

Board and Monterey Bay Community Members,

At the request of the FORA Board Chair, please find attached the working DRAFT Implementing Agreement currently being reviewed by the Administrative Committee. The Committee will further discuss the working DRAFT TPIA on July 17, 2019 and expects to have a recommendation for the Board to consider at the August 9, 2019 Regular Board Meeting.

IMPLEMENTING AGREEMENT

THIS IMPLEMENTING AGREEMENT (hereinafter the "Agreement") is made as of Month Day, 2019 between the Fort Ord Reuse Authority (hereinafter "FORA") and the following Jurisdictions:

- the City of Del Rey Oaks,
- the City of Marina,
- the City of Monterey,
- the City of Seaside, and
- the County of Monterey (hereinafter the "Jurisdictions") with reference to the following facts:

RECITALS:

- A. FORA was a regional agency established under Government Code Section 67650 to plan, facilitate, and manage the transfer of former Fort Ord property from the United States Army (hereinafter the "Army") to the governing local jurisdictions or their designee(s).
- B. FORA acquired portions of the former Fort Ord from the Army, under an Economic Development Conveyance Memorandum of Agreement (hereinafter the "EDC Agreement") between FORA and the Army and dated June 20, 2000. FORA has delivered to the Jurisdiction a complete copy of the EDC Agreement, as executed in June 2020 and including amendments and attachments.
- C. FORA, as a regional agency, adopted a Base Reuse Plan in June 1997, which identified (1) environmental actions required to mitigate development and redevelopment of the former Fort Ord (hereinafter the "Basewide Mitigation Measures), and (2) infrastructure and related costs necessary to accommodate development and redevelopment of the former Fort Ord (hereinafter the "Basewide Costs").
- D. FORA was obligated by the California Environmental Quality Act, the Base Reuse Plan and the Authority Act (as defined in Section 1 below) to implement the Basewide Mitigation Measures and incur the Basewide Costs. This obligation is now transferred to the Jurisdictions effective July 1, 2022.
- E. FORA will operate in a limited capacity beginning on July 1, 2020 and will adjust operations on June 30, 2022 as provided in California Senate Bill 189 (Monning) **adopted in 2019** (hereinafter "SB189") **OR** FORA will cease operations on June 30, 2020.

WITH REFERENCE TO THE FACTS RECITED ABOVE, the Parties agree as follows:

Section 1. Definitions

The following capitalized and underscored terms have the following meanings when used in this agreement:

- a. Agreement means this Implementing Agreement.
- b. Army means the United States Army.
- c. Authority Act means, collectively, SB 899 and AB 1600 adopted in 1994, as codified at (i) Government Code Title 7.85, Chapters 1 through 7, commencing with Section 67650, and (ii) selected provisions of the California Redevelopment Law, including Health and Safety Code Sections 33492 et seq. and 33492.70 et seq. **and amended by SB189.**
- d. Base Closure Act means Section 2905(b)(4) of the Base Closure Act, as amended by

i. Section 2821 of the Defense Authorization Act for Fiscal Year 2000, No-Cost EDC Legislation - Public Law 106-65.

- e. Base Reuse Plan means the Fort Ord Base Reuse Plan and its accompanying environmental impact report adopted as certified by the FORA Board in June 1997 to guide the reuse of the former Fort Ord, all as amended from time to time.
- f. Basewide Costs means the estimated costs identified in the Base Reuse Plan for the following: FORA Reuse Operations, Net Jurisdictional Fiscal Shortfalls, Caretaker Costs, and Demolition. The Basewide Costs are more particularly described in the Fort Ord Comprehensive Business Plan and the Findings attached to the Base Reuse Plan.
- g. Basewide Mitigation Measures means the mitigation measures identified in the Base Reuse Plan. Basewide Mitigation Measures include: basewide transportation costs (local and regional); habitat management capital and operating costs; water line and storm drainage costs; public capital costs; and fire protection costs. The Basewide Mitigation Measures are more particularly described in the Fort Ord Comprehensive Business Plan, described in Section 1 (f), the Development and Resource Management Plan, and the Findings attached to the Base Reuse Plan.
- h. Interim Use means the Jurisdiction's use of transferred property prior to the Jurisdiction's establishment of a permanent use.
- i. Jurisdiction-Owned Jurisdiction Property means all of the Jurisdiction Property that the Jurisdiction acquires through FORA.
- j. Jurisdiction Property means the portions of the former Fort Ord located within the jurisdictional limits of the Jurisdiction.
- k. Sale or Lease Proceeds means the consideration received by the Jurisdiction or FORA for purposes of Sections 4d and 4e when leasing or selling a portion of the Jurisdiction-Owned Jurisdiction Property, minus any Direct Leasing Expenses and/or Direct Sale Expenses.

Section 2 Governance

Beginning on July 1, 2020 and terminating on June 30, 2022, FORA will operate on a limited basis and be governed by a board of five members composed of the following:

- (1) One member appointed by the City of Del Rey Oaks.
- (2) One member appointed by the City of Marina.
- (3) One member appointed by the City of Monterey.
- (4) One member appointed by the City of Seaside.
- (5) One member appointed by Monterey County.

Each member agency may appoint one alternate for each of its positions on the board, and each alternate shall have all the rights and authority of a board member when serving in that board member's place.

Exofficio members may include:

- (1) One representative from Marina Coast Water District.
- (2) One representative from the United States Army.
- (3) One representative from California State University Monterey Bay.

Commented [KF1]: This section would be removed should SB 189 not pass.

Each board member and each alternate shall be a member of the legislative body making the appointment, except that the alternate appointed by the Monterey County Board of Supervisors shall be a member of the board of supervisors or county staff. Board members and alternates shall serve at the pleasure of the member agency making the appointment.

The vote of a majority of the total membership of the board shall be required to pass or act upon any matter properly before the board, and each member of the board shall have one vote.

Section 3 Compliance with Water/Waste Water Allocations

The Jurisdictions agree to honor the FORA potable and recycled water allocations under the Base Reuse Plan as set forth in FORA resolution 07-01 for potable water and FORA resolution 07-10 for recycled water as follows (collectively "Allocations"), subject to compliance with all applicable laws including, but not limited to, CEQA and the Sustainable Groundwater Management Act (hereinafter the SGMA) and to work with Marina Coast Water District to establish parameters for future allocations.

Section 4. Capital Improvements: Local Roads

The Jurisdiction(s) will receive no funding from FORA post July 1, 2020/July 1, 2022 for local road improvement projects that may be required as mitigation for development by local projects. Should improvements be required due to local mitigation impacts, this would be from the agency's own resources, grants, or from developers contracting with the agency.

These include:

- Abrams Dr. (2nd Ave to Crescent Court, Marina)
- 8th St. (2nd Ave to Inter-Garrison Rd, Marina)
- Salinas Ave. (Abrams Drive to Reservation Rd, Marina)
- General Jim Moore Blvd. Intersection at South Boundary Rd. (Del Rey Oaks)
- South Boundary Rd. Upgrade (Del Rey Oaks/Monterey)
- NE-SW Connector (County), Eucalyptus Rd. (County), Intergarrison Road (County), Gigling Road (County)
- Gigling Road (Seaside)

Section 5 Capital Improvements: Regional Roads

Effective July 1, 2020/2022, the Transportation Agency of Monterey County (TAMC) will be responsible for the collection of Regional Development Impact Fees for the FORA Zone (Zone 5). TAMC's Regional Development Impact Fee collection and funding of its Regional Transportation Projects will satisfy FORA Basewide Mitigation Measures for off-site and Regional Roadway and Transit Improvements. TAMC will utilize a nexus-based fee program.

For developments within the FORA boundary that are entitled but will not be required to pay development impact fees until after the dissolution of FORA, the Jurisdiction with permitting authority over such development will either assess the Regional Development Impact Fee or collect a comparable development impact fee equal to the Regional Development Impact Fee amount and remit that amount to the Transportation Agency for Monterey County as mitigation for impacts to regional roads.

Section 6 Habitat Conservation Plan Implementation

The Jurisdiction(s) will receive no funding from FORA post **July 1, 2020/July 1, 2022** for Basewide Mitigation Measures or Basewide Costs.

It was estimated in the 2018 Transition Plan that by June 30, 2020 FORA will hold approximately \$21,000,000 in funds dedicated to habitat conservation. All such funds accumulated before FORA's dissolution shall be transferred in the following order of priority. If before FORA's dissolution a Habitat Conservation Plan Cooperative joint powers authority (the "HCP Cooperative") has been established, all of the habitat conservation funds held by FORA immediately prior to FORA's dissolution shall be transferred in their entirety to the HCP Cooperative for use in connection with the base-wide Habitat Conservation Plan for Fort Ord being administered by the HCP Cooperative. If no HCP Cooperative is then in existence, but a joint powers authority has been formed for the management of Habitat Management Areas within the former Fort Ord, then a portion of the habitat conservation funds held by FORA immediately prior to FORA's dissolution shall be transferred to the joint powers authority for use in connection with the management of Habitat Management Areas within the former Fort Ord and the remainder in a program for incidental take permits for future development.

If no HCP Cooperative or other joint powers authority for the regional management of Habitat Management Areas within the former Fort Ord is in existence prior to **DATE**, then FORA shall prepare a program to distribute funds as between long term management of the habitat management areas (HMA) on the one hand and incidental take permits for future development.

Section 7 Ordinance.

The Jurisdictions shall cooperate fully with the Army's investigation, characterization, and remediation of potential ordnance and explosives impediments to allow the reuse of the Jurisdiction Property as contemplated by the Base Reuse Plan. This will specifically include recognizing the Army's designated Agency effective July 1, 2020/July 1, 2022 and entering into a separate agreement establishing those requirements.

Section 8 Records Retention and Management

All FORA records including personnel files, documents, and meeting records will be transferred to the County of Monterey for retention and management.

Section 9 Land Transfer Reporting Requirements

At least annually, commencing with the year in which the FORA transfers a particular parcel of Fort Ord Property to a Jurisdiction and ending on the seventh (7th) anniversary of such transfer, the Jurisdiction shall submit to the County, serving as the Economic Development Corporation Successor and Local Reuse Authority Successor, a written report of the Jurisdiction's uses of all Sale or Lease Proceeds received by the Jurisdiction in connection with such parcel of Jurisdiction-Owned Jurisdiction Property and not shared previously with FORA. The Jurisdiction shall have forty-five (45) days from the anniversary of each transfer to prepare and submit its report to the County who will submit to the Army as the designated reporting agency.

Section 10 Dissolution of the Authority

Upon dissolution of the authority, all remaining community facilities district revenues shall be transferred to the County of Monterey. The County of Monterey shall disburse those community facilities district revenues to each underlying land use jurisdiction on a pro rata basis, based on the source of the revenue or another equitable method that the County of Monterey determines is reasonable.

If the authority has any remaining outstanding debt at the time of its dissolution, property tax revenues shall continue to be paid to the County of Monterey in accordance with subparagraph (D) of paragraph (1) of subdivision (c) of Section 33492.71 of the Health and Safety Code in an amount necessary to pay the principal and interest or other amounts on that debt. Upon the dissolution of the authority or the retirement of debt as provided in this subdivision, whichever occurs later, any remaining property tax revenues shall be transferred to the auditor-controller of the County of Monterey for appropriate distribution.

If the County of Monterey succeeds to any financial obligation of the authority as a result of the disbursement of remaining revenues or the retirement of debt, that obligation shall not constitute a debt or liability of the county, or any other member agency, but shall be payable solely from the remaining revenues provided for purposes of that obligation in the transition plan.

The County of Monterey may, before disbursing revenues as provided in this section, deduct an amount equal to the reasonable cost of administering this section out of the remaining revenues of the authority to be disbursed.

Section 11. Severability.

If any term of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, then the remaining terms shall continue in full force unless the rights and obligations of the Parties have been materially altered by such holding of invalidity.

Section 12. Dispute Resolution.

Dispute resolution procedure. If any dispute arises between the Parties under this Agreement, the Parties shall resolve the dispute in accordance with this Section 17.

Duty to meet and confer. The Parties shall first meet and confer in good faith and attempt to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Party all the information in its possession that is relevant to the dispute, so that both Parties have the information needed to reach agreement. If these negotiations fail to produce agreement after fifteen (15) days from the initial demand, either Party may demand mediation.

Mediation. If meeting and conferring do not resolve the dispute, then the matter shall be submitted for formal mediation to the Mediation Center of Monterey County, the American Arbitration Association, the Judicial Arbitration and Mediation Services, or such other mediation service as the parties may mutually agree upon. Either Party may terminate the mediation if it fails to produce agreement within forty-five (45) days from selection of the mediator. The expenses of such mediation shall be shared equally between the Parties.

Arbitration. If the dispute has not been resolved by mediation, and if both Parties wish to pursue arbitration, then the dispute shall be submitted to arbitration. The decision of the arbitrator or arbitrators shall be binding, unless within thirty (30) days after issuance of the arbitrator's written decision, either Party files an action in court.

- (i) Any potential arbitrator must affirmatively disclose all of his or her potential conflicts of interest, and a description of the nature of his or her past and current law practice (if applicable), before the Parties select the arbitrator. A Party may disqualify any potential arbitrator whom the Party subjectively perceives to have a conflict or bias. Any potential arbitrator must be a qualified professional with expertise in the area that is the subject of the dispute, unless the Parties otherwise agree.

- (ii) The Parties shall jointly select a single arbitrator.
- (ii) Before commencement of the arbitration, the Parties may elect to have the arbitration proceed on an informal basis; however, if the Parties are unable so to agree, then the arbitration shall be conducted in accordance with Code of Civil Procedure Sections 1280 and following, and to the extent that procedural issues are not there resolved, in accordance with the rules of the American Arbitration Association. Notwithstanding the foregoing, the requirements of Section 17 (d)(iv) shall apply.
- (iii) The arbitrator must issue a written decision setting forth the legal basis of the decision, making findings of all relevant facts and stating how the law was applied to the found facts, and the decision must be consistent with and apply the law of the State of California.

Attorney's Fees and Costs. Should the dispute of the Parties not be resolved by negotiation or mediation, and in the event it should become necessary for either Party to enforce any of the terms and conditions of this Agreement by means of arbitration, court action or administrative enforcement, the prevailing Party, in addition to any other remedy at law or in equity available to such Party, shall be awarded all reasonable cost and reasonable attorney's fees in connection therewith, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing Party.

Judicial Resolution. If the dispute is not or cannot be resolved by mediation, and if there is not agreement between the Parties to pursue arbitration, then either Party may commence an action in the Superior Court of Monterey County. The prevailing Party, in addition to any other remedy at law or in equity available to such Party, shall be awarded all reasonable costs and reasonable attorney's fees, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing Party.

Prevailing Party. For purposes of Sections 17(e) and (f), "prevailing Party" shall include a Party that dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.

Section 13 Entire Agreement.

This Agreement contains the entire agreement of the Parties with respect to Jurisdiction Property. No other statement or representation by any employee, officer, or agent of either Party, which is not contained in this Agreement, shall be binding or valid.

Section 14 Multiple Originals: Counterparts.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 15 Modifications.

This Agreement shall not be modified except by written instrument executed by and between the Jurisdictions.

Section 16 Interpretation.

This Agreement has been negotiated by and between the representatives of all Jurisdictions, all being knowledgeable in the subject matter of this Agreement, and each Party had the opportunity to have the Agreement reviewed and drafted by their respective legal counsel. Accordingly, any rule of law (including Civil Code Section. 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this

Agreement shall be interpreted in a reasonable manner to effectuate the purpose of the Parties and this Agreement.

Section 17 Relationship of the Parties.

Nothing in this Agreement shall create a joint venture, partnership or principal-agent relationship between the Parties unless specifically provided herein.

Section 18 Waiver.

No waiver of any right or obligation of any Jurisdictions hereto shall be effective unless in writing, specifying such waiver, executed by the Party against whom such waiver is sought to be enforced. A waiver by either Party of any of its rights under this Agreement on any occasion shall not be a bar to the exercise of the same right on any subsequent occasion or of any other right at any time.

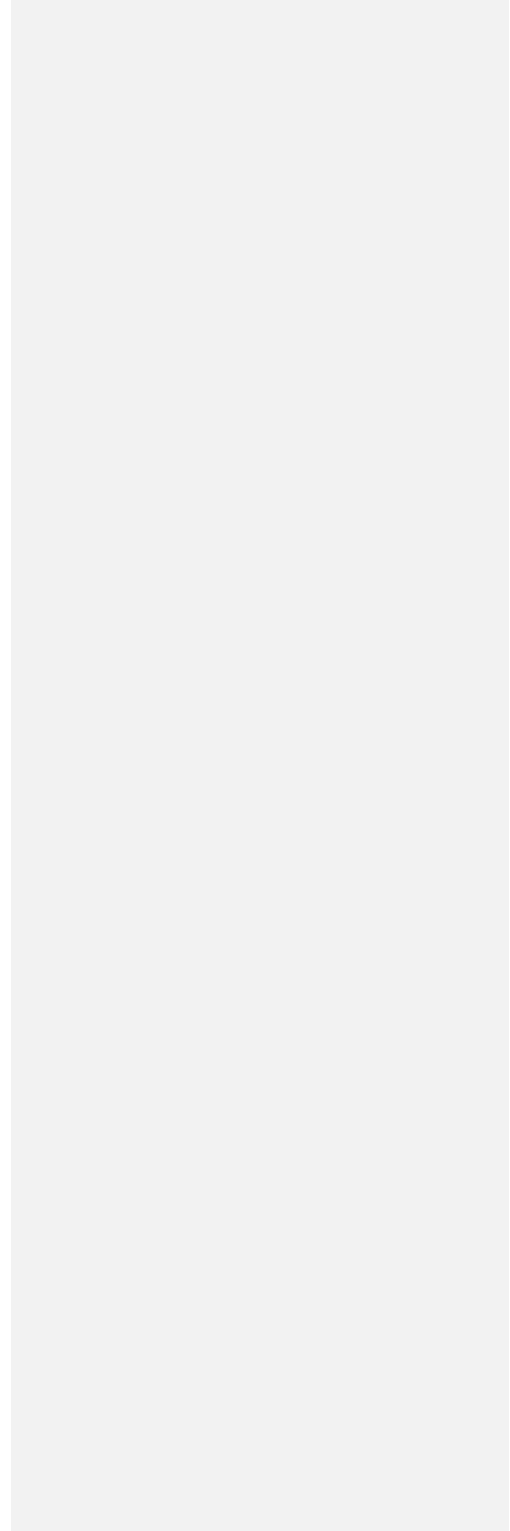
Section 19 Further Assurances.

The Parties shall make, execute, and deliver such other documents, and shall undertake such other and further acts, as may be reasonably necessary to carry out the intent of this Agreement.

Section 20 Days.

As used in this Agreement, the term "days" means calendar days unless otherwise specified.

AS OF THE DATE FIRST WRITTEN ABOVE, the Parties evidence their agreement to the terms of this Agreement by signing below.



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