

ORIGINAL
Fort Ord
Reuse Authority



**MEMORANDUM OF AGREEMENT
AMONG THE FORT ORD REUSE AUTHORITY,
THE REDEVELOPMENT AGENCY OF THE COUNTY
OF MONTEREY AND EAST GARRISON PARTNERS I, LLC
CONCERNING CERTAIN BASEWIDE FUNDING OBLIGATIONS**

This MEMORANDUM OF AGREEMENT ("MOA") is made on February 28, 2006, by and among the FORT ORD REUSE AUTHORITY, a military base reuse authority operating under the laws of the State of California ("FORA"), the REDEVELOPMENT AGENCY OF THE COUNTY OF MONTEREY, a public body, corporate and politic (the "Agency"), and EAST GARRISON PARTNERS I, LLC, a California limited liability company ("EGP") (each a "Party", collectively, the "Parties").

RECITALS

A. FORA operates under California Government Code Section 67650 *et seq.* (the "Authority Act"). FORA's functions include planning for and managing the disposition of former Fort Ord lands. One of FORA's prime functions is to receive title to these lands from the United States Army and transfer that title to local jurisdictions or their designees.

B. FORA has adopted a reuse plan for the former Fort Ord (the "Reuse Plan"). The Reuse Plan requires FORA to review for consistency with the Reuse Plan the plans and implementing ordinances as well as proposed land use development projects adopted or approved by FORA's member agencies. The County of Monterey ("County") is one of those member jurisdictions. FORA's Master Resolution (Chapter 8) establishes procedures making consistency determinations for legislative land use programs and land use entitlements approved by the member agencies.

C. On May 8, 2001 FORA and the County of Monterey entered into an Implementation Agreement. That agreement requires the County to pay FORA half the proceeds from the sale of land transferred to the County through FORA.

D. On February 4, 2003 the County, the Agency and EGP executed an Option Agreement regarding the East Garrison project area. That agreement requires the EGP to pay One-and-One-Half million dollars (\$1,500,000) to the Agency (the "Initial Payment") upon receiving title to the land and to make participation payments, as described in the immediately following paragraph.

E. On October 4, 2005, the Monterey County Board of Supervisors approved the East Garrison Disposition and Development Agreement (the "East Garrison DDA") between the Agency and EGP. The East Garrison DDA provides for the development of approximately 244-acres of Track 0 known as East Garrison. The East Garrison DDA also requires EGP to pay the Agency one-half of EGP's profits ("Participation Payments") from the development after EGP has received a 22.5% internal rate of return on its project costs. The Agency and EGP anticipate that EGP will begin those Participation Payments to the Agency in or about 2011. FORA is entitled to receive as land sale revenue half the Initial Payment from EGP to the Agency and half the Participation Payments.

F. FORA has adopted "financing policies" that require FORA to pay building deconstruction costs incurred in the cities of Marina and Seaside and in the East Garrison project area.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1. MOA Term. This MOA commences upon the later of: 1) its execution by the Parties or 2) the adoption by FORA of a resolution finding the East Garrison DDA consistent with the Reuse Plan. It will continue until it has been performed, estimated to be December 31, 2011, or it has been terminated by written agreement of the Parties.
2. Bank Loan. FORA will apply for a five year bank loan (subject to extensions in certain defined circumstances to be negotiated with the bank) in an amount not to exceed \$4.1 million at a tax exempt rate of interest not to exceed 5% if the loan qualifies for tax exempt treatment, or 7.5% interest if the loan does not qualify for tax exempt treatment. (If the loan carries an interest rate of 5%, the annual interest payments will total approximately \$203,650. If the loan carries an interest rate of 7.5%, the annual interest payments will total approximately \$305,475.) Loan proceeds shall be disbursed to FORA by the lender in incremental amounts, as needed by FORA for payments to third parties as reimbursement for their reasonable costs of deconstruction, but only after FORA has disbursed to such third parties all other revenues available to FORA for such purpose from land sale proceeds. The terms of the loan and the loan documents themselves shall be subject to the reasonable approval of the Agency and EGP.
3. Interest Payments. EGP shall make interest payments (but not payments of principal) to FORA's lender. EGP's interest payments, including amounts incurred to obtain such funds to make such interest payments, and the costs of security provided by EGP under Section 6, below, will be deemed a Project Cost, as between EGP and the Agency, under the participation formula in the East Garrison DDA. Repayment to EGP of the interest payments and such other amounts will be deemed to be Project Revenue, as between EGP and the Agency, under the East Garrison DDA participation formula.
4. Security for the Loan. When FORA receives title to such parcel from the Army, FORA will, if required by the lender, pledge an approximately 58 acre parcel of land described in Attachment A hereto to secure the payment of interest and the repayment of the principal of the loan. The parcel is scheduled to be conveyed to the Agency within five years from the date of this MOU. The Agency agrees to accept conveyance of that parcel from FORA subject to the security interest pledged by FORA.
5. Repayment of the Principal of the Loan and the Interest. Subject to the bank's concurrence, FORA shall first repay to the bank, (in the following order of preference), the \$4.1 million principal of the loan from the following sources: (a) a first call on its share of the Participation Payments, and (b) land sale proceeds received by FORA from land sales or leases from the unincorporated area of Fort Ord, (c) FORA's share of tax increment funds generated from the unincorporated area of Fort Ord, (d) from any other source reasonably available to FORA to the extent not pledged prior to the effective date of this MOA, and (e) sale of the

approximately 58 acre parcel pledged to secure the loan. FORA shall repay to EGP the interest payments made by EGP to the bank, together with the amounts incurred by EGP to obtain such funds to make such interest payments, and the costs of security provided by EGP under Section 6, below. The repayment of such amounts by FORA to EGP shall take the form (in the following order of preference, to the extent available) of one or more cash payments to EGP from: (a) FORA's 50% share of funds deposited in the interest bearing escrow account established pursuant to East Garrison DDA Attachment No. 4, Paragraph A.3.g. (iii), (b) land sale proceeds received by FORA from land sales or leases from the unincorporated area of Fort Ord, (c) tax increment funds received by FORA and generated from the unincorporated area of Fort Ord, (d) from any other source reasonably available to FORA to the extent not pledged prior to the effective date of this MOA, and/or (e) in the form of a credit against FORA's share of the Participation Payments to be made by EGP to FORA. FORA shall make the foregoing repayments of principal and interest incrementally, as such revenues are available to FORA for such repayments, provided repayment of principal to the bank shall have first priority. Accordingly, FORA agrees not to pledge or to otherwise encumber its share of the tax increment generated at Fort Ord within the County's unincorporated area and of land sale proceeds until the principal amount of the loan has been repaid to the bank and until the interest payments made by EGP to the bank have been repaid to EGP.

6. **Security for EGP's Obligation to Pay Interest.** The Parties acknowledge that if EGP defaults on its obligation to pay interest, the bank could foreclose on the approximately 58 acre parcel of land which secures the loan and the interest payments to be made on it and thus deprive the Agency of its right to acquire the land from FORA and to dispose of it for development. Accordingly, EGP shall provide to the bank security for EGP's obligation to pay the interest on the loan in a form and in an amount acceptable to the bank and the Agency in their sole and absolute discretion, and the bank shall agree that in the event of a default by EGP in its obligation to pay interest to the bank, to enforce such security provided by EGP prior to foreclosing on the approximately 58 acre parcel of land for such default.

7. **FORA Fee Credits in Favor of EGP.** FORA will in good faith consider giving credit to EGP against EGP's obligation to pay fees to FORA for the completion by EGP of components of FORA's Transportation/Transit Element under the FORA 2005/2006 CIP, though the amount of this credit is to be determined in a subsequent agreement based upon actual costs of such improvements and EGP's reasonable fair share of the costs of such improvements.

8. **FORA Land Sale Credits.** In 2001, FORA adopted financing policies that require FORA to assume responsibility for removal of certain World War II-era buildings in the East Garrison Specific Plan Area, and EGP has agreed to facilitate the purposes of this MOA by undertaking this responsibility. For doing so, EGP shall receive a credit of \$2,177,000 for East Garrison deconstruction, plus interest at the rate of interest charged by the bank for the \$4.1 million loan referred to paragraph 2, above, against FORA's portion of the land sale proceeds.

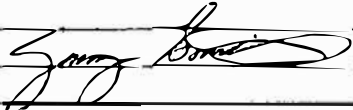
9. **Indemnification.** EGP hereby agrees to indemnify, protect and hold harmless the Agency and FORA, their agents, contractors, employees, licensees and invitees ("Indemnitees") from and against any all injuries, losses, claims, judgments, liabilities, costs, expenses and/or damages ("Claims") to the Indemnitees arising out of or in connection with the activities of EGP or its employees, agents, contractors, licensees and invitees on Fort Ord arising out of deconstruction

deconstruction, plus interest at the rate of interest charged by the bank for the \$4.1 million loan referred to paragraph 2, above, against FORA's portion of the land sale proceeds.

9. Indemnification. EGP hereby agrees to indemnify, protect and hold harmless the Agency and FORA, their agents, contractors, employees, licensees and invitees ("Indemnitees") from and against any all injuries, losses, claims, judgments, liabilities, costs, expenses and/or damages ("Claims") to the Indemnitees arising out of or in connection with the activities of EGP or its employees, agents, contractors, licensees and invitees on Fort Ord arising out of deconstruction or demolition activities in the East Garrison Specific Plan area. Each of the Parties' indemnification responsibilities shall apply only to injuries, losses, claims, judgments, liabilities, costs, expenses and/or Claims arising out of the actions and/or failures to act or alleged actions and/or failures to act of EGP. Such indemnity shall not apply to (i) any Claims to the Indemnitees arising from EGP's or its contractors' deconstruction activities determined by a court of competent jurisdiction to have been properly conducted according to approved work plans, or (ii) any Claims covered by the FORA PLL Policy, or (iii) Claims resulting directly or indirectly from Munitions and Explosives of Concern ("MEC") located during deconstruction, or (iv) claims arising from the negligence or willful misconduct of the Indemnitees.

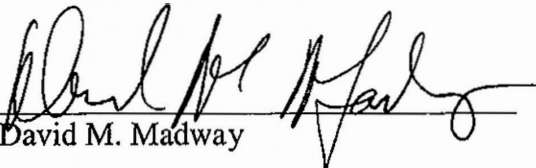
AGREED TO AND ACCEPTED

REDEVELOPMENT AGENCY OF THE COUNTY OF MONTEREY

By: 
Its: _____

Dated: 3-31-06

APPROVED AS TO FORM


David M. Madway

FORT ORD REUSE AUTHORITY

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

Dated: _____

EAST GARRISON PARTNERS I, LLC

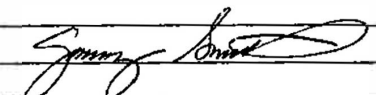
By: _____
Its: _____

Dated: _____

or demolition activities in the East Garrison Specific Plan area. Each of the Parties' indemnification responsibilities shall apply only to injuries, losses, claims, judgments, liabilities, costs, expenses and/or Claims arising out of the actions and/or failures to act or alleged actions and/or failures to act of EGP. Such indemnity shall not apply to (i) any Claims to the Indemnites arising from EGP's or its contractors' deconstruction activities determined by a court of competent jurisdiction to have been properly conducted according to approved work plans, or (ii) any Claims covered by the FORA PLL Policy, or (iii) Claims resulting directly or indirectly from Munitions and Explosives of Concern ("MEC") located during deconstruction, or (iv) claims arising from the negligence or willful misconduct of the Indemnites.

AGREED TO AND ACCEPTED

REDEVELOPMENT AGENCY OF THE COUNTY OF MONTEREY

By: 
Its: _____

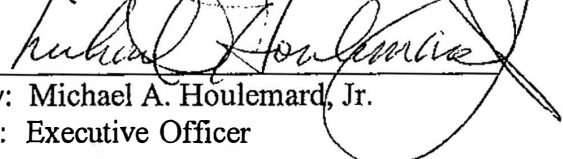
Dated: 3-15-06

As to form:

By: _____
Its: _____

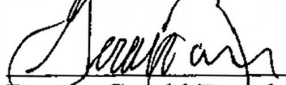
Dated: _____

FORT ORD REUSE AUTHORITY


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


Dated: February 16, 2006

As to form:

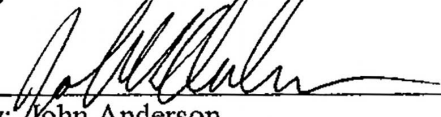

By: Gerald Bowden
Its: Authority Counsel

Dated: Feb 17 2006

EAST GARRISON PARTNERS I, LLC


By: Keith McCoy
Its: Project Director

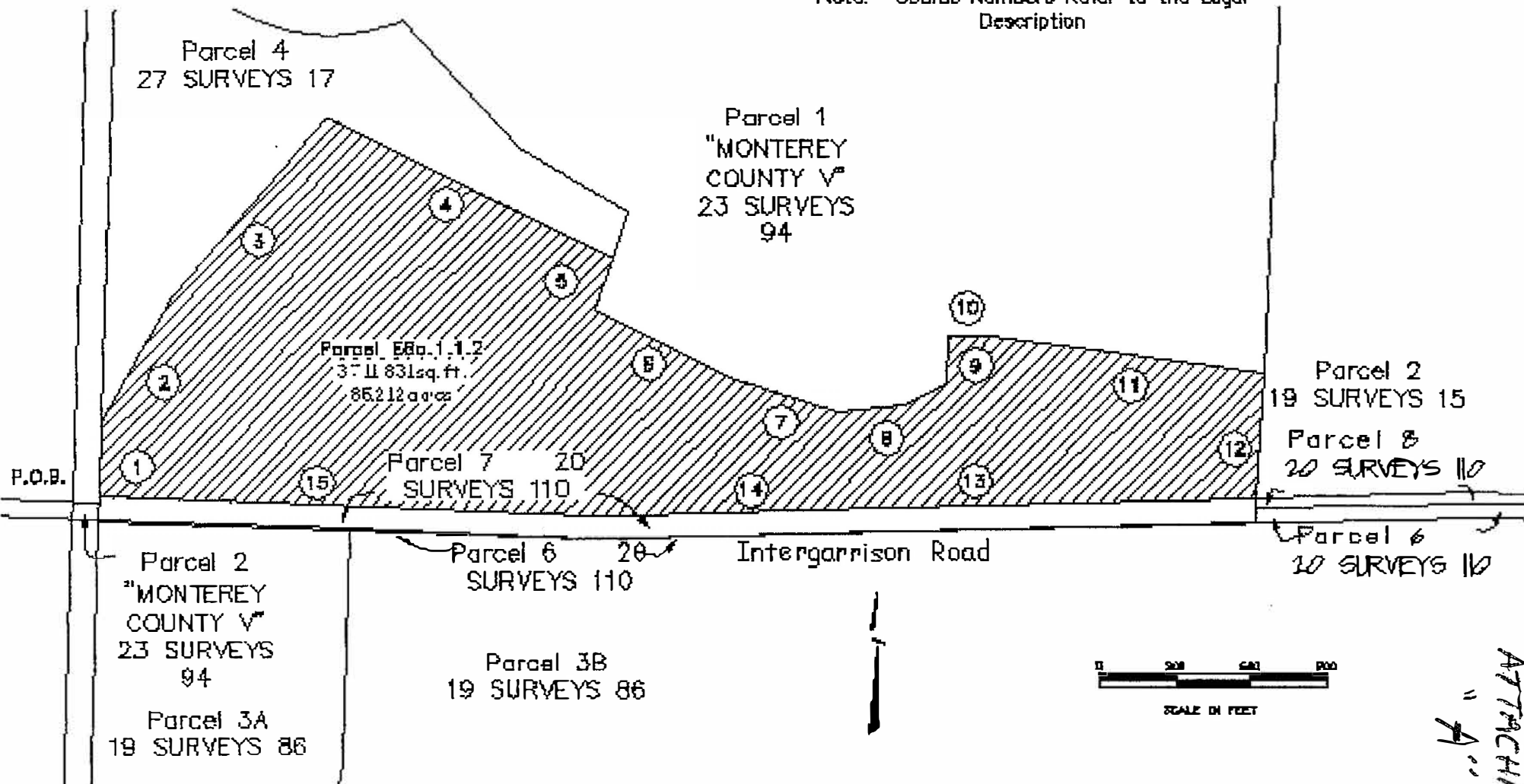
Dated: February 16, 2006


By: John Anderson
Its: Managing Member

Dated: February 16, 2006

EXHIBIT
of
PARCEL E8a.1.1.2
Monterey County Jurisdiction
Fort Ord
FOST 8 EDC
Lying within the Fort Ord Military Reservation
as shown on Vol. 19 of Surveys at Page 1
Being also within Monterey City Lands Tract No. 1
Monterey County, California.

Note: Course Numbers Refer to the Legal Description



ATTACHMENT
" A "

MONTEREY COUNTY
RESOURCE MANAGEMENT AGENCY

IB
JG



HOUSING AND REDEVELOPMENT OFFICE, Jim Cook, Director
168 W. Alisal St., 3rd Floor (831) 755-5390
Salinas, CA 93901 FAX (831) 755-5398

TRANSMITTAL

TO: Michael A. Houlemard, Jr., Executive Officer
Fort Ord Reuse Authority
100 12th St., Bldg 2880
Marina, CA 93933

FROM: Nick Nichols

DATE: April 6, 2006

SUBJECT: East Garrison Development Project



Dear Michael,

Attached for your files is a fully-executed original of the Memorandum of Agreement Concerning Certain Basewide Funding Obligations (aka "The East Garrison Loan Agreement").

Please call me if you have any questions.

Nick

9