



Fort Ord Reuse Authority

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

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

ADMINISTRATIVE COMMITTEE MEETING

8:15 A.M. WEDNESDAY, JUNE 27, 2012

910 2nd Avenue, Marina CA 93933 (on the former Fort Ord)

AGENDA

- 1. CALL TO ORDER AT 8:15 AM**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE**
- 4. PUBLIC COMMENT PERIOD:** Members of the audience wishing to address the Fort Ord Reuse Authority (FORA) Administrative Committee on matters within the jurisdiction of FORA, but not on this agenda, may do so during the Public Comment Period. Public comments are limited to a maximum of three minutes. Public comments on specific agenda items will be heard at the time the matter is under Committee consideration.
- 5. APPROVAL OF MEETING MINUTES**
 - a. June 16, 2012 Administrative Committee Minutes ACTION
- 6. JULY 13, 2012 FORA BOARD MEETING AGENDA REVIEW** INFORMATION/ACTION
- 7. OLD BUSINESS**
 - a. Habitat Conservation Plan Update INFORMATION
 - b. Capital Improvement Program - Formulaic Approach to Developer Fees INFORMATION/ACTION
- 8. NEW BUSINESS**

None

NEXT SCHEDULED MEETING: JULY 18, 2012



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ADMINISTRATIVE COMMITTEE MEETING

8:15 A.M. WEDNESDAY, JUNE 13, 2012

910 2nd Avenue, Marina CA 93933 (on the former Fort Ord)

MINUTES

1. CALL TO ORDER

Chair Dawson called the meeting to order at 8:15 a.m., noting a quorum of voting members. The following people, as indicated by signatures on the roll sheet, were present:

Daniel Dawson, City of Del Rey Oaks*
Carl Holm, County of Monterey*
John Dunn, City of Seaside*
Doug Yount, City of Marina*
Rob Robinson, BRAC
Todd Muck, TAMC
Bob Schaffer, MCP
Paul Greenway, County of Monterey DPW
Bob Rench, CSUMB
Heidi Burch, City of Carmel
Erin Harwayne, Denise, Duffy & Assoc.
Pat Ward, Bestor Engineers, Inc.

Diana Ingersoll, City of Seaside
Tim O'Halloran, City of Seaside
Graham Bice, UC MBEST
Vicki Nakamura, MPC
Carl Niizawa, MCWD
Debby Platt, City of Marina

Steve Endsley, FORA
Robert Norris, FORA
Jonathan Garcia, FORA
Crissy Maras, FORA
Lena Spilman, FORA

* Voting Members

2. PLEDGE OF ALLEGIANCE

Heidi Burch led the Pledge of Allegiance.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

Deputy Clerk Lena Spilman announced that the next Administrative Committee meeting would take place on June 27, 2012, to accommodate the July 4th holiday.

4. PUBLIC COMMENT PERIOD

No comments were received.

5. APPROVAL OF MEETING MINUTES

MOTION: Carl Holm moved, seconded by Todd Muck, and the motion passed unanimously to approve the minutes of the May 30, 2012 Administrative Committee meeting and the May 30, 2012 Joint Administrative/WWOC Committee meeting, as presented.

6. FOLLOW-UP FROM JUNE 8, 2012 FORA BOARD MEETING

Assistant Executive Officer Steve Endsley reported on the June 8, 2012 Board meeting, noting that neither the FY 2012-13 FORA Budget nor the FY 2012-13 Preston Park Budget had received Board approval. The later was continued to allow staff time to address concerns from members of the public regarding the management of Preston Park and to make necessary corrections to the document. He explained that the motion to approve the FORA Budget had failed, requiring the item return to the Board for a second vote at the July meeting. The primary point of contention seemed to be the proposed 2% cost of living salary adjustment.

7. OLD BUSINESS

a. Base Reuse Plan Reassessment Update

Senior Planner Jonathan Garcia discussed attendance at the recently held Base Reuse Reassessment public workshops. He stated that the majority of his report had already been discussed under the Board meeting review.

b. Habitat Conservation Plan (HCP) Update

Mr. Garcia stated the 3-month period scheduled for U.S. Fish and Wildlife Service and California Department of Fish and Game review of the HCP would expire within the week. He discussed the next steps in the review process.

Mr. Endsley suggested that the Committee consider Agenda Items 7c, 7d, and 7e out of order. Chair Dawson agreed.

d. Master Resolution/Sierra Club Settlement Agreement Appeal Fee Proposed Amendment to FORA Master Resolution (Section 8.01.050(a))

Mr. Endsley explained the Executive Committee had directed staff to classify the item as informational for the June Board meeting. The item was scheduled to return to the Board in July for action, at which time staff would recommend a reduction in the fee. He noted that the Administrative Committee had previously decided not to offer a recommendation to the Board regarding the item. The Committee discussed the implications of a reduction in the appeal fee, and Chair Dawson indicated that the Committee's decision to offer no recommendation still stood.

e. Department of Toxic Substances Control Annual Report on Land Use Covenants

Mr. Garcia reminded the Committee Members that their Annual Reports were due to FORA by July 11, 2012. He noted that CSUMB had already submitted their annual report and that the others were still pending.

c. Capital Improvement Program – Formulaic Approach to Developer Fees

Mr. Garcia stated that the Executive Committee had directed staff to classify the item as informational for the June Board meeting. He reviewed changes made to the Draft Implementation Agreement amendment #1 (attached) based on Economic and Planning Systems' (EPS's) memo. The Committee discussed caretaker and property management costs and various Committee members expressed concerns regarding the jurisdiction's lack of funding to maintain blighted properties on former Fort Ord. The Committee asked that the draft Implementation Agreement amendment not modify previous FORA Board policy that FORA pay for \$12.2 million in caretaker and property management costs. Mr. Endsley suggested staff seek recommendations from Economic and Planning Systems (EPS) for simplification of the language in the Draft Implementation Agreement. He also suggested that, for the next meeting, EPS provide an example of what the proposed formula would look like if implemented today, demonstrating what the FORA development fee/CFD Special Tax would be. The Committee agreed.

8. NEW BUSINESS

None.

9. ADJOURNMENT

Chair Dawson adjourned the meeting at 9:42 a.m.

Minutes Prepared by Lena Spilman, Deputy Clerk

Approved by:

Michael A. Houlemard, Jr., Executive Officer



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BOARD OF DIRECTORS MEETING

Friday, July 13, 2012 at 3:00 p.m.

910 2nd Avenue, Marina, CA 93933 (Carpenter's Union Hall)

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

- | | |
|--|--------|
| a. June 8, 2012 FORA Board Meeting Minutes | ACTION |
| b. Auditor Contract – Termination/Renewal | ACTION |

6. OLD BUSINESS

- | | |
|---|--------------------|
| a. Preston Park FY 2012/13 Budget | ACTION |
| b. Preston Park Broker Contract | ACTION |
| c. FORA FY 2012-13 Preliminary Budget – 2 nd Vote | ACTION |
| d. Ord Community Water and Wastewater Systems Proposed Budgets and Rates for FY 2012/13 | |
| i. Presentation by FORA | INFORMATION |
| ii. Presentation by Marina Coast Water District | INFORMATION |
| iii. Resolution Nos. 12-6 and 12-7 Adopting a Compensation Plan and Setting Rates, Fees and Charges for Base-wide Water and Sewer Services on the former Fort Ord | ACTION |
| e. Records Retention Policy | INFORMATION/ACTION |
| f. Base Reuse Plan Reassessment Contract Amendment #2 | INFORMATION/ACTION |
| g. Master Resolution/Settlement Agreement – Appeal Fee Proposed Amendment to FORA Master Resolution (Section 8.01.050(a)) | INFORMATION/ACTION |
| h. Capital Improvement Program Review – Phase II Study | |
| i. Resolution 12-5 to Adopt a Formulaic Approach to Development Fees | INFORMATION/ACTION |
| ii. Amendment #1 to FORA Jurisdiction's Implementation Agreements | INFORMATION/ACTION |
| iii. EPS Contract Amendment #5 | ACTION |

7. NEW BUSINESS

- | | |
|---|--------------------|
| a. June 8, 2012 Tort Claim filed Against FORA by Keep Fort Ord Wild | ACTION |
| b. FORA Expense Reimbursement Policy | INFORMATION/ACTION |

8. EXECUTIVE OFFICER'S REPORT

- a. Outstanding Receivables
- b. Administrative Committee
- c. Distribution of FY 2012/13 through 2021/22 Capital Improvement Program
- d. Habitat Conservation Plan
- e. Executive Officer's Travel

INFORMATION
INFORMATION
INFORMATION
INFORMATION
INFORMATION

9. ITEMS FROM MEMBERS

10. CLOSED SESSION

Public Comment – Closed Session Items

- a. Conference with Legal Counsel - Existing Litigation, Gov Code 54956.9(a) – Two Cases
 - i. Keep Fort Ord Wild v. Fort Ord Reuse Authority, Case Number: M116438
 - ii. Keep Fort Ord Wild v. Fort Ord Reuse Authority, Case Number: M114961
- b. Conference with Legal Counsel - Anticipated Litigation, Gov Code 54956.9(b) – One Case
- c. Public Employee Performance Evaluation – Executive Officer, Gov Code 54957

11. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

12. ADJOURNMENT

NEXT MEETING AUGUST 10, 2012

PLACEHOLDER FOR ITEM 5a:
June 8, 2012 Board meeting minutes

The minutes will be included in the final Board packet

FORT ORD REUSE AUTHORITY BOARD REPORT

NEW BUSINESS

Subject: FORA Auditor Contract

Meeting Date: July 13, 2012

Agenda Number: 5b

ACTION

RECOMMENDATION:

Authorize staff to begin selection process of a new independent audit firm ("Auditor").

BACKGROUND:

In September 2008, the FORA Board approved selection of Marcello & Company and authorized a three year contract with two one-year options. The first audit covered the fiscal year ending 2008. Last year, the Finance Committee approved the first extension option, for the audit of fiscal year ending 2011.

DISCUSSION:

At the June 18, 2012 Special Executive Committee meeting, the Executive Committee recommended that the Board a) not to extend the current Auditor's contract and b) direct staff to initiate selection of a new auditor through a competitive bid process, in conjunction with the Finance Committee.

FISCAL IMPACT:

The cost of audit services is included in the FY 12-13 budget.

COORDINATION:

Executive Committee, Finance Committee.

Prepared by _____
Ivana Bednarik

Approved by _____
Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY BOARD REPORT

OLD BUSINESS

Subject: Preston Park Fiscal Year ("FY") 2012/13 Budget

Meeting Date: July 13, 2012

Agenda Number: 6a

ACTION

RECOMMENDATION(S):

Approve FY 2012/13 Preston Park Housing Area Budget.

BACKGROUND/DISCUSSION:

The Fort Ord Reuse Authority ("FORA") staff has reviewed the Preston Park FY 2012/13 Operating Budget and Capital Improvement Program (CIP) Assessment and is prepared to recommend approval of both budgets with the following scenarios:

Option A

- Approve the Operating and Capital Improvement Program budgets (attachments **A** and **B**) reflecting a rental income 3% increase and implementing capital improvements. The rental increase assures that revenues keep pace with budgeted expenses and sustains the Replacement Reserve.

Option B

- Approve the Operating Budget and defer the rental increase and the proposed Capital Improvement Program work for a future owner of the property.

Staff recommends **Option A** considering; 1) the Board postponed rental increases by this past year, 2) an increase in accordance with the adopted rent formula keeps revenues tracking with expenses, and 3) key Capital Improvement Program expenditures will drain reserves.

The overall budget sustains FORA Board June 2010 approved formulas for setting annual market rents. The adopted formulae are: 1) **Move-ins** - establishing market rents on an on-going basis according to a market survey, and 2) **Existing tenants** - increase rent once a year by the lesser of 3% or the Consumer Price Index.

Follow-up Issues from June 8, 2012 Board Meeting

- Resident Complaints- Several Preston Park residents stated that they were threatened, intimidated, and or treated disrespectfully when they expressed concerns about conditions at the Preston Park Apartments. FORA and Alliance staff have contacted the speakers and were informed that the incidents happened after attendance at a Marina City Council and that they were unable to identify the persons involved. FORA staff is continuing to investigate this matter.

FISCAL IMPACT:

Reviewed by FORA Controller _____

Both options provide FORA adequate revenue to cover the Preston Park loan debt service.

COORDINATION:

FORA Staff, Alliance Staff, Administrative Committee, Executive Committee.

Prepared by _____ Approved by _____
Robert J. Norris, Jr. Michael A. Houlemard, Jr.

May 23, 2012

Mr. Michael Houlemard, Jr.
Fort Ord Reuse Authority
920 Second Avenue Suite A
Marina, California 93933

Re: Preston Park 2012-2013 Proposed Budget

Dear Mr. Houlemard:

Pursuant to the terms outlined in the Management Agreement between the Fort Ord Reuse Authority and Alliance Communities, Inc and in accordance to the management agreement, please find enclosed the proposed Fiscal Year (FY) 2012 - 2013 budget for Preston Park. We will solicit input from Fort Ord Reuse Authority staff and residents. Residents will be notified in writing one week before the draft budget will be available at the management office and that we will be conducting a meeting to review and discuss the budget.

Revenues

The primary source of revenue is rents, Section 8 voucher payments from the Housing Authority of the County of Monterey and associated charges to residents such as late fees.

The proposed budget reflects projected revenues according to the formulas. The market rent for new move-ins is calculated by comparable market rent levels in the competitive market throughout the year.

The formula states that the annual increase in market rents for in-place tenants shall be capped at the lesser of three percent (3%) or the Department of Labor's Consumer Price Index for San Francisco-Oakland-San Jose, All Items, for All Urban Consumers (referred to as CPI-U) Average percentage for the previous calendar year to be applied to the next fiscal year, provided that the increased rent for in-place tenants does not exceed the market rent charged to move-in tenants. Last year a proposed increase of 1.8% was approved by Board for the 2011/2012 FY, then rescinded. The current budget reflects the maximum rent increase of three percent (3%), which represents the only increase given to in-place residents over the past 24 months.

Current Market Rent Conditions

The average two bedroom apartment in Marina rents for between \$1,100 and \$1,423 per month, which does not include utilities. Additionally, the comparables as outlined in the attached market survey of March 2012 are significantly smaller in square footage than units at Preston Park.

In addition to the two-bedroom floor plans, Preston Park offers unique three bedroom town home floor plans, each with front and back yards, ample storage and garages, unlike comparative apartments in the surrounding area.

Preston Park residents are responsible for paying their own utilities; such as gas, water, electricity, sewer and trash. The market rate rent is adjusted to compensate for the cost of water

use, utility costs and garbage not paid by residents at other communities in the area. Therefore, the budget assumes adjustments in rental rates in order to compensate such costs.

As a point of measurement, the competitive set as represented in the market study provided as part of the budget package, reflects an average effective rent per square foot range of \$1.29 - \$1.61 psf. Preston Park's market rent average is \$1.17. If a \$100 per month allowance is added for water, trash and sewer expenses, this increases the rent per square foot average at Preston Park to \$1.24, which is still no less than \$.05 less than the lowest rent in the market place and up to \$.37 psf less than the competitive properties with the highest effective rent per square foot in the market place.

Utility costs for 2011 - 2012 as published by the Housing Authority of the County of Monterey (HACM) are as follows:

	<u>Two Bedroom</u>	<u>Three Bedroom</u>	
Water	\$19	\$20	
Sewer	\$13	\$13	
Garbage	\$17	\$19	
Heating	\$9	\$10	
Wtr Htg Gas	\$15	\$16	
Cooking-Gas	\$8	\$9	
Electric-other	\$17	\$18	
Total	\$98	\$105	<u>These rates are used to measure Preston Park's competitiveness in the market place once utility expenses, typically provided by other competitive properties, are taken into account against the rental rate. Please refer to the measurement above.</u>

Market Rents - In Place Residents

At this time, the proposed 2012/2013 budget assumes a 3% increase for in place residents, which is in line with the approved rent formula, which is the lesser of three percent (3%) or the Department of Labor's Consumer Price Index for San Francisco-Oakland-San Jose, All Items, for All Urban Consumers (referred to as CPI-U) Average percentage for the previous calendar year will be applied. This year, the year over year CPI increase described above was 3%. The rents proposed in the budget under the assumption of three percent increase are as follows (Application of rent formula below):

In-Place Market Rate Rents			
Unit Size	Current Rent Range FY11/12	Proposed FY12/13 Rent	Change 8/1/12
Two Bedroom	\$1,146 - \$1,555	\$1,180 - \$1,602	\$34 - \$47
Three Bedroom	\$1,455 - \$1,890	\$1,499 - \$1,947	\$44 - \$57

As shown on the attached Market Survey of March 2012, the proposed in-place market rents are within range of comparable units in the Marina/Seaside rental market.

The rent increases above reflects a 3% increase which translates to between \$34 and \$57 respectively. Where an in place resident falls in that rent increase range will depend on their

tenure at the property and move-in date. Please note, as no rent increase was given during the 2011/2012 fiscal year, the 3% increase proposed represents the first increase in rent in the last 24 months.

Should FORA elect to forego the proposed 2012/2013 rent increase which is represented in the budget provided, the potential income will be reduced by \$101,906.00.

Market Rents – Incoming Residents

The market rents for new move-ins are fluid throughout the year and change with the market conditions. Today, market rents for new move-ins are as follows:

Unit Size	Current Rent Range for Incoming Market Rate Residents
Two Bedroom	\$1,505 - \$1,555
Three Bedroom	\$1,830 - \$1,855

*Incoming rates are subject to change on an ongoing basis. The Budget assumes a 3%

increase in market rents for incoming residents, which is not reflected on the table above as these rates represent the current asking rents.

Affordable Rental Rates

Affordable rental rates are derived from median income schedules published by governmental agencies. Rental rates at Preston Park are based upon 50% and 60% of the median income for Monterey County. The U.S. Department of Housing and Urban Development calculates the maximum household income by family size in Monterey County, generally once a year. The rental rates are based upon families at 50% and 60% of the Monterey County median income for 2012 and allowances for the cost of utilities (as published by MCHA) are as noted on page 3 of this letter.

New rates for 2012 were published in January 2012 by HUD.

2011/2012 Rent	Two Bedroom	Four Bedroom
50% (very low)	\$656	\$777
60% (low)	\$807	\$959

Maximum Household Income Limits for 2012.

Income Category	Two Person	Three Person	Four Person	Five Person	Six Person	Seven Person	Eight Person
50%	\$27,700	\$31,150	\$34,600	\$37,400	\$40,150	\$42,950	\$45,700
60%	\$33,240	\$37,380	\$41,520	\$44,880	\$48,180	\$51,540	\$54,840

Rental Increase Implementation & Lease Signing

Upon Fort Ord Reuse Authority approval of the budget, rental increase notices will be mailed out on or before June 30, 2012; the new rental rates will become effective on August 1, 2012. Rents for in-place residents at market or affordable are increased once per year. New residents will be required to sign lease terms of month to month or six months, but can be converted to a month-to-month lease upon expiration, per the December 28, 2011 Council directive. Current residents are also welcome to sign lease terms beyond their current month-to month agreement.

Occupancy

The budget assumes an average occupancy rate of 97.7% for the fiscal year. The proposed occupancy rate factor allows enough time to prepare units immediately after a resident vacates the community, as well as sufficient time to place qualified applicants. Based on the local and surrounding counties, the occupancy rate is well within the acceptable range. When a unit is vacated, Alliance strives to fill the vacant unit within 5 to 10 business days, working from the waiting list if applicable. The average economic vacancy loss during the 2011/2012 fiscal year was only 1.9%, approximately 1% more than the properties physical vacancy. This indicates that the average unit vacated was turned and reoccupied within one week from the previous resident's date of move-out.

The following highlights those categories of expenses with significant changes from the FY 2011-12 budget.

<u>Expenses</u> Account	Proposed 2013	Projected 2012	Variance	%	Comments
SALARIES	\$320,601	\$311,823	(\$8,778)	-2.7%	Increase due to annual salary increases (2.7%) as well as the State of California's approval of a Workers' comp increase of 38%.
PAYROLL TAXES	\$33,576	\$26,228	(\$7,348)	-28.0%	
PAYROLL BURDEN/BEN	\$67,450	\$60,685	(\$6,764)	-11.1%	
UTILITIES	\$96,660	\$93,075	(\$3,585)	-3.9%	Increase assumes a 3% rate increase obtained by utility companies.
MARKETING	\$13,047	\$7,883	(\$5,164)	-65.5%	Increase due to the addition of Property Solutions, a comprehensive on line system which combines the properties branded webpage with a rich Resident Portal, lead

					management system, marketing control program, and telephone training portal.
PROFESSIONAL SERVICES	\$143,601	\$130,924	(\$12,676)	-9.7%	Alliance management fee remains 2.5% per contract, but increased rent revenue would result in increase in management fees paid to Alliance. Variance primarily driven by allowance for bi-annual audit.
INSURANCE	\$185,020	\$174,426	(\$10,594)	-6.1%	Based on renewed insurance contract bound in December 2011.
AD-VALOREM TAXES	\$103,104	\$101,727	(\$1,377)	-1.4%	Increase based on estimated taxes per Accounting assumptions.
NON ROUTINE MAINTENANCE	\$14,000	\$17,623	\$3,623	20.6%	Reduced number of anticipated door replacements in 2013 as is presently budgeted as a planned capital replacement item.

Capital Reserves Fund

In accordance with the 2011 reevaluation of the Replacement Reserves Study conducted in April 2008, Alliance recommends a reserve withholding of at least \$2,076 per unit during the 2012/2103 fiscal period. This withholding would ensure that the asset holds adequate reserves to perform necessary replacements and repairs to protect the useful life of the buildings.

Capital Improvement Program

The 10-Year CIP was updated with the review of the property's as built plans that were transferred from the offices of Mid-Peninsula Housing Coalition in November of 2010.

Forrest White, Director of Asset Engineering and Robert Gochee, Asset Engineering Project Manager at Alliance Residential are the managers of capital improvement projects at Preston Park.

- Please refer to attached Capital Improvement Plan (CIP) budget for details. Recommended expenditures have been listed in priority order with relevant benefits and costs identified.

Accomplishments

It has been a pleasure working with residents and the Fort Ord Reuse Authority over the past year. With the support of residents a number of positive changes have occurred within Preston Park.

Some of Alliance's accomplishments include:

- 1) Common Area Maintenance: Pet Waste Stations were installed at each playground and bus stop
- 2) Communication Tools: A monthly newsletter is personally delivered to every home once a month. Residents are encouraged to contribute to the newsletter. The newsletter provides information on community related events, good housekeeping rules for the community and safety tips.
- 3) Marina Police Department Coordination: Management staff and the Marina Police Department work closely in efforts to clean up the property, including vehicle abatement, parking on the grass, double parking, vehicles with expired tags, and abandoned vehicles.
- 4) Long Term Residents: We continuously strive to upgrade the units of our long term residents by painting, upgrading appliances, and replacing flooring.
- 5) 2011/2012 Capital Improvement Program: We are optimistic that the FORA Board will promptly execute the capital project management agreement approved in February which will enable the following enhancements at the property:
 - i. Roof Repairs
 - ii. Exterior Painting Project
 - iii. Lighting Upgrades
 - iv. Exterior Doors and Windows
- 6) Resident Events: Preston Park Management was pleased to host the following Resident events during the 2011/2012 fiscal year:
 - i. Back to School Supply Giveaway
 - ii. Halloween Trick or Treat Activity
 - iii. December "Wrap It Up" Party
 - iv. Movie and Popcorn Pass Give Aways
 - v. Leap Year Celebration
 - vi. SpEGGtacular Earth day Event
- 7) Service Request Responsiveness: The Preston Park Management Team strives to provide Residents with the best and highest service possible. In 2011/2012 more than 1,790 service requests have been processed to date. The average completion time for standard work order requests has been 2 business days or less.

Summary of Preston Park FY2012/2013 Budget

	<u>2012/13 Budget</u>	<u>2011/12 Projected</u>	<u>Variance</u>
Total Income	\$5,424,026	\$5,251,798	\$172,228
Total Expense	\$1,462,937	\$1,449,320	(\$13,617)
Net Income	\$3,961,089	\$3,802,478	\$158,611

We will continue to look for new ways to improve our services over the coming year and remain committed to meeting the objectives set by the Fort Ord Reuse Authority.

Please feel free to contact me should you have additional questions or concerns at (408) 396-8341. I look forward to receiving approval of the final budget prior to July 31, 2012, in order to implement rental increases by September 1, 2012.

Regards,

Corinne Carmody
Regional Manager

Cc: Jonathan Garcia, FOR A
Ivana Bednarik, FOR A
Robert Norris, FOR A
Jim Krohn, Chief Financial Officer, Alliance Communities, Inc.
Annette Thurman, Vice President of Operations, Alliance Communities, Inc.

Attachments: 2012/2013 Budget; Market Survey

PRESTON PARK - REVISED PHYSICAL NEEDS ASSESSMENT (9 Year Look Forward - Alliance Residential Recommendation)

Updated: 5/10/2012

Project	Detail	2012 - 2013	2013 - 2014	2014 - 2015	2015 - 2016	2016 - 2017	2017 - 2018	2018 - 2019	2019 - 2020	2020 - 2021
1410										
Resident Business Center	FF&E	\$ 12,000								
Fence Slat Replacement	Replacement	\$ 71,064								
Site Lighting Repair / Replacement /Install	*Exterior site upgrades	\$ 265,849								
Roof	*Replacement	\$ 1,311,893								
Exterior Paint	*Full Paint	\$ 398,008						\$ 283,200		
Building Exterior	*Dryrot Repairs		\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 75,000	\$ 2,000	\$ 2,000
Carbon Monoxide Detectors		\$ 33,060								
Exterior Unit Doors and Windows	*Replacement	\$ 1,557,000					\$ 2,500	\$ 2,500	\$ 2,500	\$ 2,500
Playgrounds	*Replacement			\$ 125,000						
Landscape/ Irrigation	*Replacement / Upgrades		\$ 204,864							
Leasing Office / Signage	*Upgrades		\$ 107,600							
1415										
New Office Computers	Replace existing old computers	\$ 2,600					\$ 2,600			
1416										
One Maintenance Truck	Needed for hauling etc...	\$ 14,000				\$ 15,000				\$ 15,000
1420										
Seal Coat Streets		\$ 155,787					\$ 155,787			
1425										
Dishwasher	replacement (assume 10 year life)	\$ 10,200	\$ 10,200	\$ 10,200	\$ 10,200	\$ 10,200	\$ 10,200	\$ 10,200	\$ 10,200	\$ 10,200
Refrigerators	replacement (assume 15 year life)	\$ 14,400	\$ 12,650	\$ 12,650	\$ 12,650	\$ 12,650	\$ 12,650	\$ 12,650	\$ 12,650	\$ 12,650
Range	replacement (assume 15 year life)	\$ 16,524	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500
Garbage Disposal	replacement (assume 10 year life)	\$ 2,345	\$ 2,345	\$ 2,345	\$ 2,345	\$ 2,345	\$ 2,345	\$ 2,345	\$ 2,345	\$ 2,345
Hot Water Heaters	replacement (assume 15 year life)	\$ 16,200	\$ 17,250	\$ 17,250	\$ 17,250	\$ 17,250	\$ 17,250	\$ 17,250	\$ 17,250	\$ 17,250
Carpet	replacement (assume 5 year life)	\$ 38,400	\$ 113,600	\$ 113,600	\$ 113,600	\$ 113,600	\$ 113,600	\$ 113,600	\$ 113,600	\$ 113,600
Vinyl	replacement (assume 10 year life)	\$ 66,300	\$ 19,250	\$ 19,250	\$ 19,250	\$ 19,250	\$ 19,250	\$ 19,250	\$ 19,250	\$ 19,250
HVAC Furnace	replacement (assume 20 year life)	\$ 26,400	\$ 15,300	\$ 15,300	\$ 15,300	\$ 15,300	\$ 15,300	\$ 15,300	\$ 15,300	\$ 15,300
1430			\$ -	\$ -	\$ -	\$ -	\$ 2,500	\$ 285,700	\$ 2,500	\$ 2,500
Applicable Contruction Management Expenses	Miscellaneous (see * items)	\$ 211,965	\$ 18,748	\$ 7,500	\$ -	\$ -	\$ -	\$ 21,492	\$ 150	\$ 150
Annual Reserve Expenses (uninflated)		\$ 4,223,995	\$ 535,307	\$ 336,595	\$ 204,095	\$ 219,095	\$ 367,482	\$ 869,987	\$ 209,245	\$ 224,245
Inflation Factor		0.00%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%
Annual Reserve Expenses (Inflated)		\$ 4,223,995	\$ 548,690	\$ 345,010	\$ 209,197	\$ 224,572	\$ 376,669	\$ 891,737	\$ 214,476	\$ 229,851
Reserve Withholdings per Year		\$ 734,976	\$ 734,976	\$ 283,200	\$ 283,200	\$ 283,200	\$ 283,200	\$ 283,200	\$ 283,200	\$ 283,200
Reserve Fund BEFORE Expense		\$ 4,687,035	\$ 1,198,016	\$ 932,526	\$ 870,717	\$ 944,719	\$ 1,003,347	\$ 909,878	\$ 301,341	\$ 370,065
Reserve Fund AFTER Expense		\$ 463,040	\$ 649,326	\$ 587,517	\$ 661,519	\$ 720,147	\$ 626,678	\$ 18,141	\$ 86,865	\$ 140,214

Capital Improvement Plan (CIP)

PRESTON PARK 2013 STANDARD BUDGET CONSOLIDATION & SIGN-OFF



Description	2013 Total	2012 Projected	Variance	Variance %
Physical Occupancy	98.01 %	99.01 %		
Economic Occupancy	99.52 %	96.70 %		
Gross Market Potential	\$5,431,325	\$5,386,452	\$44,874	0.8%
Market Gain/Loss to Lease	\$146,130	(\$87,610)	\$233,740	266.8%
Affordable Housing	\$0	\$0	\$0	0.0%
Non-Revenue Apartments	(\$63,216)	(\$37,260)	(\$25,956)	-69.7%
Rental Concessions	\$0	\$0	\$0	0.0%
Delinquent Rent	\$0	\$0	\$0	0.0%
Vacancy Loss	(\$108,009)	(\$52,696)	(\$55,313)	-105.0%
Prepaid/Previous Paid Rent	\$0	\$0	\$0	0.0%
Other Months' Rent/Delinquency Recovery	\$0	\$493	(\$493)	-100.0%
Bad Debt Expense	(\$935)	(\$583)	(\$352)	-60.4%
Other Resident Income	\$36,244	\$36,094	\$150	0.4%
Miscellaneous Income	\$7,632	\$6,909	\$723	10.5%
Corp Apartment Income	\$0	\$0	\$0	0.0%
Retail Income	\$0	\$0	\$0	0.0%
TOTAL INCOME	\$5,449,171	\$5,251,798	\$197,373	3.8%
PAYROLL	\$434,036	\$410,059	(\$23,977)	-5.8%
LANDSCAPING	\$70,700	\$70,865	\$165	0.2%
UTILITIES	\$96,660	\$93,075	(\$3,585)	-3.9%
REDECORATING	\$81,744	\$82,160	\$416	0.5%
MAINTENANCE	\$82,332	\$81,542	(\$790)	-1.0%
MARKETING	\$13,047	\$7,883	(\$5,164)	-65.5%
ADMINISTRATIVE	\$57,606	\$57,189	(\$417)	-0.7%
RETAIL EXPENSE	\$0	\$0	\$0	0.0%
PROFESSIONAL SERVICES	\$144,229	\$130,924	(\$13,305)	-10.2%
INSURANCE	\$185,020	\$174,426	(\$10,594)	-6.1%
AD-VALOREM TAXES	\$103,104	\$101,727	(\$1,377)	-1.4%
NON ROUTINE MAINTENANCE	\$14,000	\$17,623	\$3,623	20.6%
TOTAL OPERATING EXP	\$1,282,478	\$1,227,473	(\$55,005)	-4.5%
NET OPERATING INCOME	\$4,166,694	\$4,024,326	\$142,368	3.6%
DEBT SERVICE	\$0	\$0	\$0	0.0%
DEPRECIATION	\$173,088	\$215,698	\$42,610	19.8%
AMORTIZATION	\$0	\$0	\$0	0.0%
PARTNERSHIP	\$8,000	\$6,150	(\$1,850)	-30.1%
EXTRAORDINARY COST	\$0	\$0	\$0	0.0%
NET INCOME	\$3,985,606	\$3,802,478	\$183,128	4.8%
CAPITAL EXPENDITURES	\$4,223,995	\$191,785	(\$4,032,210)	-2102.5%
MORTGAGE PRINCIPAL	\$0	\$0	\$0	0.0%
TAX ESCROW	\$0	\$0	\$0	0.0%
INSURANCE ESCROW	\$0	\$0	\$0	0.0%
INTEREST ESCROW	\$0	\$0	\$0	0.0%
REPLACEMENT RESERVE	\$734,976	\$734,976	\$0	0.0%
REPLACEMENT RESERVE REIMBURSEM	(\$4,223,995)	(\$203,682)	\$4,020,313	1973.8%
WIP	\$0	\$0	\$0	0.0%
OWNER DISTRIBUTIONS	\$3,423,718	\$3,295,097	(\$128,621)	-3.9%
DEPRECIATION AND AMORTIZATION	(\$173,088)	(\$215,698)	(\$42,610)	-19.8%
NET CASH FLOW	(\$0)	\$0	(\$1)	-385.3%

Approvals

Owner _____ Date _____

Asset Manager _____ Date _____

COO _____ Date _____

VP _____ Date _____

Regional Manager _____ Date _____

Business Manager _____ Date _____

Alliance Residential, LLC makes no guarantee, warranty or representation whatsoever in connection with the accuracy of this Operating Budget as it is intended as a good faith estimate only.

FORT ORD REUSE AUTHORITY BOARD REPORT

OLD BUSINESS

Subject: Preston Park – Broker Advisor Services Contract

Meeting Date: July 13, 2012

Agenda Number: 6b

ACTION/INFORMATION

RECOMMENDATION(S):

Authorize a contract for real estate advisory services with Dan Lopez and Associates.

BACKGROUND/DISCUSSION:

The Fort Ord Reuse Authority ("FORA") has owned the Preston Park Housing Complex since 2000, when it was transferred by the US Army.

As a result of actions by the FORA Board in January 13, 2012, the FORA Board authorized a Preston Park updated appraisal and staff to begin the sale/disposition process. FORA staff hired CBRE to update the 2010 appraisal and is now seeking authorization to contract with Dan Lopez and Associates to provide real estate advisory services for the sale of Preston Park. Staff reached out to ten local and regional real estate brokers and service providers. Four providers responded and two proposers were interviewed. Staff received assistance from two outside agency reviewers.

Dan Lopez and Associates submitted a very thorough response to the RFQ (**Attachment A**). He cited his experience in the region unwinding nonprofit housing corporation pools of assets involving 29 properties and 2,200 units involving multiple jurisdictions, funding sources, and operating covenants. Dan Lopez and Associates offers FORA the best cost effective resource for the disposition of Preston Park. He has an extensive knowledge of the multifamily financing climate and his very experienced working with regional public agencies housing nonprofit organizations.

FISCAL IMPACT:

Reviewed by FORA Controller _____

Contract authorization is for up to start in phased contract which in renewable (\$25,000) phases and would be billed at hourly rate (\$175.00/ hour) up to a maximum of 30 basis points (0.3%) of the Sales Price of Preston Park to the authorized maximum with all costs to be paid from Preston Park sales proceeds.

COORDINATION:

Executive Committee, Authority Counsel,

Prepared by _____ Approved by _____
Robert J. Norris, Jr. Michael A. Houlemard, Jr.

April 26, 2012

APR 27 2012

FORA

Mr. Robert J. Norris, Jr.
Principal Analyst
Fort Ord Reuse Authority
920 2nd Avenue, Suite A
Marina, CA 93933

Re: Response to Request for Qualifications

Dear Mr. Norris:

Thank you for the opportunity to provide this response to the Request for Qualifications (RFQ) for real estate brokerage services in regards to the sale of the 352-unit Preston Park apartment complex located in the City of Marina. As stated in the RFQ, the property is currently 99.1% occupied with fifty-one (51) of the units paying below market rents under a deed restriction and regulatory agreement between the City of Marina and FORA. The remaining 301 units are unrestricted and receive fair market rents although these rents are estimated to be approximately 16.3% below prevailing market rents in the area.

As noted in my Statement of Qualifications (enclosed), I have extensive and recent experience in completing, selling, and transferring multifamily rental housing properties most notably through my almost completed work winding-down Citizens Housing Corporation (CHC). CHC is a San Francisco based nonprofit housing development corporation which constructed as new as well as acquired and rehabilitated over 2,200 units of housing substantially affordable to households earning up to 80% of area median income with a small percentage of the units being unrestricted and rented at fair market rents. When the CHC board of directors decided to complete an orderly wind-down of the organization in October 2009 in order to ensure the long-term affordability of each property as well as protecting the interests of individual residents, the intent was to complete, lease-up, and transfer those properties that were still under construction (six at that time) as well as sell or transfer the remaining 29 properties that were operational. The six properties under construction at the time have been completed, fully leased, and transferred to either Tenderloin Neighborhood Development Corporation (TNDC-these were the San Francisco properties) or Eden Housing, Inc. (EHI-these were the properties outside of San Francisco). The 29 operating properties were transferred to TNDC, EHI, or a variety of private interests with one property being sold on the open market to a Los Angeles based investor group. It should be noted that the property sold to the investor group was sold for approximately \$1.2 million over the bank appraised value and that because the property was formerly financed by the HUD 236 program, it carried with it affordability restrictions which have a remaining life of about 17 years.

All through the process of winding-down CHC, I have been responsible for negotiating with creditors, lenders, and investors in order to reach an acceptable conclusion with each

Transmittal Letter To: Robert J. Norris, Jr.
Re: Response to FORA RFQ
Page 2 of 2

on every property. Some of these properties had 24 sources of permanent financing with the more typical norm being 5-6 lenders per property. Sometimes this complex financing-web had to be unwound and new financing had to be put into place. Sometimes the existing financing remained in place, but had to be restructured with some of the lenders making further funding advances and/or the investors needing to provide additional investment capital. All of this has required technical review and analysis as I was ensuring that CHC received maximum value for its properties while protecting the current residents. I also had to review and analyze competing offers in order to determine the best course of action. In addition, while not necessarily relevant to the Preston Park property, I also had to work with outside legal counsel to resolve a number of filed and threatened lawsuits as well as worked with CHC's auditors to ensure full compliance with both IRS and Franchise Tax Board tax filing regulations.

My Statement of Qualifications demonstrates that I also have extensive experience in financing and restructuring rental properties. I have worked with a variety of public agency finance programs as well as tax credit investors and have considerable experience with commercial real estate transactions (i.e., market rate housing and non-residential facilities) through my experience at Citibank where I was a credit officer with credit authorization.

I will bring my extensive knowledge of transferring properties and real estate financing as well as my extensive list of industry contacts in regards to owners/operators/investors to facilitate the successful and timely sale of Preston Park, if selected. Since I am a sole proprietor, I am the one who will be completing all work and working directly with the FORA staff and its consultant. If you need additional information or have any questions or concerns, please direct all of these to me. Per the RFQ, I have enclosed one original and two photo copies of this transmittal letter along with one original and two copies of my Statement of Qualifications and a statement regarding my fee for service. Thank you, again, for the opportunity to respond to this RFQ. Best regards.

Sincerely,



Daniel B. Lopez, Principal
DBL & Associates
1339 Glen Drive
San Leandro, California 94577
E-mail address: DBLAssoc1@aol.com
Cell phone: (510) 390-1451

Enclosures: Original and two copies of
(1) Transmittal Letter; (2) Statement of Qualifications; and (3) Statement of Fee for Service

Statement of Qualifications

Daniel B. Lopez, Principal
DBL & Associates
1339 Glen Drive, San Leandro, CA 94577
Phone: (510) 390-1451
E-mail: DBLAssoc1@aol.com

Mr. Lopez provides (1) technical financial analysis and evaluation of affordable single-family and multifamily developments; (2) develops and implements single-family and multifamily financing programs for public agencies; (3) provides staff training on management and audit processes and procedures; and (4) general problem solving consultation services to public agencies, private equity investors, financial institutions, and nonprofit and for-profit housing developers. Current list of clients includes:

***City of San Jose Housing Department:** Serve as senior housing finance and development advisor to the Housing Department. Have recently consulted on: (1) proposed home ownership developments to determine project feasibility and financing structures; (2) proposed multifamily tax credit rental developments; (3) monitoring lease-up of a completed but difficult to lease tax credit multifamily project; (4) developed financing scenarios to assist in the evaluation of 15-year end of tax credit compliance period; (5) down-sizing and merging nonprofit organizations so as to achieve ongoing organizational financial stability; and (6) a variety of housing policy and programmatic issues.

Past consultation assignments have included: (1) restructure of financial debt for several multifamily rental developments so as to ensure long-term affordability, physical improvement of the properties, and significant financial return of existing debt to the City; (2) developed improved loan review/monitoring standards for the Loan Management Division; (3) served as Acting Project Development Manager; (4) in conjunction with staff, created a Teacher Mortgage Program; (5) refined loan origination processes and procedures; and (6) staff training and team building. 1994-Present.

***Santa Clara County, County Executive's Office, Office of Affordable Housing:** Serve as senior advisor to the Director of the Office of Affordable Housing to develop housing finance strategies for proposed affordable multifamily developments and more recently, for the successful implementation of the Mental Health Services Act (MHSA) program in conjunction with the Santa Clara County Mental Health Department. Provide technical expertise in designing housing programs to address the County's need for rental and special needs housing, especially for the homeless mentally ill. Assist in the determination of fund allocation developing several NOFA processes and coordinating five funding rounds. Work with staff and County Counsel's Office to develop loan documents and negotiate loan terms with fund awardees. In conjunction with staff and County Counsel's Office, finalize funding guidelines for the use of the General Use Permit (GUP) funds derived from the payment of Stanford University housing impact fees. 2002-Present.

***Citizens Housing Corporation (San Francisco, CA):** This is a nonprofit housing developer which has experienced tremendous financial duress. In 2009, the board of directors of the organization made the very difficult decisions to wind-down the organization. Appointed by the board of directors as President of the organization to complete the wind-down of the organization ensuring that the six projects in progress were completed and that these along with another 29 existing operational properties were transferred to the extent possible to nonprofit owners and operators so as to protect the long-term affordability of the properties. This effort has involved negotiating with all stakeholders including public and private lenders; nonprofit and for-profit developers; investors; and creditors so as to arrive at an acceptable conclusion for the organization. All projects in progress have been completed; all operating properties have been successfully transferred; all creditors have been satisfied; and all litigation matters have been resolved. 2010-Present.

***Abode Services/Allied Housing (Fremont, CA):** Provide technical services to this nonprofit social service/housing development corporation as it merges with another nonprofit entity. 2011-Present.

***Tri Valley Housing Opportunity Center (Livermore, CA):** Assist this nonprofit homebuyer counseling and education center in implementing organizational development changes and fundraising strategies. 2011-Present.

Past Relationships

***City of Fremont Redevelopment Agency:** Served as senior advisor to the Agency in regards to a variety of affordable housing matters including: the review and analysis of proposed tax credit affordable rental housing developments; single-family market for sale housing; special needs housing developments to determine financial feasibility and ascertain the amount of Agency funds needed in order to ensure project feasibility; worked with Agency staff and the Oakland A's Baseball Company to determine how best to meet affordable housing requirement component of the proposed Ballpark Village; researched the actual cost associated with providing an inclusionary housing unit for the purpose of amending the City's current ordinance to allow the payment of in lieu fees; and developed an implementation strategy for the City's plan to end homelessness. 2003-2012.

***County of Monterey, Office of Housing and Redevelopment:** Reviewed and analyzed proposed tax credit affordable rental housing developments; develop a sales strategy for the sale of Work Force Housing units in a completed development; and developed draft staff underwriting and lending manual. 2008-2010.

***City of Pleasanton:** Provided technical review of proposed partnership structure for the acquisition, refinancing, and resyndication of an existing tax credit development that reached the end of its 15-year compliance period. Project required some rehabilitation and additional funding from the City to buy-out the limited partner. 2009-2010.

***California Housing Consortium:** Served as Interim Executive Director for this statewide policy and legislative advocacy nonprofit corporation, which includes for-profit and nonprofit

developers, tax credit equity investors, and other statewide associations. Responsibilities included: overall administration; fundraising; legislative tracking and the development of appropriate responses; and serving as principal staff to task forces on tax credits, membership, and finance. 2008-2009.

***Housing Trust of Santa Clara County:** Developed various scenarios for program expansion so as to ensure long-term organizational financial viability. Research resulted in the development and successful implementation of the 97/5 home loan program for use throughout the county and for use in combination with local homebuyer assistance programs. 2005-2007.

***City of Livermore Redevelopment Agency:** Worked with the Redevelopment Agency Director to assemble sites for potential use for affordable housing, market rate housing, retail, and commercial uses. Responsibilities included arranging and attending meetings with current property owners so as to expedite the purchase of real property. 2005-2007.

***City of Vallejo Redevelopment Agency:** Reviewed and analyzed prospective tax credit multifamily developments and determined best combination of financing. Financing sources included tax increment, HOME, Project Based Section 8 Assistance, Federal Home Loan Bank (FHLB) Affordable Housing Program funds, and private equity sources. In addition, evaluated HUD expiring use developments as required by the Agency in order to determine the best project financing. 2002-2006.

***Hudson Housing Capital:** Advised this tax credit equity investor on possible investment opportunities on proposed tax credit affordable rental housing developments in Southern California. Evaluated potential projects and sponsors to determine interest. 2005-2006.

***City of Dublin (Alameda County):** In conjunction with City staff, developed a process that resulted in the selection of a developer for a senior housing project. Process included the development of a Notice of Funding Availability (NOFA); evaluation of all submitted proposals based on financing and technical criteria; the development of recommendations for staff and City Council approval; working with the selected developer on predevelopment agreement; and assisted the developer in obtaining financing that best leveraged the City's funds while providing the deepest affordability. 2002-2005.

***Sacramento Valley Organizing Committee:** Provided development and financial consultation to this nonprofit housing developer for the construction and acquisition/rehabilitation of very low, low, and moderate-income ownership and rental housing in the Sacramento-Yolo-Solano counties area. Efforts included securing grants, public and private interim and permanent financing; completing project financial feasibility analyses and proformas; the development of a homebuyer education and counseling function; and established long-term relationships for the organization with local communities and financial institutions. The above resulted in the construction and completion of over 400 units of first-time home ownership units, the acquisition and rehabilitation of 144 rental housing units, and increased organizational development capacity. 1994-1999; 2003-2005.

***Freddie Mac:** Assisted Freddie Mac Western Region staff in developing partnerships with cities such as Oakland, San Francisco, San Jose, Salinas, and Santa Ana; lending intermediaries such as the Low Income Housing Fund, LISC, and Century Housing Corporation; financial institutions such as Bank of America, Wells Fargo, and Citibank; and local community development corporations to establish a home ownership initiative alliance aimed at leveraging local public funds and providing additional home ownership opportunities. Assisted in the creation of a Joint Powers Authority (JPA) with twenty-four jurisdictions primarily in Alameda and Contra Costa Counties to implement a lease-to-own program. Efforts resulted in the completion of a Housing Demand Study and the issuance of \$90 million in tax-exempt bonds. In addition, coordinated efforts to create homebuyer education and counseling centers in San Francisco, San Jose, Sacramento/Solano County, and Santa Ana/Orange County. 1998-2002.

***Chilton & Associates:** Worked with this investment banking firm to complete housing demand studies for the issuance of tax-exempt bonds in support of a lease-to-own program for the Riverside-San Bernardino Housing & Finance Agency (28 communities; \$65 million bond issuance); the San Diego Area Housing & Finance Agency (18 communities; \$75 million bond issuance); the California Communities Housing Finance Agency (17 communities; \$65 million bond issuance); and the Pacific Housing & Finance Agency (48 communities; \$60 million bond issuance). 1999-2004.

***California Housing Loan Insurance Fund (CaHLIF):** For this public mortgage insurance provider, assisted in the development of innovative home ownership finance programs and worked with local communities throughout California to implement these programs. 1996-2002.

Completed Assignments Include

***Mayfair Neighborhood Improvement Initiative:** Completed a Housing Strategic Action Plan for this low-income neighborhood in east San Jose. Responsibilities included establishing a housing assistance center including fundraising for its operation, negotiating with homebuilders so as to gain financial access to new homes for local residents, and in conjunction with the City of San Jose, modified existing programs so as to expand their use in this neighborhood.

***City of Oakley Redevelopment Agency (Contra Costa County):** Developed Agency-sponsored home ownership programs to promote home ownership in the City. Programs included down payment assistance and lease-to-own programs.

***California Housing Finance Agency:** Served as Acting Chief of Multifamily Lending and supervised all loan originations and underwriting functions.

***City of Alameda Housing Department:** Served as technical advisor to the City and Housing Authority in the acquisition of an existing apartment building for conversion into an affordable rental development. Worked intensely with staff to develop project operating proforma and rehabilitation budget; researched, secured, and negotiated permanent financing; and coordinated loan closing.

***Community Development Financial Institutions (CDFI) Fund, U.S. Department of the Treasury:** Reviewed and developed funding recommendations for grant and loan requests received from 25 nonprofit sponsors from the southern and western United States for this innovative funding program.

***Marin Community Foundation:** In conjunction with an accounting firm and another housing consulting firm, completed a performance evaluation of two Marin County-based nonprofit housing providers.

***Mission Community Bank:** Worked with this newly organized financial institution serving the San Luis Obispo County area to create two wholly owned subsidiary corporations aimed at (1) providing technical assistance to nonprofit community organizations and (2) provide direct loans to nonprofit and for-profit sponsors of affordable housing, community facilities, and non-residential economic/job creating activities.

***Peoples' Self-Help Housing Corporation:** Provided development, financial, and loan consulting services to this nonprofit housing development corporation for specific rental housing developments in Santa Maria (new construction/tax credits); Santa Barbara (acquisition/rehabilitation); and Isla Vista (new construction/tax credits).

***UFW/National Farm worker Service Center, Inc.:** Reviewed possible housing development and investment opportunities to address the low-income housing needs of the farm worker population in California and the Southwest.

***USA Properties Fund, Inc.:** Created partnerships between this for-profit housing developer and locally based nonprofit organizations for the development of ownership and rental housing.

***U.S. Ninth Circuit Court of Appeals:** Appointed by the court to privatize the Century Freeway Replacement Housing Program into a viable nonprofit housing development corporation. Privatization resulted in the formation of Century Housing Corporation and the transfer of cash and real estate assets in excess of \$400 million to this nonprofit housing development and finance entity.

Previous Work Experience

***President, Chief Executive Officer and Director**
California Community Reinvestment Corporation, July 1989 to September 1994

***Vice President/Director of Community Lending**
Citicorp Savings of California (Citibank/Citigroup), June 1983 to July 1989

***Housing Program Manager/Principal Planner**
Association of Bay Area Governments, February 1979 to June 1983

***Senior and Associate Planners**
Association of Bay Area Governments, March 1976 to February 1979

Statement of Fee for Services

My fee for the anticipated services that I will provide to FORA in regards to the successful and timely sale of the Preston Park Apartments will be the lesser of 0.3% (i.e., three-tenths of one percent or 30 basis points) of the sales price or hours worked at an hourly billing rate of \$175 per hour.

FORT ORD REUSE AUTHORITY BOARD REPORT

OLD BUSINESS

Subject: FORA FY 12-13 Preliminary Budget (2nd Vote)

Meeting Date: July 13, 2012

Agenda Number: 6c

ACTION

RECOMMENDATION:

- i) Approve the Fort Ord Reuse Authority ("FORA") fiscal year 2013 ("FY 12-13") preliminary budget including a 2% Cost of Living Adjustment ("COLA") – 2nd Vote
or
- ii) Approve the Fort Ord Reuse Authority ("FORA") fiscal year 2013 ("FY 12-13") preliminary budget without COLA – 1st Vote

BACKGROUND/DISCUSSION:

Recommendation i:

At the June 8, 2012 meeting, the FORA Board reviewed the FY 12-13 preliminary budget recommended by the Finance and Executive Committees (**Attachment A**). The Board voted to approve the preliminary FY 12-13 budget including a 2% COLA. The motion failed to receive unanimous vote (6 yes-3 no). This item will require a majority vote of the Board to be approved

Recommendation ii:

The Board may choose to approve the FY 12-13 preliminary budget without the 2% COLA. This item will require unanimous vote to pass.

Budget approval is required to authorize FORA expenditures during FY 12-13.

COORDINATION:

Executive Committee

Prepared by _____
Ivana Bednarik

Approved by _____
Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY BOARD REPORT

NEW BUSINESS

Subject: FORA FY 12-13 Preliminary Budget

Meeting Date: June 8, 2012

Agenda Number: 9d

ACTION

RECOMMENDATION:

Approve the Fort Ord Reuse Authority ("FORA") fiscal year 2013 ("FY 12-13") preliminary budget.

BACKGROUND:

In 2008, FORA staff, in coordination with the Finance Committee ("FC"), modified the annual preliminary budget format to depict all FORA revenue sources and expenditures on a single chart. Consequently, an overall illustration of FORA financial position is accessible for Board members in one place. The preliminary annual budget 1) prorates the multi-year FORA/Army Environmental Services Cooperative Agreement ("ESCA") funding to cover the upcoming fiscal year expenditures; this accurately represents FORA finances, as ESCA funding is strictly project specific, and 2) includes anticipated overall budget for capital projects (itemized in the Capital Improvement Program budget). The budget chart also compares the current FY approved, mid-year and year-end projected budgets.

The FC further decided to request staff to prepare longer-term funding projections during the mid-year budget review when essential items such as FORA extension and property tax increment are determined.

DISCUSSION:

Attachments 1 - 4 illustrate the FC recommended preliminary budget for FY 12-13:

Attachment 1 depicts the overall FY 12-13 preliminary budget.

Attachment 2 itemizes expenditures.

Attachment 3 illustrates Preston Park sale transaction.

Attachment 4 provides detail on ESCA budget.

Principal areas of negative budget impact are discussed below:

- **Reuse slowdown and Economic Recession:** The national and state economic downturn/recession of the last five/six fiscal years has significantly slowed Fort Ord reuse and economic recovery. Consequently, FORA developer fee and land sale revenues have been deferred and/or reduced.
- **Property Tax Increment revenue:** In December 2011, the California Supreme Court upheld Assembly Bill AB1x26 that terminated all of California redevelopment agencies. The Successor Agencies must identify payments to FORA as enforceable obligations and submit their Recognized Obligation Payment Schedules ("ROPS") to the County Auditor-Controller who will determine if these property tax distributions will continue.

Other agencies in the state have moved ahead in submitting similar obligations on their ROPS and we have supported legal review/opinion of these obligations. However, the FC has suggested that we move ahead conservatively with our budget and adjust at mid-year once the ongoing ROPS issues are addressed/confirmed.

- **Federal revenue:** In FY 09-10 FORA secured American Recovery and Reinvestment Act ("ARRA") funding through the United States Economic Development Administration ("EDA") to finance the construction of the General Jim Moore Boulevard ("GJMB") and Eucalyptus Road. FORA obtained a loan against its 50% share in Preston Park revenues to primarily match the ARRA grant. The construction is scheduled to complete by July 2012. In FY 12-13 FORA staff will seek and evaluate federal funding, which may be available through various federal departments. Opportunities to gain funding assistance for priority roadway improvements within the former Fort Ord footprint could include the realignment and widening of South Boundary and the last 900 feet of GJMB. However, it is unlikely that funding will be available in the coming year for such projects.

Despite these economic and funding challenges, FORA continues to contain expenses and improve operational efficiencies while continuing its capital program, adding projects and maintaining services.

The following summarizes the preliminary budget figures for FY 12-13 (Attachment 1):

REVENUES

LOCAL REVENUES

- **\$261,000 Membership dues**

In addition to State Law stipulated fixed membership dues of \$224,000; FORA collects membership dues from Marina Coast Water District ("MCWD") under contract terms.

- **\$275,000 Franchise Fees**

This amount represents MCWD's projected FY 12-13 payments to FORA from water and sewer operations on Fort Ord and associated administrative fees. The transfer of ownership of the system from the US Army to MCWD occurred in 2001.

- **\$6,000,000 Developer Fees (Attachment 3)**

The amount includes \$3.3 million to be realized in the Preston Park housing project ("Preston Park") disposition and \$2.7 million from other CIP anticipated projects. As recommended by the FC, jurisdictional forecasts are reduced in the preliminary budget by 50% to reflect concern about the ongoing impact of the economic downturn and housing market conditions. Please refer to CIP budget (Table 4, Appendix B – Community Facilities District Revenue) for detail and long-term projections.

- **\$28,450,279 Land Sale Proceeds (Attachment 3)**

Estimated proceeds from Preston Park disposition. Project forecasts by FORA jurisdictions do not anticipate any land sale revenue in FY 12-13. Please refer to CIP budget (Table 4, Appendix B – Land Sale Revenue) for detail and long-term projections.

- **\$840,000 Lease/Rental Payments**

This amount consists of FORA's 50% share of lease revenue from Preston Park prorated through December 2012 (Preston Park anticipated disposition closure date).

- **\$326,795 Deficit Period payment from California State University ("CSU")**

This is the final payment to repay \$2,326,795 deficit period mitigation costs according to agreement between FORA and CSU.

- **\$135,000 from Investment/Interest Income**

Budgeted income from FORA bank accounts and certificates of deposit and it includes earnings on the Preston Park sale proceeds. It also includes interest payments on the outstanding Pollution Legal Liability insurance premium by the City of Del Rey Oaks until they are able to repay the premium. The investment income does not include earnings from funds set aside for the Habitat Conservation endowment; currently FORA has about \$4.6 million available for the endowment and all earnings are and will be restricted to fund habitat management costs.

FEDERAL FUNDING

- **\$787,690 Environmental Services Cooperative Agreement (Attachment 4)**

In March 2007, FORA was awarded a federal grant in the amount of \$99.3 million to complete munitions removal on Economic Development Conveyance parcels. FORA collected the final amount of \$97.7 million in December 2008, which pre-paid all ESCA management related services and expenditures through the December 2014 project completion (the US Army received \$1.6 million credit for paying ahead of schedule). The preliminary budget includes the FY 12-13 overhead/related expenses portion of the grant.

UNDETERMINED REVENUE

- **Property Tax Revenue**

At the time the FC met on the budget it was unclear if this revenue source would be available in FY 12-13 due to State phase-out and the FC decided not to include this revenue in the preliminary budget until it is clear if this revenue will continue.

UPDATE: FORA Authority Counsel Jerry Bowden, Special Counsel Brent Hawkins, and CIP review consultants have provided County Auditor-Controller documentation of our ongoing obligation claim. County Auditor-Controller has indicated that he agrees with FORA Counsel and consultants and is prepared to directly pay to FORA its historical share of property tax. However, the actual amounts in the future may vary given other factors that remain unclear. FORA staff will be prepared to describe how this may impact the budget at the 6/8/2012 meeting.

- **Loan Reimbursement – East Garrison ("EG")**

Pursuant to the 2005 Monterey County, developer and FORA agreement, FORA borrowed \$4.1 million to pay building removal at the Dunes on Monterey Bay. The loan was to be repaid by the EG developer who only made a partial land payment when they acquired the EG property. Terms of this obligation are being negotiated with the new developer and the County.

EXPENDITURES

- **\$1,959,578 Salaries and Benefits** (Attachment 2)

FORA staffing remains at the approved FY 11-12 level. In January 2012, the FORA Board adopted new salary ranges to bring FORA employees toward equity with other labor market agencies. To continue the equity process, the FC recommended including in the budget a 2% increase in this category should the Executive Committee ("EC") and or FORA Board approve a compensation adjustment in FY 12-13. The EC reviewed this item but was not able to take an action as the proposal to approve a 2% COLA failed 2 – 2.

- 2% Cost of Living Adjustment. Fiscal impact up to \$33,040.
Effective July 1, 2012

Both the FC and EC recommend deferring consideration of any other adjustments such as salary step increases and/or benefit adjustments to the mid-year time frame in order that these items may be reviewed in conjunction the long-term budget projections after determinations about certain revenues and extension are clearer.

- **\$193,050 Supplies and Services** (Attachment 2)

A significant reduction in this expense category compared to the previous FY budget due to: 1) Relocation to IOP office concluded in FY 11-12, 2) office equipment (computer and copy machine replacements) purchased in FY 11-12, and 3) Community Information Center ("CIC") set up (including purchasing equipment and exhibits) was completed in FY 11-12.

The budget provides for routine computer/server upgrades and computer support. The budget for travel remains the same; even though fewer trips are planned, travel costs are projected to rise in the coming fiscal year. In addition, the budget also provides funding for televised Board meetings, increased efforts for community engagement at all levels and anticipated requests for services from jurisdictions.

While product price increases continue, FORA staff has implemented cost saving procedures and/or secured decreased rates for some items such communications, insurance, supplies, and copy charges.

- **\$1,548,750 in Contractual Services** (Attachment 2)

Contractual services are slightly increased from the previous FY level. Besides FORA's recurring consulting expenses such as Authority Counsel, Auditor, Public Information, Human Resources, Legislative and Financial consultants, and ESCA regulatory response contracts, the preliminary budget includes increased and or significant costs for: 1) Base Reuse Plan reassessment consultant to finish draft reassessment and to implement any BRP adjustments (*see item 8a on this Agenda*), 2) Legal and professional services associated with Preston Park disposition, BRP reassessment, and other issues, and 3) HCP consultant to prepare the final EIS/EIR and HCP.

- **\$4,584,750 in Capital Projects** (Attachment 2)

Capital projects are decreased as compared to the last year as road improvements along GJMB/Eucalyptus Road funded predominantly by EDA grant and FORA matching funds are

now completed. The upcoming budget includes mandated/obligatory expenditures such as habitat management and UC Natural Reserve annual cost. Other capital projects are development fee collection dependent. The FORA Capital Improvement program budget, which provides itemization and timing of capital projects, is presented to the FORA Board for adoption at today's Board meeting (*see item 9b on this Agenda*).

- **\$19,124,340 Debt Service (Principal and Interest) (Attachment 2)**

The FY 12-13 debt service consists of the following liabilities:

- \$682,440 for Preston Park loan monthly debt service (principal and interest) prorated for six months through December 2012; financed by applying a portion of FORA 50% share of Preston Park revenue.
- \$18,325,900 for Preston Park loan principal pay-off upon Preston Park sale anticipated by December 2012.
- \$116,000 for fire fighting equipment capital lease payment (year 9 of 10); financed by CFD revenue.

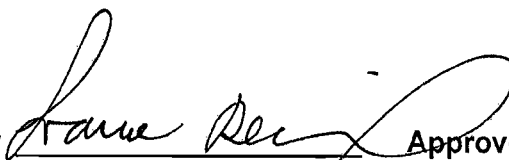
ENDING BALANCE/FORA RESERVE:

It is anticipated that FORA will have budget savings of approximately \$15 million at the end of FY 12-13 mainly due to receiving proceeds from the sale of Preston Park. The General Fund ending balance (reserve) is estimated at \$1.2 million. FORA reserve account was established in FY 99-00 to provide for unforeseen expenses. In June 2011, the Finance Committee recommended setting the reserve at six months of operating expenses (\$1.2 million).

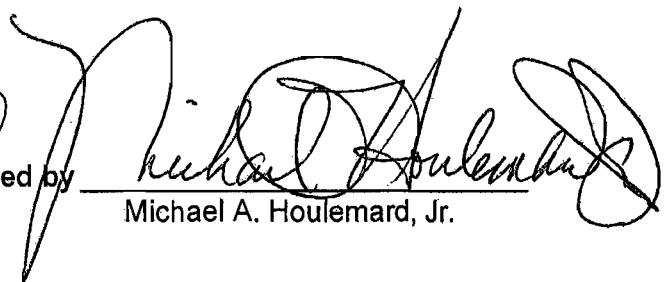
COORDINATION:

Finance Committee, Executive Committee. The Finance Committee met on March 28 and May 2, 2012 to review and discuss the preliminary budget. At the May 2 meeting, the Finance Committee made recommendations regarding the FORA Board's approval of the preliminary budget. The Executive Committee reviewed the budget on May 30, 2012. They concurred with the Finance Committee to recommend the Board's approval of the preliminary FY 12-13 budget; however, as noted above they were deadlocked (2-2) on approving the 2% COLA increase.

Prepared by


Ivana Bednarik

Approved by


Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY - FY 12-13 PRELIMINARY BUDGET - ALL FUNDS COMBINED

CATEGORIES	FY 11-12 APPROVED	FY 11-12 MID-YEAR	FY 11-12 Actual/Projected	FY 12-13 PRELIMINARY	NOTES
REVENUES					
Membership Dues	\$ 261,000	\$ 261,000	\$ 261,000	\$ 261,000	
Franchise Fees - MCWD	195,000	195,000	250,000	275,000	Per MCWD draft FY 12-13 budget
Federal Grants - ESCA	963,885	901,698	825,000	787,690	Anticipated reimbursements in FY 12-13. (See Attachment 4 -ET/ESCA)
Federal Grants - EDA	2,109,754	2,105,770	2,105,770	-	EDA/ARRA grant closed/GJMB-Eucalyptus construction completed in FY 11-12
PLL Loan Payments	727,634	727,634	727,634	-	PLL Loan paid off in FY 11-12
Development Fees	34,000	2,224,200	2,220,362	6,000,000	Preston Park (\$3.3M); jurisdictional forecasts (\$5.4M) reduced by 50% (\$2.7M)
Land Sale Proceeds	-	-	-	28,450,279	Preston Park sale by December 2012 (See Attachment 3 - Preston Park sale)
Rental/Lease Payments	1,592,858	1,872,858	1,872,858	840,000	Preston Park lease proceeds, prorated for 6 months
Tax Increment	1,500,000	779,250	837,683	-	Property Tax distribution as yet unknown - subject to external conclusions
CSU Deficit Payment	500,000	500,000	500,000	326,795	Final CSU deficit period mitigation payment
Planning Reimbursements	12,500	12,500	5,500	7,000	ESCA contract assistance - remaining reimbursement carried over to FY 12-13
Loan Reimbursements	287,000	287,000	287,000	-	Terms of remaining obligation negotiated with East Garrison developer/County
Investment/Interest Income	62,500	104,195	104,195	135,000	Anticipated income from money market and COD accounts
TOTAL REVENUES	8,246,131	9,971,105	9,997,002	37,082,763	
EXPENDITURES					
Salaries & Benefits	1,902,101	1,767,040	1,767,040	1,959,578	Full staffing, approved salary ranges (no increases), 2% COLA included
Supplies & Services	227,550	276,219	268,799	193,050	IOP office relocation concluded in FY 11-12
Contractual Services	1,493,250	1,670,650	1,526,610	1,548,750	
Capital Projects (CIP)	5,081,208	5,628,759	5,628,759	4,584,000	Habitat management, roadway projects
Debt Service (P+I)	2,360,423	2,360,423	2,360,423	19,124,340	Preston Park loan pay-off anticipated by January 2013
TOTAL EXPENDITURES	11,064,532	11,703,091	11,551,631	27,409,718	(See Attachment 2 - Itemized Expenditures)
NET REVENUES	(2,818,401)	(1,731,986)	(1,554,629)	9,673,046	
FUND BALANCES					
Budget Surplus - Beginning	5,950,417	6,980,431	6,980,431	5,425,802	
Budget Surplus - Ending	\$ 3,132,016	\$ 5,248,445	\$ 5,425,802	\$ 15,098,847	Ending fund balance/FORA Reserve

FORT ORD REUSE AUTHORITY
FY 12-13 PRELIMINARY BUDGET

ITEMIZED EXPENDITURES

EXPENDITURE CATEGORIES	FY 11-12 Approved	FY 11-12 Mid-Year	FY 11-12 Projected	FY 12-13 Preliminary	NOTES
<u>SALARIES & BENEFITS</u>	14 positions	14 positions	14 positions	14 positions	
FORA STAFF - Salaries	1,332,435	1,262,916	1,262,916	1,387,046	
FORA STAFF - Benefits/Employer taxes	504,666	474,124	474,124	527,531	
Temporary help/Vacation cash-out/stipends	65,000	30,000	40,000	45,000	
TOTAL SALARIES AND BENEFITS	1,902,101	1,767,040	1,777,040	1,959,578	2% COLA included
<u>SUPPLIES & SERVICES</u>					
Communications	12,000	12,000	12,000	12,000	
Supplies	14,000	14,000	14,000	14,000	
Equipment & Furniture	25,000	20,000	20,000	10,000	
Travel, Auto & Lodging	26,000	26,000	26,000	26,000	Trips may be reduced but costs are rising
Meeting Expenses	8,000	8,000	8,000	8,000	
Building maintenance & security	10,000	8,500	8,500	8,500	
Utilities	13,000	13,000	13,000	13,000	
Insurance	65,900	48,500	48,500	48,500	
Computer support	20,650	20,650	20,650	22,050	
Payroll/Accounting Services	8,000	6,000	6,000	6,000	
Training, Conferences & Seminars	4,000	4,000	4,000	5,000	
Moving Expenses	-	70,649	70,649	-	Relocation to IOP concluded
Community Information center	-	20,000	12,500	7,500	Software, exhibits, meetings
Televised Meetings	-	2,400	1,200	5,000	Board and other select meetings
Other (legal notices, postage, printing, etc.)	21,000	2,520	3,800	7,500	
TOTAL SUPPLIES AND SERVICES	227,550	276,219	268,799	193,050	
<u>CONTRACTUAL SERVICES</u>					
AUTHORITY COUNSEL	131,250	131,250	131,250	131,250	
LEGAL FEES - LITIGATION	125,000	125,000	100,000	125,000	Anticipated reassessment legal needs
LEGAL FEES - SPECIAL PRACTICE	-	-	-	15,000	Environmental/real property/financing
AUDITOR	30,000	30,000	25,960	37,500	Preston Park audit added
SPECIAL COUNSEL (EDC-ESCA)	80,000	80,000	65,000	70,000	ESCA contract legal review
REGULATORY RESPONSE/QUAL ASSURANCE-ESCA	550,000	550,000	450,000	420,000	Reimbursements per ESCA contract
VETERANS CEMETERY CONSULTANTS	-	-	-	-	Not included until bill #1842 passes (fall 2012)
FINANCIAL CONSULTANT	80,000	91,000	91,000	60,000	Phase II CIP review/RDA wind down/restructuring
LEGISLATIVE SERVICES CONSULTANT	30,000	38,400	38,400	40,000	Increased needs - CCCVC, FORA sunset, RDA
PUBLIC INFORMATION/OUTREACH	12,000	12,000	12,000	25,000	Increased public access/community engagement
HCP CONSULTANTS	155,000	313,000	313,000	270,000	Prepare final EIS/EIR and HCP
UC MBEST (VISIONING)	25,000	25,000	25,000	-	
BASE REUSE PLAN REASSESSMENT	250,000	250,000	250,000	325,000	Public participation/engagement increase
OTHER CONSULTING	25,000	25,000	25,000	30,000	HR Consultant/miscellaneous consulting
TOTAL CONTRACTUAL SERVICES	1,493,250	1,670,650	1,526,610	1,548,750	
<u>CAPITAL PROJECTS</u>					
ROADWAY IMPROVEMENTS	4,990,708	4,990,708	4,990,708	3,000,000	Refer to CIP 12-13 budget for project detail
HABITAT MANAGEMENT	90,500	638,050	638,050	1,584,000	HM 25% set aside, UC Natural Reserve annual cost
TOTAL CAPITAL PROJECTS	5,081,208	5,628,758	5,628,758	4,584,000	
<u>DEBT SERVICE (Principal and Interest)</u>					
PRESTON PARK LOAN -DEBT SERVICE	1,364,880	1,364,880	1,364,880	682,440	Preston Park loan payments thru 12/12
PRESTON PARK LOAN -PAY-OFF	-	-	-	18,325,900	Preston Park loan paid off by 1/13
PLL INSURANCE FINANCING	879,543	879,543	879,543	-	PLL loan paid off Jan 2012
FIRE TRUCK LEASE	116,000	116,000	116,000	116,000	Year 9 of 10-year lease
TOTAL DEBT SERVICE	2,360,423	2,360,423	2,360,423	19,124,340	
TOTAL EXPENDITURES	11,084,532	11,703,090	11,561,630	27,409,718	

**FORT ORD REUSE AUTHORITY
FY 12-13 PRELIMINARY BUDGET**

ET/ESCA

CATEGORY		REVENUES 3/2007 - 6/2009	EXPENDITURES 3/2007 - 6/2012	AVAILABLE BALANCE FOR 12-14	EXPENDITURES FY 12-13	AVAILABLE BALANCE FOR 13-14
Federal Grant Award March 2007	*	99,316,187				
Credit to Army for early payments		(1,587,578)				
Payments to FORA		97,728,609	(93,591,701)	4,136,908	(787,690)	3,349,218
GRANT FUNDS ALLOCATION						
FORA/Program Management		3,392,656	(2,081,172)	1,311,484	(367,690)	943,794
FORA/Future PLL coverage		916,056	(916,056)	-		-
EPA/DTSC/ERRG Regulatory Response Cost		4,725,000	(1,899,576)	2,825,424	(420,000)	2,405,424
LFR/AIG commutation account	**	88,694,897	(88,694,897)	-		-
TOTALS		97,728,609	(93,591,701)	4,136,908	(787,690)	3,349,218

* The \$99.3M Federal Grant was paid in three phases: \$40M in FY 06-07, \$30M in FY 07-08, and \$27.7M in FY 08-09. The Army made payments ahead of schedule securing a \$1.6M credit; FORA collected the last payment on 12/17/2008.

** FORA made the last payment to LFR (now Arcadis)/AIG commutation account upon receipt of the final grant payment. The commutation account will continue to pay for ESCA remediation through 2014.

The preliminary FY 12-13 includes \$787K of the \$4.1M available balance prorated to cover FY 12-13 expenditures.

FORT ORD REUSE AUTHORITY
FY 12-13 PRELIMINARY BUDGET

Preston Park Sale

PRESTON PARK SALE

Sale Terms

February 2012 Appraised value	60,900,000 *	Actual sale price may be adjusted for terms
FORA Development fee	(3,265,443)	27% fee reduction less \$321,285 Dec 2009 payment
Sale Expenses	(125,000)	Direct sale expenses limited to 62.5K FORA/Marina each
Broker/Attorney fee	(609,000)	up to 1% of sale price approved by FORA Board
Net Value	56,900,557	

FORA & Marina 50% share	28,450,279	Land sale proceeds	
FORA Development fee	3,265,443	Development fee:	816,361 25% Habitat Management set aside
Total funds to FORA	31,715,722		<u>2,449,082</u> Net Development Fee
Less \$19M loan pay-off	(18,325,900)		3,265,443 Total Development Fee
Net Funds to FORA	13,389,822		

FORA's \$19M loan pay-off

Pay-off amount 18,325,900

Funds applied to retire this debt:

FORA Net Development fee	(2,449,082) **	To partially repay land sale revenues for CIP expenses
FORA Land Sale proceeds	(15,876,818)	
	(18,325,900)	

FORT ORD REUSE AUTHORITY BOARD REPORT

OLD BUSINESS

Subject:	Ord Community Water and Wastewater Systems Proposed Budgets and Rates for FY 2012/13	
Meeting Date:	July 13, 2012	INFORMATION/ACTION
Agenda Number:	6d	

RECOMMENDATION:

1. Receive a presentation outlining the Fort Ord Reuse Authority ("FORA") and Marina Coast Water District ("MCWD") contractual relationship and an overview of the FORA/MCWD Water/Wastewater Facilities Agreement.
2. Receive an MCWD FY 2012/13 operating and capital budgets presentation for proposed water and wastewater collection systems and corresponding customer rates.
3. Approve Resolutions #12-6 and #12-7 (**Attachments A and B**) adopting a compensation plan and setting rates, fees and charges for former Fort Ord base-wide water sewer services.

BACKGROUND:

Following the May 1997 FORA Board public bid selection of MCWD to operate and own the former Fort Ord water and wastewater collection systems, MCWD began service in July 1997. Between July 1997 and October 2001, MCWD operated the systems under a Cooperative Agreement with the U.S. Army which defined the terms of their operations and funding. Following the Economic Development Conveyance (U.S. Army to FORA to MCWD) of the water system, MCWD has owned the system under a Water and Wastewater Facilities Agreement (the "Agreement") with FORA since November 2001 (**Attachment C**).

Under the Agreement, MCWD submits an annual draft budget to the FORA Water and Wastewater Oversight Committee ("WWOC") for review and recommendation to the FORA Board. The WWOC was created under the Agreement as a FORA Board-advisory committee to review the budget and recommend Board actions. MCWD bills its former Fort Ord customers (Ord Community cost center) according to rates approved annually by both MCWD and the FORA Board.

A 2005 rate study prepared for MCWD determined that a substantial capacity fee increase would be required to address the costs of repairing and/or updating the extensive former Fort Ord water and wastewater systems that are supported by a small customer base. The increased capacity fee raised concern, and several WWOC and Administrative Committee meetings were convened to identify alternatives. The FORA Board added \$20M to the MCWD water augmentation program from the FORA Capital Improvement Program ("CIP"). This allowed MCWD to maintain reasonable capacity fees. This line item is voluntary and distinct from the line item for water augmentation CEQA mitigations.

In 2008, MCWD commissioned another rate study which demonstrated the need for a considerable rate increase. Rather than initiate the rate increase all at once, MCWD agreed to ramp up increases over a five-year period. After the required Proposition 218 process, the rate study proposed increases were adopted in 2008/09 (10%), 2009/10 (10%), and 2010/11 (7.8%). However, the MCWD Board reduced the recommended 7.8% increase in 2011/12 to 4.9% and the 7.8% increase recommended by the study for 2012/13 is being proposed by MCWD at 5%.

During last year's budget approval process, the FORA Board had a number of questions about the MCWD rates and budgets and asked for an audit (**Attachment D**) of the MCWD rates to confirm that increases were adequate and warranted. The audit concluded the rate increases

were warranted. A two-year Proposition 218 process and hearing was conducted last year, allowing a rate increase this year without an additional hearing or joint FORA/MCWD Board meeting.

This year, the WWOC actively reviewed the MCWD proposed budgets and rates. MCWD has answered committee member questions and worked with them to refine the Ord Community Compensation Plan to include and/or address their suggestions. Minutes of those meetings are provided in **Attachment E** to this report.

DISCUSSION:

The WWOC met in February, March, April and May 2012 to receive MCWD presentations and review/recommend action on MCWD's proposed FY 2012/13 budgets and rates. On May 30, 2012 the WWOC voted to recommend FORA Board approval of the attached budgets and rates. The vote was 6-1, with the WWOC representative from California State University Monterey Bay dissenting.

FORA staff recommends the FORA Board receive the MCWD and FORA staff presentations and act on the adopting Resolutions. Please note that the MCWD Ord Community Compensation plan is noted as an Exhibit to both Resolution Nos. 12-6 and 12-7. To conserve resources, only one copy of the compensation package is provided.

At its June 8, 2012 meeting, the FORA Board continued the Ord Community Water and Wastewater Systems proposed budgets and rates for FY 2012/13 to its July 13, 2012 meeting. Ord Community is MCWD's cost center for water/sewer service on Fort Ord. It is not a part of the FORA budget or Capital Improvement documents. During the past few weeks, FORA staff received questions from Board members and a public records request from the Law Offices of Michael W. Stamp specifically requesting information pertaining to a footnote on page 16 of the MCWD 2012/13 Ord Budget within Exhibit A, prepared by MCWD staff, to attachments A and B, which references "Loan of \$7,622,073 from Ord Water to Regional Project is expected to be reimbursed through Regional Project financing." To be clear, FORA has not loaned any dollar amount to the Regional Desalination Project.

FORA staff asked MCWD about the footnote. MCWD staff clarified that the \$7,622,073 referenced in the footnote denotes cumulative costs incurred by MCWD while processing the so-called Regional Desalination Project (Note: Ord Community's water reserves are owned by MCWD, not FORA.). This dollar amount is an obligation of MCWD and, therefore, would not be an obligation of FORA. However, MCWD's Ord Community ratepayers support this cost in one form or another. MCWD staff indicated that MCWD intends to reimburse the Ord Community's water reserves when (assuming the Regional Project moves forward) it obtains Regional Project financing or when (assuming the Regional Project does not move forward) they receive repayment from parties to the Water Purchase Agreement (MCWD, Monterey County Water Resources Agency, and California-American Water Company), which is currently under mediation.

During last year's approval of MCWD's budgets and rates, some FORA Board members expressed concerns about Ord Community ratepayers covering costs associated with the Regional Project, but have not yet made explicit reference to this matter.

FORA staff has on several occasions advised MCWD to decouple the annual rate and budget process from the Regional Project. Given previous concerns, the Board might consider more explicit options to insulate the Ord Community ratepayers from further Regional Project expenditures. The Board might consider amending text in resolutions #12-6 and #12-7 to include language similar to the following: "No additional Ord Community resources should be

used to further the Regional Desalination Project unless expressly authorized by the FORA Board.”

FISCAL IMPACT:

Reviewed by FORA Controller _____

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

COORDINATION:

MCWD, WWOC, Administrative Committee, Executive Committee

DRAFT

Prepared by _____ Reviewed by _____
Jonathan Garcia Steve Endsley

Approved by _____
Michael A. Houlemard, Jr.

Resolution No. 12-6

Resolution of the Board of Directors
Fort Ord Reuse Authority

Adopting the Budget and the Ord Community Compensation Plan for FY 2012-2013
not including Capacity Charges

Attachment A to Item 6d
FORA Board Meeting, 07/13/12

June 8, 2012

RESOLVED by the Board of Directors ("Directors") of the Fort Ord Reuse Authority ("FORA"), at a regular meeting duly called and held on June 8, 2012 at the business office of FORA at 910 2nd Avenue, Marina California as follows:

WHEREAS, Marina Coast Water District ("District") Staff prepared and presented the draft FY 2012-2013 Budget (**Exhibit A**) which includes projected revenues, expenditures and capital improvement projects for the Ord Community Water, Recycled Water and Wastewater systems, including the area within the jurisdiction of FORA and the area remaining within the jurisdiction of the U.S. Army; and,

WHEREAS, FORA is authorized by the FORA Act, particularly Government Code 67679(a)(1), to arrange for the provision of water and wastewater services to the Ord Community; and

WHEREAS, the District and FORA, entered into a "Water/Wastewater Facilities Agreement" ("the Agreement") on March 13, 1998, and have subsequently duly amended the Agreement; and,

WHEREAS, the Agreement provides a procedure for establishing budgets and compensation plans to provide for sufficient revenues to pay the direct and indirect, short-term and long-term costs, including capital costs, to furnish the water and wastewater facilities; and,

WHEREAS, the Agreement, as amended, provides that FORA and the District will each adopt the annual Budget and Compensation Plan by resolution; and,

WHEREAS, the proposed Budget and Compensation Plan for FY 2012-2013 provides for funds necessary to meet operating and capital expenses for sound operation and provision of the water, recycled water and wastewater facilities and to enable MCWD to provide continued water, recycled water and sewer services within the existing service areas on the former Fort Ord. The rates, fees and charges adopted by FORA apply only to the area within FORA's jurisdictional boundaries; and,

WHEREAS, the Water/Wastewater Oversight Committee of FORA and the MCWD full Board have reviewed the proposed Budget and Compensation Plan; and,

WHEREAS, pursuant to the Agreement, FORA and MCWD have adopted and implemented and acted in reliance on budgets and compensation plans for prior fiscal years; and,

WHEREAS, pursuant to the Agreement, FORA and MCWD cooperated in the conveyance to MCWD of easements, facilities and ancillary rights for the water, recycled water and wastewater systems on the area of the former Fort Ord within FORA's jurisdiction; and,

WHEREAS, MCWD has provided water and wastewater services on the former Fort Ord by contract since 1997, and currently provides water and wastewater services to the area of the former Fort Ord within FORA's jurisdiction under the authority of the Agreement, and provides such services to the portion of the former Fort Ord still under the Army's jurisdiction by contract with the Army; and,

WHEREAS, FORA and MCWD have agreed that water conservation is a high priority, and have implemented a water conservation program in the Ord Community service area that includes public education, various incentives to use low-flow fixtures, and water-conserving landscaping. The rates, fees and charges adopted by this Resolution are intended to support the water conservation program and encourage water conservation, pursuant to sections 375 and 375.5 of the California Water Code. This conservation program and these rates, fees and charges are in the public interest, serve a public purpose, and will promote the health, welfare, and safety of Ord Community, and will enhance the economy and quality of life of the Monterey Bay community; and,

WHEREAS, estimated revenues from the rates, fees and charges will not exceed the estimated reasonable costs of providing the services for which the rates, fees or charges are imposed, will not be used for any purpose other than that for which the fee or charge was imposed, will not exceed the proportional cost of the service attributable to each identified parcel upon which the fee or charge is proposed for imposition and no fee or charge will be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question; and,

WHEREAS, at a public meeting based upon staff's recommendations, the Board has determined that the Budget and Compensation Plan, including the rates, fees and charges therein, should be adopted as set forth on **Exhibit A** to this Resolution; and,

WHEREAS, on June 10, 2011, FORA held a joint hearing with the District on the rates, fees and charges, not including Capacity Charges, for the Compensation Plan pursuant to and in accordance with Section 6 of Article XIID of the California Constitution; and

WHEREAS, at the joint hearing, the Board heard and considered all protests to the Compensation Plan and the rates, fees and charges proposed and found that written protests were submitted by less than a majority of the record owners of each identified parcel upon which the fee or charge is proposed for imposition; and,

WHEREAS, Capacity Charges for the FY 2012-2013 are the subject of and will be adopted by a separate Resolution; and,

WHEREAS, FORA is the lead agency for the adoption of rates, fees and charges for the area of the Ord Community under FORA's jurisdiction, and that in adopting rates and charges for that area, the District is acting as a responsible agency and relying on FORA's compliance with the requirements of the California Environmental Quality Act ("CEQA"); that the District has previously adopted rates, fees and charges for its jurisdictional service area; and that, in approving rates, fees and charges for the area of Ord Community within the jurisdiction of the U.S. Army, the District is acting to provide continued water, recycled water and sewer service within existing service areas on the Ord Community, and that such action is exempt from CEQA pursuant to Public Resources Code Section 21080(b)(8) and Section 15273 of the State CEQA Guidelines codified at 14 CCR §15273.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS,

1. The Board of Directors of the Fort Ord Reuse Authority does hereby approve and adopt FY 2012-2013 Budget and Compensation Plan, not including Capacity Charges for water, recycled water and wastewater services to the Ord Community.
2. The District is authorized to charge and collect rates for provision of water and wastewater services within the boundaries of FORA in accordance with the rates, fees and charges set forth in **Exhibit A**, not including Capacity Charges. The District is further authorized to use the same rates, fees and charges in providing services to the area of Ord Community within the jurisdiction of the U.S. Army.
3. The rates, fees and charges authorized by this Resolution shall not exceed the estimated reasonable costs of providing the services for which the rates, fees or charges are imposed.

PASSED AND ADOPTED on June 8, 2012, by the Board of Directors of the Fort Ord Reuse Authority by the following roll call vote:

Ayes: Directors _____

Noes: Directors _____

Absent: Directors _____

Abstained: Directors _____

Dave Potter, Chair

ATTEST:

Michael A. Houlemard, Jr., Secretary

CERTIFICATE OF SECRETARY

The undersigned Secretary of the Board of the Fort Ord Reuse Authority hereby certifies that the foregoing is a full, true and correct copy of Resolution No. 12-4 adopted June 8, 2012.

Michael A. Houlemard, Jr., Secretary

Resolution No. 12-7

**Resolution of the Board of Directors
Fort Ord Reuse Authority**

Attachment B to Item 6d
FORA Board Meeting, 07/13/12

**Adopting the Capacity Charge element of the Budget and the Ord Community Compensation
Plan for FY 2012-2013**

June 8, 2012

RESOLVED by the Board of Directors ("Directors") of the Fort Ord Reuse Authority ("FORA"), at a regular meeting duly called and held on June 8, 2012 at the business office of FORA at 910 2nd Avenue, Marina California as follows:

WHEREAS, Marina Coast Water District ("District") Staff prepared and presented the draft FY 2012-2013 Budget which includes projected revenues, expenditures and capital improvement projects for the Ord Community Water, Recycled Water and Wastewater systems, including the area within the jurisdiction of FORA and the area remaining within the jurisdiction of the U.S. Army; and,

WHEREAS, FORA is authorized by the FORA Act, particularly Government Code 67679(a)(1), to arrange for the provision of water and wastewater services to the Ord Community; and

WHEREAS, the District and FORA, entered into a "Water/Wastewater Facilities Agreement" ("the Agreement") on March 13, 1998, and have subsequently duly amended the Agreement; and,

WHEREAS, the Agreement provides a procedure for establishing budgets and compensation plans to provide for sufficient revenues to pay the direct and indirect, short-term and long-term costs, including capital costs, to furnish the water and wastewater facilities; and,

WHEREAS, the Agreement, as amended, provides that FORA and the District will each adopt the annual Budget and Compensation Plan by resolution; and,

WHEREAS, the proposed Budget and Compensation Plan for FY 2012-2013 provides for funds necessary to meet operating and capital expenses for sound operation and provision of the water, recycled water and wastewater facilities and to enable the District to provide continued water, recycled water and sewer services within the existing service areas on the former Fort Ord. The rates, fees and charges adopted by FORA apply only to the area within FORA's jurisdictional boundaries; and,

WHEREAS, a financing study prepared by Citigroup Global Markets Inc. in 2005 for the District recommended the adoption of capacity charges as an element of financing capital facilities for water and wastewater services to the Ord Community; and,

WHEREAS, the Water/Wastewater Oversight Committee of FORA and the District full Board have reviewed the proposed Budget and Compensation Plan; and,

WHEREAS, pursuant to the Agreement, FORA and the District have adopted and implemented and acted in reliance on budgets and compensation plans for prior fiscal years; and,

WHEREAS, pursuant to the Agreement, FORA and the District have cooperated in the conveyance to the District of easements, facilities and ancillary rights for the water, recycled water and wastewater systems on the area of the former Fort Ord within FORA's jurisdiction; and,

WHEREAS, the District has provided water and wastewater services on the former Fort Ord by contract since 1997, and currently provides water and wastewater services to the area of the former Fort Ord within FORA's jurisdiction under the authority of the Agreement, and provides such services to the portion of the former Fort Ord still under the Army's jurisdiction by contract with the Army; and,

WHEREAS, capacity charges are imposed as a condition of service to customers. The charges are not imposed upon real property or upon persons as an incident of real property ownership; and,

WHEREAS, estimated revenues from the capacity charges will not exceed the estimated reasonable costs of providing the facilities and services for which the charges are imposed; and,

WHEREAS, the capacity charges have not been calculated nor developed on the basis of any parcel map, including any assessor's parcel map; and,

WHEREAS, no written requests are on file with the District for mailed notice of meetings on new or increased fees or service charges pursuant to Government Code Section 66016. At least 10 days prior to the meeting, the District made available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service; and

WHEREAS, the amount of the increase in capacity charges exceeds the percentage increase in the Implicit Price Deflator for State and Local Government Purchases, as determined by the Department of Finance. As a result, the District cannot charge the increased capacity fee to any school district, county office of education, community college district, state agency, or the University of California before first negotiating the increases with those entities in accordance with District Code section 6.16.020 and Government Code section 54999.3. Although these sections also apply to California State University at Monterey Bay, the District has complied with its obligation to negotiate with it and can charge the increased amounts to CSUMB as a result of and as limited by a Settlement Agreement and Mutual Release dated June 1, 2006, by which the District and California State University made an agreement regarding the amount of all future capacity charges. Accordingly, the District can charge the increased capacity charges as limited by the Settlement Agreement and Mutual Release immediately to CSUMB. The increased capacity charges to any other school district, state agency, county office of education, community college district or the University of California will be effective only when negotiations are concluded with those entities; and,

WHEREAS, after a public meeting and based upon staff's recommendations, the Board has determined that the capital elements of the Budget and Compensation Plan, including the capacity charges therein, should be adopted as set forth on **Exhibit A** to this Resolution; and

WHEREAS, the capacity charges set forth on **Exhibit A** to this Resolution have not changed from those approved in the FY 2011-2012 Budget and Compensation Plan; and,

WHEREAS, Government Code Section 54999.3 requires that before imposing certain capital facilities fees on certain educational and state entities, any public agency providing public utility service must negotiate with the entities receiving the service; and

WHEREAS, FORA is the lead agency for the adoption of rates, fees and charges for the area of the Ord Community under FORA's jurisdiction, and that in adopting rates and charges for that area, the District is acting as a responsible agency and relying on FORA's compliance with the requirements of the California Environmental Quality Act ("CEQA"); that the District has previously adopted rates, fees and charges for its jurisdictional service area; and that, in

approving rates, fees and charges for the area of Ord Community within the jurisdiction of the U.S. Army, the District is acting to provide continued water and sewer service within existing service areas on the Ord Community, and that such action is exempt from CEQA pursuant to Public Resources Code Section 21080(b)(8) and Section 15273 of the State CEQA Guidelines codified at 14 CCR §15273.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS,

1. The Board of Directors of the Fort Ord Reuse Authority does hereby approve and adopt the capital elements of the FY 2012-2013 Budget for water, recycled water and wastewater services to the Ord Community.
2. The capital elements of the compensation plan for the area of Ord Community within FORA's jurisdiction, including capacity charges, set forth on **Exhibit A** to this Resolution are hereby approved and adopted. The District is authorized to charge and collect capacity charges for provision of water and wastewater services within the boundaries of the Fort Ord Reuse Authority in accordance with the schedule set forth in **Exhibit A**. The District is further authorized to use the same charges in providing services to the area of Ord Community within the jurisdiction of the U.S. Army.
3. The charges authorized by this Resolution shall not exceed the estimated reasonable costs of providing the services for which the charges are imposed.
4. The District will comply with the requirements of Government Code section 54999.3 before imposing a capital facilities fee (as defined in Government Code section 54999.1) on any school district, county office of education, community college district, the California State University, the University of California or state agency.

PASSED AND ADOPTED on June 8, 2012, by the Board of Directors of the Fort Ord Reuse Authority by the following roll call vote:

Ayes:	Directors_____
Noes:	Directors_____
Absent:	Directors_____
Abstained:	Directors_____

Dave Potter, Chair

ATTEST:

Michael A. Houlemard, Jr., Secretary

CERTIFICATE OF SECRETARY

The undersigned Secretary of the Board of the Fort Ord Reuse Authority hereby certifies that the foregoing is a full, true and correct copy of Resolution No. 12-7 adopted June 8, 2012.

Michael A. Houlemard, Jr., Secretary

Marina Coast Water District

Ord Community Water & Wastewater

Five Year Capital Improvement Planning Budget

FY 2012/13-16/17

DRAFT

CAPITAL IMPROVEMENT PROJECTS - SUMMARY SHEET

Water District (WD) - Summary

[illegible]

Cost Centers	% Cost Splits	Prior Years	FY 12/13	FY 13/14	FY 14/15	FY 15/16	FY 16/17	Total
01 - Marina Water	30%	166,467	128,550	40,500	151,500	340,500	40,500	868,017
02 - Marina Sewer	9%	49,940	38,565	12,150	45,450	102,150	12,150	260,405
03 - Ft Ord Water	50%	277,445	214,250	67,500	252,500	567,500	67,500	1,446,696
04 - Ft Ord Sewer	11%	61,038	47,135	14,850	55,550	124,850	14,850	318,273
Funding By Fiscal Year		554,890	428,500	135,000	505,000	1,135,000	135,000	2,893,390

DRAFT

CAPITAL IMPROVEMENT PROJECTS - SUMMARY SHEET
General Water (GW) - Summary

CIP No.	PROJECT DESCRIPTION	PRIOR YEARS	FY 12/13 Current Year	FY 13/14 Proposed	FY 14/15 Proposed	FY 15/16 Proposed	FY 16/17 Proposed	TOTAL
GW-0211	Regional Desal (RD) Integration w/ Potable System	0	42,000	697,590	4,208,025	3,662,435	0	8,610,050
GW-0112	"A1/A2" Zone Tanks & B/C Booster Sta @ CSUMB	0	0	1,299,640	7,659,210	0	0	8,958,850
GW-0300	Marina & Ord Water Master Plan	0	0	350,000	0	0	0	350,000
GW-0112A	"A3" Zone Tank @ CSUMB	0	0	0	0	0	2,427,473	2,427,473
GW-0123	"B2" Zone Tank @ CSUMB	0	0	0	0	0	2,379,581	2,379,581
	TOTALS	0	42,000	2,347,230	11,867,235	3,662,435	4,807,054	22,725,954

Cost Centers	% Cost Splits	Prior Years	FY 12/13	FY 13/14	FY 14/15	FY 15/16	FY 16/17	Total
01 - Marina Water	30%	0	12,600	704,169	3,560,171	1,098,731	1,442,116	6,817,786
02 - Marina Sewer	9%	0	3,780	211,251	1,068,051	329,619	432,635	2,045,336
03 - Ft Ord Water	50%	0	21,000	1,173,615	5,933,618	1,831,218	2,403,527	11,362,977
04 - Ft Ord Sewer	11%	0	4,620	258,195	1,305,396	402,868	528,776	2,499,855
Funding By Fiscal Year		0	42,000	2,347,230	11,867,235	3,662,435	4,807,054	22,725,954

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CAPITAL IMPROVEMENT PROJECTS - SUMMARY SHEET
Ord Water (OW) - Summary

CIP No.	PROJECT DESCRIPTION	PRIOR YEARS	FY 12/13 Current Year	FY 13/14 Proposed	FY 14/15 Proposed	FY 15/16 Proposed	FY 16/17 Proposed	TOTAL
OW-0119	Demolish D-zone Reservoir	0	167,000	0	0	0	0	167,000
OW-0222	Eastern Distribution System - Phase II	20,000	230,000	0	0	0	0	250,000
OW-0169	Intergarrison Road PRV	0	0	171,000	0	0	0	171,000
OW-0206	Inter-Garrison Road Pipeline Up-Sizing	0	0	162,240	506,189	0	0	668,429
OW-0201	Gigling Transmission from D Booster to JM Blvd	0	0	80,000	400,000	0	0	480,000
OW-0211	Eastside Parkway (D-Zone pipeline)	0	0	407,482	2,401,427	0	0	2,808,909
OW-0202	South Boundary Road Pipeline	0	0	502,578	502,578	502,578	0	1,507,736
OW-0128	Lightfighter "B" Zone Pipeline Extension	0	0	0	396,731	0	0	396,731
OW-0167	2nd Ave extension to Gigling Rd	0	0	0	221,512	0	0	221,512
OW-0200	Surplus Area 2 Pipelines	0	0	0	1,002,102	0	0	1,002,102
OW-0127	Pipeline Up-Sizing - Commercial on CSU	0	0	0	108,712	640,679	0	749,391
OW-0203	7th Avenue and Gigling Rd	0	0	0	38,099	224,531	0	262,630
OW-0212	Reservoir "D2" + D-BPS Up-Size	0	0	0	540,241	3,061,363	0	3,601,604
OW-0122	Replace D & E Reservoir Off-Site Piping	0	0	0	0	181,492	0	181,492
OW-0166	CSU Pipeline Improvements	0	0	0	0	134,651	0	134,651
OW-0204	2nd Ave Connection, Reindollar to Imjin	0	0	0	0	1,169,859	0	1,169,859
OW-0208	Pipeline Up-Sizing - to Stockade	0	0	0	0	711,976	0	711,976
OW-0209	Pipeline Up-Sizing - between Dunes & MainGate	0	0	0	0	220,167	0	220,167
OW-0210	Sand Tank Demolition	0	0	0	0	434,268	0	434,268
OW-0118	"B4" Zone Tank @ East Garrison	0	0	0	0	399,179	2,352,496	2,751,675
TOTALS		20,000	397,000	1,323,300	6,117,590	7,680,743	2,352,496	17,891,129

Cost Centers	% Cost Splits	Prior Years	FY 12/13	FY 13/14	FY 14/15	FY 15/16	FY 16/17	Total
03 - Ft Ord Water	100%	20,000	397,000	1,323,300	6,117,590	7,680,743	2,352,496	17,891,129
Funding By Fiscal Year		20,000	397,000	1,323,300	6,117,590	7,680,743	2,352,496	17,891,129

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CAPITAL IMPROVEMENT PROJECTS - SUMMARY SHEET
Ord Sewer (OS) - Summary

CIP No.	PROJECT DESCRIPTION	PRIOR YEARS	FY 12/13 Current Year	FY 13/14 Proposed	FY 14/15 Proposed	FY 15/16 Proposed	FY 16/17 Proposed	TOTAL
OS-0200	Clark Lift Station Improvement	0	395,000	0	0	0	0	395,000
OS-0150	East Garrison Lift Station Improvements	324,020	217,000	97,000	0	0	731,000	1,369,020
OS-0154	Del Rey Oaks -- Collection System Planning	0	0	54,080	0	0	0	54,080
OS-0208	Parker Flats Collection System	0	0	15,600	91,936	0	0	107,536
OS-0205	Imjin LS & Force Main Improvements -- Phase I	0	0	334,338	1,970,364	0	0	2,304,702
OS-0153	Misc. Lift Station Improvements	0	0	450,000	400,000	350,000	250,000	1,450,000
OS-0152	Booker, Hatten, Neeson LS Improvements Project	0	0	0	700,000	0	0	700,000
OS-0214	Intergarrison/8th Ave SS (for Eastside Pkwy developments)	0	0	0	1,124,864	0	0	1,124,864
OS-0202	DRO Gravity Sewer Main and GJMB Improvements	0	0	0	1,801,678	10,617,888	0	12,419,566
OS-0203	Giggling LS and FM Improvements	0	0	0	267,892	1,578,777	0	1,846,669
OS-0147	Ord Village Sewer Pipeline & Lift Station Impr Project	0	0	0	0	560,877	0	560,877
OS-0204	CSUMB Developments	0	0	0	0	0	568,649	568,649
OS-0207	Seaside Resort Sewer Imps. Project	0	0	0	0	0	303,739	303,739
OS-0148	Marina Heights Sewer Pipeline Improvements Project	0	0	0	0	0	761,465	761,465
OS-0149	Dunes Sewer Pipeline Replacement Projects	0	0	0	0	0	430,267	430,267
OS-0151	Cypress Knolls Sewer Pipeline Improvements Project	0	0	0	0	0	94,603	94,603
OS-0209	Imjin LS & Force Main Improvements -- Phase II	0	0	0	0	0	712,290	712,290
TOTALS		324,020	612,000	951,018	6,356,734	13,107,542	3,852,013	25,203,327

Cost Centers	% Cost Splits	Prior Years	FY 12/13	FY 13/14	FY 14/15	FY 15/16	FY 16/17	Total
04 - Ft Ord Sewer	100%	324,020	612,000	951,018	6,356,734	13,107,542	3,852,013	25,203,327
Funding By Fiscal Year		324,020	612,000	951,018	6,356,734	13,107,542	3,852,013	25,203,327

AMENDMENT TO WATER/WASTEWATER FACILITIES AGREEMENT

The parties to this Amendment to Water/Wastewater Facilities Agreement ("Amendment") are the FORT ORD REUSE AUTHORITY ("FORA") and the MARINA COAST WATER DISTRICT ("MCWD"), which agree as follows:

1. Agreed Facts. The parties entered into an agreement dated March 13, 1998 and entitled "Water/Wastewater Facilities Agreement" ("Agreement"). Subsequent changes in applicable law and circumstances make it mutually beneficial for the parties to amend the Agreement to add the option of effecting the conveyance of the subject water and wastewater facilities to MCWD either through a no-cost economic development conveyance through FORA or through a public benefit conveyance through the US Department of Health and Human Services. Such an amendment will benefit both parties by potentially expediting the conveyance and providing greater flexibility in operating the facilities with greater public and economic benefit to the communities served by the parties.

2. Amendment Procedure. Paragraph 10.7 of the Agreement requires consent of the governing Boards of both parties to amend the Agreement. As with the Agreement, FORA will adopt this Amendment by ordinance and MCWD will adopt this Agreement by resolution. FORA is the lead agency for adoption of this Amendment.

3. Definitions. The definitions of words and terms in the Agreement shall control the meaning of the same words and terms used in this Amendment.

4. Amendments. The Agreement is amended as follows:

4.1 Paragraph 1.4 is amended as follows:

"EXISTING FACILITIES. The USA presently owns all existing facilities. The USA has determined to divest itself of the existing facilities. Federal law authorizes such divestiture by either a "public benefit conveyance" or a "no-cost economic development conveyance" to a local governmental entity satisfying certain criteria, which criteria are satisfied by MCWD. FORA and MCWD have formally determined that MCWD's acquisition of the existing facilities for the service area by either a public benefit conveyance or a no-cost economic development conveyance will benefit mutually the service area and the area within MCWD's jurisdictional boundaries."

4.2 Paragraph 1.5 is amended as follows:

"CONTEXT. The public health, safety and welfare of the present population of the Ft. Ord reuse area and all future population require continued operation of a water distribution system and a wastewater collection system. The U.S. Army has agreed to convey the systems pursuant to federal law and regulations. Following organization of FORA, discussions commenced with the USA regarding transfer of ownership and operation of the facilities, and FORA evolved a process to assure continuity of management and operation. FORA has been given a limited statutory life and must find reliable utility providers to assume the responsibility for system operation. The FORA

Board appointed a select committee from technical staff of its members to design a set of minimum requirements for water system operators and invited statements of qualifications from those interested. Three statements were received and referred to the same select committee for evaluation, analysis, and recommendation. After receiving the select committee's analysis and recommendation, and after providing opportunity for public input, at its meeting of October 11, 1996, the FORA Board authorized staff to commence negotiations with MCWD for the purpose of negotiating an agreement with MCWD whereby MCWD would assume the responsibility of the operation, maintenance, and ownership of the existing water (and wastewater collection) systems on the former Fort Ord. The same select committee was authorized to oversee the negotiations that were undertaken by FORA staff. Negotiations included detailed financial analyses by FORA staff/consultants and by Stone & Youngberg LLC. These analyses are very comprehensive and demonstrate MCWD's fiscal capacity. The Stone & Youngberg Financial Analysis includes provision for possible payments to FORA and various land use agencies in accordance with law. On May 9, 1997, the FORA Board authorized the staff to work with MCWD to develop an agreement regarding the systems and to prepare an application for Public Benefit Conveyance (PBC) to be filed after the FORA/MCWD agreement is authorized for execution by the FORA Board. Effective June 2, 1997, MCWD has been selected by the USA to be the interim operator of the facilities pending a full transfer. The parties anticipate that such full transfer will be by either a public benefit conveyance or a no-cost economic development conveyance pursuant to this Agreement."

4.3 The heading of Paragraph 3.1 is amended as follows:

"APPLICATION FOR PUBLIC BENEFIT CONVEYANCE OR NO-COST ECONOMIC DEVELOPMENT CONVEYANCE; PERMITS TO OPERATE."

4.4 Paragraph 3.1.1 is amended as follows:

"MCWD Responsibilities. MCWD, as lead agency, will diligently either prosecute an application to the USA for a public benefit conveyance to MCWD, or through FORA prosecute a no-cost economic development conveyance to MCWD of all of the USA's existing sewer and water facilities and appurtenances and incidental rights of access, extraction, discharge, and use for the service area. MCWD will also act diligently to obtain and maintain in good standing all permits needed to operate all such facilities."

4.5 Paragraph 3.1.2 is amended as follows:

"FORA Responsibilities. FORA will forego and forebear its rights to acquire the facilities through negotiated sale, economic development conveyance, or any other procedure permitted under law, and FORA hereby nominates and designates MCWD as the appropriate local governmental entity to acquire the facilities for the benefit of FORA, its member agencies, and the general public. FORA will support MCWD's application for conveyance of the facilities and incidental rights to MCWD through either a public benefit conveyance or a no-cost economic development conveyance.

4.6 Paragraph 7.1.4 is amended as follows:

"Payments to FORA. Upon the effective date of either a public benefit conveyance or a no-cost economic development conveyance of the facilities to MCWD, when MCWD has the ability to levy and collect rates for service through the facilities within the Service Area, MCWD will commence to pay to FORA monies determined to be due as provided in this section. The amount of MCWD's payments to FORA under this section will be included in each budget and request for change presented to FORA under section 7.1.3."

4.7 Paragraph 9.3 is amended as follows:

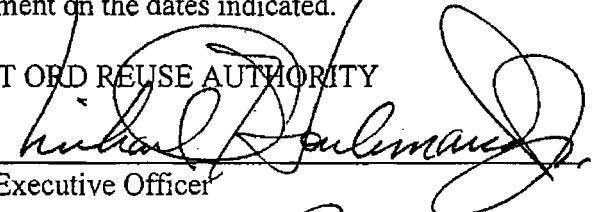
"TERM. This Agreement shall have a term coincident with the legal existence of FORA, unless the USA denies MCWD's application for a public benefit conveyance or MCWD's application through FORA for a no-cost economic development conveyance. If the USA denies MCWD's application for a public benefit conveyance or for a no-cost economic development conveyance, the parties shall meet and confer in good faith during the 120 days immediately following the final denial to discuss possible change in terms for MCWD to acquire, construct, operate and/or furnish the facilities. If FORA and MCWD cannot agree on new terms within the 120 days, or such other additional time as may be agreed by FORA and MCWD, this Agreement shall terminate and have no further effect, and the parties thereafter shall have no further rights or obligations under this Agreement."

5. Incorporation of Terms. This Amendment is incorporated into the Agreement by this reference, and all the provisions of the Agreement as specifically amended by this Amendment, including but not limited to execution in counterparts are incorporated in and apply to this Amendment.

IN WITNESS WHEREOF, the parties hereto, by and through their respective, duly authorized representatives, have executed this Agreement on the dates indicated.

FORT ORD REUSE AUTHORITY

By


Executive Officer

MARINA COAST WATER DISTRICT

By


President, Board of Directors

Dated: 3-2-01

ATTEST

By


Secretary

WATER/WASTEWATER FACILITIES AGREEMENT

The parties to this Water/Wastewater Facilities Agreement ("Agreement") are the FORT ORD REUSE AUTHORITY and the MARINA COAST WATER DISTRICT, which agree as follows:

ARTICLE 1. AGREED FACTS

1.1. CAPACITY OF THE PARTIES. FORA is a local governmental entity and is defined as a public corporation of the State of California established by the FORA Act. MCWD is a County Water District and political subdivision of the State of California, organized under Division 12, sections 30000 and following, of the California Water Code.

1.2. AUTHORITY. FORA has authority under the FORA Act, and particularly under Government Code section 67679(a)(1), to plan for and arrange the provision of those base wide public capital facilities described in the Fort Ord Reuse Plan, including, but not limited to, sewage and water conveyance and treatment facilities to assure a reasonable transition from military ownership and operation to civilian ownership and operation, and to further the integrated future use of Fort Ord. MCWD has authority, under Water Code sections 30000 and following, and under Article 11, Section 9 of the California Constitution, to acquire, construct, operate, and furnish water and sewer facilities outside its boundaries and within the jurisdictional boundaries of a local governmental entity by agreement with the local governmental entity.

1.3. PURPOSE. The parties intend by this Agreement to establish the terms and conditions for FORA to plan and arrange for the provision of the facilities, and for MCWD to acquire, construct, operate, and furnish the facilities, to benefit mutually the service area and the area within MCWD's jurisdictional boundaries. This Agreement will govern MCWD's ownership and operation of the facilities.

1.4. EXISTING FACILITIES. The USA presently owns all existing facilities. The USA has determined to divest itself of the existing facilities. Federal law authorizes such divestiture by a "public benefit conveyance" to a local governmental entity satisfying certain criteria, which criteria are satisfied by MCWD. FORA and MCWD have formally determined that MCWD's acquisition of the existing facilities for the service area by a public benefit conveyance will benefit mutually the service area and the area within MCWD's jurisdictional boundaries.

1.5. CONTEXT. The public health, safety and welfare of the present population of the Ft. Ord reuse area and all future population require continued operation of a water distribution system and a wastewater collection system. The

U.S. Army has agreed to convey the systems pursuant to federal law and regulations. Following organization of FORA, discussions commenced with the USA regarding transfer of ownership and operation of the facilities, and FORA evolved a process to assure continuity of management and operation. FORA has been given a limited statutory life and must find reliable utility providers to assume the responsibility for system operation. The FORA Board appointed a select committee from technical staff of its members to design a set of minimum requirements for water system operators and invited statements of qualifications from those interested. Three statements were received and referred to the same select committee for evaluation, analysis, and recommendation. After receiving the select committee's analysis and recommendation, and after providing opportunity for public input, at its meeting of October 11, 1996, the FORA Board authorized staff to commence negotiations with MCWD for the purpose of negotiating an agreement with MCWD whereby MCWD would assume the responsibility of the operation, maintenance, and ownership of the existing water (and wastewater collection) systems on the former Fort Ord. The same select committee was authorized to oversee the negotiations that were undertaken by FORA staff. Negotiations included detailed financial analyses by FORA staff/consultants and by Stone & Youngberg LLC. These analyses are very comprehensive and demonstrate MCWD's fiscal capacity. The Stone & Youngberg Financial Analysis includes provision for possible payments to FORA and various land use agencies in accordance with law. On May 9, 1997, the FORA Board authorized the staff to work with MCWD to develop an agreement regarding the systems and to prepare an application for Public Benefit Conveyance (PBC) to be filed after the FORA/MCWD agreement is authorized for execution by the FORA Board. Effective June 2, 1997, MCWD has been selected by the USA to be the interim operator of the facilities pending a full transfer. The parties anticipate that such full transfer will be by public benefit conveyance pursuant to this Agreement.

1.6. WATER SUPPLY CAPACITY RIGHTS. The FORA Board has previously adopted a comprehensive plan for the administration of groundwater extraction rights consistent with the Agreement between the USA and the Monterey County Water Resources Agency dated September 1993. It is anticipated this plan may be amended from time to time at the sole discretion of the FORA Board. The total volume of groundwater available for this plan is 6,600 acre feet per year.

1.7. LEAD AGENCY. FORA is the lead agency for the adoption of this Agreement.

ARTICLE 2. DEFINITIONS AND ATTACHMENTS

2.1. "Committee" means the Water/Wastewater Oversight Committee appointed by the FORA Board to oversee the provision of water and wastewater collection services by MCWD under this Agreement.

- 2.2. **"Facilities"** means the public capital facilities used to provide water and wastewater collection services on the service area, including appurtenances and incidental rights of access, extraction, discharge, and use. Sewage (herein also called "sewer" and "wastewater") and water public capital facilities existing as of the date of this Agreement are generally shown on Exhibits A and B to this Agreement. Public capital facilities are those on MCWD's side of the service connection, including the meter for water service. For sewer facilities, the service connection is at the tap into the main collection system, wherever located, as determined by MCWD.
- 2.3. **"FORA"** means Fort Ord Reuse Authority.
- 2.4. **"FORA Act"** means the Fort Ord Reuse Authority Act codified in Title 7.85, sections 67650 and following, of the California Government Code, as may be amended from time to time.
- 2.5. **"MCWD"** means Marina Coast Water District.
- 2.6. **"Service Area"** means the former Fort Ord Army base in northwestern Monterey County, California. The service area is shown generally on the diagram attached to this Agreement as Exhibit A.
- 2.7. **"USA"** means the United States of America represented by the Department of the Army.
- 2.8. **Attachments to this Agreement:**
- | | |
|--------------|---|
| EXHIBIT "A": | Diagram of Fort Ord Water System/Service Area, Schaaf & Wheeler, April 1994 |
| EXHIBIT "B": | Diagram of Fort Ord Wastewater System/Service Area, FORIS, undated |
| EXHIBIT "C": | Mediators |
| EXHIBIT "D": | Gov. Code §§ 54980-54983, 67679(a)(1) |
| EXHIBIT "E": | Pub. Util. Code §§ 10101, 10102, 10103, 10104 and 10105 |

ARTICLE 3. FACILITIES ACQUISITION AND OWNERSHIP

3.1. APPLICATION FOR PUBLIC BENEFIT CONVEYANCE; PERMITS TO OPERATE.

3.1.1. MCWD Responsibilities. MCWD, as lead agency, will diligently prosecute an application to the USA for a public benefit conveyance to MCWD of all of the USA's existing sewer and water facilities and appurtenances and incidental rights of access, extraction, discharge, and use for the service area. MCWD will also act diligently to obtain and maintain in good standing all permits needed to operate all such facilities.

3.1.2. FORA Responsibilities. FORA will forego and forebear its rights to acquire the facilities through negotiated sale, economic development conveyance, or any other procedure permitted under law, and FORA hereby nominates and designates MCWD as the appropriate local governmental entity to acquire the facilities for the benefit of FORA, its member agencies, and the general public. FORA will support MCWD's application for a public benefit conveyance.

3.1.3. Joint Responsibilities. MCWD and FORA will diligently take such actions and execute such documents as either considers necessary for MCWD to obtain and confirm all rights in and to the existing wastewater and water facilities and appurtenances and incidental rights of access, extraction, discharge, and use.

3.2. ADDITIONAL FACILITIES.

3.2.1. MCWD Responsibilities. MCWD will cause to be planned, designed and constructed such additional water and sewer facilities as FORA, in consultation with MCWD, reasonably determines are necessary for the service area. MCWD may cause to be planned, designed and constructed any other facilities as MCWD reasonably determines will carry out the purpose of this agreement as expressed in section 1.3 of this Agreement.

3.2.2. FORA Responsibilities. FORA will determine in consultation with MCWD, based on recommendations from the Committee, what additional facilities are necessary for the service area.

3.3. TRANSFER, OBLIGATION, AND ENCUMBRANCE OF FACILITIES. Any transfer, obligation, or encumbrance of any interest in the facilities shall require the prior written approval of both parties.

3.4. ESTABLISHMENT OF WATER AND SEWER CAPACITY RIGHTS.

3.4.1. MCWD Responsibilities. MCWD shall have no responsibility for establishment and administration of water extraction capacity rights and

wastewater discharge and treatment capacity rights, except to compensate FORA for such administration.

3.4.2. FORA Responsibilities. The FORA Board will administer all extraction and discharge rights which may be obtained from the USA, pursuant to the comprehensive plan previously adopted by FORA and such changes as may be made to the plan from time to time by the FORA Board.

3.5. GRANT LOCAL SHARE. MCWD shall assume and pay the local share of any federal or state grant made to improve, maintain or add to the facilities. Any such obligation shall be a reimbursable cost under section 7.1.2 of this Agreement.

ARTICLE 4. OVERSIGHT

4.1. MCWD RESPONSIBILITIES. MCWD shall own and operate the facilities under the oversight and with the approvals and authorizations of FORA and the Committee as provided in this Agreement. MCWD shall cooperate with FORA and the Committee, and shall provide such information to the Committee as reasonably requested by the Committee, including but not limited to the reports enumerated in section 4.2.3 of this Agreement.

4.2. FORA RESPONSIBILITIES.

4.2.1. Committee Appointment. A Water/Wastewater Oversight Committee will be appointed by the FORA Board from appropriate agency staff members who will serve at the pleasure of the Board. The Committee will include representatives from the future land use jurisdictions and the two Universities (Cities of Marina, Seaside, Monterey, Del Rey Oaks, the County of Monterey, CSUMB and UCMBEST), for a total of seven members (see attachment).

4.2.2. Committee Role. The Committee shall be advisory to the FORA Board and shall have the following functions:

- 4.2.2.1. Receive recommendations regarding operation of the facilities.
- 4.2.2.2. Advise the FORA Board and staff on appropriate action regarding such recommendations.
- 4.2.2.3. Review and recommend on operating and capital improvement budgets.
- 4.2.2.4. Periodically review and recommend a master plan of public sewer and water facilities.

- 4.2.2.5. Make recommendations pursuant to Article 7 of this Agreement, including recommendations regarding allocation of costs over benefitted properties.
- 4.2.2.6. Confirm adequacy of services provided.
- 4.2.2.7. Review the annual financial statement and MCWD audit to affirm that results achieved comport with expectations of FORA.
- 4.2.2.8. Evaluate annually the performance of MCWD in accordance with this Agreement.
- 4.2.2.9. Advise on short and long term financial planning and fiscal management.
- 4.2.2.10. Assure that the facilities are complimenting implementation of the reuse plan.

4.2.3. Evaluation Criteria. The Committee will use the following criteria in evaluating MCWD's performance under this Agreement:

- 4.2.3.1. Timely development annually of operation and capital budgets.
- 4.2.3.2. Timely and accurate quarterly and annual financial reports.
- 4.2.3.3. Timely and accurate quarterly and annual operational reports.
- 4.2.3.4. Customer service orientation and MCWD's responsiveness to customer concerns, as shown in quarterly and annual reports of customer communications and responses.

ARTICLE 5. FACILITIES OPERATION

5.1. MCWD RESPONSIBILITIES.

5.1.1. Operation. MCWD will operate the facilities in accordance with applicable laws, rules and regulations, and policies established by the MCWD Board and the FORA Board, and procedures adopted by MCWD staff after

consultation with the Committee. Unless this Agreement or any policy or procedure established pursuant to this Agreement provides otherwise, MCWD will operate the facilities in the same manner as MCWD operates similar facilities for other areas served by MCWD.

5.1.2. Communication and Reports. MCWD will communicate regularly with the Committee about the operation of the facilities, and will respond promptly to communications from FORA and the Committee. MCWD will deliver quarterly and annual operational reports to the Committee.

5.1.3. Complaints. Complaints about MCWD's operation of the facilities will be dealt with in the first instance by MCWD's General Manager or designee. Decisions of the General Manager or designee may be appealed to the FORA Board in the same manner that decisions within the boundaries of MCWD are appealed to MCWD's Board. The decision of the FORA Board on complaints will be final and will exhaust all administrative remedies.

5.1.4. Interconnection With MCWD Facilities. Interconnections currently exist between the facilities and MCWD's facilities. MCWD may improve interconnections between MCWD's facilities and the facilities, to provide for enhanced, conjunctive and concurrent use of all system facilities to serve the service area and other areas served by MCWD.

5.2. FORA RESPONSIBILITIES. FORA will cooperate with MCWD to establish policies for the operation and administration of the facilities and to facilitate operation and administration of the facilities to achieve the purpose of this Agreement as stated in section 2.3 of this Agreement. FORA will respond promptly to communications from MCWD about operation of the facilities. The FORA Board will deal promptly with appeals of complaints about MCWD's operation of the facilities.

5.3. JOINT RESPONSIBILITIES.

5.3.1. Groundwater Use. The parties will cooperate on MCWD's increased withdrawal of potable groundwater from MCWD's existing wells in the 900-foot aquifer by up to 1,400 acre-feet per year (afy), in compliance with law, to enable the increased withdrawals from 5,200 afy to 6,600 afy for use in the service area, as stipulated in paragraph 4.c. of the September 1993 Agreement between The United States of America and the Monterey County Water Resources Agency, and in paragraph 5.1.1.1 of the "Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands," recorded August 7, 1996, in Reel 3404 Page 749, in the Office of the Monterey County Recorder.

5.3.2. Groundwater Management. The parties will cooperate to further the conservation, management and protection of groundwater underlying the service area and groundwater used on the service area.

5.3.3. Recycled Water. The parties will cooperate to further the use of recycled, reused and reclaimed water and stormwater.

5.4. AGREEMENT ADMINISTRATION. The following persons or their designated representatives shall be the contact persons for the parties and shall administer this Agreement:

Executive Officer of FORA
FORA
100 12th Street, Bldg 2880
Marina, CA 93933

General Manager of MCWD
MCWD
200 12th Street, Bldg. 2788
Marina, CA 93933

ARTICLE 6. EX OFFICIO MEMBERSHIP

6.1. MCWD Responsibilities. Close cooperation and communication between FORA and MCWD being vital to the successful implementation of this Agreement, upon execution of this Agreement and payment of the membership fees described in Article 7 of this Agreement, MCWD will become an ex officio member of FORA under applicable provisions of the FORA Act, with all of the rights and obligations of an ex officio member.

6.2. FORA Responsibilities. Upon execution of this Agreement and payment of the membership fees described in Article 7 of this Agreement, FORA will enroll MCWD as an ex officio member of FORA pursuant to the FORA Act, with all of the rights and obligations of an ex officio member.

ARTICLE 7. FINANCIAL PROVISIONS

7.1. MCWD RESPONSIBILITIES

7.1.1. Separate Fund Accounting. MCWD will account for its operations for the service area as a separate fund within the general MCWD operation. The service area fund will have its own line items and account numbers, and will give MCWD the ability to report on revenues and expenses for the service area. Rules for allocating overhead between the service area fund and other MCWD operations will be determined based on the principles set forth in Circular A-87, Cost Principles for State and Local Governments, of the federal Office of Management and Budget.

7.1.2. MCWD Will Recover Costs. MCWD will recover all of its direct and indirect, short term and long term costs of furnishing the facilities to the service area. MCWD shall not be required to take any action in connection with furnishing the facilities to the service area unless and until a source of funds is secured from the service area to pay in full in a reasonable manner consistent with normal accounting practices all of MCWD's direct and indirect, short term and long term costs of the action to be taken by MCWD, including costs of administration, operation, maintenance and capital improvements to provide adequate system capacity to meet existing and anticipated service demands.

7.1.3. Budgets and Compensation Plans.

7.1.3.1. Proposed Budgets. MCWD's General Manager shall submit a proposed budget to the Committee within four months after conveyance of the existing facilities from the USA to MCWD, and shall submit subsequent proposed budgets by March 30 of each year. Each budget shall contain an action budget for one year, from July 1 through June 30, and an operational planning budget for an additional year, and a five-year capital improvement planning budget, updated annually. Each budget shall provide for sufficient revenues to pay MCWD's direct and indirect, short-term and long-term costs to furnish the facilities to the service area for the two years covered by the action budget and the planning budget.

7.1.3.2. Request for Change. MCWD may at any time submit a written request to FORA for recommended changes in compensation. The request shall state in detail the reasons for the request and the amount of change requested.

7.1.3.3. MCWD Board Action. Not less than two weeks nor more than four weeks after receiving FORA's response pursuant to section 7.2, MCWD's governing Board shall act on the response. MCWD's Board may adopt the proposal with FORA's recommended changes, or may refer the matter to mediation as provided in section 10.1 of this Agreement.

7.1.3.4. Term of Adopted Plan. Each adopted compensation plan shall remain in effect until a new plan is adopted.

7.1.4. Payments to FORA. Upon the effective date of a public benefit conveyance of the facilities to MCWD, when MCWD has the ability to levy and collect rates for service through the facilities within the Service Area, MCWD will commence to pay to FORA monies determined to be due as provided in this section. The amount of MCWD's payments to FORA under this section will be included in each budget and request for change presented to FORA under section 7.1.3.

7.1.4.1. MCWD will pay for FORA's administrative and liaison services incurred by FORA in the management and operation of the facilities and the administration of this Agreement.

7.1.4.2. MCWD will pay to FORA an amount equal to five percent (5%) of all revenues derived, earned, or paid to MCWD for any purpose from customers of MCWD or users of water, within the Service Area, to partially compensate FORA for its forbearance pursuant to section 3.1.2 of this Agreement.

7.1.4.3. MCWD will pay any sum due to FORA under any agreement with FORA which may be required under the provisions of sections 10101 and following of the California Public Utilities Code, and sections 54980 and following of the California Government Code.

7.1.4.4. MCWD will pay the fair market value of any interest in property purchased from FORA.

7.1.4.5. MCWD will pay an annual fee for membership on the FORA Board of Directors as an ex-officio member in an amount as the FORA Board may establish by resolution. MCWD acknowledges that MCWD's annual fee for such ex-officio membership may exceed the amount paid by other ex-officio members. The annual fee to be paid by MCWD will not exceed one percent (1%) of all revenues, derived, earned, or paid to MCWD for any purpose from customers of MCWD or users of water within the service area.

7.1.4.6. In the event FORA enters into an agreement with Monterey County or any city which has jurisdiction over a portion of the service area, for the division of revenues derived from the sales of water by MCWD within the jurisdiction of the County or city, the amounts specified in Section 7.1.4.2 of this Agreement shall be reduced by the amount FORA receives pursuant to such agreements for the division of revenues.

7.1.5. MCWD's Financial Authority. MCWD may exercise any authority available to MCWD under law and this Agreement to finance MCWD's operations for the service area.

7.1.6. Defense of Financial Plans. MCWD, at MCWD's cost, shall defend all financial plans adopted and financial actions taken by MCWD and FORA by or pursuant to this Agreement. MCWD may file and prosecute a validating action if authorized by law for any such plan.

7.2. FORA RESPONSIBILITIES.

7.2.1. FORA shall respond to MCWD within three months after receiving a proposed budget or a written request or a referral for further response pursuant to section 7.1.3. FORA's response shall state whether FORA agrees with the proposed budget or written request. If FORA does not agree, FORA's response shall identify each disputed element, shall state detailed reasons for the dispute, and shall specify a resolution acceptable to FORA. If FORA does not respond within three

months, the compensation plan contained in the latest submittal from MCWD shall be deemed adopted.

7.2.2. Nothing in this Agreement shall limit or impair FORA's ability to contract or arrange financing for construction of capital facilities.

7.3. JOINT RESPONSIBILITIES.

7.3.1. MCWD's Board shall adopt by resolution and FORA's Board shall adopt by ordinance, as a supplement to this Agreement, each compensation plan for MCWD determined pursuant to sections 7.1.3 and 7.2.1 of this Agreement.

7.3.2. MCWD and FORA will cooperate in reviewing and working with communications and proposals from other municipal corporations pursuant to sections 10100 and following of the Public Utilities Code and any other provisions of law dealing with water and sewer utility franchises, with the use of the public streets, ways, alleys, and places within the other municipal corporations for the provision of water and sewer services, or with compensation to a municipal corporation for services performed for another municipal or public corporation.

7.3.3. If MCWD makes any payments to another municipal corporation the amount of such payments shall reduce any sums which such municipal corporation would otherwise receive from sales pursuant to Title 7.85 of the Government Code.

ARTICLE 8. RISK MANAGEMENT

8.1. RISK OF LOSS. Except as otherwise provided in this Agreement, MCWD shall bear the risk of loss from its provision of services to the service area, to the same extent and in the same manner and subject to the same limitations as with MCWD's activities within the area from which MCWD's Directors are elected. This Agreement is not intended and shall not be construed to remove any protection from liability or any procedures for claiming liability under state and federal law. Allocation of the risk from defective or inadequate facilities shall be determined in the conveyance of the facilities from the USA. To the fullest extent permitted by law, MCWD's facilities and other assets for providing water and sewer services within its jurisdictional boundaries shall not be at risk from claims based on MCWD's owning, operating, and furnishing the facilities within the service area. MCWD's risk and liability for MCWD's activities for the service area shall be limited to the value of any facilities within or for the service area, the assets in any service area accounts, and the value of insurance carried by MCWD for providing services within the service area. MCWD, with FORA's assistance, shall diligently apply for and attempt to obtain any all state and federal assistance that is available in the event of catastrophic losses to the facilities.

8.2. INSURANCE. Throughout the term of this Agreement MCWD shall maintain insurance with coverage and limits equivalent to that maintained for MCWD's operations within its jurisdictional boundaries. The insurance shall cover the members of the Committee and shall name FORA as an additional insured.

8.3. COST OF RISK. Each compensation plan adopted for MCWD pursuant to Article 7 of this Agreement shall be adequate to pay MCWD's cost of insurance for acquiring, constructing, operating and furnishing the facilities for the service area, and to establish a prudent risk reserve for uninsured risks.

ARTICLE 9. EFFECTIVE DATE AND TERM

9.1. EFFECTIVE DATE. This Agreement shall become effective when FORA and MCWD have each executed this Agreement.

9.2. FORMAL ADOPTION. FORA will adopt this Agreement by ordinance. MCWD will adopt this Agreement by resolution.

9.3. TERM. This Agreement shall have a term coincident with the legal existence of FORA, unless the USA denies MCWD's application for a public benefit conveyance. If the USA denies MCWD's application for a public benefit conveyance, the parties shall meet and confer in good faith during the 120 days immediately following the final denial to discuss possible change in terms for MCWD to acquire, construct, operate and/or furnish the facilities. If FORA and MCWD cannot agree on new terms within the 120 days, or such other additional time as may be agreed by FORA and MCWD, this Agreement shall terminate and have no further effect, and the parties thereafter shall have no further rights or obligations under this Agreement.

9.4. EFFECT OF TERMINATION. Upon termination of this Agreement, unless otherwise provided by this Agreement or by law or by further agreement of FORA and MCWD or their successors, MCWD shall own the facilities free and clear of the terms and conditions of this Agreement.

ARTICLE 10. GENERAL PROVISIONS

10.1. DISPUTE RESOLUTION PROCEDURE.

10.1.1. Meet and Confer; Mediation. This section shall apply to all disputes arising under this Agreement. The Agreement Administrators designated under section 5.4 of this Agreement shall first meet and confer to resolve any dispute. Each party shall make all reasonable efforts to provide to the other party all information relevant to the dispute. If the Agreement Administrators cannot resolve the dispute within ten working days from the date of the dispute, they shall meet and

confer together with the Committee. If the dispute is not resolved within another ten working days from the date of the dispute, the Agreement Administrators shall meet and confer together with a voting member of the FORA Board and a member of the MCWD Board. If the dispute is not resolved within another ten days from the date of the dispute, the parties shall mediate the dispute at the earliest possible date, with one of the persons named on Exhibit "C" to this Agreement serving as mediator. If the dispute is still not resolved, the parties may pursue any and all remedies available to them at law and equity, including declaratory relief which shall be binding on the parties.

10.1.2. Provisional Relief Available. The requirement to use the procedure specified in section 10.1.1 of this Agreement shall not prevent a party from seeking provisional relief from a court if necessary to protect the public health or safety.

10.1.3. Mediator List. Exhibit "C" to this Agreement is a list of persons both parties will accept as mediators for any dispute arising under this Agreement. If a dispute requires mediation, the parties will choose a mediator from the list by some random method, and will continue to do so until a mediator is selected who can mediate the particular dispute without delay. As a last resort, if no person named on Exhibit "C" can mediate a particular dispute without delay, the parties will ask the Presiding Judge of the Monterey County Superior Court to appoint a mediator.

10.2. WAIVER OF RIGHTS. None of the covenants or agreements herein contained can be waived except by the written consent of the waiving party.

10.3. SEVERABILITY. If any one or more of the covenants or agreements set forth in this Agreement on the part of the parties, or either of them, to be performed should be contrary to any provision of law or contrary to the policy of law to such extent as to be unenforceable in any court of competent jurisdiction, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements and shall in no way affect the validity of this Agreement.

10.4. EXHIBITS. All exhibits referred to in this Agreement and attached to this agreement are incorporated in this Agreement by reference.

10.5. COUNTERPARTS. This Agreement may be executed in counterparts, and each fully executed counterpart shall be deemed an original document.

10.6. NOTICES. All notices, requests, consents, approvals, authorizations, agreements, or appointments hereunder shall be given in writing and addressed to the principal office of each party.

10.7. AMENDMENTS. This Agreement integrates and supersedes all prior and contemporaneous agreements and understandings about MCWD's provision of the services to the Service Areas. This Agreement may not be amended without consent of the governing Boards of both parties.

10.8. SUCCESSORS. This Agreement shall bind and benefit the successors of the parties hereto.

10.9. ADDITIONAL DOCUMENTS. The parties hereto agree, upon request, to execute, acknowledge, and deliver all additional documents necessary to carry out the intent of this Agreement.

10.10. CAPTIONS. Captions of the Articles, Sections, and Paragraphs of this Agreement are for convenience and reference only and are not intended to define or limit the scope of any provision contained herein.

IN WITNESS WHEREOF, the parties hereto, by and through their respective, duly authorized representatives, have executed this Agreement on the dates indicated.

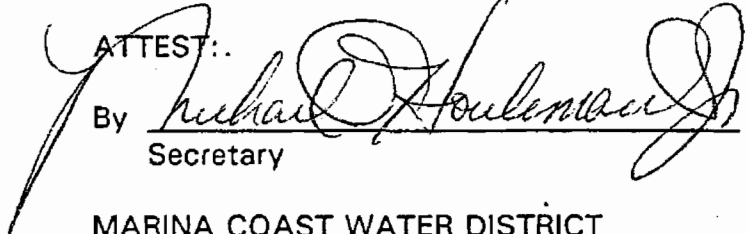
FORT ORD REUSE AUTHORITY

By


Chairperson, Board of Directors

ATTEST:

By


Secretary

Dated:

3/13/98

MARINA COAST WATER DISTRICT

By


President, Board of Directors

ATTEST:

By


Secretary

Dated:

3/13/98

ORDINANCE NO. 98-01

**AN ORDINANCE OF BOARD OF DIRECTORS OF THE FORT ORD REUSE
AUTHORITY APPROVING AN AGREEMENT BETWEEN MARINA COAST
WATER DISTRICT AND THE FORT ORD REUSE AUTHORITY**

The Board of Directors of the Fort Ord Reuse Authority ordains as follows:

SECTION 1. The Board of Directors of the Fort Ord Reuse Authority approves
an Agreement between Marina Coast Water District and the Fort
Ord Reuse Authority for the operation of water and wastewater
collection systems on the former Fort Ord military reservation.

SECTION 2. This ordinance shall become effective on its adoption.

PASSED AND ADOPTED this 13th day of February, 1998 by the
following vote:

AYES: Barlich, Albert, Vocelka, Potter, Perkins, Johnsen
Jordan, Mancini, Pendergrass, Styles, Koffman, White

NOES: Perrine

ABSENT: None



Chair of the Board of Directors

ATTEST:

Michael Houlemard
Clerk of the Board

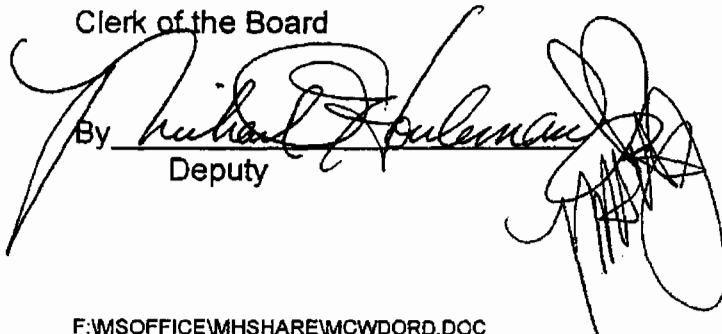
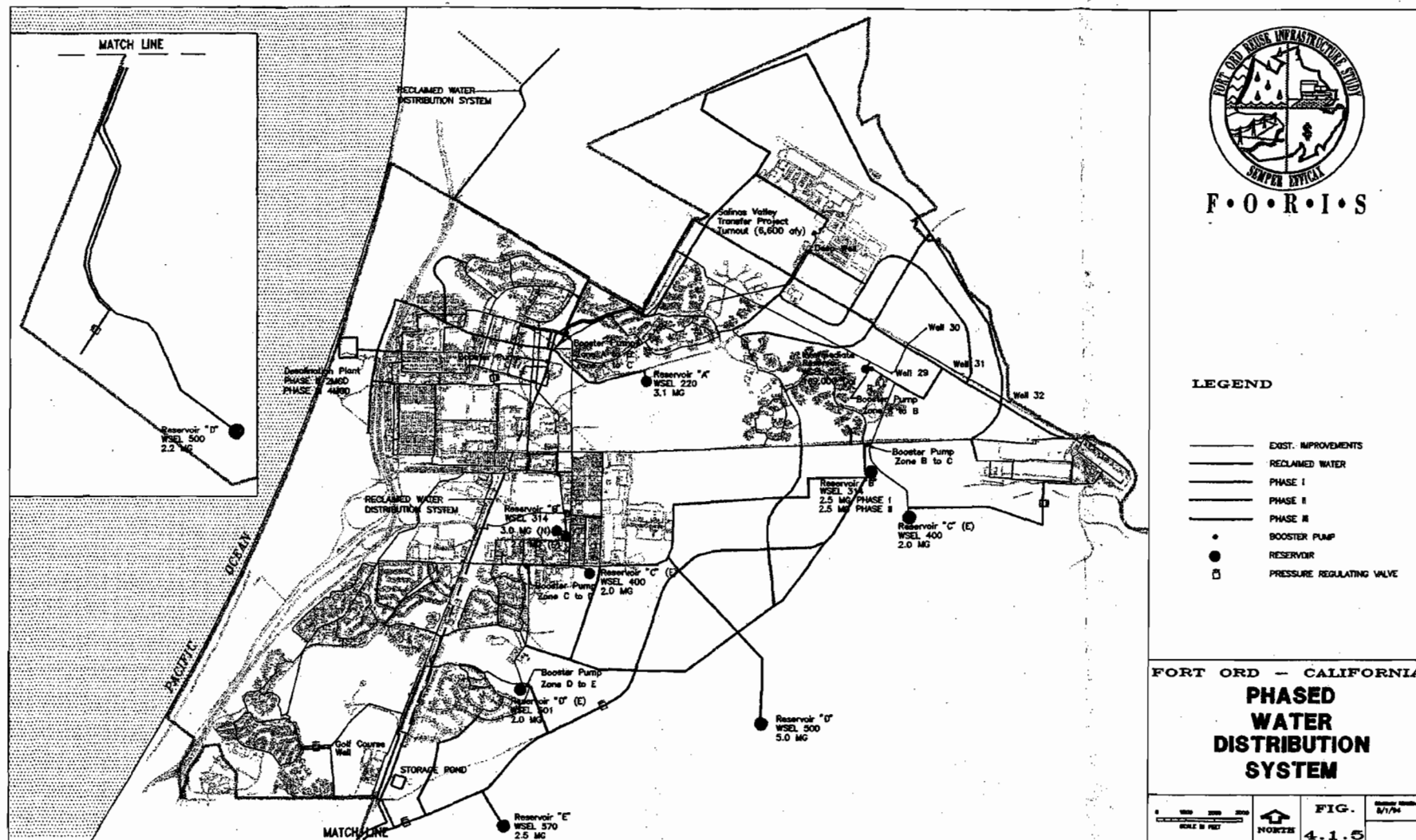
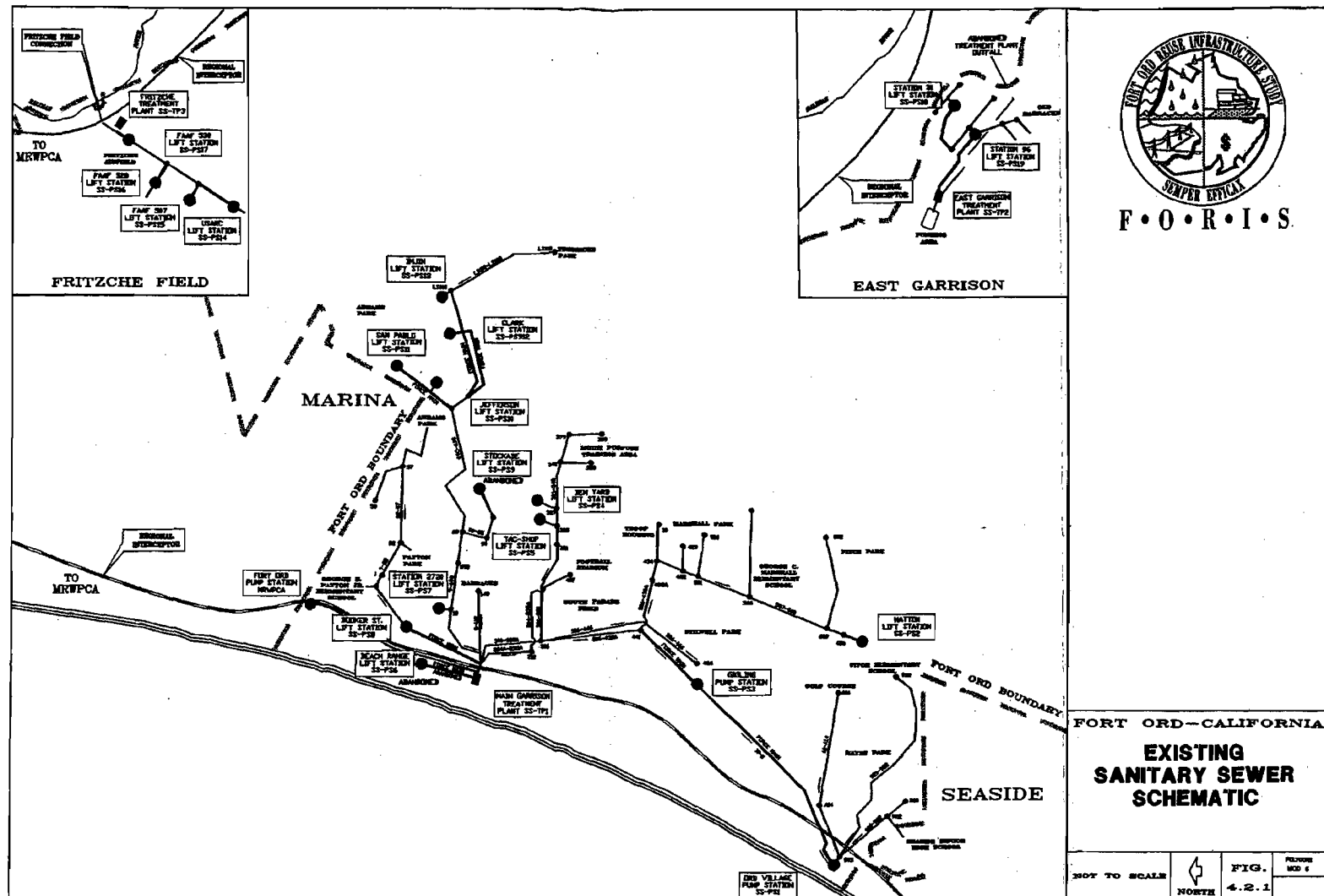
By 
Deputy

EXHIBIT A





**EXHIBIT C
MEDIATORS**

Dick Milbrodt
Leon Panetta
Lt. Gen. Ret. James Moore
Don Owen
Frank Dimick
John Gregg
Anne Schneider

CITIES, COUNTIES, & OTHER AGENCIES
Title 5

Chapter 12, added as Chapter 11, Municipal Services and Functions, by Stats.1978, c. 960, p. 2961, § 1, was renumbered Chapter 12 and amended by Stats.1980, c. 676, § 131.

§ 54980. Definitions

As used in this chapter:

(a) "Legislative body" means the board of supervisors in the case of a county or a city and county, the city council or board of trustees in the case of a city, and the board of directors or other governing body in the case of a district.

(b) "Local agency" means any county, city, city and county, or public district which provides or has authority to provide or perform municipal services or functions.

(c) "Municipal services or functions" includes, but is not limited to, firefighting, police, ambulance, utility services, and the improvement, maintenance, repair, and operation of streets and highways.

(Added by Stats.1978, c. 960, p. 2121, § 1.)

Historical and Statutory Notes

Former § 54980, added by Stats.1957, c. 4736, § 34. See Government Code § 56000 et seq. 1382, p. 2716, § 1, relating to district boundaries, was repealed by Stats.1965, c. 2043, p.

Forms

See West's California Code Forms, Government.

Law Review and Journal Commentaries

Decline of emergency medical services coordination in California: Why cities are at war with counties over illusory ambulance monopolies. Byron K. Toma, 23 Sw.U.L.Rev. 285 (1994).

Library References

Municipal Corporations ¶226.
WESTLAW Topic No. 268.
C.J.S. Municipal Corporations § 976 et seq.

Notes of Decisions

Paramedics 1

1. Paramedics

For purposes of determining whether county's program of certifying paramedics for ambu-

lance services was immune from antitrust liability under the state action doctrine, provision of emergency service is a traditional municipal function. *Mercy-Peninsula Ambulance, Inc. v. San Mateo County*, N.D.Cal.1984, 592 F.Supp. 956, affirmed 791 F.2d 755.

§ 54981. Contracts for municipal services

The legislative body of any local agency may contract with any other local agency for the performance by the latter of municipal services or functions within the territory of the former.

(Added by Stats.1978, c. 960, p. 2121, § 1.)

MUNICIPAL SERVICES /
Div. 2

H

Former § 54981, added by Stats.1978, c. 960, p. 2961, § 1, relating to district boundaries, was repealed by Stats.1965, c. 2043, p.

**§ 54981.7. Indian tribe
tion servi**

A city or county may enter into a contract with any other city or county to provide fire protection services for the Indian lands and territory adjacent to the city or county. The contract shall be construed to alter or not alter jurisdiction in Indian lands.

(Added by Stats.1996, c. 1085)

§ 54982. Consideration

Any agreement entered into for consideration.

(Added by Stats.1978, c. 960, p. 2121, § 1.)

Former § 54982, added by Stats.1978, c. 960, p. 2121, § 1, relating to district boundaries, was repealed by Stats.1965, c. 2043, p.

§ 54983. Construction

Authority for entering into a contract shall be construed as supplementing the authority of local agencies to enter into agreements for the performance of functions and shall not be construed to limit the authority of a local agency to enter into agreements for the performance of functions which it is permitted to perform on its own account limit applicable.

The amendments to this section shall not apply to any agreement entered into prior to the effective date of this act.

(Added by Stats.1978, c. 960, p. 2121, § 1.)

Former § 54983, added by Stats.1978, c. 960, p. 2121, § 1, relating to district boundaries, was repealed by Stats.1965, c. 2043, p.

ES, & OTHER AGENCIES
Title 5

Services and Functions,
numbered Chapter 12 and

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Peninsula Ambulance, Inc. v.
N.D.Cal.1984, 592 F.Supp.
2d 755.

t with any other local
services or functions

MUNICIPAL SERVICES AND FUNCTIONS
Div. 2

§ 54983

Historical and Statutory Notes

Former § 54981, added by Stats.1957, c. 4736, § 34. See Government Code § 56000 et seq.
1382, p. 2716, § 1, relating to district bound-
aries, was repealed by Stats.1965, c. 2043, p.

§ 54981.7. Indian tribes; fire protection services; police or sheriff protection services

A city or county may enter into a contract with an Indian tribe for the city or county to provide fire protection services and police or sheriff protection services for the Indian tribe either solely on Indian lands, or on the Indian lands and territory adjacent to those Indian lands. Nothing in this section shall be construed to alter or affect federal Public Law 280, relating to state jurisdiction in Indian lands.

(Added by Stats.1996, c. 1085 (A.B.1762), § 1.)

§ 54982. Consideration

Any agreement entered into pursuant to this chapter shall be for valuable consideration.

(Added by Stats.1978, c. 960, p. 2121, § 1.)

Historical and Statutory Notes

Former § 54982, added by Stats.1957, c. 4736, § 34. See Government Code § 56000 et seq.
1382, p. 2716, § 1, relating to district bound-
aries, was repealed by Stats.1965, c. 2043, p.

§ 54983. Construction of authority granted

Authority for entering into agreements pursuant to this chapter shall be construed as supplementing existing authority for legislative bodies of local agencies to enter into agreements for the providing of municipal services and functions and shall not be construed as authorizing the legislative body of any local agency to enter into an agreement for the providing of municipal services or functions which it is prohibited to provide by law or which exceeds the force account limit applicable to the local agency contracting to receive services.

The amendments to this section which become effective January 1, 1981, shall not apply to any agreement which was made prior to that date nor to the current term of any self-renewing or renewable agreement which had been entered into prior to that date.

(Added by Stats.1978, c. 960, p. 2121, § 1. Amended by Stats.1980, c. 398, p. 781, § 1.)

Historical and Statutory Notes

Former § 54983, added by Stats.1957, c. 4736, § 34. See Government Code § 56000 et seq.
1382, p. 2716, § 1, relating to district bound-
aries, was repealed by Stats.1965, c. 2043, p.

GOVERNMENT CODE

of the proceeds shall be retained by the board to help finance its responsibilities for the reuse of Fort Ord, unless otherwise agreed upon by the city or county with jurisdiction over the property and the board.

(3) The board shall transfer or lease all real or personal property received pursuant to this section and which is intended for public utility use within a reasonable period of time, consistent with the orderly and economical provision of utility services to the area of Fort Ord, under terms and conditions the board may determine.

(4) Notwithstanding any other paragraph of this subdivision, the board may retain real or personal property received pursuant to this section as long as both of the following occur:

(i) The board determines that retention of the property is necessary or convenient to carrying out the authority's responsibilities pursuant to law.

(ii) The board determines that its retention of the property will not cause significant financial hardship to the city or county with jurisdiction over the property.

(c) The board may mediate and resolve conflicts between local agencies concerning the uses of federal land to be transferred for public benefit purposes or other uses.

(d) The provisions of this title shall not preclude negotiations between the federal government and any local telecommunication, water, gas, electric, or cable provider for the transfer to any * * * utility or provider of federally owned distribution systems and related facilities serving Fort Ord.

* * * (e) This title shall not be construed to limit the rights of the California State University or the University of California to acquire, hold, and use real property at Fort Ord, including locating or developing educationally related or research oriented facilities on this property.

(f) Except for property transferred to the California State University, or to the University of California, and that is used for educational or research purposes, and except for property transferred to the California Department of Parks and Recreation, all property transferred from the federal government to any user or purchaser, whether public or private, shall be used only in a manner consistent with the plan adopted or revised pursuant to Section 67675.

(Added by Stats.1994, c. 64 (S.B.899), § 1, eff. May 9, 1994. Amended by Stats.1994, c. 1169 (S.B.1600), § 2.)

Historical and Statutory Notes

1994 Legislation

The 1994 amendment of this section by c. 1169 (S.B. 1600) explicitly amended the 1994 addition of this section by c. 64 (S.B.899).

§ 67679. Basewide public capital facilities; identification; financing and construction; identification of significant local public capital facilities; construction or improvement; exceptions; assessments; financing districts; development fees

(a)(1) The board shall identify those basewide public capital facilities described in the Fort Ord Reuse Plan, including, but not limited to, roads, freeway ramps, air transportation facilities, and freight hauling and handling facilities; sewage and water conveyance and treatment facilities; school, library, and other educational facilities; and recreational facilities, that serve residents or will serve future residents of the base territory and could most efficiently or conveniently be planned, negotiated, financed, * * * constructed, or repaired, remodeled, or replaced by the board to further the integrated future use of the base. The board shall undertake to plan for and arrange the provision of those facilities, including arranging for their financing and construction or repair, remodeling, or replacement. The board may plan, design, construct, repair, remodel, or replace and finance these public capital facilities, or delegate any of those powers to one or more member agencies. Notwithstanding any other provision of law, no permit or permission of any kind from any city or county shall be required for any project undertaken by the board pursuant to this section.

(2) The board shall identify significant local public capital facilities, as distinguished from the basewide public capital facilities identified in the paragraph (1) which are described in the Fort Ord Reuse Plan. Local public capital facilities shall be the responsibility of the city or county with land use jurisdiction or the redevelopment agency if the facilities are located within an established project area and the board of the redevelopment agency determines that it will assume responsibility.

(3) The board may construct or otherwise act to improve a local public capital facility only with the consent of the city or county with land use authority over the area where the facility is or will be located.

Additions or changes indicated by underline; deletions by asterisks * * *

A city or county or a local redevelopment agency may construct or otherwise act to improve a basewide public capital facility only with the consent of the board.

(b) If all or any portion of the Fritzsche Army Air Field is transferred to the City of Marina, the board shall not consider those portions of the air field that continue to be used as an airport to be basewide capital facilities, except with the consent of the legislative body of the city. If all or any portion of the two Army golf courses within the territory of Seaside are transferred to the City of Seaside, the board shall not consider those portions of the golf courses that continue in use as golf courses to be basewide capital facilities, except with the consent of the legislative body of the city.

(c) The board may seek state and federal grants and loans or other assistance to help fund public facilities.

(d) The board may, in any year, levy assessments, reassessments, or special taxes and issue bonds to finance these basewide public facilities in accordance with, and pursuant to, any of the following:

(1) The Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code).

(2) The Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code).

(3) The Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code).

(4) The Benefit Assessment Act of 1982 (Chapter 6.4 (commencing with Section 54703)).

(5) The Landscape and Lighting Act of 1972 (Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code).

(6) The Integrated Financing District Act (Chapter 1.5 (commencing with Section 53175) of Division 2 of Title 5).

(7) The Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5).

(8) The Infrastructure Financing District Act (Chapter 2.8 (commencing with Section 53395) of Division 2 of Title 5).

(9) The Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1).

(10) The Revenue Bond Act of 1941 (Chapter 6 (commencing with Section 54300) of Division 2 of Title 5).

(11) Fire suppression assessments levied pursuant to Article 3.6 (commencing with Section 50078) of Chapter 1 of Part 1 of Division 1 of Title 5.

(12) The Habitat Maintenance Funding Act (Chapter 11 (commencing with Section 2900) of Division 3 of the Fish and Game Code).

Notwithstanding any other provision of law, the board may create any of these financing districts within the area of Fort Ord to finance basewide public facilities without the consent of any city or county. In addition, until January 1, 2000, the board may, but is not obligated to create, within the area of Fort Ord, any of these financing districts which authorize financing for public services and may levy authorized assessments or special taxes in order to pass through funding for these services to the local agencies. Notwithstanding any other provision of law, no city or county with jurisdiction over any area of the base, whether now or in the future, shall create any land-based financing district or levy any assessment or tax secured by a lien on real property within the area of the base without the consent of the board, except that the city or county may create these financing districts for the purposes and subject to any financing limitations that may be specified in the capital improvement program prepared pursuant to Section 67675.

(e) The board may levy development fees on development projects within the area of the base. Any development fees shall comply with the requirements of Chapter 5 (commencing with Section 66000) of Division 1 of Title 5. No local agency shall issue any building permit for any development within the area of Fort Ord until the board has certified that all development fees that it has levied with respect to the development project have been paid or otherwise satisfied.

(Added by Stats.1994, c. 64 (S.B.899), § 1, eff. May 9, 1994. Amended by Stats.1994, c. 1169 (S.B.1600), § 3.)

Additions or changes indicated by underline; deletions by asterisks * * *

EXHIBIT "E"

CALIFORNIA PUBLIC UTILITIES CODE
SELECTED SECTIONS

§ 10101. Powers of municipality

There is granted to every municipal corporation of the State the right to construct, operate, and maintain water and gas pipes, mains and conduits, electric light and power lines, telephone and telegraph lines, sewers and sewer mains, all with the necessary appurtenances, across, along, in, under, over, or upon any road, street, alley, avenue or highway, and across, under, or over any railway, canal, ditch, or flume which the route of such works intersects, crosses, or runs along, in such manner as to afford security for life and property.

§ 10102. Restoration

A municipal corporation exercising its rights under this article shall restore the road, street, alley, avenue, highway, canal, ditch, or flume so used to its former state of usefulness as nearly as may be, and shall locate its use so as to interfere as little as possible, with other existing uses of a road, street, alley, avenue, highway, canal, ditch, or flume.

§ 10103. Agreement of other municipality

Before any municipal corporation uses any street, alley, avenue, or highway within any other municipal corporation, it shall request the municipal corporation in which the street, alley, avenue, or highway is situated to agree with it upon the location of the use and the terms and conditions to which the use shall be subject.

§ 10104. Action to establish terms and conditions of use

If the two municipal corporations are unable to agree on the terms and conditions and location of a use within three months after a proposal to do so, the municipal corporation proposing to use a street, alley, avenue, or highway may bring an action in the superior court of the county in which the street, alley, avenue, or highway is situated against the other municipal corporation to have the terms and conditions and location determined. The superior court may determine and adjudicate the terms and conditions to which the use of the street, avenue, alley, or highway shall be subject, and the location thereof, and upon the making of the final judgment the municipal corporation desiring to do so may enter and use

the street, alley, avenue, or highway upon the terms and conditions and at the location specified in the judgment.

§ 10105. Unincorporated territory

A grant of authority from or agreement with another municipality is not necessary in any case where the street, alley, avenue, or highway, or portion thereof, proposed to be used is a necessary or convenient part of the route of the proposed works and at the time construction was commenced or the plans adopted was located in unincorporated territory. This section is not applicable if the street, alley, avenue, or highway, or portion thereof, was located in incorporated territory prior to May 5, 1933.

000071

FORT ORD REUSE AUTHORITY BOARD REPORT

NEW BUSINESS

Subject: Independent audit report – Marina Coast Water District water rates

Meeting Date: September 16, 2011

Agenda Number: 3a

INFORMATION

RECOMMENDATION:

Receive an independent audit report of Marina Coast Water District ("MCWD") proposed 2011/12 water rates performed by Economic Planning Systems ("EPS").

BACKGROUND:

MCWD began serving customers on the former Fort Ord in 1997 and in November 2001, took over ownership of the basewide water and recycled water system via Economic Development Conveyance. MCWD bills their former Fort Ord customers according to the rates approved annually by the Fort Ord Reuse Authority ("FORA") Board of Directors.

In 2008, a rate study performed by Bartles & Wells showed the need for a substantial increase to capacity fees and water rates to adequately fund MCWD maintenance and capital improvement projects. To avoid drastically increasing capacity fees, the FORA Board approved the addition of \$20M of costs associated with the Monterey Bay Regional Water Supply Program into the FORA Capital Improvement Program. Additionally, the study proposed increasing water rates over the course of five years: a 10% increase in the first two years followed by a 7.8% increase in each remaining year.

After the MCWD Board reviewed the proposed 7.8% increase to the 2011/12 water rates, they requested that staff identify budget reductions and lower the rate increase as much as possible. MCWD staff was able to reduce outside consulting and operating expenses, thus reducing the proposed increase to 4.9%.

DISCUSSION:

In June 2011, the FORA and MCWD Boards of Directors received a presentation of the draft FY 2011/12 MCWD budgets and rates for the Ord Community. The FORA Board had numerous questions. MCWD staff met with individual FORA Board members in order to provide additional information (see Questions & Answers, **Attachment A**).

In July 2011, the joint Boards convened to receive the Questions & Answers and act on the resolutions adopting the budget and setting the rates, fees and charges. However, the FORA Board was still concerned about the proposed rate increase. Although individual Board members had received answers to their questions, they requested that MCWD staff list each question and answer in a comprehensive document for the FORA Board as a whole. The FORA Board additionally requested that staff engage a consultant to perform an independent audit of the proposed water rates to ensure that the requested increase was both adequate and warranted. Staff solicited proposals from several consultants and selected EPS to perform the independent audit. FORA expanded EPS's scope of services for a separate contract (**Attachment B**) to include this work.

Based on their review, EPS found that the 4.9% rate increase proposed for 2011/12 *is warranted*. Additionally, they found that the 5% increase proposed for 2012/13 *is warranted* as well. A final report prepared by EPS is attached (**Attachment C**) and includes further details of these findings. Staff is requesting that the Board receive the results of the audit prior to acting on continued old business item 4a.

FISCAL IMPACT:

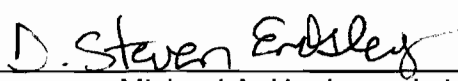
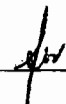
Reviewed by FORA Controller 

The cost to FORA for the water rates audit is not to exceed \$7,500 and this expense was approved by the FORA Board in July 2011. Staff time for this item is included in the FY 11-12 budget.

COORDINATION:

MCWD, Administrative Committee, Executive Committee

Prepared by  Reviewed by 
Crissy Maras Steve Endsley

Approved by  
Michael A. Houlemard, Jr.

**ANSWERS TO QUESTIONS ON 2011/12 ORD COMPENSATION PLAN FROM
THE JOINT FORA/MCWD MEETING 06/10/2011**

1. *2nd Chair/Mayor Pro-Tem O'Connell asked if the District looked into a different sewer rate between residential and commercial so as to reduce the rate of residential.*

No. The current rate structure, recommended by the firm of Bartle & Wells from their 2008 rate study (the foundation of all rate increases since FY 2008/09), is based on 1 equivalent dwelling unit (EDU). Commercial customer rates are based on the number EDUs that are assigned to their business and residential customer rates are based on the number of EDUs assigned to residences. If for example a business is determined to have 42 EDU, their monthly bill would be $42 \times \$24.36 = \$1,023.12$. The residential charge is based on 1 EDU, as such their monthly charge would be \$24.36.

2. *Mayor McCloud asked if the District was concerned by the amount of ratepayer protests (about 25%) and if the District took on additional debt to cause such an increase in interest.*

Of the 553 protests that were reported at the June 10th meeting, 517 were from a single ratepayer, CSUMB. CSUMB letter counts as 517 protests based on the number of connections it has. There were 36 protests received from individual ratepayers. 1.3% of the ratepayers protested.

The reason for the increase in interest expense is that new debt has been placed in a debt instrument with an accelerated (10 yr) repayment schedule. As such, it substantially increased the interest budgeted for FY 2011/12. In June, 2010, the District exercised a long held option to purchase 224 Acres of Armstrong Ranch with a Promissory Note as part of the 1996 Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands. If the Promissory Note was paid by December 31, 2010, the District would be able to recoup the costs of the land purchase through annexation and/or capacity fees collected on the Development of Armstrong Ranch. In December 2010, the District refinanced the Promissory Note with refunding revenue bonds with the same repayment schedule as the Promissory Note - 10 years. The existing 2006 Bonds have a 30-year repayment schedule and FY 2011/12 is year 6 of 30. The 2010 refunding revenue bonds have a 10-year repayment schedule and FY 2011/12 is year 2 of 10.

3. *Mayor Edelen, City of Del Rey Oaks, asked what attributed to the increase of interest anticipated for FY 2011/12.*

See answer to Question 2.

KAMPE QUESTIONS EMAILED TO FORA

So here are the questions regarding the tables of numbers:

1. *What are the main cost drivers of the rate increase?*
 - a. *Expenses, e.g. energy, salaries*
 - b. *Capital/interest costs*
 - c. *Required or necessary improvements for healthy, safety or reliability*
 - d. *Unanticipated maintenance actions*
 - e. *Can we see a few summary year to year compares in a simple table format, for significant cost factors?*

All of the above are potential cost drivers of a rate increase. The combined outstanding Debt for the Ord Community is more than \$30 million. The Ord community is a small rate base that must support a large water and sewer system. The annual Debt Service for FY 2011/12 is \$2.5 million. Below is a table of the budgeted annual Debt Service for Ord Community Cost Centers:

Cost Center	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12
Ord Water	692,880	793,933	1,017,034	1,828,100
Ord Sewer	365,640	413,285	433,814	730,590

2. *Salaries are obviously a hot topic. Probably needs some comment.*

Ord Water personnel costs increased by .2% and Ord Sewer personnel costs have decreased by 18.7% for an overall decrease of 3% or \$92,750. This was achieved by decreasing staff through attrition and current staff picking up the workload.

3. *What role does the 5-year plan play?*

The 5-year financial plan and rate study was used to determine the rates for the five years within the plan (FY 2008/09 – FY 2012/13). FY 2011/12 is year 4 of 5 of recommended rate increases. The plan assumes little to no growth during these years. Rates for the five years were established to meet the annual debt service, operating costs, fund a scaled-down CIP plan and to fund reserves.

4. *What adjustments are being made to adjust to circumstances, e.g. the slow build-out of former Fort Ord?*

The implemented 5-year financial plan assumes the current slow build-out environment at of the former Fort Ord.

5. *What actions are being taken to mitigate cost increases*

The Board directed staff to make necessary cuts in order to reduce the planned increase of 7.8% to less than 5%. Staff took measures to mitigate cost increases and reduce the planned increase by reducing staffing levels through attrition. In addition, O&M staff is doing more work in-house instead of using outside contractors and Engineering staff have reduced the use of consultants and doing more of the work in house as well.

6. *I think I heard that conservation measures are reducing water usage overall.*

a. *How much?*

Total water consumption in the District has gone down 4.6% (based on five year averages from 2001-2005 and 2006-2010) while the number of connections has gone up.

b. *What is the consequence for the base rate, all other things being equal?*

If by “all other things being equal” includes the continued reduction of water usage, the base rate would need to increase in order to meet operational costs, debt service and capital needs.

Another industry, solid waste, serves as a good example for how good public behavior (recycling) can negatively impact the revenue stream for public agencies. As the revenue for landfills is based on the volume of refuse it receives, successful recycling efforts of the public have impacted landfill revenue streams. Rates reflect the operational costs of a landfill or water district, which in large part, are fixed.

c. *While the rate may go up, shouldn't the monthly bill for the average, more water-wise customer still go down?*

The average bill for the more water-wise customer may or may not go down depending on how much they can reduce water usage.

7. *How is overhead/common expense allocated to cost centers? (My experience in product and service pricing is that overhead allocation is a battle ground and has a significant effect on prices.) It's operating cost ratio – but I don't know what that means. What is in each cost center operating cost? I look at Exhibit W-1 and it's just hard to sort that out. There's a section for operation and maintenance, but are personnel assigned exclusively*

to the cost center for this line item? Or should I be looking at the Total Operating Expenses? But that clearly includes allocated expenses already.

Shared/Overhead Cost ratio is based on actual operating costs for each cost center from the previous audited fiscal year. The proposed FY 2011/12 expense allocation is based on the audited FY 2009/10 total operating expenses of the District. The cost allocation used in the proposed FY 2011/12 compensation plan is Marina Water (28%), Marina Sewer (7%), Ord Water (54%), and Ord Sewer (11%).

There are personnel costs and overhead/common expenses that are distributed among the cost centers using the cost allocation. These expenses include certain insurance and equipment lease payments, various administrative costs and supplies. There are also direct costs for each cost center as well as staff that are allocated to particular cost centers. The personnel and expenses listed in the Exhibits of the Compensation Plan therefore include the total of direct and allocated costs.

8. Comparison of cost center increases

- a. Would like to see a simple table comparing the 4 cost center selected rates and rate increases.*

Table 1 - Rate Increases (%)

Cost Center	Approved FY 2008/09	Approved FY 2009/10	Approved FY 2010/11	Proposed FY 2011/12
Marina Water	3.8%	7.8%	7.8%	4.9%
Marina Sewer	3.8%	7.8%	7.8%	4.9%
Ord Water	10%	10%	7.8%	4.9%
Ord Sewer	3.8%	7.8%	7.8%	4.9%

Table 2 - Rates

Cost Center	Approved FY 2008/09	Approved FY 2009/10	Approved FY 2010/11	Proposed FY 2011/12
Marina Water				
Base Rate (3/4" Meter)	\$14.72	\$15.87	\$17.11	\$17.95
Tier 1	\$1.79	\$1.93	\$2.08	\$2.18
Tier 2	\$2.18	\$2.35	\$2.53	\$2.66
Tier 3	\$3.98	\$4.29	\$4.62	\$4.85
Marina Sewer (per EDU)	\$7.14	\$7.70	\$8.30	\$8.71
Ord Water				
Base Rate (3/4" Meter)	\$13.75	\$15.13	\$16.31	\$17.11
Tier 1	\$1.87	\$2.06	\$2.22	\$2.33
Tier 2	\$2.63	\$2.89	\$3.12	\$3.27
Tier 3	\$3.39	\$3.73	\$4.02	\$4.22
Flat Rate	\$67.76	\$74.58	\$80.40	\$84.34
Surcharge	\$20.00	\$20.00	\$20.00	\$20.00
Ord Sewer (per EDU)	\$20.97	\$22.60	\$24.36	\$25.56
Surcharge	\$5.00	\$5.00	\$5.00	\$5.00

- b. Jim, your comment that the board reduced your recommended increases to a common 4.9% across all cost centers really caught my ear. I hope that's based on some tangible plan to control costs. And it still leaves me wondering if the cost center pricing is really properly represented.*

The rate study recommended a 7.8% rate increase to all cost centers in year 4. In earlier years of the study, the rates varied between Ord Water and the rest of the cost centers. The Board chose to decrease the rate increase of all cost centers to 4.9%.

9. Tier structure, why is first break so high?

- a. The answer provided at our board meeting was bewildering. It was oriented around multiple users at a trailer park, and perhaps at some apartments. It seems to me that there must be some rate setting method to manage that.*
- b. Fix the problem of multiple users on a meter! Special rate table, more meters? Can you create a special scale based on number of EDU's per meter?*
- c. It just doesn't make sense to me to forgo the conservation incentives for the single meter per EDU users. That's the perspective of a CalAm customer with a CDO looming.*

The increasing tier rate structure used by the District and other local water districts, are in part placed to encourage water conservation. In these rate structures the water rates increase with progressive preset consumption "blocks". The MCWD tier rates were derived from recommendations from Bartle Wells Associates in its 2008 MCWD rate study report. This study included water conservation considerations in its analysis. The rate structure is similar to California Water Service, which draws its water from the same Salinas Valley aquifer.

SUPERVISOR PARKER'S QUESTIONS EMAILED TO FORA

1. Ord Community Water Budget –

- a. What capital projects caused the interest rate to double?*

Interest rates did not double. Interest expense did increase 68%. New debt has been placed in a debt instrument with an accelerated (10 yr) payment schedule.

*Can the debt service be refinanced to ease the burden on current rate payers?
(Bill Kempe's questions)*

It is not feasible to refinance the debt at this time.

1. Interest rates on municipal bonds are currently higher than interest rates on existing debt.
2. It would not be cost-effective because there would be severe cost penalties for early call on the bonds.

b. How do the tier rates compare to Cal-Am's?

Cal-Am's tier structure is more aggressive towards water conservation.

By comparison, the Cal Am rate structure is more aggressive with more tiers and steeper rate structure. This is accompanied by a customization of rate schedules for different factors such as number of people in the household, lot size, etc. This rate structure is formulated for the water supply situation in the Cal Am area.

The MCWD rate structure is similar to California Water Service, which draws its water from the same Salinas Valley aquifer. MCWD and Cal Water rate schedules do not account for the number of people in the household or multiple users behind one meter.

*What unit of water do the numbers on the chart represent in gallons? (Jane)
There were numbers, like 400, 800, but it didn't say "gallons" or any other measurement.*

The numbers represent cubic feet.

2. Ord Community Waste Water –

a. Why are the rates so high compared to surrounding communities?

The rates are higher compared to surrounding communities for a couple of reasons

1. The Ord customer base is very small compared to the large system that it must support.
2. The rates must provide for a portion of the pay down of the large debt service incurred for sewer restoration capital projects due to the poor condition of the system when it was turned over to the District.

b. Where did the dollar amounts for surrounding communities come from – the PCA rates for the cities are higher than what was on the chart – for example, it lists Monterey as paying \$5.18 per month, but Monterey residents pay much more than that to PCA, and there is no separate bill from the city of Monterey. Perhaps the comparison numbers don't include all the expenses? It may be that

Ord Community rates are not much different from other Peninsula communities, but the chart makes them look 5x as expensive.

The sewer bill to the City of Monterey residents (and some of the other cities with MRWPCA), have combined collection system and wastewater treatment bills. The referenced chart shows only the collection system costs for the Ord and surrounding communities.

**QUESTIONS SUBMITTED TO FORA BY PAULA PELOT, RATEPAYER
VIA MAYOR PRO-TEM O'CONNELL**

Proposed MCWD Rate Increases to the Ord Community and the MCWD Budget Presentation

- 1. *Since 2003, what is the percentage increase to Ord Community ratepayers?***

Since 2003, the percentage increase for water rates is 96% and 132% for wastewater rates.

- 2. *What accounts for the 68% increase in Interest Expense under the Administration/Management section of the Ord Community Water Systems Operations Proposed Budget? Was there additional indebtedness acquired (if so when/what) or did the terms for the existing indebtedness change resulting in this increase? Provide the detail of what comprises the interest expense line.***

The 68% increase in interest expense is primarily due to new debt which has been placed in a debt instrument with an accelerated (10 yr) payment schedule. Interest expense is comprised of (2006 Bond Interest - \$937,330; 2010 Bond Interest - \$174,420; Loans & Interest on Leased EQ - \$47,000.)

- 3. *What accounts for the 38% increase in Maintenance Expenses under the Operations and Maintenance section of the Ord Community Water Systems Operations Proposed Budget?***

The 38% increase in Maintenance Expense is due to O&M equipment (primarily valve replacement) - 52,300; O&M property (on aging facilities) - \$14,400; O&M fleet -\$10,000; O&M supplies (lubricants, safety, data).

- 4. *What accounts for the 71% increase in Lab Contract Services under the Laboratory section of the Ord Community Water Systems Operations Proposed Budget?***

Lab Contract Services increase is due to more anticipated tests to be run when two new wells go online in the proposed budget year. The increase is also for additional tests required under the District's permit.

5. *What accounts for the 81% increase in Interest Expense under the Administration/Management section of the Ord Community Wastewater Systems Operations Proposed Budget? Was there additional indebtedness acquired (if so when/what) or did the terms for the existing indebtedness change resulting in this increase? Provide the detail of what comprises the interest expense line.*

The 81% increase in interest expense is primarily due to new debt which has been placed in a debt instrument with an accelerated (10 yr) payment schedule. Interest expense is comprised of (2006 Bond Interest - \$406,000; 2010 Bond Interest - \$41,040; Loans & Interest on Leased EQ - \$15,800.)

6. *What accounts for the 85% increase in Maintenance Expenses under the Operations and Maintenance section of the Ord Community Wastewater Systems Operations Proposed Budget?*

The 85% increase in Maintenance Expense is due to O&M equipment for the sewer lift stations (2 stations in particular: Clark - \$15,000 and Giggling - \$30,000).

7. *What is the allocation of administrative overhead between the cost centers? Please provide the justification for the allocations. Has administrative staff increased since MCWD "acquired" the Ord Community as a service area? Has it been necessary to increase staff by full-time equivalents that justify the allocation of perhaps 50% to 60% of the entire MCWD administrative overhead to the Ord Community Cost Centers (in other words has the Administrative staff full time equivalents doubled?)*

Shared/Overhead Cost ratio is based on actual operating costs for each cost center. The proposed expense allocation is based on the FY 2009/10 total operating expenses of the District. The cost allocation used in the proposed FY 2011/12 compensation plan is Marina Water (28%), Marina Sewer (7%), Ord Water (54%), and Ord Sewer (11%). There are personnel costs and overhead/common expenses that are distributed among the cost centers using the cost allocation. These expenses include certain insurance and equipment lease payments, various administrative costs and supplies. There are also direct costs for each cost center as well as staff that are allocated to particular cost centers. The personnel and expenses listed in the Exhibits of the Compensation Plan therefore include the total of direct and allocated costs.

The administrative staff has not increased since MCWD "acquired" the Ord Community as a service area. As an example, in FY 1999, the administrative staff had 10 full time equivalents (FTE's) which is what the District maintains in the proposed 2011/12 budget. The District has been able to accommodate the increased workload through technology and ongoing review of work processes. However, the basis for cost distribution is not based on the number of FTE but on expenses. By MCWD taking on the Ord Community service area, each community receives the benefit of economy of scale. If Central Marina and Ord Community were individual districts, they would each have to staff their own administrative

staff. Further, while Ord Community's rate base is smaller than Central Marina's, the Ord service area and systems are much larger than Marina's. Water and wastewater systems of Central Marina consist of 91 miles of pipeline, 5 pressure zones, 4 well, 1 tank and 5 lift stations versus Ord Community's 257 miles of pipeline, 9 pressure zones, 5 well, 7 tanks and 16 lift stations. If the allocation were based on size of system and service area, the Ord Community's percentage would be more like 75% to 80%.

In re Exhibit W-3, MCWD Ord Community Water Systems Operations Revenue Projections:

8. *What accounts for the drop off of # of Metered Accounts from 2,988 in FY 10/11 to 2,808 in FY 11/12?*

The # of accounts in Compensation plan are budget estimates. They are based on existing meters plus the # of meters estimated to be added in that particular fiscal year. The additional metered accounts did not materialize in FY 10/11 therefore the FY 11/12 estimate was reduced to 2,808.

9. *The number of metered accounts in the Ord Community that was provided to me by MCWD relative to the Prop 218 process was 2,876. How do you account for the discrepancy with that in Exhibit W-3 (2,988), or 112 metered accounts. Over the years, and each time we move into one of these Prop 218 processes, Ord Community residents have not been able to obtain a fixed number from MCWD; it continually changes and this discrepancy exemplifies that condition.*

The discrepancy between the number of actual accounts at the time of the Prop 218 process (2,876) for FY 11/12 and the number of budgeted meters for FY 10/11 listed in Exhibit W-3 (2,988) is due to the fact that the anticipated increase in meters in FY 10/11 were not realized.

Marina Coast Water District Water and Wastewater Rate Analysis

This proposal is in response to FORA's request that EPS analyze Marina Coast Water District's (MCWD) proposal to increase water and wastewater rates.

Scope of Work

EPS understands MCWD recently sought approval for an annual rate increase at a joint meeting of the MCWD and FORA boards. As a result of that and follow-up meetings, the FORA Board is seeking to engage a professional services firm with water and wastewater rate and fee expertise to review and make findings regarding the proposed water and wastewater rate increases. The review will not constitute a complete recalculation of proposed rates, but rather findings as to whether the proposed rate increases are warranted or could be modified.

This review of the proposed MCWD water rates has a direct relation to the overall consideration of financial feasibility for new development and redevelopment planned at Fort Ord. EPS's current work on the CFD special tax has provided recent data related to the financial feasibility of private development projects.

EPS will complete the following work for the MCWD Water and Wastewater Rate Analysis:

- Review original MCWD Five-Year Water and Wastewater Financial Plan and Rate Study, prepared by Bartle Wells Associates.
- Review historical MCWD and FORA materials documenting prior rate increases.
- Review recent MCWD Board agendas, meeting materials and minutes to document basis for proposed rate increases.
- Review recent FORA Board agendas, meeting materials and minutes for background information on proposed rate increases.
- Evaluate operating cost, financing and other cost assumptions used in justifying the proposed rate increases.
- Focus on the largest cost drivers and on the allocations of costs between cost centers.
- Conduct interviews with MCWD and FORA staff to inform the rate review analysis.
- Review existing rate comparisons and augment them as necessary with additional data.
- Prepare a technical memorandum summarizing the results of the water and wastewater rate review. EPS will prepare an administrative draft memorandum for staff review and comment. Following staff review, EPS will prepare a memorandum for FORA Board consideration.
- Present information at an upcoming FORA Board meeting – targeted for September 2011.

EPS will also respond to questions from FORA staff and the Board throughout the process of completing the work product.

Budget and Schedule

EPS requests a budget amendment of \$7,500 to complete the review and prepare associated technical memoranda. EPS charges for its services on a direct-cost (hourly billing rates plus direct expenses), not-to-exceed basis; therefore, you will be billed only for the work completed up to the authorized budget amount.

EPS is prepared to begin working immediately and will complete this work on a schedule that allows for presentation at an upcoming FORA Board meeting targeted for September 2011.

EPS Contact Information

Jamie Gomes will serve as EPS Principal-in-Charge for this project. Questions regarding this proposal should be directed to him at (916) 649-8010.

Final Report

Marina Coast Water District Rate Increase Proposal Review

Economic & Planning Systems, Inc.



Prepared for:

Ford Ord Reuse Authority

Prepared by:

Economic & Planning Systems, Inc.

September 9, 2011

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1. EXECUTIVE SUMMARY

The purpose of this report is to evaluate the water and wastewater rate increase request for the Ord Community on behalf of the Fort Ord Reuse Authority (FORA). FORA engaged Economic & Planning Systems, Inc. (EPS) to provide an independent review of the proposed water and wastewater rate increase request. Following this summary of findings, this document describes the review of the Marina Coast Water District (MCWD) Fiscal Year (FY) 2011-12 annual budget and proposed rate increases.

Context and Scope of Review

In 2008, MCWD adopted the Marina Coast Water District Five-Year Water and Wastewater Financial Plan and Rate Study (2008 Rate Study), prepared by MCWD's consultant, Bartle Wells Inc. This document included recommendations for MCWD's annual water and wastewater rates, as well as capital improvement charges to be collected from new development. The 2008 Rate Study included recommendations for 2008 rates, as well as rate increases for a 5-year period through FY 2012-13. From FY 2008-09 through FY 2010-11, MCWD adhered to the annual rate increases recommended in the 2008 Rate Study. MCWD is now proposing alternative rate increases for FY 2011-12 and FY 2012-13. These rate increases are lower than those proposed in the 2008 Rate Study.

MCWD proposed the alternative rate increases to members of the Joint Board of MCWD and FORA in June 2011. Questions from the joint meeting ultimately led to the request for an audit of the proposed rate increase request. EPS performed the audit by reviewing the FY 2011-12 annual budget and historical budget and other financial planning documents. The scope of the budget analysis focuses on the Ord Community's Water and Wastewater budgets. However, MCWD-wide budget information also was reviewed for contextual understanding.

This analysis is based on data from the following sources:

- FY 2011-12 Ord Community Compensation Plan.
- FY 2011-12 MCWD Revised Draft Budget.
- 2008 Rate Study.
- FY 2009-10 Comprehensive Annual Financial Report (CAFR).
- Historical MCWD Budgets.
- Meeting Agendas and Minutes from FORA Board, MCWD Board, and joint board meetings.
- Interviews with MCWD staff.

Summary of Findings

This section summarizes findings from the budget and rate review analysis. The findings are summarized for MCWD overall and separately for Ord Water and Ord Wastewater. Later chapters in the report discuss the findings in detail.

Overall Findings

1. The proposed Ord Water and Wastewater 4.9-percent rate increases are warranted.
2. Ord Community operating and other cost increases are similar to Marina.
3. MCWD implemented cost reductions of \$360,000 to reduce the FY 2011-12 rate increase proposal from 7.8 percent to 4.9 percent.
4. Individual cost centers are funding proportional amounts of administrative costs.
5. Required debt service coverage ratios are being met.
6. General district cash reserves are adequately funded.
7. Ord Community capital reserves are not at adequate levels and require additional funding to reach desired levels.
8. Major capital facility financing will be contingent on new revenue sources (e.g., capacity charges from new development and other sources such as grants and loans).

Ord Water Rate Request Findings

1. The proposed Ord Water rate increase of 4.9 percent is warranted.
2. FY 2011-12 operating revenues are anticipated to exceed operating costs.
3. Excluding interest costs, annual operating costs increased 3.8 percent from FY 2010-11 to FY 2011-12.
4. Including interest costs, overall operating costs increased 13.6 percent from FY 2010-11 to FY 2011-12.
5. The Ord Water capital reserve account is below desired levels but is improving.
6. Reserve funding will be used to meet FY 2011-12 obligations.

Ord Wastewater Rate Request Findings

1. The proposed Ord Wastewater rate increase of 4.9 percent is warranted.
2. FY 2011-12 operating revenues are anticipated to exceed operating costs by approximately 50 percent.
3. Excluding interest costs, annual operating costs decreased by 17.5 percent from FY 2010-11 to FY 2011-12.
4. Including interest costs, overall operating costs increased 5.5 percent from FY 2010-11 to FY 2011-12.
5. The Ord Wastewater capital reserve fund is inadequately funded but is improving.

Table 1 provides a detailed summary of FY 2011-12 Ord Community Water and Wastewater revenues and expenses separated between operating and capital-related items. The remainder of this document describes the information summarized in **Table 1**.

Table 1
FORA MCWD Rate Increase Review
Ord Water and Wastewater Operations and Capital Budgets

Item	FY 2011-12 Adopted Budget					
	Ord Water			Ord Wastewater		
	Operations	Capital	Total	Operations	Capital	Total
Operating Revenues	\$5,514,880	-	\$5,514,880	\$1,775,600	-	\$1,775,600
Other Revenues						
Funding New Source	-	\$4,035,929	\$4,035,929	-	\$1,459,985	\$1,459,985
Grant Revenues	-	\$800,000	\$800,000	-	-	-
Capital Surcharge	-	\$80,000	\$80,000	-	\$10,000	\$10,000
Capacity Revenue	-	\$50,000	\$50,000	-	\$18,000	\$18,000
Subtotal	-	\$4,965,929	\$4,965,929	-	\$1,487,985	\$1,487,985
Total Revenues	\$5,514,880	\$4,965,929	\$10,480,809	\$1,775,600	\$1,487,985	\$3,263,585
Operating Expenses	(\$5,162,055)	-	(\$5,162,055)	(\$1,161,510)	-	(\$1,161,510)
Capital Expenses						
Principal	-	(\$669,350)	(\$669,350)	-	(\$264,250)	(\$264,250)
Capital Replacement Reserves Fund	-	(\$200,000)	(\$200,000)	-	(\$100,000)	(\$100,000)
Capital Improvement Project	-	(\$4,835,929)	(\$4,835,929)	-	(\$1,459,985)	(\$1,459,985)
CIP General	-	(\$95,600)	(\$95,600)	-	(\$15,400)	(\$15,400)
Subtotal	-	(\$5,800,879)	(\$5,800,879)	-	(\$1,839,635)	(\$1,839,635)
Total Expenses	(\$5,162,055)	(\$5,800,879)	(\$10,962,934)	(\$1,161,510)	(\$1,839,635)	(\$3,001,145)
Total Revenues less Total Expenses	\$352,825	(\$834,950)	(\$482,125)	\$614,090	(\$351,650)	\$262,440
Use of Reserve	-	-	\$482,125	-	-	-
Potential Transfer to Gen. Reserve Fund	-	-	-	-	-	(\$262,440)

"cap_op"

Overview of Report

This report consists of four chapters, including this Executive Summary as **Chapter 1**.

Chapter 2 describes MCWD operating and capital facilities financing. **Chapter 3** describes the analysis of Ord Water revenues and expenditures in the context of the proposed rate increase.

Chapter 4 describes the analysis of Ord Wastewater revenues and expenditures in the context of the proposed rate increase.

2. MCWD OPERATING AND CAPITAL FACILITIES FINANCING

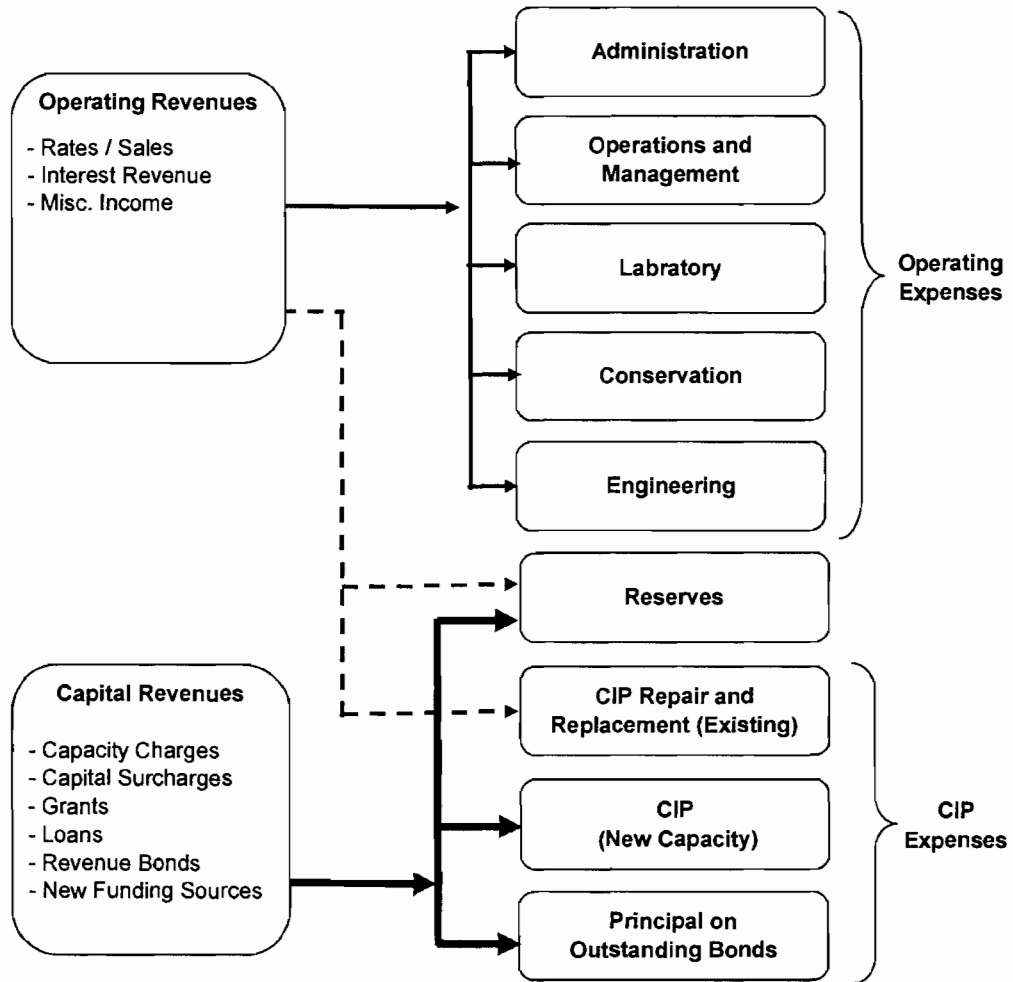
MCWD relies on a combination of revenue sources to provide operating and capital facility financing. This chapter summarizes the major sources and how those sources are programmed for both operating and capital needs.

General Overview

MCWD adopts an annual budget for each fiscal year (July 1 through June 30). The annual budget includes historical revenue and expenditure information, as well as the anticipated revenues and expenditures for the upcoming fiscal year. Each annual budget estimates revenues and expenditures by department or major category/function. In addition to its annual operating budget, the annual budget contains the agency's 5-year capital improvement plan (CIP) for planned capital expenditures. The 5-year CIP is also reviewed and updated annually to reflect revised estimates of revenues available and planned capital facility expenditures. MCWD prepares a 5-year CIP for both water and wastewater facilities. Each of the respective CIP documents tracks capital expenditures separately for the Marina and Ord communities. This separate tracking is necessary for purposes of setting and updating the rates and capacity charges for customers in each of the respective service areas. **Figure 1** on the following page generally summarizes major sources of revenues and categories of operating and capital expenditures.

As shown, capital facilities are anticipated to be funded through a combination of annual rate revenues, capacity charges from new development, grants, and other sources. Rate revenue funding for capital facilities is intended to fund ongoing repair and replacement of existing facilities that serve existing MCWD customers. Annually, MCWD transfers a portion of annual rate revenues to its capital replacement reserve funds (for both water and wastewater). Funding from the capital replacement reserve funds is programmed for expenditure through the 5-year CIP development.

Figure 1
Illustration of Major Operating and Capital Revenues and Expenses



2008 Rate Study and Financing Plan

In 2008, MCWD adopted the 2008 Rate Study, prepared by MCWD's consultant, Bartle Wells, Inc. This document included recommendations for MCWD's annual water and wastewater rates, as well as capital improvement charges to be collected from new development. The 2008 Rate Study included recommendations for 2008 rates, as well as rate increases for a 5-year period through FY 2012-13. From FY 2008-09 through FY 2010-11, MCWD adhered to the annual rate increases recommended in the 2008 Rate Study. MCWD is now proposing alternative rate increases for FY 2011-12 and FY 2012-13, as shown in the figures below.

These rate increases are lower than those proposed in the 2008 Rate Study. MCWD implemented cost reductions of \$360,000 to reduce the FY 2011-12 rate increase from 7.8 percent to 4.9 percent. These cost reductions reflected budgeted cuts to personnel and contracting.

Figure 2
Recommended and Proposed Water Rate Increases by Fiscal Year

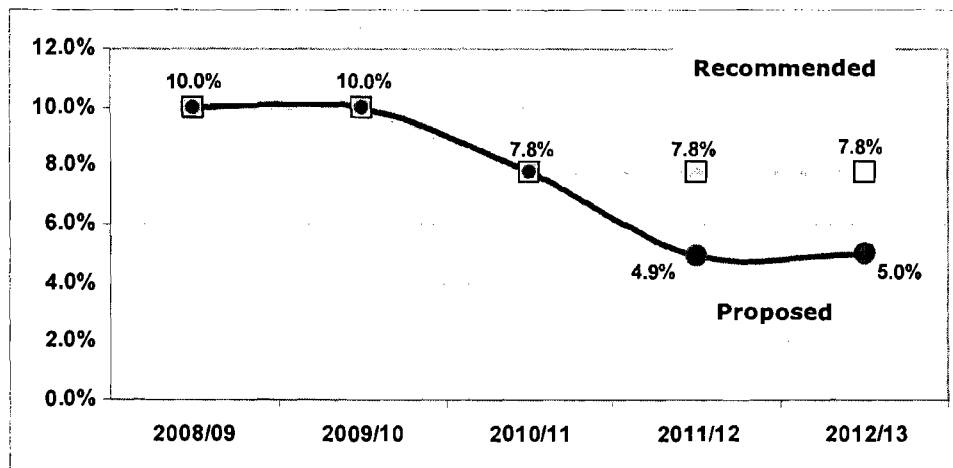
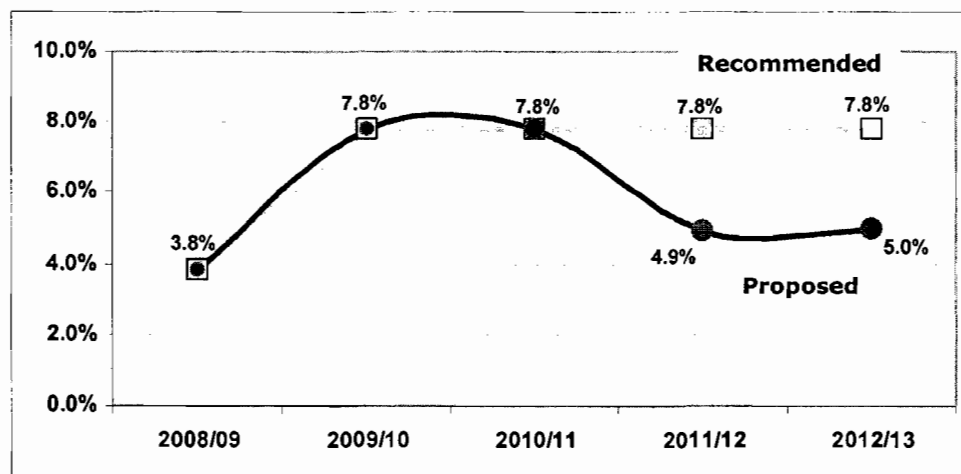


Figure 3
Recommended and Proposed Wastewater Rate Increases by Fiscal Year



The 2008 Rate Study and financing plan relied on estimates of annual revenues and expenditures for operating and capital purposes. As anticipated, actual revenues and expenditures have varied from original estimates. **Tables 2A** and **2B** respectively compare the estimated FY 2011-12 operating revenue and expenditure estimates for Ord Water and Wastewater from the 2008 Rate Study with those in the current FY 2011-12 MCWD annual budget.

Major changes in revenues and expenditures included the following items:

- Increased water conservation translated into lower water revenues.
- Lower interest earnings on fund balances because of reduced interest rates.
- Increased debt service costs (incurred by increased debt financing).
- Increased administration/management costs.
- Decreased Engineering department costs.

The comparison of prior estimates with the current budget provides a good context for evaluating the FY 2011-12 rate increase request. **Chapters 2** and **3** discuss findings from the review of Ord Water and Wastewater budget information and evaluation of the requested rate increase.

Administrative Cost Allocation

MCWD costs that are not dedicated to a specific cost center are shared among the four primary cost centers:

Marina Water	Ord Water
Marina Wastewater	Ord Wastewater

Table 2A
FORA MCWD Rate Increase Review
Comparison of Projected and Adopted Water System Operations Budgets

Item	FY 2011-12 Ord Community		Difference	Percent Change
	Projected MCWD Financial Plan & Rate Study	Adopted MCWD Budget Water Expenses		
<i>Source</i>	<i>Table 23</i>	<i>Exhibit W-1</i>		
Administration/Management	\$1,481,000	\$2,545,620	\$1,064,620	71.9%
Operations & Maintenance	\$1,542,000	\$1,880,130	\$338,130	21.9%
Laboratory	\$258,000	\$237,540	(\$20,460)	-7.9%
Conservation	\$192,000	\$208,755	\$16,755	8.7%
Engineering	\$580,000	\$290,010	(\$289,990)	-50.0%
Total Operating Expenses	\$4,053,000	\$5,162,055	\$1,109,055	27.4%
<i>Less: Interest Expense [1]</i>	<i>\$0</i>	<i>(\$1,158,750)</i>	<i>n/a</i>	<i>n/a</i>
Total Operating Expenses Less Interest Expense	\$4,053,000	\$4,003,305	\$1,109,055	-1.2%

Source: MCWD Ord Community Water/Wastewater Systems Compensation Plan for FY 2011-12, May 2008 Barle Wells MCWD Water and Wastewater Financial Plan and Rate Study and EPS. "w_comp"

[1] Included under Administration/Management in MCWD Adopted Budget.

Table 2B
FORA MCWD Rate Increase Review
Comparison of Projected and Adopted Wastewater System Operations Budgets

Item	FY 2011-12 Ord Community		Percent Change
	Projected MCWD Financial Plan & Rate Study	Adopted MCWD Budget Wastewater Expenses	
<i>Source</i>	<i>Table 44</i>	<i>Exhibit WW-1</i>	
Administration/Management			
Administration	\$438,000		
Employee CALPERS Transfers	\$10,500		
Subtotal	\$448,500	\$689,370	53.7%
Operations & Maintenance	\$462,000	\$396,720	-14.1%
Engineering	\$210,000	\$75,420	-64.1%
Total Operating Expenses	\$1,120,500	\$1,161,510	3.7%
<i>Less: Interest Expense [1]</i>	<i>\$0</i>	<i>(\$466,340)</i>	<i>n/a</i>
Total Operating Expenses, Less Interest Expense	\$1,120,500	\$695,170	-38.0%

"ww_comp"

Source: MCWD Ord Community Water/Wastewater Systems Compensation Plan for FY 2011-12 and EPS.

[1] Included under Administration/Management in MCWD Adopted Budget.

General overhead costs are also allocated in this same manner. Costs are allocated based on each cost center's proportionate share of total operating expenses for the most recent audited fiscal year. The FY 2011-12 allocation of overhead (e.g., administrative/management) costs was reportedly based on the FY 2009-10 actual budget figures. The assigned cost share for each cost center is shown below:

Marina Water—	28%	Ord Water—	54%
Marina Wastewater—	7%	Ord Wastewater—	11%

EPS recreated MCWD's cost assignment by calculating the proportionate share of FY 2009-10 operating costs among the four cost centers using the FY 2009-10 audited figures from the FY 2009-10 CAFR. **Table 3** shows the calculations using FY 2009-10 CAFR data.

The allocation of FY 2011-12 administrative/management costs was evaluated based on that function's two activities: (1) Salaries and Benefits and (2) Department Expense. **Table 4** identifies the cost breakdown for these two activities and compares them with the assigned cost share.

As shown, the cost breakdown by cost center for Salaries and Benefits varies from the assigned cost sharing. A portion of salary and benefit costs was allocated to Recycled Water and the Regional Project because MCWD expects staff to spend a portion of their time on both projects. This proportionately reduced the share of costs attributed to Marina Water, Marina Sewer, Ord Water, and Ord Wastewater. The allocation of Department Expense is consistent with the assigned cost shares for each cost center.

Figure 4 illustrates the FY 2011-12 overhead cost assignment, as well as the cost breakdown for Salaries and Benefits and Department Expense.

Interest Expense

Interest expense represents one of the most significant cost increases for Ord Community Water and Wastewater. **Table 5A** identifies the difference in Ord Water interest expense from FY 2010-11 to FY 2011-12, while **Table 5B** identifies the difference in Ord Wastewater interest expense from FY 2010-11 to FY 2011-12. Ord Water interest expense, which equals more than 22 percent of the annual operating budget, is anticipated to increase by approximately 68 percent in FY 2011-12. Of the total estimated \$617,000 in operating cost increase, interest expense represents approximately \$469,000. Ord Wastewater interest expense equals more than 40 percent of the annual operating budget and is anticipated to increase by approximately 81 percent in FY 2011-12. While total operating costs are estimated to increase by \$61,000, interest expense is budgeted to increase by nearly \$209,000.

Table 3
FORA MCWD Rate Audit
Expense Budget Allocation - FY 2009/10 Actual [1]

Item	Total	
	Amount	Percent
Marina Water	\$2,858,595	28%
Marina Wastewater	\$739,876	7%
Ord Water [2]	\$5,562,012	54%
Ord Wastewater	\$1,101,309	11%
Total	\$10,261,792	100%

"ex09.10"

Source: Marina Coast Water District CAFR FY 2010-11 and EPS.

[1] Does not include other expenses for recycled water and the regional project.

[2] Includes New Water Fund.

Table 4
FORA MCWD Rate Increase Review
Administration Allocation - FY 2011/12 Budget

Item	Administration				2011/12 Budget Allocation Percent
	Salaries and Benefits		Department Expense		
	Amount	Percent	Amount	Percent	
Marina Water	\$295,720	20%	\$241,390	28%	28%
Marina Wastewater	\$73,940	5%	\$60,350	7%	7%
Ord Water	\$570,330	39%	\$474,540	54%	54%
Ord Wastewater	\$116,190	8%	\$94,840	11%	11%
Recycled Water	\$16,070	1%	\$0	0%	0%
Regional Project	\$378,630	26%	\$0	0%	0%
Total	\$1,450,880	100%	\$871,120	100%	100%

"admin"

Source: Marina Coast Water District Budget 2011-2012 and EPS.

Figure 4
Allocation of Administration Cost Components

FY 2011/12 Overhead Budget Allocation

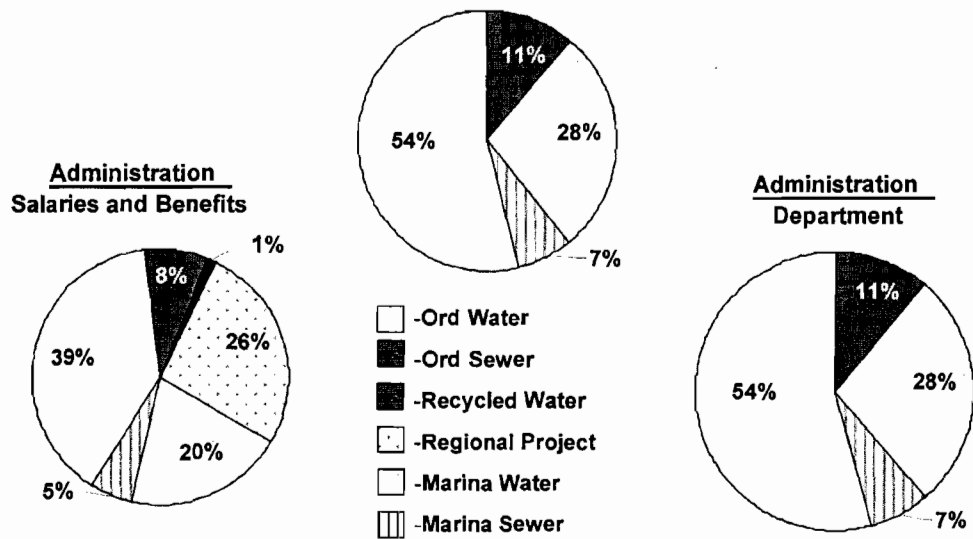


Table 5A
FORA MCWD Rate Increase Review
Ord Community Water System Operations Proposed Budgets

Item	Adopted Budget Ord Community Water Expenses		Difference	
	FY 2010-11	FY 2011-12	Actual	% Change
Administration/Management				
Personnel	\$676,570	\$570,330	(\$106,240)	-15.7%
Expenses	\$647,280	\$686,940	\$39,660	6.1%
Insurance	\$55,300	\$67,500	\$12,200	22.1%
Legal	\$57,500	\$62,100	\$4,600	8.0%
Interest Expense	\$689,800	\$1,158,750	\$468,950	68.0%
Subtotal	\$2,126,450	\$2,545,620	\$419,170	19.7%
Operations & Maintenance				
Personnel	\$979,650	\$1,115,890	\$136,240	13.9%
Maintenance Expenses	\$161,900	\$223,990	\$62,090	38.4%
Power Costs	\$437,750	\$490,250	\$52,500	12.0%
Annual Maintenance	\$50,000	\$50,000	\$0	0.0%
Subtotal	\$1,629,300	\$1,880,130	\$250,830	15.4%
Laboratory				
Personnel	\$152,880	\$157,530	\$4,650	3.0%
Equipment/Expenses	\$39,489	\$44,010	\$4,521	11.4%
Lab Contract Services	\$21,000	\$36,000	\$15,000	71.4%
Subtotal	\$213,369	\$237,540	\$24,171	11.3%
Conservation				
Personnel	\$125,750	\$144,550	\$18,800	15.0%
Expenses	\$64,370	\$64,205	(\$165)	-0.3%
Subtotal	\$190,120	\$208,755	\$18,635	9.8%
Engineering				
Personnel	\$314,860	\$264,830	(\$50,030)	-15.9%
Expenses	\$15,032	\$4,180	(\$10,852)	-72.2%
Outside Consultants	\$56,000	\$21,000	(\$35,000)	-62.5%
Subtotal	\$385,892	\$290,010	(\$95,882)	-24.8%
Total Operating Expenses	\$4,545,131	\$5,162,055	\$616,924	13.6%
<i>Less: Interest Expense</i>	<i>(\$689,800)</i>	<i>(\$1,158,750)</i>	<i>(\$468,950)</i>	<i>68.0%</i>
Total Operating Expenses, Less Interest Expense	\$3,855,331	\$4,003,305	\$147,974	3.8%

"water"

Source: MCWD Ord Community Water/Wastewater Systems Compensation Plan
for FY 2011-12 and EPS.

Table 5B
FORA MCWD Rate Increase Review
Ord Community Wastewater System Operations Proposed Budgets

Item	Adopted Budget Ord Community Wastewater Expenses		Difference	
	FY 2010-11	FY 2011-12	Actual	% Change
Administration/Management				
Personnel	\$189,310	\$116,190	(\$73,120)	-38.6%
Expenses	\$95,660	\$80,440	(\$15,220)	-15.9%
Insurance	\$15,500	\$13,750	(\$1,750)	-11.3%
Legal	\$16,100	\$12,650	(\$3,450)	-21.4%
Interest Expense	\$257,700	\$466,340	\$208,640	81.0%
Subtotal	\$574,270	\$689,370	\$115,100	20.0%
Operations & Maintenance				
Personnel	\$230,490	\$233,100	\$2,610	1.1%
Maintenance Expenses	\$52,200	\$96,520	\$44,320	84.9%
Power Costs	\$62,900	\$57,100	(\$5,800)	-9.2%
Annual Maintenance	\$30,000	\$10,000	(\$20,000)	-66.7%
Subtotal	\$375,590	\$396,720	\$21,130	5.6%
Engineering				
Personnel	\$94,480	\$68,820	(\$25,660)	-27.2%
Expenses	\$1,510	\$1,100	(\$410)	-27.2%
Outside Consultants	\$54,800	\$5,500	(\$49,300)	-90.0%
Subtotal	\$150,790	\$75,420	(\$75,370)	-50.0%
Total Operating Expenses	\$1,100,650	\$1,161,510	\$60,860	5.5%
<i>Less: Interest Expense</i>	<i>(\$257,700)</i>	<i>(\$466,340)</i>	<i>(\$208,640)</i>	<i>81.0%</i>
Total Operating Expenses, Less Interest Expense	\$842,950	\$695,170	(\$147,780)	-17.5%

"wastewater"

Source: MCWD Ord Community Water/Wastewater Systems Compensation Plan for FY 2011-12 and EPS.

As has been documented,¹ the rise in Ord Water and Wastewater interest expense is attributed to the refinancing of the Armstrong Ranch promissory note. The accelerated 10-year repayment schedule of the promissory note resulted in a substantial increase in the interest expense budgeted for FY 2011-12.

Tables 5A and 5B also show operating costs excluding interest costs. The Ord Water operating cost increase of 5.5 percent is reduced to 3.8 percent excluding interest expense. The Ord Sewer operating cost increase is reversed to a cost decrease of 17.5 percent excluding interest expense. These results demonstrate MCWD's efforts to control costs at the Board's direction.

¹ Based on response #2 in Attachment A to Item 8d for the FORA Board Meeting, 8/12/11.

3. ORD WATER

This chapter focuses on the FY 2011-12 budget for the MCWD Ord Community Water functions. It describes and compares operations and maintenance revenues and expenditures with historical data and projections from the 2008 Rate Study and discusses capital facility needs and financing sources. This chapter concludes with a summary of findings from the budget analysis.

Operations and Maintenance

FY 2011-12 Budget

Table 5A in **Chapter 2** compares estimated FY 2011-12 annual expenditures with estimated totals from FY 2010-11. Increases in Ord Water system operations costs in all department functions are offset by a decrease in operations costs for the Engineering department. Overall, operating costs (including interest expenses) are anticipated to increase by 13.6 percent. The largest cost increase is interest expense allocated to Ord Water. Ord Water interest expense, which equals almost 22 percent of the annual operating budget, is anticipated to increase approximately 68 percent.

Below is a summary of FY 2011-12 Ord Community Water revenues, expenditures, and surplus/shortfalls for operations and maintenance and capital improvements. Detailed revenues and expenditures are shown in **Table 1** in **Chapter 1**.

Item	Operations & Maintenance	Capital	Total
<hr/>			
Revenues	\$5,514,880	\$4,965,929	\$10,480,809
Expenses	(\$5,162,055)	(\$5,800,879)	(\$10,962,934)
Surplus/(Shortfall)	\$352,825	(\$834,950)	(\$482,125)

MCWD anticipates using reserve funds to cover the \$482,000 shortfall.

Operating Revenues and Expenses

Table 6 compares the Ord Water operating revenues and expenditures for the last 3 fiscal years. Even considering annual rate increases implemented by MCWD, Ord Water sales revenues have ranged between approximately 67 percent and 104 percent of total operating expenses. The difference between operating revenues and expenditures is partially attributable to increased water conservation. When the interest expense is excluded, Ord Water revenues equate to approximately 79 percent to 133 percent of budgeted expenditures.

Table 6
FORA MCWD Rate Increase Review
Historical Comparison of Ord Water Sales and Operating Expenses [1]

Item	Formula	Ord Water		
		2009-10 Actual [2]	2010-11 Estimated	2011-12 Proposed
Water Sales				
Water Sales Residential	<i>a</i>	\$2,714,635	\$3,027,030	\$3,196,000
Water Sales Other [3]	<i>b</i>	\$0	\$0	\$893,000
Flat Rate Accounts	<i>c</i>	\$0	\$0	\$1,253,000
Total Water Sales	<i>d = a + b + c</i>	\$2,714,635	\$3,027,030	\$5,342,000
Operating Expenses				
Administration/Management	<i>e</i>	\$1,941,648	\$2,126,450	\$2,545,620
Operations & Maintenance	<i>f</i>	\$1,307,159	\$1,629,300	\$1,880,130
Laboratory	<i>g</i>	\$196,122	\$213,369	\$237,540
Conservation	<i>h</i>	\$167,822	\$190,120	\$208,755
Engineering	<i>i</i>	\$267,090	\$385,892	\$290,010
Total Operating Expenses	<i>j = e+f+g+h+i</i>	\$3,879,841	\$4,545,131	\$5,162,055
<i>Less: Interest Expense</i>	<i>k</i>	<i>(\$484,000)</i>	<i>(\$689,800)</i>	<i>(\$1,158,750)</i>
Total, Less Interest Expense	<i>l = j + k</i>	\$3,395,841	\$3,855,331	\$4,003,305
<i>Water Sales as a % of Total Operating Expense</i>	<i>m = d / j</i>	70.0%	66.6%	103.5%
<i>Water Sales as a % of Total Operating Expense, Less Interest Expense</i>	<i>n = d / l</i>	79.9%	78.5%	133.4%

"water_hist"

Source: MCWD Revised Draft Budget FY 2011-12 and MCWD Draft Budget FY 2009-10.

- [1] Excludes other revenues besides Water Sales Residential and Other. Excludes costs to fund the principal portion of debt service.
- [2] All 2009-10 budget information is based on actuals except interest expense, which is based on the adopted budget.
- [3] Represents revenue associated with MCWD's agreement with the City of Seaside to exchange 2,500 acre-feet of water for Seaside's conveyance and assignment of all certain property to MCWD.

Comparison to 2008 Rate Study Estimates

Because the proposed rate increase is lower than originally recommended in the 2008 Rate Study, it is helpful to compare 2008 Rate Study data to the current budget. **Table 7** compares the proposed FY 2011-12 budget with FY 2011-12 projections in the 2008 Rate Study. The largest difference in cost is in the Administration/Management function, with a difference of approximately \$1.1 million. The 2008 Rate Study estimate for Administrative/Management excluded interest costs, so the comparison actually needs to account for that difference. If the \$1.2 million in interest costs were removed from the Administrative/Management function, budgeted costs for FY 2011-12 are lower than originally anticipated in the 2008 Rate Study.

Increases in operations and maintenance costs (e.g., higher utilities, materials costs) were offset by decreases in Laboratory and Engineering costs. Overall, excluding interest costs, the FY 2011-12 budget Ord Water expenditures are approximately 1.2 percent less than projected in the 2008 Rate Study.

The comparisons demonstrate that MCWD appears to have implemented actions to limit cost increases where possible to keep overall Ord Water system operations and maintenance costs at or below original projections. Aside from increases in interest cost, which were at MCWD's discretion, other cost increases appear to be based on outside influences (i.e., external cost changes).

Capital Facility Financing

Ord Water's 5-year CIP includes capital projects that serve existing customers (i.e., repair and replacement projects), as well as capacity expansion projects. As discussed earlier, CIP projects will be funded through a combination of funding sources.

As shown in **Table 1** in **Chapter 1**, MCWD has programmed approximately \$5.8 million in capital facility and other expenses for FY 2011-12. Expenses include \$4.8 million for a capital improvement project, nearly \$96,000 for general CIP expenses, a \$200,000 contribution for the capital replacement reserves fund, and \$670,000 in principal payments on outstanding debt attributable to Ord Water.

Funding sources include grant revenues, capital surcharges, capacity revenues, and "new sources" of funding (e.g., additional grants, loans, capacity charges, etc.). Capital surcharge revenue may be used to make a portion of the outstanding principal payments on the debt service allocated to new capacity. Because new development is limited, the budgeted capital surcharge revenue is not adequate to pay the entire proportionate share of such costs.

Overall, capital-related revenue estimates of \$5.0 million are approximately \$0.8 million short of budget expenditures.

Table 7
FORA MCWD Rate Increase Review
Comparison of Projected and Actual FY 2011-12 MCWD Budgets, Water

Water

Item	Projected FY 2011-12 MCWD Rate Study (May 2008)			Actual FY 2011-12 MCWD FY 2011-12 Revised Budget			Difference From Projected		
	Marina	Ord Community	Total	Marina	Ord Community	Total	Marina	Ord Community	Total
REVENUES									
Total Water Sales	\$4,403,000	\$5,755,000	\$10,158,000	\$3,711,000	\$5,342,000	\$9,053,000	(\$692,000)	(\$413,000)	(\$1,105,000)
Permits and Other Income	\$283,000	\$114,000	\$397,000	\$3,000	\$5,000	\$8,000	(\$280,000)	(\$109,000)	(\$389,000)
Interest Income	\$20,000	\$26,000	\$46,000	\$70,000	\$90,000	\$160,000	\$50,000	\$64,000	\$114,000
Other Revenues [1]	\$0	\$0	\$0	\$63,850	\$77,880	\$141,730	\$63,850	\$77,880	\$141,730
Total	\$4,706,000	\$5,895,000	\$10,601,000	\$3,847,850	\$5,514,880	\$9,362,730	(\$858,150)	(\$380,120)	(\$1,238,270)
<i>Percent Difference</i>							-18%	-6%	-12%
EXPENSES									
Administration	\$876,000	\$1,481,000	\$2,357,000	\$887,810	\$2,545,620	\$3,433,430	\$11,810	\$1,064,620	\$1,076,430
Operations and Maintenance	\$1,299,000	\$1,542,000	\$2,841,000	\$993,720	\$1,880,130	\$2,873,850	(\$305,280)	\$338,130	\$32,850
Laboratory	\$209,000	\$258,000	\$467,000	\$154,340	\$237,540	\$391,880	(\$54,660)	(\$20,460)	(\$75,120)
Conservation	\$166,000	\$192,000	\$358,000	\$180,350	\$208,755	\$389,105	\$14,350	\$16,755	\$31,105
Engineering	\$482,000	\$580,000	\$1,062,000	\$191,990	\$290,010	\$482,000	(\$290,010)	(\$289,990)	(\$580,000)
Other Expenses	\$89,000	\$0	\$89,000	\$0	\$0	\$0	(\$89,000)	\$0	(\$89,000)
Subtotal	\$3,121,000	\$4,053,000	\$7,174,000	\$2,408,210	\$5,162,055	\$7,570,265	(\$712,790)	\$1,109,055	\$396,265
<i>Less: Interest Expense</i>	<i>\$0</i>	<i>\$0</i>	<i>\$0</i>	<i>(\$350,600)</i>	<i>(\$1,158,750)</i>	<i>(\$1,509,350)</i>	<i>(\$350,600)</i>	<i>(\$1,158,750)</i>	<i>(\$1,509,350)</i>
Total, Less Interest Expense	\$3,121,000	\$4,053,000	\$7,174,000	\$2,057,610	\$4,003,305	\$6,060,915	(\$1,063,390)	(\$49,695)	(\$1,113,085)
<i>Percent Difference</i>							-34%	-1%	-16%
NET REVENUES, Less Int. Expense	\$1,585,000	\$1,842,000	\$3,427,000	\$1,790,240	\$1,511,575	\$3,301,815	\$205,240	(\$330,425)	(\$125,185)
<i>Percent Difference</i>							13%	-18%	-4%

"comparison"

Source: Marina Coast Water District Revised Draft Budget FY 2011-12, Marina Coast Water District
Five Year Water and Wastewater Financial Plan and Rate Study (May 2008), and EPS.

[1] Actual FY 2011-12 "Other Revenues" includes fire system charge, backflow prevention, meter fees, late charges and other income.

Findings

1. The proposed Ord Water rate increase of 4.9 percent is warranted.

The proposed rate increase will permit MCWD to adequately cover operating costs, make contributions to an underfunded capital reserve account, and help fund some FY 2011-12 capital costs.

2. Operating revenues are anticipated to exceed operating costs.

Operating revenues are anticipated to exceed operating costs by approximately \$353,000. More than half of this amount will be used to fund the capital reserve fund. The remaining amount will help to fund principal payments on outstanding debt service.

3. Excluding interest costs, annual operating costs increased 3.8 percent from FY 2010-11 to FY 2011-12.

Operating cost increases were mitigated by decreases in some functions. This is primarily a result of decreases in Engineering department costs, which fell by 25 percent between FY 2010-11 and FY 2011-12. Total operating costs, excluding interest costs, are in line with original 2008 Rate Study expectations.

4. Including interest costs, overall operating costs increased 13.6 percent from FY 2010-11 to FY 2011-12.

Interest costs from Armstrong Ranch promissory note refinance increased overall interest costs by approximately \$467,000. This increase had a significant influence on overall operating cost changes on a year-over-year basis.

5. The Ord Water capital reserve account is below desired levels but is improving.

Including the FY 2011-12 contribution, the Ord Water capital reserve account will be approximately \$200,000 below the desired \$1.0 million level. MCWD has been making annual contributions to the capital reserve account to bring it up to desired levels.

6. Reserve funding will be used to meet FY 2011-12 obligations.

Excluding CIP projects that may or may not be fully funded in FY 2011-12, MCWD will need to use approximately \$482,000 in reserves to meet its Ord Water obligations.

4. ORD WASTEWATER

This chapter focuses on the FY 2011-12 budget for the MCWD Ord Community Wastewater functions. It describes and compares operations and maintenance revenues and expenditures with historical data and projections from the 2008 Rate Study. It also discusses capital facility needs and financing sources. The chapter concludes with a summary of findings from the budget analysis.

Operations and Maintenance

FY 2011-12 Budget

Table 5B in **Chapter 2** compares estimated FY 2011-12 annual expenditures with estimated totals from FY 2010-11. Increases in wastewater system operations costs in Administration and Operations & Maintenance department functions are offset by a decrease in Engineering department costs. Overall, operating costs (including interest expenses) are anticipated to increase by 5.5 percent.

The largest cost increase is interest expense. Ord Water interest expense, which equals more than 40 percent of the annual operating budget, is anticipated to increase by approximately 81 percent. While total operating costs are estimated to increase by \$61,000, interest expense is budgeted to increase by nearly \$209,000.

Below is a summary of FY 2011-12 Ord Community Wastewater revenues, expenditures, and surplus/shortfalls for operations and maintenance and capital improvements. Detailed revenues and expenditures are shown in **Table 1** in **Chapter 1**.

Item	Operations & Maintenance	Capital	Total
Revenues	\$1,775,600	\$1,487,985	\$3,263,585
Expenses	(\$1,161,510)	(\$1,839,635)	(\$3,001,145)
Surplus/(Shortfall)	\$614,090	(\$351,650)	\$262,440

MCWD anticipates using the \$262,000 in surplus revenues to fund CIP projects that serve existing ratepayers.

Operating Revenues and Expenses

Table 8 compares the Ord Wastewater operating revenues and expenditures for the last 3 fiscal years. Data was based on budget actuals for FY 2009-10, budget estimates for FY 2010-11, and the proposed budget for FY 2011-12. Including annual rate increases implemented by MCWD, wastewater sales revenues equate to approximately 150 percent of total operating expenses.

Table 8
FORA MCWD Rate Increase Review
Historical Comparison of Ord Water Sales and Operating Expenses [1]

Item	Formula	Ord Wastewater		
		2009-10 Actual [2]	2010-11 Estimated	2011-12 Proposed
Wastewater Sales	<i>a</i>	\$1,488,795	\$1,635,451	\$1,713,000
Operating Expenses				
Administration/Management	<i>b</i>	\$557,867	\$574,270	\$689,370
Operations & Maintenance	<i>c</i>	\$282,752	\$375,590	\$396,720
Engineering	<i>d</i>	\$136,262	\$150,790	\$75,420
Total Operating Expenses	<i>e = b + c + d</i>	\$976,881	\$1,100,650	\$1,161,510
<i>Less: Interest Expense</i>	<i>f</i>	<i>(\$242,000)</i>	<i>(\$257,700)</i>	<i>(\$466,340)</i>
Total, Less Interest Expense	<i>g = e - f</i>	\$734,881	\$842,950	\$695,170
<i>Wastewater Sales as a % of Total Operating Expense</i>	<i>h = a/e</i>	152.4%	148.6%	147.5%
<i>Wastewater Sales as a % of Total Operating Expense, Less Interest Expense</i>	<i>i = a/g</i>	202.6%	194.0%	246.4%

"wastewater_hist"

Source: MCWD Revised Draft Budget FY 2011-12 and MCWD Draft Budget FY 2009-10.

[1] Excludes costs to fund the principal portion of debt service.

[2] All 2009-10 budget information is based on actuals except interest expense, which is based on the adopted budget.

The difference between operating revenues and expenditures is partially attributable to MCWD's actions to reduce operating costs. Excluding interest expense, wastewater revenues equate to approximately 200 percent to 250 percent of budgeted expenditures.

Comparison to 2008 Rate Study Estimates

Because the proposed rate increase is lower than the rate originally recommended in the 2008 Rate Study, it is helpful to compare 2008 Rate Study data to the current budget. **Table 9** compares the proposed FY 2011-12 budget with FY 2011-12 projections in the 2008 Rate Study. The largest difference in cost is in the Administration/Management function, with a difference of approximately \$251,000. The 2008 Rate Study estimate for Administrative/Management excluded interest costs, so the comparison should account for that difference. If the \$466,000 in interest expense were removed from the Administrative/Management function, budgeted costs for FY 2011-12 would be less than originally anticipated in the 2008 Rate Study.

The increases in Administration costs was offset and exceeded by cost reductions in all other departments. Overall, excluding interest costs, the FY 2011-12 budget for wastewater expenditures is approximately 38 percent less than the operating expenditures projected in the 2008 Rate Study.

These comparisons demonstrate that MCWD appears to have implemented actions to limit cost increases where possible to keep overall wastewater system operations and maintenance costs at or below original projections.

Capital Facility Financing

Ord Wastewater's 5-year CIP includes capital projects that serve existing customers (i.e., repair and replacement projects), as well as capacity expansion projects. As discussed earlier, CIP projects will be funded through a combination of funding sources.

As shown in **Table 1** in **Chapter 1**, MCWD has programmed approximately \$1.8 million in capital facility expenses for FY 2011-12. Expenses include \$1.46 million for a capital improvement project, more than \$15,000 for general CIP expenses, a \$100,000 contribution for the capital replacement reserves fund, and \$264,000 in principal payments on outstanding debt attributable to Ord Wastewater.

Funding sources include capital surcharges, capacity revenues, and "new sources" of funding. The new sources of funding could include additional grants, loans, capacity charges, and reserves. These sources and their amounts are estimates. The completion of CIP projects will occur pending the acquisition of these new sources of funding. Capital-related revenue estimates are approximately \$352,000 short of budgeted capital expenditures.

FY 2011-12 capital improvements are for repair and replacement of capital facilities that benefit existing ratepayers. Because rate revenues can cover costs for capital repair and replacement, the budget uses FY 2011-12 surplus wastewater operating revenues to offset the funding gap for capital projects. The surplus operating revenues of \$614,000 are sufficient to fill the \$352,000 gap in capital funding. The remaining \$262,000 will be used as another new source of capital funding. As shown in **Table 10**, this represents 18 percent of the total funding needed. Other sources will be required to generate the additional 82 percent.

Table 9
FORA MCWD Rate Increase Review
Comparison of Projected and Actual FY 2011-12 MCWD Budgets, Wastewater

Wastewater

Item	Projected FY 2011-12 MCWD Rate Study (May 2008)			Actual FY 2011-12 MCWD FY 2011-12 Revised Budget			Difference From Actual		
	Marina	Ord Community	Total	Marina	Ord Community	Total	Marina	Ord Community	Total
REVENUES									
Total Wastewater Sales	\$815,000	\$1,655,000	\$2,470,000	\$751,500	\$1,713,300	\$2,464,800	(\$63,500)	\$58,300	(\$5,200)
Permits and Other Income	\$1,000	\$8,000	\$9,000	\$2,500	\$2,500	\$5,000	\$1,500	(\$5,500)	(\$4,000)
Interest Income	\$8,000	\$8,000	\$16,000	\$15,800	\$43,000	\$58,800	\$7,800	\$35,000	\$42,800
Other Income	\$0	\$0	\$0	\$2,400	\$16,800	\$19,200	\$2,400	\$16,800	\$19,200
Total	\$824,000	\$1,671,000	\$2,495,000	\$772,200	\$1,775,600	\$2,547,800	(\$51,800)	\$104,600	\$52,800
<i>Percent Difference</i>							-6%	6%	2%
EXPENSES									
Administration	\$174,000	\$438,000	\$612,000	\$281,730	\$689,370	\$971,100	\$107,730	\$251,370	\$359,100
Operations and Maintenance	\$204,000	\$462,000	\$666,000	\$190,550	\$396,720	\$587,270	(\$13,450)	(\$65,280)	(\$78,730)
Engineering	\$96,000	\$210,000	\$306,000	\$48,010	\$75,420	\$123,430	(\$47,990)	(\$134,580)	(\$182,570)
Other Expenses	\$7,200	\$10,500	\$17,700	\$0	\$0	\$0	(\$7,200)	(\$10,500)	(\$17,700)
Subtotal	\$481,200	\$1,120,500	\$1,601,700	\$520,290	\$1,161,510	\$1,681,800	\$39,090	\$41,010	\$80,100
<i>Less: Interest Expense</i>	<i>\$0</i>	<i>\$0</i>	<i>\$0</i>	<i>(\$147,440)</i>	<i>(\$466,340)</i>	<i>(\$613,780)</i>	<i>(\$147,440)</i>	<i>(\$466,340)</i>	<i>(\$613,780)</i>
Total, Less Interest Expense	\$481,200	\$1,120,500	\$1,601,700	\$372,850	\$695,170	\$1,068,020	(\$108,350)	(\$425,330)	(\$533,680)
<i>Percent Difference</i>							-23%	-38%	-33%
NET REVENUES, Less Int. Expense	\$342,800	\$550,500	\$893,300	\$399,350	\$1,080,430	\$1,479,780	\$56,550	\$529,930	\$586,480
<i>Percent Difference</i>							16%	96%	66%

"comparo2"

Source: Marina Coast Water District Revised Draft Budget FY 2011-12, Marina Coast Water District
Five Year Water and Wastewater Financial Plan and Rate Study (May 2008), and EPS.

Table 10
FY 2011-12 Ord Wastewater Capital Improvement Project Funding

Item	Amount	Percent
Ord Wastewater Expenses for Capital Repair and Replacement	\$1,459,985	100%
Rate Revenue Available for Capital Costs	\$262,440	18%
Remaining Funding Needed From New Source	\$1,197,545	82%

"cip"

Findings

1. The proposed Ord Wastewater rate increase of 4.9 percent is warranted.

The proposed rate increase will permit MCWD to adequately cover operating costs, make contributions to an underfunded capital reserve account, and help fund some FY 2011-12 capital projects.

2. Operating revenues are anticipated to exceed operating costs by approximately 50 percent.

Although operating revenues under the rate increase exceed operating costs by approximately \$614,000, the surplus operating revenues are needed to help fund FY 2011-12 capital costs and to make progress toward desired capital reserve funding thresholds. Approximately 57 percent of wastewater operating revenues in excess of costs will be used to offset the shortfall in capital funding of \$352,000. The remainder will be used to fund eligible FY 2011-12 capital projects.

3. Excluding interest costs, annual operating costs decreased by 17.5 percent from FY 2010-11 to FY 2011-12.

Operating cost decreases were identified in many wastewater functions. The overall decrease is primarily a result of decreases in Engineering department costs, which fell by 50 percent between FY 2010-11 and FY 2011-12. Total operating costs, excluding interest costs, are approximately 38 percent less than original 2008 Rate Study expectations.

4. Including interest costs, overall operating costs increased 5.5 percent from FY 2010-11 to FY 2011-12.

Interest costs from Armstrong Ranch promissory note refinance increased overall interest costs by approximately \$209,000. This increase had a significant influence on overall operating cost changes on a year-over-year basis.

5. The Ord Wastewater capital reserve fund is inadequately funded but is improving.

Including the FY 2011-12 contribution, the wastewater capital reserve fund will be approximately \$400,000, well below the desired \$1.0 million level. MCWD has been making annual contributions to the capital reserve account to bring it up to desired levels.

Attachment E to Item 6d – Ord Community Water and Wastewater Systems Proposed Budgets and Rates for FY 2012/13

FORA Board Meeting, July 13, 2012

NOTE: This Board report attachment will be sent under separate cover based on the timing of the material received.

FORT ORD REUSE AUTHORITY BOARD REPORT

OLD BUSINESS

Subject: Records Retention Policy

Meeting Date: July 13, 2012

Agenda Number: 6e

INFORMATION/ACTION

RECOMMENDATION(S):

1. Review and adopt a Records Retention Policy for the Fort Ord Reuse Authority (attachment A).
2. Authorize FORA Staff to expend up to \$15,000 for additional resources to respond to unanticipated volume and bring records into retention policy compliance (attachment B).

BACKGROUND:

At the May 11, 2012 FORA Board meeting, the Board instructed staff to schedule a discussion regarding the establishment of a records retention policy. For comparative purposes, the Board suggested a review of the current records retention policies of local/regional agencies. This item was agendaized in response to public concern regarding FORA's current records retention practices, which have not been combined in a formally adopted policy.

Records retention policies should be tailored to meet the needs of the agency. For that reason, policies vary considerably from agency to agency. The policies we have seen, however, share some common themes. For example, most agencies operate with limited server space for the vast quantity of emails received by their employees in the course of their duties.

Many public agencies have established a specific time frame in which emails must be deleted from the system. Most agencies rely on individual employees to determine whether their email correspondence constitutes a public record, in which case the document is retained and stored outside of the email system. Email is extremely valuable in litigation because it contains off-the-cuff, unguarded comments written at the time of the event. It is difficult to refute email in court, even when taken out of context.

Email Retention Period	# of Cities
No Limit	12
1 year	1
6 months	2
120 days	1
90 days	10
60 days	3
45 days	2
30 days	14

Because it is so valuable, the volume of email discovery requests (search) is likely to increase substantially. These requests will be an added burden to schools and local governments, which often have limited resources with which to respond.

Unfortunately, the courts are taking a dim view of organizations that cite lack of resources as a reason for not meeting tight deadline requirements.

A number of courts state that "evidentiary and monetary sanctions" or "spoliation sanctions" are appropriate for a party's "reckless disregard of its duty to preserve relevant evidence" (United Med.

Supply v. U.S., July 2007) or "a willful indifference ... with respect to fulfilling its discovery obligations in the early stages of this litigation" (Google v. Am. Blind & Wallpaper Factory, July 2007).

Since the requirements for email archiving and electronic discovery are becoming better known, it is now clear that public agencies are exposed to significant liability and risk if they do not take action to prepare for email archiving and electronic discovery. Staff obtained the results of a survey conducted in May 2009, comparing the email retention periods for 45 California Cities. The survey (inset above) shows the statewide variation in retention periods.

To accomplish the Board assigned task, staff compiled 18 email retention policies from public agencies across the state, as well as general Records Retention Policies from the Cities of Monterey and Del Rey Oaks, the Salinas Valley Solid Waste Authority, and the Monterey Bay Unified Air Pollution Control

establish a formal retention policy. The retention period for other documents more specific to the work of FORA would need to be drafted with special consideration for FORA's needs. After reviewing the common themes and the highlights from various Records Retention Policies received to date, staff recommends consideration of a policy that shares the most common features of these sample policies.

FISCAL IMPACT:

Reviewed by FORA Controller _____

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

COORDINATION:

Executive Committee

Prepared by _____ Approved by _____
Lena Spilman Michael A. Houlemard, Jr.

Attachment A

Fort Ord Reuse Authority

Public Records Retention and Management Policy

Issue Date: Effective Immediately

The purpose of this Public Records Retention and Management Policy is to ensure that records of public business are kept as long as necessary to serve their intended purpose. When records no longer fulfill the value for which they were created, they should be destroyed unless they also have some historic or research significance

DEFINITIONS

1. Public Record

"Public Record" means a writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by FORA regardless of physical form or characteristics.

2. Non-Record

"Non-records are all forms of writing that either do not meet the definition of a "Public Record" or are described in Government Code Section 6254. This includes, but is not limited to, unofficial copies of documents kept only for convenience or reference, working papers, transitory documents, rough drafts/notes/calculations assembled or created and used in the preparation or analysis of other documents, appointment logs, stocks of publications and blank forms, and library material intended solely for reference or exhibition.

3. Records Retention Schedule

Records Retention Schedule refers to a list of all records produced or maintained by FORA and the actions taken with regards to those records. FORA's retention schedule assists FORA to determine the retention value of all documents and provides legal authority to receive, create, retain, and dispose of Public Records.

4. Retention Period

The phrase "retention period" refers to the length of time a record must be retained. All records should be disposed of in accordance with an approved Records Retention Schedule. That schedule is attached to this Policy as **Exhibit A**

ELECTRONIC RECORD STORAGE

FORA stores Public Records on a software program known as DocStar. Each Public Record is scanned and then saved, for retrieval, viewing, copying or emailing. Public Records saved in DocStar consist of, but are not limited to, the following:

1. Memoranda and correspondence received or sent out by FORA
2. Public drafts of agreements and contracts
3. Final executed documents
4. FORA Board/Committee meeting packets, including agendas, the approved minutes and all supporting documents

5. Land grant deeds of properties transferred to FORA and pre-recorded copies of deeds transferring properties to the receiving jurisdictions/entities
6. Documents formerly considered as chronological files
7. Ordinances and Resolutions

In general, it is FORA's policy to destroy the original hard copy record once it has been scanned into the DocStar program. FORA maintains a number of original, fully executed documents and agreements in hard copy form. These documents are primarily deeds, milestone agreements, and other documents required by banking, financing or other contracts.

Databases – Network back-up Procedure

For records retention purposes the DocStar database is a file of Public Records. Since databases change over time, the retention period is established as "until superseded." Only the current version of FORA's computer database must be maintained and can be the subject of a Public Records request. The FORA email system and files are backed-up daily. A full System Security Backup, which constitutes a backup of all data on the server (email, files, accounting system, phone system, Community Information Center), is performed weekly to an external hard-drive. System Security Backups are transported monthly to a secure, off-site location.

Word Processing Files

Many Public Records are prepared using word processing. For records retention purposes, original notes and drafts are considered non-records or works-in-progress. These versions are destroyed and only the final approved, paper record is considered a Public Record. Occasionally, when the subject matter of a draft agreement, contract or policy is deemed to be of a significant and non-transitory subject matter, drafts are retained; however, this is an exception to the general policy.

E-mail Retention

Emails are no different from any other Public Record.. Those emails that meet the definition of a Public Record must be retained in the same way as any other correspondence. The rule for retention of correspondence differs from one agency to another. Routine email messages are used primarily to communicate drafts, availability for meetings and other non-public activity that is not intended to be retained as public records in the ordinary course of business. FORA's policy is to keep emails for sixty (60) days or until the subject matter is ended. However, some transmissions, particularly those sent externally to the general public or to certain public officials, are preserved longer. Staff members have the obligation to select, process, and retain e-mails that contain information of a significant, non-transitory nature to FORA's business. When a formal written record result from e-mail correspondence and the e-mail or its attachments are determined by the user not to be transitory – that is, the document has administrative, fiscal, historical or legal value and is not a draft or a copy – it must be retained as a Public Record. These records must be printed and then scanned into DocStar, so they become part of FORA's permanent records. All emails are considered destroyed as soon as they have been deleted from the user's mailbox, even though they are temporarily stored in the trash folder before being purged from the e-mail system. Digital e-mail backup tapes are destroyed every _____ weeks. FORA is not required to maintain both an electronic and a hard copy form of the same information (Government Code §34090.5).

Records Retention Schedule

Administration

Record Type	Retention Period
Founding Documents (FORA Master Resolution)	Permanent
Board/Committee Agendas and Packets	Permanent
Board/Committee Minutes	Permanent
Board/Committee Resolutions	Permanent
Board Meeting Recordings	Current meeting + 1 year
FPPC Forms	Permanent
Agreements/Contracts	Completion + 5 years
Certificate of Liability Insurance	Expiration + 1 year
Requests for Qualifications /Proposals	Completion of work + 5 years
Correspondence, Misc	Current year + 10 years
General Admin	Current year + 5 years
Internal Documents/Memos, etc	Current year + 5 years
Insurance	Permanent
FORA Publications	Permanent
Deeds	Permanent
Records Retention Schedule/Policy	Until revised

Legal

Record Type	Retention Period
Legal Opinions	Until revised
Law Suits/Claims	Until revised
Public Records Requests/Responses	Until revised
Misc Legal	Until revised

Public Relations

Record Type	Retention Period
Press Releases	Expiration + 1 year
Public Presentations/Speeches	Expiration + 1 year
Press Clippings	Expiration + 1 year

Finance

Record Type	Retention Period
Accounts Payable	Expiration + 1 year
Accounts Receivable (Revenue Documents)	Expiration + 1 year
Audit Reports/Financial Statements	Expiration + 1 year
Bank Statements	Expiration + 1 year
Budgets	Expiration + 1 year
Check Registers	completion + 5 years
Contracts/Agreements (Consultants,	

Suppliers)	
Deferred Compensation Plan Documents	Expiration + 1 year
Form 1099 Reports	Expiration + 1 year
Form W-2 Reports	Expiration + 1 year
Grant Documents (Agreements, Payments, Financial Reports)	
General Leger (End of Fiscal Year)	
Investment Records	
Loan Records	
Employee Payroll Records	Termination + 3 years
Employee Payroll/Benefits Files	6 years
CalPERS Reports	
Annual Equipment Inventory (end of Fiscal Year)	
Equipment Inventories (End of Fiscal Year)	
Workers' Compensation Reports	

Human Resources/Personnel

Record Type	Retention Period
Personnel Files	Termination + 3 years
Recruiting/Interview Records (advertisements, notices, resumes, etc.)	Current Year + 5 years
Employment Contracts/Agreements	Termination + 3 years

Engineering/Construction

Record Type	Retention Period
Land Surveys	
Construction Reports (Environmental, Geological, Soils, Archaeology, traffic, structural)	
Design Drawings (30%, 60%, 90% complete)	
Misc. Construction Documents	
Environmental Documents (state and federal)	
Grant Funding Applications (state and federal)	
Construction Contracts	
Consultant/Contractor Pay Requests	
Contractor Certifications	
Construction Payrolls	
Construction Inspection Reports	
Accident Reports	

Planning

Record Type	Retention Period
Base Reuse Plan	

Base Reuse Plan Reassessment Documents/Materials	
Jurisdiction Consistency Determinations	
Base wide PLL Insurance Policy and Confidentiality Agreements	
Planning/Finance Journals	
Professional Training Materials	
Habitat Management and Related Materials	
Habitat Conservation Plan and Related Materials	
Capital Improvement Program and Related Materials	
Fort Ord Mapping Materials	
Grant Materials	
Imjin Office Park Planning, Construction, Permitting Documents	
Planning Misc.	

PLACEHOLDER FOR ITEM 6e:

Attachment B

The Attachment B will be included in the final Board packet.

FORT ORD REUSE AUTHORITY BOARD REPORT

OLD BUSINESS

Subject: Base Reuse Plan Reassessment contract amendment #2

Meeting Date: July 13, 2012

Agenda Number: 6f

ACTION

RECOMMENDATION(S):

Authorize the Executive Officer to execute a Base Reuse Plan Reassessment contract amendment #2 (**Attachment A**) with EMC Planning Group, Inc., not to exceed \$229,995

BACKGROUND:

Contract amendment #1 (May 2012): EMC Planning Group, Inc. is a planning consulting firm hired by the Board in April 2012 to conduct the Base Reuse Plan (BRP) reassessment. At the May 2012 meeting, the Board approved a proposed amendment to the EMC contract. The approved amendment #1 deferred funding of the reassessment report, which is the reassessment's final work product, to fiscal year 2012-13 and substituted this dollar amount for enhanced public outreach, including 1) an additional community workshop in the City of Seaside, and 2) targeted stakeholder outreach efforts to expand contacts with representatives of various community groups that are comprised of, or interface with traditionally underserved and underrepresented ethnic and interest groups, and various other individuals and groups.

Community workshops in FY12-13: Over the past few months, the Board also expressed interest in adding two additional workshops, targeted for August and October 2012, to help distribute opportunities for public involvement more evenly throughout the course of the project schedule (**Attachment B**). However, budget was not available in FY11-12 to fund these new reassessment-related costs, so these two additional workshops were presented in May as an early informational item and effectively placed on hold for Board action, pending approval of the FY 12-13 budget.

Other supplemental scope of work: In addition to the two Board workshops, and as was noted in several previous Board reports for the reassessment, EMC has developed a list of supplemental tasks and deliverables, with associated budget. The supplemental scope provides in-depth analysis of subject areas such as the feasibility of "incentivizing" development on previously developed areas of the base, review of FORA's Consistency Determination process, targeted job creation, and analysis of financial and market impacts of the recent economic downturn. This supplemental work would result in additional areas of analysis and documentation, increasing the overall utility of the reassessment as a basis for future policy decisions.

Staff presented a draft supplemental scope and budget to Administrative, Finance, and Executive Committees on May 2, 2012 for review and comment. Staff is returning these items to Administrative and Executive committees this month with minor refinements.

DISCUSSION:

Restoring funding for the final reassessment document (follow-on action to amendment #1): Approval of restored funding for Task 4.0 (Reassessment Document) in the currently proposed contract amendment #2 is vital to timely completion of the BRP reassessment process. As noted above, this final reassessment report was deferred to the FY12-13 budget in order to provide for enhanced public outreach in FY11-12. However, the reassessment report is an indispensable component of the process. Restoring funds for this task is a necessary step that was identified at the time of the first contract amendment in May 2012.

Community workshops in FY12-13: The current "scoping"/information-gathering phase of the reassessment included five community workshops in May-June 2012. Members of the Board and the community have voiced a strong desire for additional community workshops to occur during subsequent phases of the

reassessment process. The two proposed additional community workshops that have been discussed at previous Board meetings are a very significant component of the reassessment's public engagement strategy. As previously discussed, the first of these workshops would be held after release of the draft scoping report in August, and the second would follow release of a draft final reassessment report (planned for October).

Other supplemental scope of work: As of this writing, staff is reviewing the other proposed supplemental tasks and will develop analysis and recommendations, in conjunction with Administrative and Executive Committee input, prior to distribution of the Board packet.

FISCAL IMPACT:

Reviewed by FORA Controller _____

Anticipated staff time and consultant costs for the reassessment are included in the approved FY 11-12 budget. Approval of contract amendment #2 would result in additional funding of \$229,995 for the BRP reassessment, in addition to the previously approved \$249,970 contract amount (total not to exceed \$479,965). Depending on the outcome of the reassessment, the Board may wish to consider adjusting portions of the BRP. Funding for any update of the BRP or subsequent actions, should the Board so require, will be covered by the FY 12-13 budget. As potential costs will remain unknown until the reassessment is completed, the Board may have to revisit this issue during mid-year budget review (Jan.-Feb. 2013).

COORDINATION:

Administrative Committee, Executive Committee, Finance Committee, and Authority Counsel.

Prepared by _____ Reviewed by _____
Darren McBain Steve Endsley

Approved by _____
Michael A. Houlemard, Jr.

REVISED FORT ORD REUSE PLAN REASSESSMENT SUPPLEMENTAL SCOPE OF WORK

EXECUTIVE SUMMARY

A revised initial scope of work and budget for the Fort Ord Reuse Plan Reassessment project has been prepared under separate cover. The revised initial scope of work consists of three major tasks: Task 1.0 Administration, Meetings, and Coordination; Task 2.0 Research and Scoping; and Task 3.0 Summary Scoping Report. The cost to implement these tasks is within FORA's \$250,000 fiscal year 2011-2012 budget limits for the reassessment process.

This revised supplemental scope of work is presented to identify an additional level of effort needed to complete Tasks 1.0 through 3.0 as identified in the initial scope of work, which comprise the fundamental elements of the reassessment process, and to initiate and complete Task 4.0, preparation of a Reassessment Document. The Reassessment Document is the final product of the reassessment process and will provide recommendations for changes to the Fort Ord Reuse Plan for consideration by the Board. This revised supplemental scope of work also includes costs to conduct two Board workshops as a basis for expanding opportunity for public input on the Scoping Report and Reassessment Document. The cost of implementing the additional level of effort described herein is in excess of FORA's 2011-2012 budget for the reassessment process. The additional cost would need to be included in FORA's 2012-2013 budget.

A summary of highlights of this supplemental scope of work budget for each task follows:

Task 1.0 Administration, Meetings, and Coordination includes attendance at additional meetings, including Administrative Committee, Executive Committee, and Board meetings; and additional meetings with staff and with other groups as directed by staff.

Task 2.0 Research and Scoping is the information gathering stage of the project. The market study is supplemented with a jurisdictional fiscal evaluation. Opportunities for public input on the draft Scoping Report and on the draft Reassessment Document are provided by adding two Board workshops to the scope of work. Additional information on the status of the base reuse plan implementation will be prepared, including maps and tables for habitat and other focused topics.

Task 3.0 Summary Scoping Report will present the results of Task 2.0 activities with discussion and context for the results. Additional level of effort is needed to fully document, evaluate, and present information collected in Tasks 1.0 to 3.0 as described in the revised initial scope of work so that a more complete foundation of information is available for use in the Reassessment Document.

Task 4.0 Reassessment Document will be initiated and completed as part of this supplemental scope of work.

TASK 1.0 ADMINISTRATION, MEETINGS, AND COORDINATION

1.1 Scope and Contract Finalization

No supplemental scope of work for this task.

1.2 Management and Communications

Communications, coordination of meetings and subconsultants, and oversight of product development from July through December will be handled by Ron Sissem and Richard James, Principal Planners with EMC Planning Group. Michael Groves will oversee this effort.

1.3 FORA Meeting Attendance

The revised supplemental scope of work includes the following additional work efforts:

Board Meetings. Michael Groves and an EMC Planning Group Principal Planner will attend additional Board meetings.

Committee Meetings. Michael Groves and an EMC Planning Group Principal Planner would attend additional committee meetings.

Ad Hoc Meetings. Michael Groves and an EMC Planning Group Principal Planner will attend additional meetings and/or third party workshops as directed by FORA staff. Economic Planning Systems and The Ingram Group will be available to several of the additional meetings.

Staff Meetings. Michael Groves and an EMC Planning Group Principal Planner will attend additional staff meetings with FORA staff to discuss project issues. Economic Planning Systems will be available to attend an additional staff meeting. Denise Duffy and Associates and The Ingram Group will be available to attend an additional staff meeting each.

TASK 2.0 RESEARCH AND SCOPING

2.1 Background Research

No supplemental scope of work for this task.

2.2 Fort Ord Reuse Plan Policy and Document Review

Provide a context statement for each policy and program that supports inclusion of the policy or program on the list described in the initial scope of work for this task. Review Fort Ord Reuse Plan goals, text, tables, and graphics for internal consistency and relevance and identify those that may be considered for revision. Compile a list of such conditions and provide a brief context statement for each that supports inclusion on the list.

2.3 Consistency Determinations Review

Provide a context statement for each site as described for this task in the initial scope of work, providing the existing land use map designation, a summary of the project found consistent, and potential effects on/changes to the land use map. Develop a map of sites included on the list developed in Task 2.3 of the original scope of work.

2.4 Reuse Plan Implementation Status

Supplemental work for this task includes the creation of additional data, mapping, and tables, to include:

- Identification of the jurisdiction or ownership of vacant land;
- Housing units developed;

- Buildings removed;
- Major infrastructure and transportation projects completed or under active construction;
- Conserved habitat and open space areas;
- Water allocation; and
- Targeted and completed cleanup areas.

2.5 Consistency with Local and Regional Plans

Provide a context statement for each policy defined in Task 2.5 of the initial scope of work that supports inclusion on the list. Review and provide discussion of Fort Ord Reuse Plan consistency with AMBAG's "Envisioning the Monterey Bay Area".

2.6 Technical Inputs and Analysis

This supplemental scope provides additional time for more in-depth support by the technical subconsultants, including detailed mapping work.

2.7 Market Study

Jurisdictional Fiscal Evaluation. Based on the outcome of the revised land demand outlook, it may be prudent to reconsider the potential fiscal health of one or more of the individual jurisdictions. In cases where suggested adjustments to land uses in a jurisdiction appear as though they may have significant fiscal implications, Economic Planning Systems will examine the fiscal impacts of new Fort Ord development in that jurisdiction. In such circumstances, Economic Planning Systems will prepare a summary-level fiscal impact analysis, contrasting major revenue streams with major service costs. This summary-level fiscal impact work will be completed with direct input from staff in the respective jurisdiction. This task includes high-level evaluations of major funding sources and extraordinary cost implications of up to three major projects.

2.8 Community Outreach/Public Workshops

This supplemental task provides additional time to coordinate the public workshop process and to evaluate the public input obtained during the public workshop process.

2.9 Community Outreach/Board Workshops

As part of the public comment/input process for the reassessment provided to date, stakeholders have made it clear that opportunities for public comment on the Scoping Report and the Reassessment Document are needed. For this reason as well as to provide an early opportunity for the Board to become familiar with the content of both documents, two Board workshops are proposed as part of this supplemental scope of work. Each workshop would be conducted prior to a regularly scheduled Board hearing. The first workshop would provide a platform for the EMC Planning Group team and FORA staff to present the draft Scoping Report, for public input on the document, and for the Board to ask questions about the same prior to its consideration of the document at a subsequent Board hearing. This would also be the purpose of the second workshop, which would focus on the draft Reassessment Document.

TASK 3.0 SUMMARY SCOPING REPORT

3.1 Draft Report Preparation

Additional detail and content will be added to the summary scoping report, including:

- Additional implementation status summary tables and maps;
- Discussion of findings regarding Fort Ord Reuse Plan goals, policies, and programs;
- Discussion of Fort Ord Reuse Plan consistency with local and regional plans;
- Discussion of local and regional plan policy inconsistencies;
- Discussion of FORA consistency procedures;
- A table linking public input comments to the relevant objectives and policies contained in the Fort Ord Reuse Plan;
- Discussion of water and other constraints; and
- Two or three suggested options for the content and scope of the reassessment document for FORA Board consideration.

3.2 *Final Report Preparation*

The final report will include additional detail as noted above for Task 3.1 and will reflect public input provided during the Board workshop on the Scoping Report.

TASK 4.0 REASSESSMENT DOCUMENT

4.1 *Board Direction Summary*

Following the summary scoping report presentation to the Board and based on Board discussion at the presentation meeting, the following tasks will be undertaken:

- Consult with FORA staff;
- Review Board comments/discussion;
- Prepare Board Direction Summary as needed.

4.2 *Administrative Draft Report Preparation*

The content of this document will be shaped in part by the Board and be identified in Task 4.1.

It is envisioned that the document will contain several specific parts: a summary of the key findings of the Summary Scoping Report, a summary of public and Board comment on the Summary Scoping Report, a listing of items for which the Board may consider future action, and analysis of the status of each mandatory element of the Fort Ord Reuse Plan.

The EMC Planning Group team and FORA staff will distill the information from the summary scoping report and develop a list of issues for further consideration. The mandatory element analysis will include review of the base reuse plan objectives, policies, and programs, and suggest/recommend changes to these if needed. The issues for further consideration will be classified by level of importance and/or complexity; i.e. some issues will be categorized as routine or housekeeping issues with little complexity or controversy, while others will be more complex, controversial or both. It is anticipated that the recommended actions would be categorized as housekeeping actions, routine actions, and actions requiring special attention and consideration by the Board.

4.3 *Draft Reassessment Report*

Based on comments from FORA staff, revise the reassessment document for initial presentation to the FORA Board and the public at a Board Workshop.

4.4 *Final Reassessment Report*

Based on public input provided at the Board workshop on the draft reassessment document and on direction from the FORA Board provided at the workshop and during its formal consideration of the draft reassessment document, revise the reassessment document for final adoption. A proof draft will be provided for FORA staff and Executive Committee review prior to printing the final reassessment report.

Deliverables for Task 4.0

- Reassessment Report (administrative draft, public draft, proof final, and final)

Note on Deliverables

All project deliverables are assumed to be provided in electronic format only, unless otherwise noted.

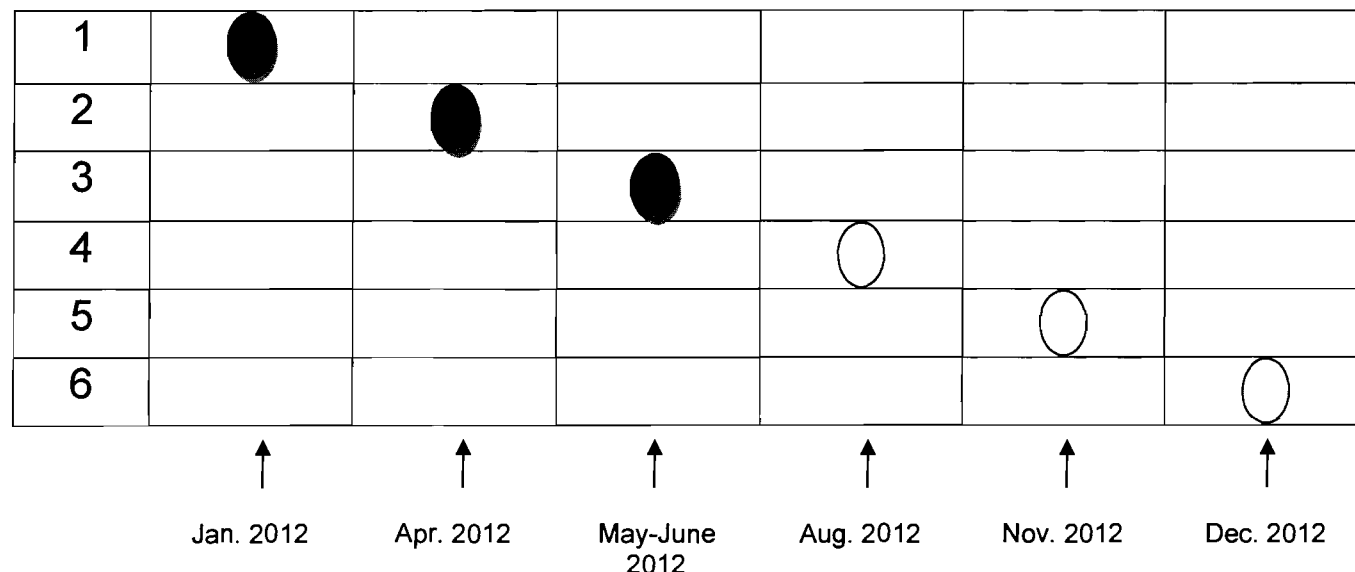
Fort Ord Reuse Plan Reassessment Supplemental Budget - Revised June 22, 2012									Subconsultants						
Task	EMC Planning Group Inc.								EPS	Ingram Group	DDA	ARCADIS	Hexagon	Creegan & D'Angelo	SMG
Staff	Sr. Principal	Principal Planner RS	Principal Planner RJ	Associate Planner	Production	Administrative	Total Hours	Total Cost							
Billing Rate (Per Hour)	\$195.00	\$175.00	\$175.00	\$125.00	\$125.00	\$95.00									
TASK 1.0 ADMINISTRATION, MEETINGS, AND COORDINATION								\$38,300.00							
1.1 Scope and Contract Finalization	3.0	12.0	6.0	0.0	0.0	0.0	21.0	\$3,735.00							
1.2 Management and Communications	7.0	50.0	10.0	0.0	0.0	0.0	67.0	\$11,865.00							
1.3 Board Meetings (2)	6.0	6.0	1.0	1.0	4.0	1.0	19.0	\$3,115.00							
1.3 Admin and Executive Committee Meetings (9)	16.0	18.0	0.0	0.0	0.0	0.0	34.0	\$6,270.00							
1.3 Staff Meetings (3)	9.0	8.0	8.0	0.0	0.0	0.0	25.0	\$4,555.00							
1.3 Other Meetings as Directed (8)	18.0	18.0	12.0	0.0	0.0	0.0	48.0	\$8,760.00							
1.4 Coordinate/Prepare Materials for Upload to FORA Website	0.0	0.0	0.0	0.0	0.0	0.0	0.0	\$0.00							
TASK 2.0 RESEARCH AND SCOPING								\$50,470.00	\$8,600.00	\$12,100.00		\$2,000.00			\$10,000.00
2.1 Background Research	0.0	0.0	0.0	0.0	0.0	0.0	0.0	\$0.00							
2.2 Fort Ord Reuse Plan Policy and Document Review	2.0	2.0	24.0	0.0	0.0	0.0	28.0	\$4,940.00							
2.3 Consistency Determinations Review	3.0	1.0	32.0	0.0	0.0	0.0	36.0	\$6,360.00							
2.4 Reuse Plan Implementation Status	8.0	10.0	30.0	82.0	3.0	0.0	133.0	\$19,185.00				2,000.00			
2.5 Consistency with Local and Regional Plans	1.0	1.0	15.0	0.0	0.0	0.0	17.0	\$2,995.00							
2.6 Technical Inputs and Analysis	4.0	8.0	12.0	0.0	4.0	1.0	29.0	\$4,875.00							
2.7 Market Study Preparation	3.0	4.0	0.0	0.0	0.0	0.0	7.0	\$1,285.00	5,000.00						
2.8 Community Outreach - Public Workshops	0.0	0.0	0.0	0.0	0.0	0.0	0.0	\$0.00		7,100.00					
2.9 Additional Board/Community Workshops (2)	14.0	24.0	8.0	12.0	8.0	0.0	66.0	\$10,830.00	3,600.00	5,000.00					10,000.00
TASK 3.0 SUMMARY SCOPING REPORT								\$23,820.00			\$1,900.00				
3.1 Draft Report Preparation	34.0	36.0	32.0	4.0	3.0	0.0	109.0	\$19,405.00			1,900.00				
3.2 Final Report Preparation	2.0	4.0	14.0	4.0	3.0	0.0	27.0	\$4,415.00							
TASK 4.0 REASSESSMENT DOCUMENT								\$59,855.00			\$4,000.00	\$2,000.00	\$1,000.00	\$5,000.00	
4.1 Board Direction Summary	5.0	2.0	12.0	0.0	0.0	1.0	20.0	\$3,520.00							
4.2 Preliminary Results and Administrative Draft Report Preparation	32.0	28.0	92.0	20.0	8.0	6.0	186.0	\$31,310.00			4,000.00	2,000.00	1,000.00	5,000.00	
4.3 Draft Reassessment Report	12.0	8.0	41.0	11.0	8.0	6.0	86.0	\$13,860.00							
4.4 Final Reassessment Report	6.0	6.0	36.0	8.0	7.0	6.0	69.0	\$10,965.00							
Subtotal (Hours)	185.0	246.0	385.0	142.0	48.0	21.0	Total Hours	Total Cost							
Subtotal (Cost)	\$36,075.00	\$43,050.00	\$67,375.00	\$17,750.00	\$6,000.00	\$1,995.00	1027.0	\$172,245.00	\$8,600.00	\$12,100.00	\$5,900.00	\$4,000.00	\$1,000.00	\$5,000.00	\$10,000.00
Additional Costs															
Production Costs								\$5,000.00							
Travel Costs								\$300.00							
Postal/Deliverables								\$0.00							
Miscellaneous								\$600.00							
Administrative Overhead 10%								\$590.00							
Total								\$6,490.00							
Subconsultant Fees															
Economic Planning Systems ¹								\$8,600.00							
The Ingram Group ²								\$22,100.00							
Denise Duffy and Associates								\$5,900.00							
ARCADIS								\$4,000.00							
Hexagon Transportation Consultants								\$1,000.00							
Creegan & D'Angelo								\$5,000.00							
Subconsultant Overhead 10%								\$4,660.00							
Total								\$51,260.00							
Total Costs								\$229,995.00							

¹As an optional task, Economic Planning Systems can perform a jurisdictional fiscal evaluation as described in the Supplemental Scope of Work and Budget

²Translation cost and SMG costs included in Ingram Group cost

FORT ORD BASE REUSE PLAN REASSESSMENT SCHEDULE

Attachment B to item 6f
FORA Board meeting, 7/13/12



1. RFQ process to select BRP review consultant
2. Board Kickoff presentation
3. Public workshops (May – June)

4. Present draft initial “scoping” report (market study and public outreach summary) to Admin. Committee and FORA Board
5. Present draft Reassessment Report to Admin. Committee and FORA Board
6. Final action completed

FORT ORD REUSE AUTHORITY BOARD REPORT

OLD BUSINESS

Subject: Master Resolution/Settlement Agreement Amendment – Appeal Fee
Proposed Amendment to Section 8.01.050(a)

Meeting Date: July 13, 2012

Agenda Number: 6g

INFORMATION/ACTION

RECOMMENDATION(S):

Amend section 8.01.050(a) of the FORA Master Resolution/Sierra Club Settlement Agreement to adjust FORA's Consistency Determination appeal fee basis from the County of Monterey's land use appeal fee to an average of FORA's jurisdictions' land use appeal fees, as described in **Attachments A and B**, or

Amend section 8.01.050(a) of the FORA Master Resolution/Sierra Club Settlement Agreement to adjust FORA's Consistency Determination appeal fee basis to allow a fee waiver to an appellant who meets low income eligibility standards set by the U.S. Department of Housing and Urban Development, as described in **Attachment C**.

BACKGROUND/DISCUSSION:

Each of the past 9 months, FORA has hosted stakeholder meetings with the Ventana Chapter of the Sierra Club, LandWatch Monterey County, the League of Women Voters, and others to discuss issues pertaining to the proposed FORA extension legislation and the Base Reuse Plan Reassessment process. From the beginning, stakeholders stated concerns with the FORA appeal fee for Consistency Determinations being at a level that make it difficult for local community members to participate in the appeal process due to the fee being pegged to the County of Monterey's appeal fee, which is currently \$5,040 per appeal.

The Sierra Club noted this concern in their letter to Assembly Member Bill Monning, in which they supported his proposed legislation (AB1614) extending FORA's sunset. Sierra Club representatives have clarified that, when the Sierra Club and FORA signed the settlement agreement and set FORA's appeal fee to be the same as the County of Monterey's appeal fee, the County of Monterey's appeal fee level was similar to the surrounding land use jurisdictions. However, since 1998, the County's appeal fee has risen to \$5,040 per appeal. FORA staff and Authority Counsel discussed the issue with Sierra Club representatives and created a proposal, in which the FORA Board might consider amending section 8.01.050(a) to establish an appeal fee based on the average of FORA's jurisdictions' land use appeal fees (after excluding the highest and lowest appeal fees from the calculation) (as seen in **Attachment B**). If the Board adopts this proposed amendment, FORA's appeal fee would change from \$5,040 per appeal to \$737.69 per appeal.

At its May 30, 2012 meeting, the Administrative Committee discussed this issue in-depth and concluded that, since strong arguments could be made in favor of and against implementing the proposed appeal fee amendment, this was a policy issue the Board should decide. One argument made in favor of implementing the proposed amendment was that the high fee precluded participation of many members of the public, which infringed upon their right to petition their government for redress of grievances. Arguments made against implementing the proposed amendment were that lowering the fee will not

allow FORA to recover the actual costs of processing an appeal, and might encourage frivolous appeals. At its May 30, 2012 meeting, the FORA Executive Committee directed staff to place this item on the June FORA Board agenda as an information item and to include an option for a tiered appeal fee approach prior to the July FORA Board meeting, based on a set of circumstances and their cost implications.

FORA staff prepared a tiered appeal fee modification option for consideration, described in Attachment C, that would allow a waiver of the appeal fee if low income eligible standards are met by the appellant.

FISCAL IMPACT:

Reviewed by FORA Controller _____

Staff time for this item is included in the approved FY 11-12 budget. Staff does not expect that a reduction in the appeal fee would affect FORA's operating budget significantly.

COORDINATION:

Administrative Committee, Executive Committee, Authority Counsel, and Sierra Club representatives.

Prepared by _____ Reviewed by _____
Jonathan Garcia Steve Endsley

Approved by _____
Michael A. Houlemard, Jr.

Proposed Appeal Fee Amendment to Section 8.01.050 (a) of the FORA Master Resolution

8.01.050 REVIEW OF DEVELOPMENT ENTITLEMENTS BY APPEAL TO AUTHORITY BOARD.

a. Within 10 days of a land use agency approving a development entitlement, any person aggrieved by that approval and who participated either orally or in writing, in that agency's hearing on the matter, may file a written appeal of such approval with the Executive Officer, specifically setting forth the grounds for the appeal, which shall be limited to issues raised at the hearing before the land use agency. The person filing the appeal shall pay a filing fee in an amount equal to the average of the planning decision appeal fees established by the nine member agencies of the Authority's Board omitting the highest and the lowest, not to exceed the Authority's reasonable cost to prepare the appeal. The appeal fee may be reimbursed not more than once yearly to an appellant who signs a declaration under penalty of perjury that s/he qualifies as "very low income" under low income eligibility standards set by the U.S. Department of Housing and Urban Development. The Authority Board must conduct a public hearing on the appeal within 60 days.

Attachment B to Item 6g
FORA Board meeting, 7/13/12

FORA Jurisdiction	Land Use Appeal Fee	w/out highest & lowest
County	\$ 5,040.00	
Pacific Grove	\$ 2,385.00	\$ 2,385.00
Salinas	\$ 659.00	\$ 659.00
Del Rey Oaks	\$ 550.00	\$ 550.00
Marina	\$ 460.00	\$ 460.00
Sand City	\$ 439.83	\$ 439.83
Monterey	\$ 370.00	\$ 370.00
Seaside	\$ 300.00	\$ 300.00
Carmel	\$ 295.00	
Total		\$ 5,163.83
Average appeal fee:		\$ 737.69

Proposed Appeal Fee Amendment to Section 8.01.050 (a) of the FORA Master Resolution

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FORT ORD REUSE AUTHORITY BOARD REPORT

OLD BUSINESS

Subject: Capital Improvement Program Review – Phase II Study

Meeting Date: July 13, 2012

Agenda Number: 6h

INFORMATION/ACTION

RECOMMENDATION(S):

- i. Adopt Resolution 12-05, which would implement an annual formulaic approach to establishing the annual Fort Ord Reuse Authority (FORA) development fee schedule and Community Facilities District (CFD) Special Tax rates (**Attachment A**).
- ii. Authorize the Executive Officer to execute Amendment #1 to the FORA-jurisdictions Implementation Agreements, which would codify the annual formulaic approach to establish the FORA development fee schedule and CFD Special Tax rates (**Attachment B**).
- iii. Authorize the Executive Officer to execute contract amendment #5 with Economic and Planning Systems (EPS) to complete the Phase II Study in FY 12/13 (**Attachment C**), not to exceed additional budget authority of \$60,000.

BACKGROUND:

On July 9, 2010, the FORA Board directed staff to:

- 1) propose a 6-month Capital Improvement Program (CIP) work plan timeline;
- 2) review FORA's CIP obligations and resources; and
- 3) provide monthly updates.

That assignment was completed by the January 2011 target. At the January, February, and March 2011 meetings however, the Board requested additional information and received answers to specific questions about the CIP. The Board increased the consultant's scope and budget in January and April 2011 to generate supplemental information. At the April 8, 2011 meeting, the Board:

- 1) received a presentation from the Transportation Agency for Monterey County (TAMC) regarding their analysis of FORA's Transportation and Transit phasing,
- 2) received an EPS presentation responding to questions raised at the March 2011 Board meeting,
- 3) received information regarding benefits and impacts of a fee reduction,
- 4) directed staff to prepare documents and/or policy revisions necessary to a) approve an across the board 27% fee reduction (\$33,700 for new residential units, etc.) for the May 2011 Board meeting and b) implement accompanying policy adjustments, and

- 5) directed staff to work with EPS on a third contract amendment for consideration at the May 2011 Board meeting, which would commence a Phase II CIP review to be completed during the following 2 fiscal years.

EPS has been the principal consultant from the inception of the project. David Zehnder is the Managing Principal and Jamie Gomes is the Principal. Each have experience with California municipalities and county organizations reviewing CIP obligations and fee structures. During their initial CIP review, EPS completed updated development forecasts, a preliminary CIP analysis, a cost-burden analysis, a draft summary report on the CIP, a draft final report, four powerpoint presentations to the Board, and three additional reports in response to Board member questions.

Concurrent with EPS's work in 2011, FORA staff reviewed its CIP funding sources to ensure accuracy and TAMC reviewed phasing of FORA's CIP transportation project expenditures to coordinate regional transportation planning efforts. FORA is committed to continued consultation with TAMC in this manner.

DISCUSSION:

In May 2011, the Board adopted resolution 11-02 to reduce the developer fee approximately 27% across all fee categories (from \$46,205 to \$33,700 [also referred to as Option 2C] for new residential units). At the same meeting, the Board also authorized FORA to enter into a contract with EPS to complete a Phase II CIP review study to ascertain whether further reductions in contingencies or costs would be feasible while ensuring FORA's CEQA and operational obligations are met. Due to the uncertainty related to the effects of the State of California's dissolution of redevelopment and endowment holder requirements for the future Habitat Conservation Plan, it was deemed prudent to have EPS study those elements of Phase II first. However, during legislative hearings on FORA's extension (AB1614), the issue of a change in FORA's approach to both the development fee and CFD Special Tax rates was proposed to reduce uncertainty for the development community. This is a uniquely FORA issue. It is not one that can be resolved by state legislation.

EPS, working with FORA staff, developed a formula for establishing the development fee. That formula was reviewed by the FORA Administrative Committee at five meetings in May and June 2012. At its May 30, 2012 meeting, the committee considered the proposed formula as it might be implemented through a draft FORA Board resolution and amendment to the FORA-jurisdictions Implementation Agreements. The proposed formula would match FORA revenue sources with FORA obligations and set an appropriate fee level consistent with obligations. Staff would apply any adjustments to FORA's development fee and CFD Special Tax resulting from the formula within 90 days of adopting the resolution and, thereafter, staff would integrate the formula into the FORA Board's annual consideration of the FORA Capital Improvement Program. The Administrative Committee passed a motion recommending that a draft resolution and draft amendment to the Implementation Agreements be presented to the FORA Board after several edits were made. At its June 13, 2012 meeting, the Administrative Committee asked staff/EPS to return to its June 27, 2012 meeting with a model illustration and calculation of the formula (**Attachment D**) so that

every component of the proposed formulaic approach is easily understood and end-result modeled.

FISCAL IMPACT:

Reviewed by FORA Controller _____

The funding for EPS's phase II CIP review study work is funded through FORA's annual budget.

COORDINATION:

Administrative Committee, CIP Committee, Executive Committee, Authority Counsel, Assemblymember Bill Monning and Luis Alejo's offices, development teams, Development Planning & Financing Group, Inc., and EPS.

DRAFT

Prepared by _____ Reviewed by _____
Jonathan Garcia Steve Endsley

Approved by _____
Michael A. Houlemard, Jr.

Attachment A to Item 6h – Capital Improvement Program Review – Phase II Study

FORA Board Meeting, July 13, 2012

NOTE: This Board report attachment will be sent under separate cover based on the timing of the material received.

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

RECITALS

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

CEQA Mitigation Measures and Board-determined basewide obligations in FORA's CIP identified in Section 1.1.; and

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

AGREEMENTS

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

I. ADJUSTMENT TO THE POLICY AND CFD SPECIAL TAXES.

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

1.1.1 Transportation/Transit improvements, including regional

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

1.1.2 Water Augmentation, which includes ~~FORA's financial CEQA obligation for the approved water augmentation project capped at 2011/12 CIP amount, currently \$44,562,883 in obligation remaining (amount comprised of FORA's CEQA mitigation and FORA's voluntary payment contribution to help offset water capacity charge increases.)~~. FORA's CEQA obligation is subject to annual escalation, while the voluntary contribution is not as indexed.

1.1.3 Habitat Management endowment requirements anticipated in the future Fort Ord Habitat Conservation Plan excluding costs related to an open space management plan or costs related to a regional trails system program, currently \$32,997,171 in obligation remaining, as indexed by the San Francisco-Oakland-San Jose Consumer Price Index from the U.S. Department of Labor Bureau of Labor Statistics.

1.1.4 Fire Fighting equipment ("Rolling Stock") lease-purchase of four fire engines and one water tender, currently \$232,000 in obligation remaining.

1.1.5 Other Costs and Contingencies shall be evaluated on an annual basis in the same manner as other CIP costs and revenues. Other Costs and Contingencies are currently limited to the following:

FORA Board contribution toward the water augmentation program (in lieu of increased MCWD capacity charges).

A contingency amount not to exceed 15% of the costs of Transportation/Transit improvements for MEC construction support, soil management plans, right of way acquisition, CEQA/CESA/NEPA mitigations, unknown subsurface conditions, self insurance retention amounts and transportation/transit improvement phasing. that do not already include a contingency line item (e.g., if a roadway improvement cost estimate includes a contingency line item, then the Other Costs and Contingency category would not include an additional 15% contingency for that improvement).

Additional Habitat Management Costs equal to 50% increase over the existing HCP endowment cost estimate, based on revised endowment investment return calculations (3% payout rate vs. 4.5% payout rate).

Additional Utility and Storm Drainage Costs which provide for restoration of storm drainage sites in State Parks land and relocation of utilities, equal to 3.5 million.

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Other Costs equal to \$3 million for PLL insurance costs.

CFD Administration Expenses (including staff and consultant costs).

Costs. 1.1.6 CIP improvements exclude Property Management and Caretaker

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1.2 FORA will annually adopt a formula to monitor and update the Policy and CFD Special Tax, as follows

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

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

1.2.3 In accordance with the process set forth in part II of this Agreement, commencing with Section 2.1, the FORA Board will update anticipated construction costs and revenues available to fund the facilities identified in Section 1.1, above, which are eligible to be funded by the Policy and CFD Special Taxes, and corresponding adjustments to the Policy and CFD Special Taxes within 90 days of the effective date of this Agreement, and annually thereafter concurrently with the annual update of the CIP.

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

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

II. PROCESS

2.1 FORA shall review and update the CIP annually. That procedure must ensure that FORA's revenue sources, including the Policy and CFD Special Tax revenues, are adequate to carry out the Base Reuse Plan and complete required CEQA Mitigation Measures and Board-determined base-wide obligations in FORA's CIP identified in Section 1.1 above. The annual process will include the following steps:

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

2.1.2 Determine the source and amount of funds, including, without limitation: a) Fund balances; b) Grant money; c) CSU Mitigation fees; d) Loan proceeds; e) Land sales revenues/proceeds net of a required credit/offset equal to the amount of monies loaned to construct CIP improvements (this amount shall ultimately be reduced to zero once the full credit/offset has been recognized) in excess of remaining building removal program estimated costs, and lease revenues (not required for other obligations); and f) tax increment revenues or FORA property tax revenue allocations to FORA as calculated below, net of operations expenses directly attributable to administering the CEQA Mitigation Measures and Board-determined base-wide obligations in FORA's CIP as set forth in Section 1.1 above and not otherwise available to be funded from other sources. The following assumptions and formula shall be used to calculate the tax increment/FORA property tax revenues, if available:

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Assumptions:

- a. Current FORA CIP build-out assumptions as shown to estimate CFD special tax revenue (adjusting build-out assumptions based on the reliability of the previous years' development forecasts by comparing projected development to actual development occurring and applying this percentage accuracy on the build-out projections).
- b. Current market data assumptions to estimate assessed values for each land use type.

Formula:

- a. Calculate the net present value (NPV) of 90% of the tax increment/FORA property tax revenue stream for all future (new) development assessed value anticipated to develop on Fort Ord after after July 1, 2012.
- b. The term on the tax increment/FORA property tax stream shall be from the date of the current CIP (e.g., upcoming fiscal year) through the anticipated end date of FORA (or the proposed FORA extension end date if applicable).
- c. The NPV calculation shall assume a discount rate of 6%, equal to the annual average Bond Buyer Revenue Bond Index plus [Insert #] basis points using the prior fiscal year end date (e.g., use 2012 year to date

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annual average at the end of FY 2011-12 for the FY 2012-13 calculation) as published in The Bond Buyer.

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- d. Allocate 10% of the NPV as calculated above to reduce/offset costs of CIP, in year 1 and adjust based on actual property tax collected from new development for year 2 and subsequent years.
- e. See Table 1 for illustration how to calculate/offset CIP costs. Allocate 10% of the actual tax increment/property tax revenues collected by FORA from all new assessed value after FY 11-12 July 1, 2012 and generated from parcels in the Fort Ord area of the member jurisdiction to the City or County for Fort Ord Reuse and economic development to support the development/reuse of Fort Ord land within the relevant City or County.

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

2.1.4 Calculate Policy and CFD Special Tax revenues using the prior year Policy and CFD Special Tax Rates and the same land use assumptions calculation as used for to estimate tax increment/ FORA property tax revenues shown above in Section 2.1.2).

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

III. ENFORCEMENT

3.1 This agreement is entered into for the benefit of FORA, the *member jurisdiction*, and the *member jurisdiction's developers* implementation agreement assignees subject to the Policy and CFD Special Tax, and may be subject to dispute resolution and enforced by FORA or the *member jurisdiction* or the implementation agreement assignees member jurisdiction's developers subject to the Policy and CFD Special Taxes in the same manner and process set forth for dispute resolution and under Section 17 of the Implementation Agreement.

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

[Add signature pages]
[Add acknowledgments for
recordation]
[Attach Table 1]

Attachment C to Item 6h – Capital Improvement Program Review – Phase II Study

FORA Board Meeting, July 13, 2012

NOTE: This Board report attachment will be sent under separate cover based on the timing of the material received.

Attachment D to Item 6h – Capital Improvement Program Review – Phase II Study

FORA Board Meeting, July 13, 2012

NOTE: This Board report attachment will be sent under separate cover based on the timing of the material received.

FORT ORD REUSE AUTHORITY BOARD REPORT

NEW BUSINESS

Subject: June 8, 2012 Tort Claim Filed Against FORA by Keep Fort Ord Wild

Meeting Date: July 13, 2012

Agenda Number: 7a

ACTION

RECOMMENDATION:

Deny the "claim" submitted by Keep Fort Ord Wild on June 8, 2012. (**Attachment A**)

BACKGROUND:

The California Tort Claims Act requires a formal claim to be filed with a public agency prior to filing suit against that agency to obtain an award of monetary damages. This "Claim" does not ask for damages. It asks for repayment of funds by the staff members who benefited by the alleged misappropriation of public funds.

DISCUSSION:

This Claim alleges that FORA staff made a variety of expenditures that are not permitted by law. They include:

1. Salaries and benefits (paragraph 5)
2. Traffic tickets (paragraphs 7-8)
3. Business lunches (paragraph 9)
4. Holiday cards (paragraph 10)
5. Cookies (paragraph 10)
6. DSL for Exec Officer (paragraph 10)

The second item, traffic ticket, has been repaid. Several auditors have determined that the remainder of these expenditures are legitimate business expenses. For that reason this claim is without legal merit. It is a separate question whether the Board desires to adopt a more restrictive policy to govern expenditures and staff expense reimbursements.

FISCAL IMPACT:

Reviewed by FORA Controller _____

Unknown, depending on the response of the party filing the Claim.

COORDINATION:

FORA Executive Committee and Administrative Committees.

Prepared by _____ Approved by _____
Jerry Bowden Michael A. Houlemard, Jr.

NOTICE OF CLAIM
(Government Code section 910)

TO: FORT ORD REUSE AUTHORITY
920 2nd Avenue, Suite A
Marina, CA 93933

- 1. This claim is filed by Keep Fort Ord Wild and its members. Keep Fort Ord Wild and its members are beneficially interested in the enforcement and application of laws assuring public accountability and public disclosure and responsible decision making by local governments. Petitioner and its members are vitally concerned with the way that fiscal decisions and land use decisions are made, particularly on the former Fort Ord.**
- 2. For purposes of communications relating to this claim, contact Keep Fort Ord Wild c/o Law Offices of Michael W. Stamp, 479 Pacific Street, Monterey, CA 93940; Phone: (831) 373-1214.**
- 3. This claim arises out of the actions of the Fort Ord Reuse Authority (FORA) relating to expenditures and gifts of public funds. FORA does not have adequate controls in force, allows reimbursements in violation of the Constitutional provision against the gift of public funds, and expends taxpayer funds for improper or dubious purposes.**
- 4. All California public agencies are required by law and public policy to enforce policies in order to prevent (a) illegal gifts of public funds under the California Constitution, (b) illegal waste of public funds, and (c) expenditures not authorized by law or by written policy. Enforcement of actions may be brought in taxpayer suits under section 526(a) of the Code of Civil Procedure and other laws, or by enforcement actions by public officers such as the District Attorney or the California Attorney General. Keep Fort Ord Wild asserts that no claim need be filed before litigation is filed, and files this claim solely out of an abundance of caution in order to provide additional information to the FORA member agencies, and in order to demonstrate the good faith of Keep Fort Ord Wild under the California "catalyst" theory of the private Attorney General statutes.**
- 5. FORA employs approximately 14 staff members full-time, and has a contract for part-time services by FORA's legal counsel. Of the 14 members, a disproportionate number of employees are paid in excess of \$100,000. In addition to base salaries, the employees receive additional compensation, including 19.5% PERS retirement compensation and, in one or more cases, additional time off that is then "sold" to FORA as a salary boost. The highest paid employee is the FORA Executive Officer, who is paid over \$200,000 per year in salary, plus approximately \$25,000 per year in additional compensation, plus the PERS contribution.**

6. FORA compensation policy provides insufficient direction and specificity. Under the policy, the public does not know what expenses are being reimbursed to employees or why, or what controls and oversight exist.

7. The problem with not having adequate controls in place is that employees can make ad hoc determinations as to whether the taxpayers should pay for a particular personal expense of the employee. The problem is demonstrated by the traffic ticket that the Executive Officer was given while driving in Carmel. Despite clear and unequivocal Internal Revenue Service rules and precedents, public agency standard practices and policies, and despite FORA's own explicit policy against using public funds to pay traffic fines (FORA Travel Reimbursement Policy, section D, "Unallowable Travel Expenses, "traffic fines"), the Executive Officer submitted a claim for reimbursement for \$271 for the traffic fine, and then later submitted a claim for traffic school relating to that fine.

8. FORA paid both the fine and the traffic school cost. Neither of these expenses is a lawful reimbursement and both of them are unlawful gifts of public funds under the California Constitution. The FORA employee created an exception for himself under the applicable rules, asserting that because he was en route to Carmel to meet with the Carmel Mayor, he was entitled to the reimbursement as a business expense. The exception was invalid and void under public policy, the State Constitution, the State and Federal tax codes, and Government Code section 1090 (conflict of interest). The traffic violation reimbursement was processed and paid to the Executive Officer by FORA. Keep Fort Ord Wild alleges on information and belief that the reimbursement and the exception were not approved by the FORA Board or FORA Authority Counsel, or by anyone with supervisory authority over the actions of the Executive Officer, because there is no system in place to require or allow supervision of these types of decisions, and FORA management does not require it.

9. For years, the Executive Officer has sought and received reimbursements by FORA on a frequent basis for meals, even when he was not traveling out of the County, but when he was having routine daily meals at or near his workplace. The Executive Officer and other FORA officials seem to be applying FORA's travel reimbursement policy to routine local lunches at taxpayer expense. The FORA policy on local expenses (non-travel expenses) does not authorize reimbursement for everyday meals (Employee Business Expense Reimbursements). Many of the Executive Officer's reimbursement requests for local meals do not show the required pre-approval, and do not appear to be reviewed or approved by anyone other than the Executive Officer himself and the Controller who reports to the Executive Officer. In times of economic hardship for much of the community, FORA's free lunches for its top paid staff and for other public officers are particularly inappropriate. Many of the meals appear to be lunch meetings with the bill picked up by FORA. Some examples are provided below.

- The most recent of these lunches for which Keep Fort Ord Wild has obtained receipts typifies these expenditures: lunch for \$63 on March 9, 2012 while the Executive Officer and three other persons discussed the KFOW litigation over

- lunch at Bayonet Black Horse Golf Club. There is no documentation for that lunch or for the many others that explain why the taxpayers paid the tab, why the participants did not pay for their own lunches, why the meeting took place over lunch instead of some other time during the work day, and why the expenses should not be classified as wages subject to income tax withholdings and payment of related taxes for FORA employees and gifts for other participants.
- Some local restaurant meals were attended only by FORA staff. For example, on July 28, 2011, the Executive Officer took three FORA employees to lunch at Bayonet Black Horse Golf Club, for which the taxpayers picked up the \$58 tab.
 - Other FORA employee meals paid for by the taxpayers include:
 - a \$280 retirement party at Kula Ranch in August 2011.
 - a \$260 "farewell lunch" at P.F. Chang's in May 2011.
 - over \$480 for an "office holiday party" at The Whole Enchilada in December 2011.
 - a \$306 "holiday luncheon" at Bayonet Black Horse Golf Club in December 2010.
 - On May 2, 2011, the Executive Officer, his spouse, another FORA official and his spouse, and two FORA attorneys went to dinner at Fandango Restaurant. Purportedly the group discussed the "ESCA contract, RSA contract, RQA issues." There is no explanation of why the 2007 Environmental Services Cooperative Agreement (ESCA) contract and 2007 Remedial Services Agreement (RSA) contract had to be discussed over dinner in 2011, or why the unidentified "issues" with the ongoing Residential Quality Assurance process could not be discussed during regular working hours. Apparently invoking the FORA policy for meals *while traveling*, the Executive Officer sought and received payment from FORA for the meal tab of the two FORA employees and the two FORA attorneys.
 - Here are just a few more of the examples in FORA's files of meals for which the taxpayers picked up the cost.
 - On May 24, 2011, the Executive Officer and another employee took Marina Coast Water District General Manager Jim Heitzman to lunch at Kula Ranch, for which the taxpayers paid the \$78 tab.
 - On March 21, 2011, the Executive Officer met Monterey Peninsula College president Doug Garrison for lunch at Tusca at the Hyatt, for which the taxpayers paid \$41.
 - On January 31, 2011, the Executive Officer met FORA board member Dave Potter for a "monthly lunch" at the Hyatt, for which the taxpayers paid \$53.

- On January 18, 2011, the Executive Officer went to lunch with FORA attorney Jerry Bowden and the Seaside City Attorney at Kula Ranch for \$56, to discuss "Preston Park."
- On January 6, 2011, the Executive Officer took Seaside's then-mayor Ralph Rubio to lunch at El Palmar for \$26.
- On December 29, 2010, the Executive Officer took Curtis Weeks to lunch at Kula Ranch, for which the taxpayers paid the \$35 tab.
- The Executive Officer also has sought reimbursement for local restaurant meals he had with FORA contractors, such as the contractors working on the publicly funded multi-million dollar ESCA contracts. In those cases, the taxpayers paid for the meals of the Executive Officer and his guest(s).

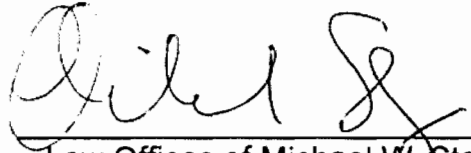
10. In December 2011, FORA wasted public funds by purchasing and mailing 99 holiday cards signed by the Executive Officer to FORA's Board members, FORA member agency employees, FORA contractors, and others, including the Executive Officer's spouse, with no legitimate governmental interest in doing so. Taxpayer dollars spent on such shameless self-promotion are of no public value, and represent the expenditure of public funds for no legitimate business purpose. Other expenditures, such as the special custom cookies "with edible custom design logo" (\$460 of cookies for three events in 2010 and 2011 – FORA Board meeting, FORA open house, General Jim Moore ribbon cutting), or the purchase of other items for personal use also are questionable and appear to constitute public waste or gifts of public funds, and should be investigated and evaluated by an outside person or party who is not part of the FORA management team. The Executive Officer has sought and received reimbursement for monthly DSL service to his home, even though that expense is not the kind that public agencies typically pay for. There is a sufficient amount and variety of unusual public agency spending by FORA to justify or require that a proper and independent audit of taxpayer expenditures be undertaken.

11. The remedy sought by Keep Fort Ord Wild by way of this claim and by way of any subsequent petition is the accounting for all expenditures, reimbursement to FORA's general fund by those persons who benefitted from or approved the expenditures, with interest, injunctive relief to protect the taxpayers from unauthorized, illegal or wasteful expenditures in the future, and the creation of sufficient safeguards to prevent waste and gifts in the future. The taxpayers should not be paying personal expenses of FORA managers, FORA consultants, and other governmental officials or "guests" of FORA. Traffic tickets, free lunches, home DSL service, and wasteful promotional expenses are not the types of expenditures for which FORA should be paying.

12. Because of the wholesale destruction of public records by FORA, as shown in the Keep Fort Ord Wild litigation currently ongoing, and the pattern and practice of FORA's destruction of public records without having any written policy in place, it is impossible for Keep Fort Ord Wild to fully identify, analyze and quantify the extent of

waste and gifts at FORA. Claimant Keep Fort Ord Wild is informed and believes, and on that basis alleges, that the amount in controversy is within the jurisdiction of the Superior Court as an unlimited civil matter.

Dated: June 8, 2012



Law Offices of Michael W. Stamp
Attorneys for Keep Fort Ord Wild

FORT ORD REUSE AUTHORITY BOARD REPORT

NEW BUSINESS

Subject: Expense Reimbursement Policy

Meeting Date: July 13, 2012

Agenda Number: 7b

ACTION

RECOMMENDATION:

As per below

BACKGROUND:

At its special meeting on June 18, 2012, the Executive Committee voted to recommend that the FORA Board 1. Hire a Forensic Auditor to perform an independent audit of certain specified expenditures; 2. Create an ad hoc committee consisting of the Finance Committee Chair and an Executive Committee member to oversee the forensic audit; 3. Recommend that staff develop a formal Expense Reimbursement Policy; 4. Agendize Executive Committee review of FORA check signing practices.

The first two recommendations are dealt with in another staff report. Items 3 and 4 are dealt with in this staff report, although all four items may be considered in the context of improving organizational practices. This report will give a brief overview of the issues and recommend a path forward for developing a formal Expense Reimbursement Policy. The Board may wish to add additional topics for discussion or emphasis and/or require additional information be provided by staff at a subsequent meeting.

DISCUSSION:

At the outset, it is noted that FORA already has an Expense Reimbursement Policy but that it is assumed for the purposes of this assignment that it will be replaced with a broader, more detailed policy that has been vetted in full. It is also noted that FORA already has a Travel Reimbursement Policy that should be consistent with any Expense Reimbursement Policy resulting from this process.

For the purposes of analysis, expense reimbursements might be divided into two categories, contractual/payroll related, and budgetary. In most cases, contractual/payroll related reimbursements and expenditures must conform to a distinct set of rules, laws and regulations and are best considered separately. Budget authorized expenditures (including reimbursements) must also conform to certain rules, laws and regulations, but tend to be matters of policy to be set by the Board of Directors.

Beginning with Budget Authorized Expenditures, the usual control points would be: not exceeding overall budgetary targets for certain categories (meals, travel, memberships, etc.) and/or not violating certain standards of practice (established business meal

reimbursement policies, per diem, business purpose, and so on.) Among the types of reimbursements to study in this category would be: what business meals will be reimbursed; If an employee is required to drive their own car will mileage to meetings that are not part of the regular commute to and from work and are for work related activities be reimbursed; will professional dues and memberships be reimbursed; if for the convenience of the employer, should cell phones be provided to certain employees in case of emergency or need should access be required when they are not in the office;

Another category of expenses are not actually reimbursements. These include provision of coffee, tea, bottled water, cookies and refreshments for staff, Administrative, Executive and Finance Committee meetings; cold cut lunches for regulatory personnel, law enforcement, trail users, and others who attend specialized monthly meetings during the lunch hour; Pizza and other refreshments provided for public workshops, road openings, or informational meetings on topics relevant to FORA's mission (ESCA, Base Reuse Plan Reassessment, etc.); Holiday card exchange with other agencies; annual holiday party; retirement parties for long time employees; For the most part, these are all discretionary expenditures that the Board may approve or discontinue based on budgetary priorities and common sense.

Payroll related reimbursements effect all employees and are governed by a number of FLSA and other regulatory requirements, as well as established case law and the IRS. The Board commissioned a consultant to do a compensation study last year and adopted her recommendations to bring employees to median for the region. Medical/dental/vision and retirement costs are provided under longstanding contracts with CalPERS and insurance companies. Holidays and vacations are considered by the courts to be earned when accrued, meaning a 'use it or lose it' policy may not be adopted. Employees must be paid for accrued vacation either with vacation time off or a vacation buy-back. To minimize the budgetary effects, last year the Board approved a policy limiting vacation accrual to 240 hours per employee, and vacation buy-backs to 80 hours per fiscal year.

Finally, some payroll items are contractual, meaning they are limited to an individual employee as a contractual provision. The Executive Officer is the only employee currently under such a management contract and receives a car allowance and DSL service. The rationale for the latter is related to a combination of time zone, work availability and health reasons best discussed within the context of his employment contract. What is important to note is the Board has discretion regarding contractual arrangements and may negotiate different terms should industry standard or preference dictate.

The remaining set of issues for any expense reimbursement policy to deal with would be oversight and approval. Who should review reimbursements requested by the Executive Officer and Authority Counsel? Should it be the Chair of the Executive or Finance Committees? Or both? Should one of these elected officials review a monthly

warrant list, list of reimbursements made, payroll and cash out of paid leave and travel reimbursements? Can a list of payroll reimbursements be readily prepared and appropriately reviewed or should they be paid by separate check? Industry standards may point the way. FORA currently has a dual check signing policy. Should additional signers be added?

FORA's current policy is to reimburse expenses that qualify as legitimate business expenses, as recognized under federal (IRS, OMB A-87) and state rules (AB 1234). Although none of the prior four FORA auditors reported as questionable reimbursements or payments in these categories, it would be prudent to 1. Engage a second (or even third) opinion from the forensic or successor auditor. Any practices deemed questionable should be discontinued immediately; Once any doubt as to legality is established, it is recommended that 2. Staff is directed to compile 'best practices' and policies regarding reimbursements and expenditures from neighboring agencies. 3. Have staff review these best practices with the Ad hoc subcommittee and Finance Committee and assemble them into a draft revised Expense Reimbursement Policy for FORA. 4. Have the draft policy peer reviewed by the forensic and successor auditors; 5. Present the draft policy for Board review/approval.

FISCAL IMPACT:

Reviewed by FORA Controller _____

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

COORDINATION:

FORA Executive Committee.

Prepared by _____ Approved by _____
Steve Endsley Michael A. Houlemard, Jr.