the amount owed.

FISCAL IMPACT:

Negative. FORA must expend resources or borrow funds until these receivables are collected. The majority of FORA revenues come from member/jurisdiction/agencies and developers. FORA's ability to conduct business and finance its capital obligations depends on a timely collection of these revenues.

COORDINATION:

Finance Committee, Executive Committee

Prepared by

Ivana Bednarik

Approved by

Michael A. Houlemard, Jr.

**MEMORANDUM OF AGREEMENT
BY AND BETWEEN
THE FORT ORD REUSE AUTHORITY AND
THE REDEVELOPMENT AGENCY OF THE CITY OF MARINA
FOR PAYMENT OF TAX INCREMENT PASS-THROUGH REVENUE**

THIS MEMORANDUM OF AGREEMENT ("MOA"), dated for reference as December 1, 2011, by and between the Fort Ord Reuse Authority ("FORA"), a corporation of the State of California created, operated and existing under the laws of the State of California and the Redevelopment Agency of the City of Marina ("Agency"), collectively referred to herein as "the Parties."

I. RECITALS

1.1 State Law entitles FORA to receive a percentage of the tax increment ("TI") revenue generated from redevelopment projects within the Agency's jurisdiction on the former Fort Ord. This revenue is collected by the County of Monterey ("County") and paid to the Agency, who then passes through the designated TI percentage to FORA which is referred to herein as the "pass-through TI."

1.2 As a part of FORA's Capital Improvement Program review, FORA conducted review of past fiscal years' TI revenue by an independent auditor who confirmed an underpayment in FY 07-08 pass-through TI by the Agency.

1.3 The Agency agrees that the pass-through TI balance due is \$111,245.81 (One Hundred Eleven Thousand Two Hundred Forty Five Dollars and Eighty One Cents).

1.4 The Agency proposes a payment plan to retire this balance due as set forth in this MOA.

1.5 FORA requires near-term repayment to meet its ongoing obligations and Agency agrees to pass-through the balance due in two (2) installments as set forth below.

II. TERMS AND CONDITIONS

2.1 Payment terms: The Agency agrees to pay FORA the outstanding \$111,245.81 pass-through TI balance in two installment payments.

2.2 Principal: The Parties agree to the following payment schedule:

First Installment:	February 1, 2012	\$ 55,622.90
Second Installment:	June 30, 2012	<u>\$ 55,622.91</u>
	Total	\$111,245.81

2.3 Interest: Per FORA Late Fee policy, the outstanding principal balance shall bear simple interest at the rate of 7.2 percent (7.2%) per annum from February 1, 2012 until full repayment of the principal.

III. GENERAL TERMS

3.1 **Further Actions.** Each of the parties agrees to execute and deliver to the other such documents and instruments and to take such actions, as may reasonably be required to give effect to the terms and conditions of this Agreement.

3.2 **Modification.** This Agreement is not subject to amendment or modification except in writing and signed both the parties hereto.

3.3 **Assignment.** Neither party may assign all or portions of its rights and obligations under this Agreement without prior written approval from the other party. Any party shall not unreasonably withhold approval of an

assignment.

3.4 Interpretation. This Agreement has been negotiated by and between representatives of each party 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. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Agreement.

3.5 Attorney's Fees. If any controversy, claim or dispute arises relating to this Agreement, or the breach thereof, the prevailing party shall be entitled to recover from the other party reasonable expenses, attorney's fees and costs. Monterey County will be the venue for hearing any disputes.

3.6 Notice and Correspondence. Any notice required to be given to any party shall be in writing and deemed given if personally delivered upon the other party or deposited in the United States mail, and sent certified mail, return receipt requested, postage prepaid and addressed to the other party at the address set forth below or sent via facsimile transmission during normal business hours to the party to which notice is given at the telephone number listed for fax transmission.

Redevelopment Agency of the City of Marina
Anthony J. Altfeld, Executive Director
Redevelopment Agency of the City Marina
211 Hillcrest Avenue
Marina, CA 93933
Telephone: (831) 884-1278
Facsimile: (831) 384-9148

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

3.7 Areas of Non-Responsibility. Neither party shall be liable for commitments made to a third party by the other party which are:

- a. contrary to this Agreement; or
- b. not specifically included within the obligations of the parties hereto.

Each party shall defend, indemnify and hold the other harmless for any claims, costs, damages or other liability arising from such statements, representations or commitments.

3.8 No Third Party Rights. This Agreement shall not create any benefits or rights in or to a third party.

IN WITNESS WHEREOF, FORA and the Agency, by their duly authorized representatives, have executed this Agreement as of the date first written above.

FORT ORD REUSE AUTHORITY

By: _____
Michael A. Houlemard, Jr., Executive Officer

As to form: _____
Gerald D. Bowden, Authority Counsel

REDEVELOPMENT AGENCY OF THE CITY OF MARINA

By: _____
Anthony J. Altfeld, Executive Director

As to form: _____
Robert Wellington, Agency Counsel

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject: Administrative Committee Report

Meeting Date: December 16, 2011

Agenda Number: 8b

INFORMATION

RECOMMENDATION:

Receive a report from the Administrative Committee.

BACKGROUND/DISCUSSION:

The FORA Administrative Committee met November 9, 2011. Approved minutes are attached.

FISCAL IMPACT:

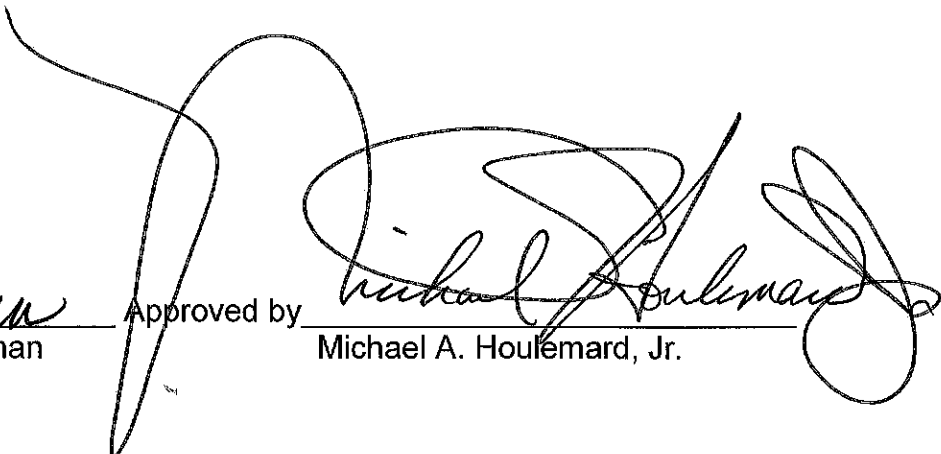
Reviewed by FORA Controller 

Staff time for this item is included in the approved FY 11-12 budget.

COORDINATION:

Administrative Committee

Prepared by 
Daylene Alliman

Approved by 
Michael A. Houlemard, Jr.



Fort Ord Reuse Authority

920 2nd Ave, Suite A, Marina, CA 93933

Phone: (831) 883-3672 • Fax: (831) 883-3675 • www.fora.org

ADMINISTRATIVE COMMITTEE MEETING

Wednesday, November 9th, 2011

8:15 a.m. – Carpenters Union Hall

910 2nd Ave., Marina (on the former Fort Ord)

Minutes

1. **CALL TO ORDER** - Noting a quorum was present, Fort Ord Reuse Authority ("FORA") Executive Officer Michael Houlemard called the meeting to order at 8:16 AM as Chair. The following people, as indicated by signatures on the roll sheet, were present:

Rick Medina, City of Seaside Kristie Reimer, ESCA RP-Arcadis Stan Cook, FORA Nick Nichols, County of Monterey John Marker, CSUMB Lisa Brinton, City of Seaside Laura Cohan, FORA Jonathan Garcia, FORA Bill Collins, BRAC Chieko Nozaki, BRAC Keith McCoy, UCP Anya Spear, CSUMB Tim O'Halloran, City of Seaside	Patrick Breen, MCWD Carl Niizawa, MCWD Graham Bice, UC-MBEST Steve Endsley, FORA Andy Sterbenz, Schaaf & Wheeler Jim Arnold, FORA Bob Schaffer, MCP Vicki Nakamura, MFC Grissy Maras, FORA Paula Koepsel, Monterey Horse Park Doug Yount, City of Marina Debby Platt, City of Marina Kathleen Lee, County of Monterey
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2. **PLEDGE OF ALLEGIANCE** – Chair Houlemard asked Roman Rocca, from DTSC, to lead the Pledge of Allegiance.
3. **ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE**
 - a. Dan Dawson announced that the Heroes Open golf tournament will be held on November 12th to benefit the California Central Coast Veterans Cemetery.
 - b. Graham Bice announced that the results of UC-MBEST's visioning exercise will be made available in January.
 - c. Chair Houlemard noted that former Administrative Committee member/Seaside City Manager Tim Brown passed away recently.
 - d. FORA's Senior Planner, Jonathan Garcia, announced that FORA was notified on November 4th that the former Fort Ord has been selected for a Feasibility Study under the Environmental Protection Agency's "RE-Powering America's Land Initiative" grant program.
 - e. Carl Niizawa, District Engineer for Marina Coast Water District ("MCWD"), announced that a negative declaration for the service area annexation on the former Fort Ord was out for public review, with comments due by the end of November. Since the District already serves the area, the annexation will not cause an environmental impact.
4. **PUBLIC COMMENT PERIOD** – none
5. **APPROVAL OF MEETING MINUTES** – Chair Houlemard noted that some FORA Board Members had suggested that the minutes for this committee were at times lengthy and that action minutes may be more appropriate. Beginning with this meeting, Administrative Committee meeting minutes will be transitioning to action minutes and full audio recordings will be made as well. **Upon a motion made by Graham Bice, and seconded by Nick Nichols, the minutes of the meeting on October 19th, 2011 were approved.**

6. OLD BUSINESS

a. Habitat Conservation Plan – update

Senior Planner Garcia reported that FORA has received all comments back from Habitat Conservation Plan (HCP) permittees. The process is slightly delayed because some comments came in late. The consultant will submit the draft plan to the wildlife agencies by early December for their review. Chair Houlemard added that wildlife agencies should respond by early February, and that sometime next summer the HCP should be going through the final approval process. Early December will be the deadline for the full package.

b. Department of Toxic Substances Control (“DTSC”) comments and review of annual Land Use Covenant (“LUC”) reports

Mr. Garcia presented Roman Rocca from the State DTSC, regarding DTSC’s annual review of LUC reports.

i. LUC Background – no questions

ii. Existing LUC reporting agreement states that LUC reports are required annually for properties that contain contaminated groundwater, landfill, and soil.

iii. Mr. Rocca gave general feedback from his review of FY 09-10 annual LUC reports, saying that staff was satisfied with the reporting, and they were timely. He asked whether upper level management of reporting entities were aware of the reporting and the restrictions with which they must comply. He noted that the main part of implementation is starting, with a lot of transfer and land use, and jurisdictions have conditions to comply with. He urged entities to bring any questions to DTSC or FORA.

iv. Reporting Entities’ questions regarding annual LUC reports – none

v. Reporting Entities’ comments

- Kristie Reimer, ESCA Program Manager from Arcadis, commented that LUC reporting is crucial, because if regulators have concerns about whether LUC’s requirements are being met, they tend to consider regulatory site use closures.
 - Chair Houlemard commented that FORA’s annual reports are very informative to the 5-year reviews. The US EPA makes adjustments based on that report, and some adjustments may happen at DTSC level, too. FORA is required to participate in a 5-year review process for all Fort Ord land use.
 - Mr. Houlemard commented that he believed most city managers are probably aware of these reports.
 - Stan Cook from FORA commented that, from his experience providing support for Eucalyptus Rd and ASR well site, it is important to be aware of whether and how many cubic yards of dirt were being removed, and whether that triggered the ordinance ordinance, and that it is easier to track that issue as it happens instead of catching it later at year-end reporting time.
- Mr. Houlemard offered to draft a memo regarding how upper management is made aware of reports, to more fully address Mr. Rocca’s question.

7. NEW BUSINESS

- a. Mr. Garcia reported that on October 26th, FORA received a consistency determination request for the Seaside housing element, which is one of the Seaside general plan requirements. The housing element must be reviewed and determined by the FORA Board to be consistent with the Base Reuse Plan. Assistant Executive Officer Steve Endsley commented that the housing element is a blueprint for development, reviewed every 5 years. **A motion was made by Doug Yount recommending to the Board that Seaside’s housing element be found consistent with the Base Reuse Plan, seconded by Tim O’Halloran from the City of Seaside, and carried.**

b. After some discussion regarding the date and proposed draft agenda for the next joint Administrative and Water/Wastewater Oversight Committee meeting agenda, the consensus was to hold a meeting on November 30th to discuss the background of the Regional Urban Water Augmentation Plan and Fort Ord's water needs. An agenda item will be added to address wastewater and annexation.

8. FORA BOARD MEETING AGENDA REVIEW NOVEMBER 18, 2001

Chair Houlemard reviewed the November 18th FORA Board meeting agenda, no changes were requested.

9. ITEMS FROM MEMBERS

a. The League of Women Voters will hold a meeting at Oldemeyer Center in Seaside on Dec 1st, at 10 a.m., including Bill Monning, Dave Potter, Landwatch, ForU, and others.

b. Landwatch is having a meeting on Friday, November 11th, 11:00 am, at the Hyatt.

10. ADJOURNMENT – Chair Houlemard adjourned the meeting at 9:29 a.m.

Meeting minutes prepared by Laura Cohan, Communications Coordinator

APPROVED



Fort Ord Reuse Authority

920 2nd Ave., Ste. A, Marina, CA 93933

Phone: (831) 883-3672 Fax: (831) 883-3675 www.fora.org

2012 ADMINISTRATIVE COMMITTEE MEETING DATES

(Approved on _____)

JANUARY 4
JANUARY 18

JUNE 27
JULY 18

FEBRUARY 1
FEBRUARY 15

AUGUST 1
AUGUST 15

FEBRUARY 29
MARCH 14

SEPTEMBER 5
SEPTEMBER 19

APRIL 4
APRIL 18

OCTOBER 3
OCTOBER 17

MAY 2
MAY 16

NOVEMBER 7
NOVEMBER 21

MAY 30
JUNE 13

DECEMBER 5
DECEMBER 19

The Administrative Committee meets regularly on the Wednesday nine days prior to the FORA board meetings (to facilitate timely review of the board agenda, among other items) and again two weeks after this first meeting, which is usually, but not always, on the Wednesday following the board meetings. Additional meetings are scheduled as deemed necessary. The above dates shown in bold letters are the "nine days prior" meeting dates in 2012, and the italicized dates are the "two weeks after" meeting dates. The meetings begin at 8:15 AM, end no later than 10:00 AM and are held in the Carpenters Union Hall, located at 910 Second Avenue, Marina, CA 93933, on the former Fort Ord. Please call the FORA office for up-to-date information (831-883-3672) or check the FORA website (www.fora.org).

Public notices are posted when any changes in the meeting dates occur.

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject: Finance Committee - report	
Meeting Date: December 16, 2011	INFORMATION
Agenda Number: 8c	

RECOMMENDATION(S):

Receive the November 16, 2011 Finance Committee (FC) meeting minutes.

BACKGROUND/DISCUSSION:

The FC met on November 16, 2011 to discuss the potential ways Fort Ord Reuse Authority could help jurisdictions to secure future of redevelopment/tax increment payments, the salary survey study, and the FY 10-11 Annual Financial Statement (Audit Report). Please refer to the attached minutes from this meeting for more details and the FC recommendations.

FISCAL IMPACT:

Reviewed by FORA Controller 

Staff time for this item is included in the approved FY 11-12 budget.

COORDINATION:

Finance Committee

Prepared by 
Marcela Fridrich

Approved by 
Michael A. Houlemard, Jr.



Fort Ord Reuse Authority

920 2nd Avenue, Suite A, Marina, CA 93933
Phone: (831) 883-3672 • Fax: (831) 883-3675 • www.fora.org

Finance Committee Meeting

Monday, November 16, 2011 at 2:00 pm

Action Minutes - DRAFT

Present: Chair Sue McCloud, Members: Graham Bice, Bill Kampe, Ian Oglesby, Hunter Harvath
Staff: Michael Houlemard, Steve Endsley, Ivana Bednarik, Daylene Alliman, Marcela Fridrich
Guest: Shellie Anderson (Bryce Consulting), Ralph Marcello (Marcello & Company), Frank O'Connell, Doug Yount (City of Marina)

AGENDA

The Finance Committee (FC) discussed the following agenda items:

- Roll Call:
A quorum was achieved at 2:00 PM. Member Harvath joined meeting at 2:10 pm.
- October 28 Minutes:
Approved (Motion Bice; Second Oglesby, passed 4:0).
- Future Tax increment Opt-in Proposal:
Chair McCloud changed the order of the items to accommodate Marina Mayor Pro-Tem Frank O'Connell and Director of Strategic Development Doug Yount who asked to attend the meeting to discuss tax increment issues brought up by a letter from Marina City Manager, Tony Altfeld. They asked FC members and FORA leadership to provide City of Marina financial assistance in the form of pass-through TI revenue to make required "ransom" payments to the state in order to enable the Marina Redevelopment Agency to continue former Fort Ord reuse. FC members asked for more data analysis to be provided before they will make recommendations to the FORA Board. The item will be further discussed at the December 14 FC meeting.
- Salary survey overview:
This item was continued from the October 28 meeting. FC members had requested four additional entities be included in the salary survey. FC members received the updated report prior to the meeting. They decided to recommend proposed new salary ranges with the effective date January 1, 2012. Approved (Motion Harvath, Second Oglesby, passed 5-0). Executive Officer Houlemard suggested implementing these ranges in conjunction with revised titles immediately or over time. FC members agreed but asked staff to provide a budget analysis showing how these changes will impact the FORA budget. They also recommended staff revise the current longevity policy to reflect recommendations made by the consultant. FC members scheduled their continued discussion of this item for December 14, 2011 to facilitate that the FORA Board review a proposed equity program by the mid-year budget meeting.
- FY 10-11 Draft Annual Financial Statement (Audit Report):
FC members received the draft Audit Report prior to the meeting. FORA Auditor was present to answer questions and describe additional notes. He explained the new fund balances terminology on page 10 of the financial statements. He reflected on previous tax increment discussion with City of Marina representatives and noted the importance of property tax increment revenue to the general fund. He made several recommendations related to notes 12 through 18. The Auditor issued the unqualified (best) opinion and reported no negative audit findings or questionable costs. FC unanimously voted to recommend that the FORA Board accept the FY 10-11 Audit Report with the recommended changes. Approved (Motion Kampe, Second Harvath, passed 5:0).
- Adjournment:
Meeting adjourned at 4:00 pm.

Minutes prepared by Marcela Fridrich, Accounting Officer.

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject: Habitat Conservation Plan – status report

Meeting Date: December 16, 2011

Agenda Number: 8d

INFORMATION

RECOMMENDATION(S):

Receive a status report regarding the Habitat Conservation Plan (“HCP”) and State of California 2081 Incidental Take Permit (“2081 permit”) preparation process.

BACKGROUND/DISCUSSION:

The Fort Ord Reuse Authority (“FORA”), with the support of its member jurisdictions and consultant team, is on a path to receive approval of a completed basewide HCP and 2081 permit in 2013, concluding with the US Fish and Wildlife Service (“USFWS”) and California Department of Fish and Game (“CDFG”) issuing federal and state permits.

ICF International (formerly Jones & Stokes), FORA’s HCP consultant, completed an administrative draft HCP on December 4, 2009. FORA member jurisdictions completed a comment and review period, which ended February 26, 2010. In April 2011, USFWS finished their comments on all draft HCP sections, while CDFG provided limited feedback. These comments by the regulatory agencies required a substantial reorganization of the document. To address this, ICF International completed a 3rd Administrative Draft HCP for review (dated September 1, 2011). The 12 Permittees (County, Cities of Marina, Seaside, Del Rey Oaks, and Monterey, Monterey Peninsula Regional Park District, Marina Coast Water District, State Parks, Monterey Peninsula College, California State University Monterey Bay, University California Monterey Bay Education, Science, and Technology Center, and FORA) and Cooperating Entity (Bureau of Land Management) reviewed this draft document and submitted their comments in October 2011. This review includes the draft HCP Implementing Agreement and Ordinance/Policy, which are appendices to the draft HCP and are being prepared separately by FORA. ICF International is currently addressing all received comments into a draft that can be submitted to USFWS/CDFG by early January 2012. It is estimated that it will take the wildlife agencies 90 days to complete their internal review followed by 60 days for ICF International to prepare a Screen Check draft that will undergo a 30-day review for legal compliance by the wildlife agencies’ solicitors/legal departments. ICF International would then respond to any comments/issues raised in 30 days. FORA staff estimate a Public Draft document to be available for public review by August 2012.

At the September 7, 2011 FORA Administrative Committee meeting, Jamie Gomes, Principal, from EPS presented information related to Economic and Planning Systems’ (“EPS”) review of HCP costs and endowment investment strategy. EPS provided an HCP endowment investment strategy that will be incorporated into the draft HCP. Final approval of the endowment strategy rests with CDFG/USFWS.


FISCAL IMPACT:


Reviewed by FORA Controller 

ICF International and Denise Duffy and Associates’ (FORA’s NEPA/CEQA consultant) contracts have been funded through FORA’s annual budgets to accomplish HCP preparation.

COORDINATION:

Executive Committee, Administrative Committee, Legislative Committee, HCP working group, FORA Jurisdictions, USFWS and CDFG personnel, ICF International, Denise Duffy and Associates, and various development teams.

Prepared by 
Jonathan Garcia

Reviewed by 
Steve Endsley

Approved by 

Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject: Executive Officer's Travel Report

Meeting Date: December 16, 2011

Agenda Number: 8e

INFORMATION

RECOMMENDATION(S):

Receive an informational travel report from Fort Ord Reuse Authority ("FORA") Executive Officer.

BACKGROUND/DISCUSSION:

The Executive Officer regularly submits reports to the Executive Committee providing details of travel requests, including those by the FORA Board members and Executive Officer. Travel expenses may be paid or reimbursed by FORA, outside agencies/ jurisdictions/organizations, or a combination of these sources. The Executive Committee reviews and approves these requests, accordingly, and the travel information is reported to the Board as an informational item.

February 2 – 4, 2012 - The Local Government Commission is sponsoring a conference "New Partners for Smart Growth" in San Diego. The focus of the conference is building safe, healthy, and livable communities.

February 27-29, 2012 – Association of Defense Communities 2012 Winter Forum, Miami, Florida – "The New Normal Understanding, Preparing, and Moving Forward." The Winter Forum includes a Board meeting and updates on several topics impacting the reuse of former Military installations.

FISCAL IMPACT:


Reviewed by FORA Controller 

Travel costs and incidentals are covered according to FORA's travel policy.

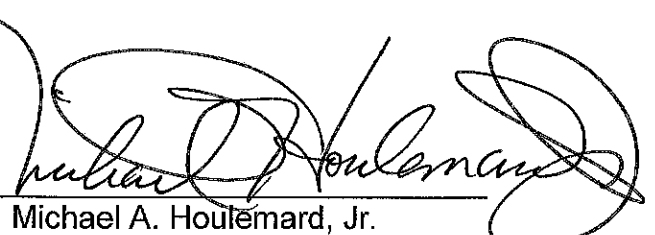
COORDINATION:

Executive Committee.

Prepared by


Daylene Alliman

Approved by


Michael A. Houlemard, Jr.