REGULAR MEETING FORT ORD REUSE AUTHORITY (FORA) ADMINISTRATIVE COMMITTEE

Wednesday, February 5, 2020 at 8:30 a.m.

920 2nd Avenue, Suite A, Marina, CA 93933 (FORA Conference Room)

AGENDA

- 1. CALL TO ORDER/ESTABLISHMENT OF QUORUM
- 2. PLEDGE OF ALLEGIANCE
- 3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE
 - Caretaker Cost
- 4. PUBLIC COMMENT PERIOD

Members of the public wishing to address the Committee on matters within its jurisdiction, but not on this agenda, may do so for up to 3 minutes and will not receive Committee action. Whenever possible, written correspondence should be submitted to the Committee in advance of the meeting, to provide adequate time for its consideration.

5. APPROVAL OF MEETING MINUTES

ACTION

a. January 15, 2020 Meeting Minutes

6. FEBRUARY 13, 2020 BOARD MEETING AGENDA REVIEW

ACTION

- a. Building Removal Bond Status
- b. Habitat Working Group Update
- c. Draft Transition Plan Implementing Agreements ("TPIA") Review

7. BUSINESS ITEMS

INFORMATION/ACTION

a. ESCA/LRA Update

8. ITEMS FROM MEMBERS

INFORMATION

Receive communication from Committee members as it pertains to future agenda items.

9. ADJOURNMENT

THE ESCA LONG-TERM OBLIGATION MEETING WILL CONVENE IMMEDIATELY FOLLOWING
THE ADMINISTRIVE COMMITTEE MEETING

NEXT MEETING: February 19, 2020



FORT ORD REUSE AUTHORITY

ADMINISTRATIVE COMMITTEE MEETING MINUTES

8:30 a.m. Wednesday, January 15, 2020 | FORA Conference Room

920nd Avenue, Suite A, Marina, CA 93933

1. CALL TO ORDER

Chair Dino Pick called the meeting to order at 8:32 a.m.

The following were present:
Steve Matarazzo (UCMBEST)
Matt McCluney (CSUMB)
Mike Zeller (TAMC)
Patrick Breen (MCWD)
Vicki Nakamura (MPC)
Nicole Hollingsworth (17th State Senate)

Hans Uslar* (City of Monterey)
Melanie Beretti* (County of Monterey)
Craig Malin* (City of Seaside)
Dino Pick* (City of Del Rey Oaks)
Matt Mogensen* (City of Marina)
*Voting Member

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by City of Monterey City Manager Hans Uslar.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

 Senior Program Manager Stan Cook provided the Committee with a February 5, 2020 Environmental Services Cooperative Agreement ("ESCA") Long-Term Obligation ("LTO") Management Program Meeting draft agenda, including an example ESCA LTO 2020 Management Calendar. The meeting will be held directly following the Administrative Committee meeting in the FORA Community Information Center until 12:00 p.m.

4. PUBLIC COMMENT PERIOD

Members of the public wishing to address the Administrative Committee on matters within its jurisdiction, but not on this agenda, may do so for up to 3 minutes.

No public comments were received.

5. APPROVAL OF MEETING MINUTES

ACTION

a. January 2, 2020 Meeting Minutes

MOTION: On motion by Committee member Malin, seconded by Committee member Uslar and carried by the following vote, the Administrative Committee moved to approve the January 2, 2020 meeting minutes.

MOTION PASSED UNANIMOUSLY

6. January 10, 2020 Board Meeting Follow-up

Executive Officer Joshua Metz reviewed the January 10, 2020 Board Meeting and provided the Committee a draft transcription of the Board's key discussion points surrounding Business Item 8a: 2018 Transition Plan Implementation. Mr. Metz summarized the item and stated the Board's motion to approve the City of Seaside ("Seaside") as ESCA Successor and Successor to the Economic Development Conveyance ("EDC") (with some constraints regarding property transfer) was approved by majority vote (7 aye, 6 no), thus requiring a second vote at the next Board meeting. Staff is working to clarify the motion for the record and video of the meeting may be accessed at www.fora.org. The

Board unanimously approved the 2020 elected Board officers, as well as an Economic Planning Systems, Inc. ("EPS") contract amendment for additional funds to perform fiscal analysis in support of the Habitat Working Group and to assess Monterey County Regional Fire District ("MCRFD") revenue loss issues. FORA consultants Kendall Flint, Kristie Reimer and staff responded to questions and comments from members.

*Noted for the record, Committee member Malin exited the meeting at 8:40 a.m. Quorum maintained.

*Committee member Pick confirmed plans to coordinate meetings between jurisdictions' counsels and FORA consultants to discuss EDC/Local Redevelopment Authority concerns and review revised Transition Plan Implementing Agreements ("TPIA") a week prior to the next Administrative Committee meeting of February 5, 2020.

7. BUSINESS

a. Building Removal Bond Status Report

Mr. Metz reported building removal bond validation action will be filed next week. He and special counsel will travel to Sacramento to meet with Department of Finance ("DOF"), State Treasurer's Office and Attorney General's Office representatives to discuss the summons they will receive, and request no response be submitted. Authority Counsel Jon Giffen stated if DOF contests the validation action, the building removal bond issue will likely fail, due to prolonged litigation extending past FORA's sunset.

i. Successor Entity Designation

Mr. Metz reported that while the Administrative Committee has consistently recommended the City of Marina ("Marina") as designated building removal bond successor entity, the Board has yet to take action regarding that assignment. Mr. Metz suggested adding this action to the February 13, 2020 Board Meeting Agenda, noting it is a necessary step to move forward in the bond issue process should the validation action go uncontested.

ii. Monterey County Regional Fire District & Issue Resolution

Mr. Metz reported the Board approved an amendment to EPS's contract in order to perform financial analysis and provide a recommendation as to how to "make MCRFD whole." EPS will examine the County of Monterey's tax procedure as it relates to MCRFD revenues to determine if they are considered "harmed" by FORA's dissolution. If EPS determines MCRFD will require additional funding, the current proposed solution is to split the cost between Seaside and Marina, as they are the two main beneficiaries of the bond issuance.

b. Habitat Planning Update

- i. Draft Habitat Conservation Plan
- ii. Habitat Working Group

Mr. Metz reported the first Habitat Working Group ("HWG") meeting took place on Friday, January 10, 2020 and will recur weekly on Fridays from 10:00 a.m. - 12:00 p.m. in the Carpenter's Hall. He stated the meeting was productive, noting the Group assembled meeting agendas for the next two HWG meetings, which will be jointly-noticed with the Administrative Committee. January 17th's HWG meeting will feature presentations from U.S. Fish & Wildlife Services and Department of Fish & Wildlife representatives. Jurisdictions are encouraged to review the questions included in the HWG meeting packet and provide feedback regarding any "reduced footprint" development scenarios for consideration by FORA's consultant analyst team.

c. 2018 Transition Plan Status

Regional Government Services consultant Kendall Flint reported that at the February 5, 2020 meeting, the Committee will review current TPIAs, including ESCA. Ms. Flint stated she is working to create a transition plan flow chart, which will track in two-week increments the proposed schedule of critical tasks left to complete. Ms. Flint noted that approval of all TPIAs must be agreed to and signed by all agencies before FORA sunsets. Mr. Metz stated staff plans to bring the TPIAs to the Board as an information item in February in preparation for possible Board action in March.

8. ITEMS FROM MEMBERS

None.

9. ADJOURNMENT at 9:27 a.m.

Minutes Prepared By:

Natalie Van Fleet Administrative Assistant



FORT ORD REUSE AUTHORITY ADMINISTRATIVE REPORT BUSINESS ITEMS Subject: Economic Development Conveyance/ Local Redevelopment Authority Successor Designation Meeting Date: February 5, 2020 Agenda Number: 7c INFORMATION

RECOMMENDATION(S):

Receive report from legal counsel regarding the impact of designating the City of Seaside as the Successor Agency to the Ford Ord Reuse Authority ("FORA") under the Economic Development Conveyance ("EDC") Agreement between the United States Army and FORA.

BACKGROUND/DISCUSSION:

The underlying Local Redevelopment Authority ("LRA") / Economic Development Conveyance ("EDC") Agreement issues arise due to the imminent "Sunset" of FORA on June 30, 2020, pursuant to California law, and whether and to what extent, FORA may control or even guide Army property disposal actions under the EDC Agreement following FORA's Sunset. Both Administrative Committee and FORA Board Members wish to understand the future role of the City of Seaside ("Seaside"), should (i) FORA nominate Seaside to be FORA's successor as the Federally recognized LRA for the former Fort Ord, (ii) the Department of Defense ("DOD") Office of Economic Adjustment ("OEA") recognize Seaside as the LRA, and (iii) the Army agree to amend the EDC Agreement such that Seaside assumes FORA's roles and responsibilities under the EDC Agreement.

The EDC Agreement is authorized by Federal law, and is separate and apart from that body of California law that created FORA. Any entity recognized by the DOD-OEA as a successor to FORA with regard to the former Fort Ord, will inherit only those rights and obligations granted by the EDC Agreement, and absent further State legislation, none of the authorities, rights or obligations granted to FORA pursuant to FORA's enabling authorities.

Legal counsel from Kutak-Rock prepared a memo describing the impacts of naming the City of Seaside as successor to the EDC agreement. Staff also prepared a summary document which describes the authority that will carry over to Seaside.

The following points are critical to this discussion:

- The City of Seaside is willing to take over management of the Environmental Services Cooperative Agreement ("ESCA") subject to the following;
 - FORA names the City as its successor to the EDC Agreement between FORA and the Army.
 - b. FORA names the City as its successor to the LRA.
- The existing EDC Agreement may not be amended. The Army requires this agreement as a fundamental element to facilitate the transfer of property.

 If no successor is named, the Army would retain the property and possible future water and wastewater capacity and may or may not make it available for sale via General Services Administration.

The DRAFT Fort Ord Reuse Authority and City of Seaside Environmental Services Cooperative Agreement (ESCA) and Local Redevelopment Authority (LRA) Successor Implementing Agreement (Attachment A) was updated as of January 31, 2020 to clarify three specific items of concern for Board members:

- i. <u>Water Allocations</u>. Until such time as such allocations may be amended by agreements, Seaside agrees to honor and abide by the allocations of potable and recycled water set forth in <u>Exhibit A</u> attached hereto, subject to compliance with all applicable laws (Exhibit A is included in Attachment A for reference).
- ii. <u>Creates No Land-Use Authority</u>. Nothing in the Agreement, nor Seaside's designation as the local redevelopment authority or as FORA's successor under the ESCA or MOA creates in Seaside any land-use decision-making authority with respect to any land not within Seaside's city limits. Further, Seaside shall not require that any land-use decisions of other entities be in compliance with the Fort Ord Base Reuse Plan.
- iii. Third-Party Rights. Each of the Monterey Peninsula Community College District, the Board of Trustees of the California State University (on behalf of the Monterey Bay campus), the County of Monterey, the Cities of Del Rey Oaks, Marina and Monterey, and the Marina Coast Water District are intended third-party beneficiaries of this Agreement and shall have the right to enforce the provisions hereof as if they were direct parties hereto. Nothing in this Agreement is intended to confer upon any individual or entity, other than the parties and the above-identified third-party beneficiaries, any rights or remedies whatsoever.

FISCAL IMPACT:

None.

COORDINATION:

Authority Counsel, Administrative Committee, Executive Committee, FORA Board, FORA Special Counsel

ATTACHMENTS:

- Updated DRAFT Fort Ord Reuse Authority and City of Seaside Environmental Services Cooperative Agreement (ESCA) and Local Redevelopment Authority (LRA) Successor Implementing Agreement updated January 31, 2020
- Kutak-Rock Memo, January 24, 2020
- c. Memorandum of Agreement between the United States of America and the Fort Ord Reuse Authority for the Sale of Portions of the Former Fort Ord, as amended ("EDC Agreement") with an Execution Date of June 20, 2000

Prepared by and Approved by:

Joshua Metz

FORT ORD REUSE AUTHORITY AND CITY OF SEASIDE ENVIRONMENTAL SERVICES COOPERATIVE AGREEMENT (ESCA) AND LOCAL REDEVELOPMENT AUTHORITY (LRA) SUCCESSOR IMPLEMENTING AGREEMENT

RECITALS

WHEREAS, the Fort Ord Reuse Authority ("FORA") is a regional agency and a Corporation of the State of California established under California State Law Government Code Sections 67650, et seq., to plan, facilitate and manage the transfer of former Fort Ord property and is acknowledged as the federally recognized local reuse authority for property transfers from the Army, to the governing local jurisdictions or their designees.

WHEREAS Fort Ord, California was placed on the National Priorities List (Superfund) in 1990 due to leaking underground storage tanks, contaminated groundwater and a 150-acre landfill.

WHEREAS, in 1990, the Army executed a Federal Facility Agreement (FFA) under CERCLA Section 120 outlining the Army's Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") clean up responsibilities with respect to the former Fort Ord. The Army remains responsible for certain actions under that FFA. The FFA was amended on or about July 26, 2007, the effect of which suspends the FFA for FORA's ESCA obligations so long as FORA or its successors are in compliance with the AOC.

WHEREAS, the former Fort Ord was closed on September 30, 1994 pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101-510; hereinafter referred to as the "Base Closure Act").

WHEREAS, in accordance with Section 2905(b)(4) of the Base Closure Act, as amended by Section 2821 of the Defense Authorization Act for Fiscal Year 2000, Pub. L. No. 106-65 (1999), and the implementing regulations of the Department of Defense (32 CFR Parts 90 and 91), FORA executed an economic development conveyance agreement and acquired portions of the former Fort Ord consisting of approximately five thousand two hundred (5,200) acres of land, including all buildings, personal property, appurtenances, rights-of-way, and drainage areas upon and subject to the terms and conditions of a June 23, 2000 Memorandum of Agreement (MOA) with the United States of America.

WHEREAS, the MOA provided for transfers of property in accordance with the Army's clean-up schedule. Subsequent to the MOA execution, FORA and the local communities decided to pursue an early transfer process pursuant to Title 42 United States Code, section 9620(h)(3)(C) in order to expedite the property transfers and ultimate reuse and economic recovery for the communities affected by the Fort Ord closure.

WHEREAS, in furtherance of the early transfer process, the Army, with the approval of the EPA Administrator and the concurrence of the Governor of California, transferred title

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of 3.337 acres of munitions impacted Fort Ord property by quitclaim deed to FORA before all action to protect human health and the environment had been completed. Concurrent with this transfer without the otherwise required CERCLA covenant mandated by Title 42 United States Code, section 9620 (h)(3), FORA accepted title and agreed to perform the Army's environmental remediation with funding from the Army. Excluded from FORA's performance obligation are matters related to the groundwater at the former Fort Ord, as well as other Army responsibilities enumerated in the ESCA and elsewhere.

WHEREAS, in 2007 an "Administrative Order on Consent ("AOC") [Docket No. R9-2007-003] [was] entered into voluntarily by the United States Environmental Protection Agency ("EPA"), the California Department of Toxic Substances Control ("DTSC"), and the Fort Ord Reuse Authority. The AOC concerns the preparation and performance of potential removal actions, one or more remedial investigations and feasibility studies ("RI/FS") and one or more remedial designs and remedial actions ("RD/RA") for contaminants present on portions of the former Fort Ord located at Monterey, California ("Site") and the reimbursement for future response costs incurred by EPA and DTSC in connection with such CERCLA response actions.".

WHEREAS, in 2007 the Army executed an amendment to the Federal Facilities Agreement.

WHEREAS, in 2007 the Army and FORA executed an Environmental Services Cooperative Agreement W9128F 07 2-0l62 ("ESCA") under the authority of Title 10 United States Code, Section 2701(d)- Environmental Restoration Program (10 U.S.C. 2701) whereby FORA would perform the Army's environmental responsibilities as the Army Response Action Contractor pursuant to Title 42 United States Code, section 9619, with the Army providing funding to perform these services.

WHEREAS, the ESCA has been amended several times, the ESCA Mod 9 amendment in 2017 which provided approximately \$6.8 million for Regulatory Oversight Through31 December 2019, FORA ESCA Administrative costs during the EPA/DTSC remedial-completion documentation, property transfer process through 30 June 2020 and to perform the required long-term land management tasks, including Munitions and Explosives of Concern ("MEC") Find Assessments, inspections, enforcement, monitoring and reporting through June 30, 2028.

ESCA Mod.	ESCA Contract Line Item Number (CLIN) and Description	Expiration Date	Amount
Number	•		
	CLIN 02 – Department of Toxic Substance Control (DTSC) and United States EPA Technical Oversight Services	31 Dec. 2019	\$745,913
MOD 09	CLIN 03 – FORA ESCA Administrative Funds	30 June 2020	\$1,865,848
	CLIN 04 – Post-Closure MEC Find Assessments	30 June 2028	\$528,651
	CLIN 05 – Long Term/LUCs Management	30 June 2028	\$3,705,792

Totals \$6,846,204

WHEREAS, due to changes and delays in the transfer of properties, modifications were made to the ESCA grant leaving post-June 30, 2020 funds available are ESCA CLIN 0004 Post Closure MEC Find Assessments \$528,651 and ESCA CLIN 0005 for Long-Term Management and Land Use Control (LUC) management are \$3,705,792, (Totaling \$4,234,443 available from June 30, 2020 through June 30, 2028),

ESCA Mod. Number	ESCA Contract Line Item Number (CLIN) and Description	Expiration Date	Amount
	CLIN 04 – Post-Closure MEC Find Assessments	30 June 2028	\$528,651
MOD 09	CLIN 05 – Long Term/LUCs Management	30 June 2028	\$3,705,792
		Totals	\$4,234,443

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WHEREAS, in 2018 FORA adopted a Transition Plan as required by State Law that specifies that FORA engage the Successor-in-Interest ("Successor") provisions of the ESCA contract.

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WHEREAS, the Successor assumes responsibility and will be tasked with performing the remaining LTOs under the ESCA, including the recent amendment. It is assumed that all work under the previous \$98,000,000 contract will have been accomplished prior to FORA's dissolution as evidenced by the 2019 EPA Remedial Action Completion letters, per AOC Section XVII, Certification of Completion, housed in the Army Administrative Record located at: http://fortordcleanup.com/documents/administrativerecord/.

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WHEREAS, the City of Seaside is prepared, subject to funding, to assume ESCA responsibility and attendant local reuse authority status, including the execution of the AOC in order to complete the ESCA obligations and any property-related transfer actions required after June 30, 2020.

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NOW, THEREFORE,

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1. Incorporation of Recitals. The above recitals are hereby incorporated herein by reference.

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2. Acknowledgement. FORA agrees to acknowledge Seaside as the ESCA Successor-In-Interest under the 2018 Transition Plan.

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3. Insurance Policies. FORA agrees to designate and request the transfer its insurance coverages to Seaside. FORA shall also transfer any self-insured retention funds to Seaside to be used exclusively for ESCA and claim-related obligations. acknowledges that these coverages will expire in 2022 and 2024, respectively, and that successor designations will be subject to approval by the insurers. Seaside's successful

receipt of insurance coverage through June 30, 2028 is a condition precedent to becoming FORA's ESCA and local reuse authority successor.

- 4. ESCA LTO Program Evidence of Fiduciary and Technical Capability. FORA agrees to provide technical and/or financial assistance to Seaside to meet the terms required by the Army, EPA, and DTSC that the Successor be a single entity and demonstrate technical and financial competence to complete the work.
- 5. ESCA records and contracts funds. FORA and Seaside shall establish a mechanism for transfer of all ESCA records, back-up documents, computer files and accounting records, and contract funds to Seaside for meeting FORA's ESCA obligations.
- 6. Technical Assistance. FORA agrees to request the Army extend the funding expiration date on any remaining ESCA funds (not dedicated to Post-Closure MEC Find Assessments and Long Term/LUCs Management) for Seaside to utilize providing technical assistance and funding to complete the ESCA transfer process through June 30, 2020, including specialized legal, drafting and other staff or contract support. FORA agrees to establish and fund a pool of monies to support Seaside's assumption of responsibilities and obligations of the MOA.
- 7. Obligations. Seaside agrees to assume the Federal local redevelopment authority "LRA" designation and the remaining reporting, monitoring, and stewardship or other identified responsibilities associated with (i) the FORA-Army 2007 ESCA as FORA's Successor through the end of the ESCA Contract June 30, 2028 in order to complete property transfers and the ESCA to the extent that ESCA performance does not obligate or put at risk Seaside's municipal non-ESCA funds, and (ii) the MOA, as FORA's successor. Exhaustion or unavailability of ESCA funds with which to compensate Seaside for the performance of ESCA obligations will constitute a force majeure under the ESCA and the AOC, thereby relieving Seaside of its obligations to perform the surviving FORA obligations.
- 8. ESCA LTO Program Evidence of Fiduciary and Technical Capability. Seaside agrees to provide evidence of its fiduciary and technical capability to comply with the terms of the ESCA and manage the contract financial assets with associated invoicing and reporting responsibilities, to assure the Army, EPA and DTSC of continued ESCA fiduciary capability.

- a. To assume FORA's ESCA Long Term Obligations Management Program, as approved by the US Army, EPA and DTSC
 - i. Personnel. Hire (2) full-time qualified staff to manage ESCA as required under the contract provisions as currently amended through 2028, but with allowances for indirect administrative overhead to assure the Army, EPA and DTSC of continued ESCA technical capacity.

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ii. ESCA Long-Term Obligation Support Services Contract. Enter into Support Services Contracts through 2028 with specialists Arcadis, Weston

 Solutions, Inc. and Westcliffe Engineers, Inc. (or other qualified vendors), including allowances for indirect administrative overhead to assure the Army, EPA and DTSC of continued ESCA technical capacity.

- iii. <u>Representation</u>. Contract with Counsel reasonably qualified on environmental issues with experience in working with state and federal entities (Army, EPA and DTSC) for review and compliance as noted in the ESCA and the AOC.
- 9. <u>Coordination with other Entities</u>. Seaside agrees to enter into agreements with the Monterey Peninsula Community College District, the Board of Trustees of the California State University (on behalf of the Monterey Bay campus), the County of Monterey, the Cities of Del Rey Oaks, Marina and Monterey, and the Marina Coast Water District or others for the property transfers and other necessary property-related rights to effectuate the reuse and the oversight, reporting, response, and other long-term stewardship obligations listed in and consistent with (a) the ESCA through 2028 on behalf of the Army or (b) the MOA.
 - i. <u>Water Allocations</u>. Until such time as such allocations may be amended by agreements, Seaside agrees to honor and abide by the allocations of potable and recycled water set forth in <u>Exhibit A</u> attached hereto, subject to compliance with all applicable laws.
 - ii. <u>Creates No Land-Use Authority</u>. Nothing in this Agreement, nor Seaside's designation as the local redevelopment authority or as FORA's successor under the ESCA or MOA creates in Seaside any land-use decision-making authority with respect to any land not within Seaside's city limits. Further, Seaside shall not require that any landuse decisions of other entities be in compliance with the Fort Ord Base Reuse Plan.
- 10. <u>ESCA Amendment</u>. The parties agree to work cooperatively to successfully receive Army, EPA and DTSC concurrence that Seaside is the formal ESCA Successor and execute the ESCA upon review and approval of terms and conditions. Seaside agrees to execute an ESCA Agreement and to comply to comply with the U.S. Army Corps of Engineers ("USACE") oversight and grant management requirements for funding to Seaside under the ESCA terms, provided however, that the Successor activities are fully funded, including without limitation provision for PLL insurance coverage, funding shall be provided from January 1, 2024 through June 30, 2028 or the completion of the ESCA obligations. Seaside will not pay for Regulatory Oversight unless it is a reimbursement funded by the Army through the end of the ESCA obligations.
- 11. <u>Administrative Order on Consent</u>. The parties agree to work cooperatively to successfully receive EPA and DTSC approval that Seaside is the formal Successor to execute an AOC upon review of terms and conditions.

- 12. .<u>Amendment</u>. This Agreement or any provision hereof may be changed, waived, or terminated only by a statement in writing signed by the Party against which such change, waiver or termination is sought to be enforced.
- 13. <u>No Waiver</u>. No delay in enforcing or failing to enforce any right under this Agreement will constitute a waiver of such right. No waiver of any default under this Agreement will operate as a waiver of any other default or of the same default on a future occasion.
- 14. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Agreement are to any extent declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, the Parties agree to amend the terms in a reasonable manner to achieve the intention of the Parties without invalidity. If the terms cannot be amended, the invalidity of one or several terms will not affect the validity of the Agreement as a whole, unless the invalid terms are of such essential importance to this Agreement that it can be reasonably assumed that the Parties would not have contracted this Agreement without the invalid terms. In such case, the Party affected may terminate this Agreement by written notice to the other Party without prejudice to the affected Party's rights in law or equity.
- 15. <u>Entire Agreement</u>. This Agreement is intended by the Parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof. Acceptance of or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing Party had knowledge of the nature of the performance and opportunity for objection.
- 16. <u>Choice of Law</u>. This Agreement will be construed in accordance with the laws of the State of California.
- 17. <u>Further Assurances</u>. Each Party agrees to execute and deliver all further instruments and documents and take all further action that may be reasonably necessary to complete performance of its obligations hereunder and otherwise to effectuate the purposes and intent of this Agreement.
- 18. <u>Headings</u>. The headings of the sections hereof are inserted for convenience only and shall not be deemed a part of this Agreement.
- 19. <u>Notices</u>. Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to this Agreement shall be acknowledged by the Party giving such notice, and shall to the extent reasonably practicable be sent by hand delivery, and if not reasonably practicable to send by hand delivery, then by telecopy, overnight courier, electronic mail, or registered mail, in each case to the other Party at the address for such Party set forth below (Note: A Party may change its place of notice by a notice sent to all other Parties in compliance with this section):

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2	City of Seaside	Fort Ord Reuse Authority
3	Attn. City Manager	Attn: Executive Officer
4	440 Harcourt Avenue	920 2nd Avenue, Suite A
5	Seaside, CA 93955	Marina CA
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7	w/ an email copy to cityattorney@)ci.seaside.ca.us
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9	20. Term of Agreement: This A	greement shall be effective on the Effective Date
10	specified at the beginning of the Agree	ment and shall remain in effect unless and until
11	terminated by mutual agreement of the P	arties or upon the legal dissolution of the Fort Ord
12	Reuse Authority.	
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14	21. Authorization. Each party a	affirms that it is fully authorized to enter into this
15	Agreement. The Seaside City Manage	r is designated on behalf of Seaside, subject to
16		the City Attorney, to enter into the terms and
17	conditions of this Memorandum of Agre-	ement, the AOC and the ESCA and sign related
18	ESCA and AOC reporting and financial d	
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20	22. <u>Third-Party Rights</u> . Each	of the Monterey Peninsula Community College
21	District, the Board of Trustees of the Cali	fornia State University (on behalf of the Monterey
22	Bay campus), the County of Monterey, the	ne Cities of Del Rey Oaks, Marina and Monterey,
23	and the Marina Coast Water District are in	tended third-party beneficiaries of this Agreement
24	and shall have the right to enforce the pro	visions hereof as if they were direct parties hereto.
25	Nothing in this Agreement is intended to	confer upon any individual or entity, other than the
26	parties and the above-identified third	d-party beneficiaries, any rights or remedies
27	whatsoever.	
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32	IN WITNESS WHEREOF, each Pa	arty has executed the Agreement with the approval
33	of its governing body as of the date first v	vritten above.
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35	CITY OF SEASIDE:	
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38		Date:
39	Craig Malin	
40	City Manager	
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42	APPROVED AS TO FORM:	
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46	CITY ATTORNEY	

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3	FORT ORD REUSE AUTHORITY:	
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6		Date:
7	Joshua Metz Executive Officer	
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9	APPROVED AS TO FORM:	
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13	AUTHORITY COUNSEL	

EXHIBIT A

Current Water Allocations & Potential* Future Percentage-based Allocations

	Current Potable Water Allocation in Acre Feet	Future Water Allocation Based on Percentage of Current Water Allocation	Current Recycled Water in Acre Feet	Future Recycled Water Allocation Based on Percentage of Current Recycled Water Allocation
City of Marina	1340	29%	345	25%
City of Monterey	65	1%	0	0%
City of Seaside	1012.5	22%	453	33%
County of Monterey	720	15%	134	10%
CSUMB	1035	22%	87	6%
City of Del Rey Oaks	242.5	5%	280	21%
CA State Parks	44.5	1%	0	0%
UCMBEST	230	5%	60	4%

*In the unlikely event of availability of additional water from the US Army it would be distributed following the percentage-based allocation provide above. These allocations reflect previously agreed water distribution as per FORA Board Resolution No. 07-1 (potable water) and No. 07-10 (recycled water) (2007), and are consistent with the Marina Coast Water District Urban Water Management Plan (2105). They also incorporate the Memorandum of Understanding between the County of Monterey, the City of Seaside, and the FORA allocating 10 acre-feet (af) to the Central Coast Veterans Cemetery (2009), and includes the transference of 15 af to the City of Marina for Veterans Transition Center housing (effective Nov 20, 2017).

Kutak Rock LLP

1625 Eye Street, NW, Suite 800, Washington, DC 20006-4029 office 202.828.2400

George R. Schlossberg 202.828.2418 qeorge.schlossberg@kutakrock.com

MEMORANDUM

TO: JOSH METZ, EXECUTIVE OFFICER

FORT ORD REUSE AUTHORITY

FROM: GEORGE SCHLOSSBERG

DATE: JANUARY 24, 2020

RE: REVIEW AND ANALYSIS OF THAT CERTAIN MEMORANDUM OF

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE FORT ORD REUSE AUTHORITY FOR THE SALE OF PORTIONS OF THE

FORMER FORT ORD

Introduction:

This Memorandum is in response to your request that we review, summarize, and analyze the rights and responsibilities of the Fort Ord Reuse Authority ("FORA"), as the Federally recognized local redevelopment authority ("LRA") for the former Fort Ord, and a party to that certain *Memorandum of Agreement between the United States of America and the Fort Ord Reuse Authority for the Sale of Portions of the Former Fort Ord*, as amended ("EDC Agreement") with an Execution Date of June 20, 2000. This Memorandum will address the LRA/EDC Agreement issues alone; we will defer discussion of the Environmental Services Cooperative Agreement ("ESCA") at this time.

The underlying LRA/EDC Agreement issues arise due to the imminent "Sunset" of FORA on June 30, 2020, pursuant to California law, and whether and to what extent, FORA may control or even guide Army property disposal actions under the EDC Agreement following FORA's Sunset. Specifically, we understand that FORA Board Members wish to understand the future role of the City of Seaside ("Seaside"), should (i) FORA nominate Seaside to be FORA's successor as the Federally recognized LRA for the former Fort Ord, (ii) the DOD Office of Economic Adjustment ("OEA") recognize Seaside as the LRA, and (iii) the Army agree to amend the EDC Agreement such that Seaside assumes FORA's roles and responsibilities under the EDC Agreement.

¹ The EDC Agreement, together with EDC Amendment No. 1, are attached as an Exhibit to this memorandum.

REVIEW AND ANALYSIS OF FORT ORD EDC AGREEMENT

Discussion:

I. The EDC Agreement:

An EDC Agreement permits the Secretary of a Military Department to dispose of surplus property at former military installations closed or realigned pursuant to the Defense Base Closure Act of 1990, as amended ("Base Closure Act"). Unlike other more general Federal disposal authorities, Section 2905(b)(4) of the Base Closure Act permits the United States to dispose of surplus base closure property for no monetary consideration for economic development purposes only to State or local governmental entities recognized as an LRA by OEA. Section 2905(b)(4) was enacted specifically to help communities address the loss of jobs and other economic development challenges brought upon them by base closures.

Following the decision by the Defense Base Closure Commission to realign Fort Ord, and the enactment of appropriate legislation by the State of California creating the Fort Ord Reuse Authority, FORA was recognized by OEA as the LRA for the former Fort Ord. Subsequently, FORA prepared and submitted to the Army an Application for an Economic Development Conveyance dated October 30, 1997. That application, and the subsequent discussions and negotiations, formed the basis for the EDC Agreement.

In simple terms, the EDC Agreement is a "purchase and sale agreement," that addresses limited obligations relating to the transfer and conveyance of various surplus property interests of the United States to FORA. Although the full document contains dozens of pages, most of which are legal descriptions, form documents, and Army environmental reports, the EDC Agreement itself consists of twenty-five (25) pages describing what, when, and how portions of the former Fort Ord were to be conveyed by the Army to FORA, and FORA's obligation to report on its activities to the Army.

a. Transfer of Property Interests:

The heart of the EDC Agreement is contained in Article 2, which states, in material part, as follows:

"2.01. No Cost Economic Development Conveyance."

"A. ...[t]his Agreement represents a contract whereby the Government agrees to convey to the Authority, and the Authority agrees to acquire the Property, by means of a No Cost Economic Development Conveyance, for no monetary consideration. The consideration for the property is the Authority and the Authority member jurisdictions' agreement to commit proceeds from the sale or lease of the Property toward the economic development of the former Fort Ord for the benefit of the general public in accordance with the terms of this Agreement."

REVIEW AND ANALYSIS OF FORT ORD EDC AGREEMENT

- "B. Following the conveyance of the Property to the Authority, the Authority shall transfer the Property, at no cost, to the Authority member jurisdiction with land use jurisdiction over such portion of the Property. …"
- "C. In accordance with appropriate State of California and local redevelopment laws and regulations, the Authority or Authority member jurisdiction in possession of the Property may transfer, sell or lease such parcel(s) of Property to a Bona Fide Purchaser or Lessor except for the parcel(s) of Property that the Authority or Authority member jurisdiction utilizes for governmental purposes, consistent with California law."

[Underline added for emphasis]

As indicated by these three subsections, the EDC Agreement (i) imposes on FORA a contractual obligation to accept the surplus Federal EDC property from the United States, (ii) imposes on FORA a contractual obligation to re-convey such property to the underlying land use jurisdiction in which the property resides, and (iii) authorizes the land use jurisdictions or FORA to sell the surplus Federal EDC property or to retain such property for governmental purposes.

[Underline added for emphasis]

b. Water and Wastewater:

- (i) <u>Allocation of Water and Wastewater Collection Systems and Rights</u>: Article 5 of the EDC Agreement discusses the disposition of the water and wastewater collection systems on the EDC Property and the Presidio of Monterey Annex, including their respective water rights and wastewater discharge rights ("Water/Wastewater"). Specifically, Section 5.02 provides that the Government reserves out of its controlled interests:
 - " ... 1729 acre feet per year ("afy") of water exclusively for Government use ("Government Water Rights"). Also, the Government will retain ownership of 1.08 million gallons per day ("mgd") of wastewater discharge rights ("Government Wastewater Discharge Rights")."

Section 5.02 provides further that if the Government does not utilize all of the retained Government Water Rights or Government Wastewater Discharge Rights:

"... the Authority shall have the right to negotiate with the Government for use of the Government Water Rights or Government Wastewater Discharge Rights not

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² EDC Agreement Amendment No. 1 reduces these amounts for specific projects, including SunBay Housing, and Bay View Community/Brostrom Housing Area.

REVIEW AND ANALYSIS OF FORT ORD EDC AGREEMENT

utilized by the Government (collectively "Unutilized Government Water/Wastewater Rights"). The Government and the Authority agree to meet and confer regarding the Unutilized Government Water/Wastewater Rights two (2) years following the completion of the installation of water meters at the Presidio of Monterey Annex ("POMA"). The Government shall determine the amounts of unutilized Government Water/Wastewater Rights on an annual basis and will consult with the Authority regarding this determination on an annual basis. In the event of a proposed transfer of Government Water Rights or Government Wastewater Discharge Rights to a third party, the Authority shall have the first right of refusal to any such transfer rights."

[Underline added for emphasis]

With regard to the Water/Wastewater conveyed to FORA pursuant to the EDC Agreement, and for all future Water/Wastewater conveyed to FORA, or its successors or assigns, the EDC Agreement mandates an equitable allocation of such Water/Wastewater, by requiring in Section 5.03 and Section 5.04, the following:

- 5.03. Equitable Allocation of Water. The Authority, and its successors and assigns, shall cooperate with the Marina Coast Water District, Monterey County Water Resources Agency and grantees of former Fort Ord Property to establish and apply a fair process to ensure that all grantees of former Fort Ord property will be provided an equitable supply of the water at the former Fort Ord.
- 5.04. Wastewater Discharge Rights. The Authority, and its successors and assigns, shall cooperate with the Marina Coast Water District, the Monterey Regional Water Pollution Control Agency and grantees of former Fort Ord Property to establish and apply a fair process to ensure that all grantees of former Fort Ord property will enjoy equitable utilization of the existing sewage treatment capacity, including existing connections to the former Fort Ord sewage collection system.

We believe the "...fair process..." established and applied by FORA pursuant to Section 5.03 and Section 5.04 of the EDC Agreement to ensure an equitable supply of water and the equitable utilization of the existing sewage treatment capacity at the former Fort Ord can and should be binding on any FORA successor to the EDC Agreement to the extent that additional Water/Wastewater is ever made available to FORA, or a successor LRA, pursuant to the EDC Agreement.

(ii) <u>Disposition of Water and Wastewater Collection Systems and Rights:</u> As of the Effective Date of the EDC Agreement, the United States intended to convey to the Marina Coast Water District ("District"), the water and wastewater collection systems on the EDC Property

REVIEW AND ANALYSIS OF FORT ORD EDC AGREEMENT

and the Presidio of Monterey Annex, including their respective water rights and wastewater discharge rights ("Water/Wastewater"), pursuant to the District's "No-Cost Public Benefit Conveyance" application dated August 26, 1997³.

Subsequently, pursuant to Article 1.a. of EDC Agreement Amendment No. 1, the Government determined to transfer such Water/Wastewater to FORA, and obligated FORA to transfer such Water/Wastewater to the District, by stating:

"a. In lieu of the Government transferring the Water and Wastewater Systems and all associated and ancillary rights directly to the District under the PBC … the Government, …, shall transfer to the Authority at no-cost, as part of the Economic Development Conveyance, … the Water and Wastewater Systems on the Property and the Ord Military Community, together with all their respective water rights and wastewater discharge rights and ancillary rights."

"c. Immediately following the transfer of the Water and Wastewater Systems on the Property and the Ord Military Community, together with all their respective water rights and obligations and wastewater discharge rights and obligations and ancillary rights and obligations, from the Government to the Authority, the Authority shall transfer such Water and Wastewater Systems and all associated ancillary rights and obligations to the District."

[Underline added for emphasis]

c. <u>Use of Sale or Lease Proceeds and Reporting Obligation:</u>

To guarantee that the surplus Federal EDC property is used to support the region's economic development, the EDC Agreement further requires in Subsection 2.01.D:

"D. The Authority agrees that Sale or Lease Proceeds received by the Authority or Authority member jurisdiction <u>during the Reporting Period</u> shall be used or obligated either on-site or off-site to support the economic redevelopment of, or economic development related to, the former Fort Ord, California ("Economic Development Uses")."

Pursuant to Amendment No 1, Article 3 to the EDC Agreement, dated October 23, 2001, the EDC Agreement Reporting Period was defined as follows:

"1.20. <u>Reporting Period.</u> A period of time, beginning with the recordation of the Deed or Lease in Furtherance of Conveyance ("LIFOC") for the initial transfer

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³ See: EDC Agreement, Section 5.01.

REVIEW AND ANALYSIS OF FORT ORD EDC AGREEMENT

of property and ending seven (7) years thereafter, within which the Authority will submit annual statements as described in paragraph 2.01(F) of this Agreement."

Importantly, the Army and FORA conducted the initial closing and conveyance of surplus Federal EDC property on August 8, 2000, thereby starting FORA's Reporting Period. Accordingly, FORA's Reporting Period, and EDC Agreement reporting obligations, ended on or around August 9, 2007.

d. Balance of EDC Agreement:

The balance of the EDC Agreement is procedural in nature, and establishes the general terms and conditions for the transfer of surplus Federal EDC Property from the United States to FORA, as the recognized LRA for the former Fort Ord. Various EDC Agreement sections set forth defined terms (Article 1), describe the timing and pre-conditions for conveyance of property interests (Article 3), the documents to be utilized for various transfers (form Deeds and other Documents set forth as Exhibits), title issues (Article 8), environmental notices and disclosures mandated by law (Articles 15, 16, 17, 18), representations of the Parties (Articles 11, 12), disputes (Article 24), insurance and damage related issues (Article 21), and various clauses mandated by Government Contracts (Articles 20, 26, 27, 28, 31).

Kutak Rock assisted in the negotiation of the EDC Agreement, and the EDC Agreement Amendments, and we remain available to further discuss any of the specific terms and conditions contained therein.

II. What is not Required by the EDC Agreement:

The Fort Ord Reuse Authority is a creature of State law. The EDC Agreement is authorized by Federal law, and is separate and apart from that body of California law that created FORA. Any entity recognized by the DOD Office of Economic Adjustment as a successor to FORA with regard to the former Fort Ord, will inherit only those rights and obligations granted by the EDC Agreement, and absent further State legislation, none of the authorities, rights or obligations granted to FORA pursuant to FORA's enabling authorities.

While we defer to FORA's regular counsel as to FORA's State granted rights, obligations, and authorities, we believe that FORA's role as the Federally recognized LRA for the former Fort Ord and as a Party to the EDC Agreement gives FORA, and any Federally recognized FORA successor, the ability only to receive surplus Federal EDC property interests from the United States, with the attendant obligation to re-convey those interests to the appropriate land use jurisdiction. Moreover, should additional Water/Wastewater as described in the EDC Agreement ever become available, FORA, and any Federally recognized FORA

⁴ Section 2.01(F) relates to the Authority's annual financial statement to be certified by an independent Certified Public Accountant.

REVIEW AND ANALYSIS OF FORT ORD EDC AGREEMENT

successor, may seek to receive such Water/Wastewater, and to transfer such interests to the District with allocations established in accordance with the "Fair" process mandated by Section 5.03 and Section 5.04 of the EDC Agreement.

III. Can FORA Control the Designation of an LRA Successor:

It would be appropriate for FORA to indicate its preference to OEA for how the United States should address the remaining EDC conveyance issues following FORA's sunset; in fact, both OEA and the Army have expressed an interest in having a designated successor, and in learning how FORA believes the process should play out post July 1, 2020. This FORA preference for a successor, be it Seaside or not, could be expressed to OEA and the Army by simple resolution, or any manner of letter, agreement or other document. However, the United States is not bound by anything FORA decides, or any party it designates, or anything in an agreement arrived at between the various FORA constituents. Should it chose to do so, OEA could recognize as the LRA an entity different from the one designated by FORA, or recognize no entity.

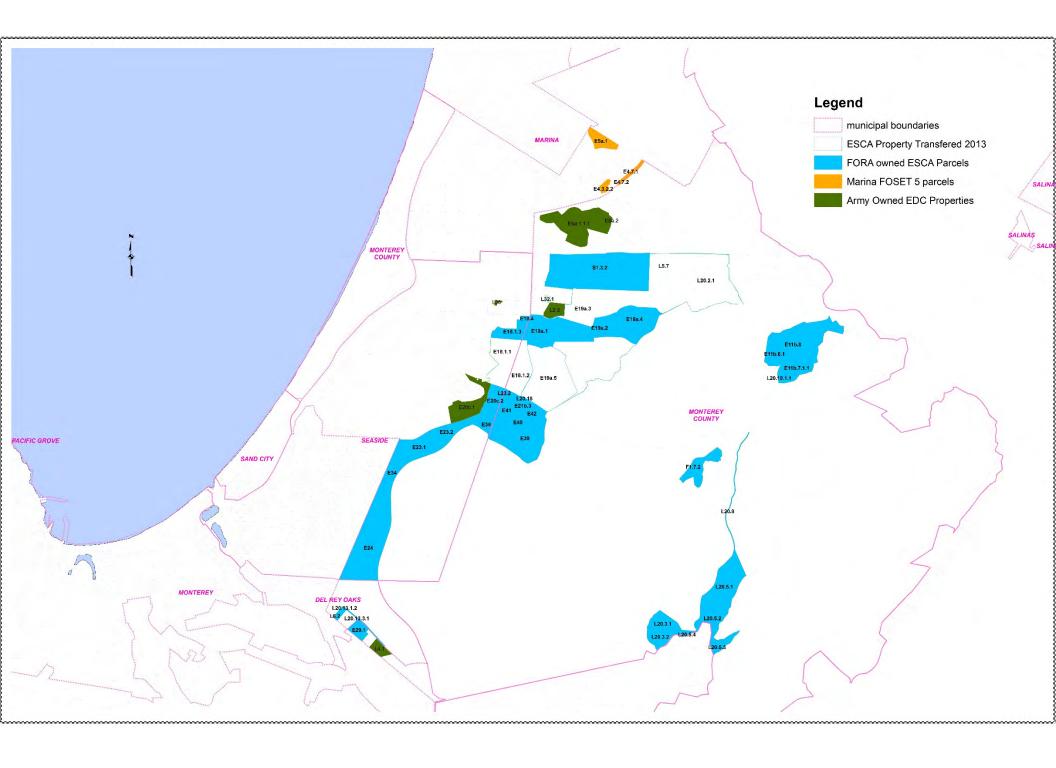
Should FORA decide to designate Seaside as the LRA successor, for purposes of implementing the EDC Agreement, we recommend some form of agreement with the other land use jurisdictions setting forth the ground-rules for what, when, and how Seaside will address property interests conveyed to Seaside as the LRA pursuant to the EDC Agreement. Of course, it should be remembered, that OEA could designate Seaside as the successor LRA, even without FORA's designation, or such implementing Agreements, with the understanding that Seaside will simply comply with the terms of the EDC Agreement.

Conclusion:

I trust this Memorandum is responsive to your request for information concerning the limited Federal rights and obligations granted or imposed upon FORA as the federally recognized local redevelopment authority for the former Fort Ord. If you have any questions, please call me directly at 202-828-2418, or call my cell at 202-549-7117, or contact me by email at George.schlossberg@kutakrock.com.

G.R.S.

Attached: Memorandum of Agreement between the United States of America and the Fort Ord Reuse Authority for the Sale of Portions of the Former Fort Ord, as amended, together with EDC Agreement Amendment No. 1.



Jurisdiction	Parcel Number	Army Parcel Name	Army/FORA In- Deed (with Recorder's Number)	Old MEC CRUP Recorder's Number	Finish Survey Mods - ARCADIS	DTSC Completes CRUP Amendment	New MEC CRUP Recorded (With Recorder's Number)	State Remedial Completion Concurrence - DTSC	BRAC CERCLA Warranty & Deed Amendment	FORA Property Transfer Notification Letters	FORA Out-Deeds Ready to Sign
ESC	ESCA FOSET-5 CERCLA Warranty & Deed Notices				7 weeks to complete after survey's done. (Requested DTSC Overnight to FORA)	1week after CRUP Amendment complete	1week after CRUPs completed. (DTSC Internal)	8 weeks from FORA CERCLA Warranty/Deed Amendment Request	1 week after Surveys modifications completed	4 weeks after Warranty & Deed Amendment Complete	
CSUMB	S1.3.2	Expansion Area 3B (CSUMB Off-Campus)	DACA05-9-07-507, RN 2009028287	RN 2009028285	Complete	Complete	RN 2016033452	Complete	Request made September 2019	Notification made October 2019	Dec-19
Seaside	E18.1.3 E18.4 E20c.2 E23.1 E23.2 E24 E34	Housing future Water Tank Housing Future ROW / Tetail ROW / Housing future ROW / Housing future	DACA05-9-07-506, RN 2009028282	RN 2009028281	Complete	Complete	RN 2019057763	Dec-19	Request made October 2019	Notification made October 2019	Jan-20 Jan-20
MPC	E21b.3 E38 E39 E40 E41 E42 F1.7.2 L23.2	Housing Single Family MPC Reserve MPC Reserve Range Extension MPC Habitat Reserve MPC Habitat Reserve BLM Parcel H / MOUT Habitat / field study area	DACA05-9-07-508, RN 20090228274	RN 2009028273	Complete	Complete	RN2020001066	Dec-19	Request made October 2019	Notification made October 2019	Jan-20
County	E11b.6.1 E11b.7.1.1 E11b.8 E19a.1 E19a.2 E19a.4 L20.18 L20.19.1.1 L20.3.1 L20.3.2 L20.5.1 L20.5.2 L20.5.3	Habitat Reserve Habitat Reserve Habitat Reserve Development / mixed use County Development Habitat Reserve Habitat Reserve / County ROW / Eucalyptus Road ROW / Barloy Canyon Wolf Hill ROW / Wolf Hill Lookout Ridge ROW / Lookout Ridge Lookout Ridge South Boundary Park - Barloy Canyon Road -	DACA05-9-07-505, RN 2009028280	RN 2009028279	Complete	Complete	RN 2020001067	Jan-20	Request made January 2020	Request made January 2020	Feb-20
Del Rey Oaks	L20.13.1.2 L20.13.3.1	ROW / Gen. Jim Moore ROW / South Boundary	DACA05-9-07-502, RN 2009028278	RN 2009028277	Complete	Complete	RN 2020001064	Feb-20	Request made December 2019	Notification made December 2019	Feb-20
Monterey	E29.1	Business Park / Light	DACA05-9-07-501, RN 2009028276	RN 2009028275	Complete	Complete	RN 2020001063	Feb-20	Request made December 2019	Notification made December 2019	Feb-20
MRPD - Parks	L6.2	Frog Pond	DACA05-9-07-504, RN 2009028270	RN 2009028269	Complete	Complete	RN 2020001065	Jan-20	Request made January 2020	Request made January 2020	Feb-20
		ort Ord Property Transfers	5	Old CRUP Number							
County	E8a.1.1 E8a.2	Landfill Landfill carrot	Deed Needed		N/A	N/A	Unknown	N/A	N/A	N/A	After 2020
County	E4.7.2	Imjin Parkway Gas Extraction	DACA05-9-09-505, RN 2009028284	RN 2009028283	N/A	Needs Kutack Rock Out-Deed Created	N/A	N/A	Complete	N/A	Jan-20
County	L2.3 L2.4.1	MST - North Gigling MST - North Gigling	FORA reviewing Deed		N/A	Kutak Rock modifying CRUP		N/A	N/A	N/A	Feb-20
Seaside	E20c.1	Housing Future	Deed Needed		N/A	Army and Kutak Rock developing deeds		N/A	N/A	2020	Unknown
Seaside	L36	Rescinded Diocese	FOST 13 & Deed Needed		Army finishing Environmental -	Army and Kutak Rock developing deeds		N/A	N/A	N/A	Feb-20

WHEN RECORDED MAIL TO:

FORT ORD REUSE AUTHORITY

100 12th STREET - BUILDING 2880

MARINA, CA 93933

ATTN: MICHAEL HOULEMARD, JR.

CEHTIFIED COPY ORIGINAL DOCUMENT STEWART TITLE

JUN 23 2000

Time: 8:00 Series # 2 MT

2000040174

THIS SPACE FOR RECORDER'S USE ONLY

0600-BT

TITLE OF DOCUMENT

MEMORANDUM OF AGREEMENT

This instrument filed for record by Stewart Title Company as an accommodation only. It has not been examined as to it's execution or as to it's effect upon the title. HEN RECORDED MAIL TO:

FORT ORD REUSE AUTHORITY

100 12th STREET - BUILDING 2880

MARINA, CA 93933

ATTN: MICHAEL HOULEMARD, JR.

Joseph F. Pitta Monterey County Recorder Recorded at the request of CRKATHLEEN 6/23/2000 8:00:00

Stewart Title

DOCUMENT: 2000040124



Titles: 1/ Pages: 106
Fees...
Taxes...
Other...

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TITLE OF DOCUMENT

MEMORANDUM OF AGREEMENT

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KR EXECUTION VERSION

6/7/00

MEMORANDUM OF AGREEMENT BETWEEN

THE UNITED STATES OF AMERICA,
ACTING BY AND THROUGH
THE SECRETARY OF THE ARMY,
UNITED STATES DEPARTMENT OF THE ARMY

AND

THE FORT ORD REUSE AUTHORITY

FOR THE SALE OF
PORTIONS OF THE FORMER FORT ORD
LOCATED IN
MONTEREY COUNTY, CALIFORNIA

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3	THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE
4	SECRETARY OF THE ARMY, UNITED STATES DEPARTMENT OF THE ARMY
5	AND
6	THE FORT ORD REUSE AUTHORITY
7	FOR THE SALE OF PORTIONS OF THE FORMER FORT ORD
8	LOCATED IN MONTEREY COUNTY, CALIFORNIA
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EXHIBITS 1 2 3 4 DESCRIPTION OF THE PROPERTY: 5 PARCEL 1 EXHIBIT A 6 PARCEL X.....EXHIBIT A 7 8 9 IT IS CONTEMPLATED THAT THERE WILL BE MULTIPLE PARCELS CONVEYED AT MULTIPLE CLOSINGS 10 11 EXAMPLE DEED..... EXHIBIT B 12 13 SAMPLE FOST (PARCEL 1)......EXHIBIT C 14 15 REPRESENTATIONS TO BE PRESENTED AT CLOSING: 16 17 GOVERNMENT REPRESENTATIONS EXHIBIT D-1 18 AUTHORITY REPRESENTATIONS EXHIBIT D-2 19 20 RESERVED EXHIBIT E 71 PROGRAMMATIC AGREEMENT EXHIBIT F 23 24 BILL OF SALE FOR PERSONAL PROPERTY 25 CONVEYED TO THE AUTHORITY EXHIBIT G 26 27 RESERVED EXHIBIT H 28 29 RESERVED EXHIBIT I 30 31 RIGHT OF ENTRY EXHIBIT J 32 33 CONVEYANCE SCHEDULE EXHIBIT K 34 35 ENVIRONMENTAL REMEDIATION SCHEDULE..... EXHIBIT L 36 37 ACCESS ROADS AND EASEMENTS EXHIBIT M 38 39 LIST OF GOVERNMENT REMEDIATION 40 DECISION DOCUMENTS EXHIBIT N 41

MEMORANDUM OF AGREEMENT BETWEEN

THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE SECRETARY OF THE ARMY, UNITED STATES DEPARTMENT OF THE ARMY AND

THE FORT ORD REUSE AUTHORITY FOR THE SALE OF PORTIONS OF THE FORMER FORT ORD LOCATED IN MONTEREY COUNTY, CALIFORNIA

of ______, 2000 by and between the United States of America, acting by and through the Secretary of the Army (hereinafter referred to as "Government"), and the Fort Ord Reuse Authority, created under Title 7.85 of the California Government Code, Chapters 1 through 7, inclusive, commencing with Section 67650, et seq., and selected provisions of the California Redevelopment Law, including Division 24 of the California Health and Safety Code, Part 1, Chapter 4.5, Article 1, commencing with Section 33492, et seq., and Article 4, commencing with Section 33492.70, et seq., and recognized as the Local Redevelopment Authority (hereinafter referred to as "Authority") by the Office of Economic Adjustment on behalf of the Secretary of Defense (collectively the "Parties").

RECITALS:

WHEREAS:

- a. The Government is the owner of a portion of certain real property, improvements and other rights appurtenant thereto together with all personal property thereon, located in Monterey County, California, and commonly referred to as the former Fort Ord, which was utilized as a military installation.
- b. The former Fort Ord was closed on September 30, 1994 pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101-510; hereinafter referred to as the "Base Closure Act").
- c. In accordance with Section 2905(b)(4) of the Base Closure Act, as amended by Section 2821 of the Defense Authorization Act for Fiscal Year 2000, Pub. L. No. 106-65 (1999), and the implementing regulations of the Department of Defense (32 CFR Parts 90 and 91), the Government desires to convey and the Authority desires to acquire portions of the former Fort Ord consisting of approximately five thousand two hundred (5,200) acres of land, including all buildings, personal property, appurtenances, rights-of-way, and drainage areas (the "Property" as hereinafter defined), upon and subject to the terms and conditions set forth herein.

As soon as the Property, or discrete parcels thereof, may be conveyed consistent with the requirements of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"; 42 U.S.C. 9620[h]), as amended, and other legal and policy requirements, the Government intends to convey to the Authority by one or more quitclaim deeds the Property or parcels thereof, subject to any necessary restrictions, reservations, conditions, and exceptions at no cost, as set forth below.

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1 42 **AGREEMENTS**

NOW, THEREFORE, in consideration of the foregoing premises and the respective representations, agreements, covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Government and the Authority agree as follows:

ARTICLE 1. DEFINITIONS:

- When used herein, the following terms shall have the respective meanings set forth opposite each such term:
- 1.01. Agreement. This Memorandum of Agreement, including the Exhibits attached hereto which are incorporated herein by reference and made a part of this Agreement.
- 1.02. Adjusted Gross Proceeds. All revenues received by the Authority or the Authority member jurisdictions from a sale, lease, or equivalent use of the Property (licenses, permits, concession agreements, etc.) or portions of the Property to a Bona Fide Purchaser or Lessor minus Direct Expenses as hereinafter defined.
- 1.03. Bona Fide Purchaser or Lessor. A non-governmental purchaser or Lessor of the Property from the Authority or an Authority member jurisdiction.
- 1.04. Claims. Any and all losses, costs, liability, judgment, claims, proceedings, demands, actions, fines, penalties, expenses, damages, or other fees.
- 1.05. Closing. The transactions during which portions of the Property transfer documents, along with other documents, are executed and delivered by the Government and the Authority, and the Government transfers a portion of the Property to the Authority. The Parties contemplate that there will be multiple closings.
- 1.06. Closing Documents. Those documents required to be delivered by the Parties at Closing as required herein.

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1.07. <u>Deed.</u> A recordable quitclaim deed substantially in the form of Exhibit B-1 and Exhibit B-2, conveying to the Authority all rights and title held by the Government in and to the Property.

1.08. <u>Direct Expenses</u>. Those customary and usual expenses expended directly by the Authority or by Authority member jurisdictions when selling or leasing the Property or portions of the Property to a Bona Fide Purchaser or Lessor, including utilities, insurance, and applicable Federal State and local taxes.

1.09. <u>Environmental Baseline Survey</u>. The investigative report entitled Environmental Baseline Survey ("EBS") for the Property dated April 1992, prepared by the Government and any supplements or amendments thereto.

1.10. <u>FOSET</u>. A Finding of Suitability for Early Transfer that represents a written determination by the Government that a parcel of the Property containing areas of suspected Hazardous Substances and contaminants may be transferred by Deed to the Authority before all necessary remedial action has been taken pursuant to Section 120(h)(3)(C) of CERCLA.

1.11. <u>FOSL</u>. A Finding of Suitability to Lease that represents a written determination by the Government that a parcel of the Property may be leased for the intended purpose to the Authority in full compliance with all applicable laws and regulations.

1.12. <u>FOST</u>. A Finding of Suitability to Transfer that represents a written determination by the Government that a parcel of the Property may be transferred by Deed to the Authority in full compliance with Section 120(h)(3) or Section 120 (h)(4) of CERCLA, substantially in the form of Exhibit C.

1.13. <u>Lease</u>. A lease instrument under which the Government agrees to lease the Property, in whole or in part, to the Authority in accordance with Article 6 of this Agreement.

1.14. <u>Lease Property.</u> The portion of the Property, if any, which the Government agrees to Lease to the Authority in accordance with Article 6 of this Agreement.

1.15. <u>Parcel 1.</u> The portion of the Property located on the former Fort Ord as shown on Exhibit A.

1.16. <u>Parcel X</u>. The portion of the Property located on the former Fort Ord as shown on Exhibit A.

1 2	1.17. <u>Personal Property</u> . The related personal property to be transferred by the Government to the Authority listed in the Bill of Sale for Personal Property Conveyed to the Authority
3	substantially in the form of Exhibit G.
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5	1.18. Property. The Real Property and Personal Property.
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7	1.19. Real Property. Approximately five-thousand one-hundred eighty-eight (5,188) acres
8	of land consisting of a number of parcels of land located in the bounds of the former Fort Ord,
9	Monterey County, California, which has been designated as surplus property, all as more particularly
0	described in Exhibits A, together with:
.1	A All level dieses Coulty's and a state of the forest markets as for the 1'm and a state of
.2	A. All buildings, facilities, roadways, and other infrastructure, including the storm
	drainage systems and the telephone system infrastructure, and any other improvements
4	thereon (including all replacements or additions thereto between the date of this Agreement and the date of conveyance of the Property to the Authority),
.5 16	and the date of conveyance of the Property to the Admonty,
17	B. All appurtenant easements and other rights appurtenant thereto, including
18	easements and rights appurtenant thereto, permits, licenses, privileges and not otherwise
19	excluded herein,
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21	C. All hereditaments and tenements therein and reversions, remainders, issues,
22	profits, privileges and other rights belonging or related thereto,
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24	D. Irrevocable non-exclusive access easements over existing roads located on
25	portions of the Property awaiting conveyance to the Authority and contiguous real property
26	owned by the Government, including but not limited to access over North-South Road,
27	Monterey Avenue, Gigling Road, etc., all as set forth in Exhibit M,
28	E. All Mineral Diebter if a new and leastly Dyman of Land Management and
29	E. All Mineral Rights, if approved by the Bureau of Land Management, and
30	F. All subject to the following reserved rights:
31 32	1. This subject to the following reserved rights.
33	1. Access from the Bureau of Land Management area out Eucalyptus Road,
34	Watkins Gate Road, and Barloy Canyon Road to Reservation Road.
35	
36	2. Access to public roads from the Presidio of Monterey Annex.
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38	3. During the term of its existing franchise agreement, currently scheduled
39	to expire on November 19, 2005, a reserved right for USA Media Group, LLC
40	(formerly Coastside Cable TV), or its successor in interest, to occupy and use parcel
41	E20c1.2 (their antenna parcel) and a portion of parcel E2d.1 where their existing
42	office trailers are located together with continued access to their cable TV lines. It

is understood by the Parties that any relocation of USA Media Group, LLC, for development purposes will be accomplished at the sole cost and expense of USA Media Group LLC.

1.20. <u>Reporting Period.</u> A period of time beginning when the Government transfers Property to the Authority by either deed or Lease in Furtherance of Conveyance and ending seven (7) years thereafter. For reporting purposes, all reports required of the Authority or an Authority member jurisdiction in a given year will be given once a year on or before December 31st of that year.

1.21. <u>Sale or Lease Proceeds</u>. The Adjusted Gross Leasing Proceeds or Adjusted Gross Sales Proceeds received by the Authority or Authority member jurisdiction minus the Direct Leasing Expenses or Direct Selling Expenses, as the case may be.

1.22. <u>Title Insurer</u>. Such title insurance company as the Authority shall from time to time designate.

1.23. <u>Title Policy</u>. An owner's title insurance policy and endorsements thereto, subject only to the Permitted Title Exceptions, insuring the Authority's interest in the Real Property, which shall be as fee simple owner to the Property conveyed to the Authority by the Deeds.

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ARTICLE 2. NO COST ECONOMIC DEVELOPMENT CONVEYANCE:

2.01. No Cost Economic Development Conveyance.

A. In accordance with Section 2905(b)(4) of the Base Closure Act, as amended by Section 2821 of the Defense Authorization Act for Fiscal Year 2000, Pub. L. 106-65 (1999), and the implementing regulations of the Department of Defense (32 CFR Parts 90 and 91), this Agreement represents a contract whereby the Government agrees to convey to the Authority, and the Authority agrees to acquire the Property, by means of a No Cost Economic Development Conveyance, for no monetary consideration. The consideration for this Property is the Authority and the Authority member jurisdictions' agreement to commit proceeds from the sale or lease of the Property toward the economic development of the former Fort Ord for the benefit of the general public in accordance with the terms of this Agreement.

B. Following the conveyance of the Property to the Authority, the Authority shall transfer the Property, at no cost, to the Authority member jurisdiction with land use jurisdiction over such portion of the Property. In lieu of transferring such portion of the Property to the Authority member jurisdictions with land use jurisdiction over such portion of the Property, FORA, with the approval of such Authority member jurisdiction, may transfer such portion of the Property to an entity selected and designated by the Authority member jurisdiction in accordance with State and local law.

- C. In accordance with appropriate State of California and local redevelopment laws and regulations, the Authority or Authority member jurisdiction in possession of the Property may transfer, sell or lease such parcel(s) of Property to a Bona Fide Purchaser or Lessor except for the parcel(s) of Property that the Authority or Authority member jurisdiction utilizes for governmental purposes, consistent with California law.
- D. The Authority agrees that Sale or Lease Proceeds received by the Authority or Authority member jurisdiction during the Reporting Period shall be used or obligated either on-site or off-site to support the economic redevelopment of, or economic development related to, the former Fort Ord, California ("Economic Development Uses"). In the event Congress enacts legislation, regarding the Reporting Period after the date of this Agreement, the Army will in good faith exercise the authority granted to modify the terms of this Agreement consistent with the intent thereof. Economic Development Uses shall include, but are not limited to:
 - 1. Road construction, operation, and maintenance.
 - 2. Transportation infrastructure and management facilities construction, operation, and maintenance.
 - 3. Storm and sanitary sewer construction, operation, and maintenance.
 - 4. Police, fire protection, and other public facilities and equipment to include construction, operation, and maintenance.
 - 5. Utility infrastructure construction, operation, and maintenance.
 - 6. Building rehabilitation, including maintenance pending rehabilitation.
 - 7. Historic property preservation, construction, operation, and maintenance.
 - 8. Pollution prevention equipment or facilities construction, operation, and maintenance.
 - 9. Demolition including maintenance of area for safety and health purposes pending demolition.
 - 10. Disposal of hazardous materials generated by demolition or rehabilitation.
 - 11. Landscaping, grading and other site or public improvements to include habitat management and related costs.
 - 12. Planning for, or the marketing of, the redevelopment and reuse of the former Fort Ord, including planning, design, environmental assessments, surveying, related professional services, and financing costs associated with eligible activities.

Other activities related to those listed above would also be considered an appropriate allowable Economic Development Use. In order for investments to be considered allowable Economic Development Uses, the Authority or Authority member jurisdiction must demonstrate that they are related to those listed above and benefit the Authority's economic redevelopment and long term job generation efforts on the former Fort Ord.

E. Notwithstanding any other provision of this Agreement, the Government reserves the right to recoup from the Authority, Sale or Lease Proceeds not utilized for Economic Development Uses during the Reporting Period. The Government may challenge the use of the Sale or Lease

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Proceeds in accordance with subsection D only if such challenge is set forth in writing and delivered to the Authority within one hundred and eighty (180) days after the submission to the Government of the certified annual financial statement showing such Economic Development Uses (the "notification"). The Authority shall have sixty (60) days from the date of the Notification to remit the amount due to the Government, unless the Parties agree to other arrangements for the payment of the amount due or the Authority objects to such Notification pursuant to the Contract Disputes Article of this Agreement. These payments must be paid on or before they are due in order to avoid sanctions imposed by the Debt Collection Act of 1982, 31 U.S.C. 371.

F. The Authority shall prepare and submit to the Government the Authority's annual statement and an annual financial statement certified by an independent Certified Public Accountant that identifies the use of the Sale or Lease Proceeds ("Accounting System"). The Authority shall enter into individual agreements with each Authority member jurisdiction ("Implementation Agreements") to insure that Authority member jurisdictions shall use the Accounting System and otherwise comply with this Agreement for all matters related to the Property.

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2.02. <u>Conveyance in Phases</u>. The Government will convey and the Authority will accept transfer of the Property in phases, through multiple Closings, as soon as the Army is able to execute a FOST or FOSET, as appropriate, and in accordance with Article 4. As parcels are conveyed, the Cooperative Agreements effective as of the 1st day of July, 1999 with the Army shall be null and void as to such parcels.

2.03. Environmental Remediation Level.

A. Unless a deferred covenant transfer through a FOSET is requested by the Authority, the Government shall:

1. except for unexploded ordnance, environmentally remediate the Property prior to its conveyance in accordance with the decision documents listed in Exhibit "N" and their supportive documents to a level supportive of the uses delineated in the Final FORA Base Reuse Plan dated July 1997, in accordance with the schedule set forth in Exhibit L; and

2. with regard to unexploded ordnance, use all reasonable effort to remediate the Property to a level supportive of the uses delineated in the Final FORA Base Reuse Plan dated July 1997, in accordance with the schedule set forth in Exhibit L.

B. The Government recognizes the ongoing interest of the Authority in the environmental remediation of the property, and agrees to include the Authority or its designated representative in meetings of the BRAC Clean-Up Team, as appropriate, to ensure the Government is informed of the Authority's concerns prior to the Government making final decisions.

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3	ARTICLE 3. CLOSING:
4	to the December shall be conveyed in accordance
5	3.01. Closing Schedule. The Parties agree that the Property shall be conveyed in accordance
6	with the schedule for conveyance of the Property as set forth in Exhibit K; should an action
7	described in this section not take place by the date or time frame identified in the appropriate
8	described in this section not take place by the date of the subsection, all subsequent dates or time frames for all subsequent actions, with the agreement of the subsection, all subsequent dates or time frames for all subsequent actions, with the agreement of the
9	Parties, shall be deferred on a day-for-day basis.
0	3.02. Requirements for Initial Closing and for All Subsequent Closings.
1	3.02. Requirements for findar closing and for the good
2	A. Time and Place.
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4	1. Initial Closing. The Parties will use their best efforts to consummate
.5	the Initial Closing no later than two (2) months after the later of:
.6 17	
18	a. the execution of this Agreement or the completion of a FOST for
9	Parcel 1 by the Government,
Ú	b. such other time as the Parties may mutually agree, or
21	c. the execution of the Habitat Management Plan by the Authority
22	and all Authority member jurisdictions.
23	a the many Closings shall take place within
23 24	2. Subsequent Closings. Subsequent Closings shall take place within
25	forty-five (45) days after the Government completes the FOST or FOSET for the
26	portion of Property to be conveyed to the Authority.
27	3. Place. Closings shall be consummated at the offices of the Title
28	Insurer, or such other place as the Parties may mutually agree.
29	
30	B. Government Deliveries. The Government shall deliver to the Initial Closing and
31	Subsequent Closings as appropriate the following documents reasonably satisfactory to the
32 33	Authority and in a form previously reviewed and approved by the Authority:
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35	1. Executed Deed(s) conveying fee ownership to the Authority to Parcel 1
36	and to all other Parcels for which a FOST or FOSET has been executed, substantiany
37	in the form set forth in Exhibit B.
38	into for each Parcel conveyed to the
39	2. Final FOST or FOSET, as appropriate, for each Parcel conveyed to the
40	Authority at the Closing.
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- 3. Executed Bill of Sale for the Personal Property to be conveyed to the Authority at the Closing with the Parcel conveyed to the Authority at the Closing substantially in the form set forth in Exhibit G.
- 4. Executed Lease in Furtherance of Conveyance, if any, in a manner set forth in Article 6.
- 5. Any permits, leases or licenses transferred or assigned relating to the Parcel conveyed to the Authority at the Closing.
- 6. A listing of the location of copies of all existing construction drawings, reports, and documents concerning as-built conditions of the facilities as well as identification of the location of the repository for all environmental reports, studies, tests and records relating to each parcel as provided for in Article 9.03.
- 7. Certificate confirming that the representations and warranties of the Government set forth in this Agreement are true and correct as of the date of the Closing in substantially the form set forth in Exhibit D-1.
- 8. Such additional documents as might be required by California law, the Title Insurer, or the Authority.
- C. Authority Deliveries. The Authority shall deliver to the Initial Closing and Subsequent Closings, as appropriate, the following documents reasonably satisfactory to the Government and in a form previously reviewed and approved by the Government:
 - 1. Executed Lease in Furtherance of Conveyance, if any, in a manner set forth in Article 6.
 - 2. A legal opinion stating that the Authority has the legal authority to execute this Agreement and accept conveyance and transfer of the Property.
 - 3. Certificate confirming that the representations and warranties of the Authority set forth in this Agreement are true and correct as of the date of the Closing in substantially the form set forth in Exhibit D-2.
 - 4. Such additional documents as might be required by California law, the Title Insurer, or the Government.

ARTICLE 4. PERSONAL PROPERTY:

4.01. <u>Personal Property</u>. In addition to the conveyance of the Real Property, the Government shall transfer to the Authority the Personal Property which the Parties agree is related to and necessary to use the Real Property, as specified and identified in and pursuant to the terms and conditions in the Bill of Sale substantially in the form set forth in Exhibit G.

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ARTICLE 5. WATER AND SEWER RIGHTS:

- 5.01. Marina Coast Water District. Immediately following the execution of this Agreement, the Government shall transfer to the Marina Coast Water District (the "District") the water and wastewater collection systems on the Property and the Presidio of Monterey Annex, including their respective water rights and wastewater discharge rights as defined in and pursuant to a no cost Public Benefit Conveyance ("PBC") in response to the application filed by the District dated August 26, 1997.
- 5.02. Government. The Authority understands that in the assignment of the water rights to the District, the Government reserves 1729 acre feet per year ("afy") of water exclusively for Government use ("Government Water Rights"). Also, the Government will retain ownership of 1.08 million gallons per day ("mgd") of wastewater discharge rights ("Government Wastewater Discharge Rights"). If the Authority or any other entity, at its own cost and expense, installs water conservation devices on the property not transferred to the Authority, resulting in decreased Government requirements for water or wastewater discharge, or the Government does not utilize all of the Government Water Rights or Government Wastewater Discharge Rights, the Authority shall have the right to negotiate with the Government for use of the Government Water Rights or Government Wastewater Discharge Rights not utilized by the Government (collectively "Unutilized Government Water/Wastewater Rights"). The Government and the Authority agree to meet and confer regarding the Unutilized Government Water/Wastewater Rights two (2) years following the completion of the installation of water meters at the Presidio of Monterey Annex ("POMA"). The Government shall determine the amounts of unutilized Government Water/Wastewater Rights on an annual basis and will consult with the Authority regarding this determination on an annual basis. In the event of a proposed transfer of Government Water Rights or Government Wastewater Discharge Rights to a third party, the Authority shall have the first right of refusal to any such transfer rights.
- 5.03. Equitable Allocation of Water. The Authority, and its successors and assigns, shall cooperate with the Marina Coast Water District, Monterey County Water Resources Agency and grantees of former Fort Ord Property to establish and apply a fair process to ensure that all grantees of former Fort Ord property will be provided an equitable supply of the water at the former Fort Ord.

5.04. <u>Wastewater Discharge Rights.</u> The Authority, and its successors and assigns, shall cooperate with the Marina Coast Water District, the Monterey Regional Water Pollution Control Agency and grantees of former Fort Ord Property to establish and apply a fair process to ensure that all grantees of former Fort Ord property will enjoy equitable utilization of the existing sewage treatment capacity, including existing connections to the former Fort Ord sewage collection system.

ARTICLE 6. LEASE IN FURTHERANCE OF CONVEYANCE:

6.01. <u>Lease</u>. In furtherance of and pending conveyance of the Property, at the Authority's request and to the extent the Government can honor such request, the Government agrees to lease the Property, in whole or in part, to the Authority, and the Authority agrees to accept such lease or leases in furtherance of conveyance, pursuant to the terms, covenants, and conditions mutually agreed to by the Parties as provided for in the FOSL. The Lease shall be executed by the Government and the Authority as soon as the Agreement and a FOSL are executed.

ARTICLE 7. EFFECT OF TRANSFER OF TITLE AND CONTINUING OBLIGATIONS OF THE GOVERNMENT:

- 7.01. Effects of Deeds. The delivery of the executed Deeds pursuant to this Agreement from the Government to the Authority shall be deemed full performance by the Government of its obligations hereunder with regard to the portions of the Property conveyed by each Deed other than any obligations of the Government which are required by this Agreement or by law (including without limitation any obligations under CERCLA Section 120(h) and under Section 330 of the Department of Defense Authorization Act of 1993) to be performed after the delivery of each such Deed.
- 7.02. As-is, Where-is. Except as provided herein, all of the Property conveyed or leased hereunder will be in an "as-is where-is" condition and without any representation or warranty whatsoever and without any obligation on the part of the United States of America except as expressly provided for by law or in this Agreement.

7.03. Liabilities.

A. The Government shall remain responsible for all liabilities, claims, demands, judgments, suits, litigation, amounts payable (collectively, "Pre-Closing Obligations") against the Government or the Property attributable to Government activity on the Property, including activities of the Government's contractors, lessees, licenses and others acting under Government authority, prior to the conveyance or lease of each parcel of the Property to the Authority. The Authority shall notify the Government of the existence or occurrence of any such Pre-Closing Obligations and shall cooperate with the Government in the payment, settlement and disposition thereof.

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B. The Authority agrees to indemnify and hold harmless the Government, its employees and agents for activities conducted by the Authority, its agents, employees or contractors under the Lease or any Right-of-Entry authorized and granted pursuant by the Government to the Authority.

ARTICLE 8. TITLE:

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8.01. Title. The deed for each parcel of Property (the "Deeds") shall convey all right and title held by the United States of America in and to the Property, subject to and free from encumbrances, covenants, conditions, restrictions, limitations on use or notices except those that are imposed under this Agreement (including the Exhibits attached hereto), or which are recorded as a matter of public record in the Recorder of Deeds Office, Monterey County, California, as of the date of execution of this Agreement. The Authority reserves the right to review the title as conveyed by each Deed. Except as otherwise provided for in this Agreement, the Government agrees not to grant, after the date set forth in this section, any encumbrances, covenants, conditions, restrictions, limitations on use or notices concerning the Property without the specific consent of the Authority.

8.02. Title Evidence. Any title insurance that may be desired by the Authority will be procured at its sole cost and expense. The Government will, however, cooperate with the Authority or its authorized agent, and will permit examination and inspection of any documents relating to the title of the Property as it may have available. It is understood that the Government will not be obligated to pay for any expense incurred in connection with title matters. The Authority may, at its sole cost and expense, on or before the conveyance date order such searches as it deems appropriate confirming the absence of Additional Title Exceptions.

ARTICLE 9. GOVERNMENT'S OBLIGATIONS PRIOR TO CONVEYANCE:

- 9.01. Restrictions. From the Effective Date of this Agreement to the Closing, the Government shall not do, permit, or agree to do, any of the following:
 - A. Sell, encumber or grant any interest in the Property or any part thereof in any form or manner whatsoever or otherwise perform or permit any act which will diminish or otherwise affect the Authority's interest under this Agreement or in or to the Property or which will prevent the Government's full performance of its obligations hereunder, unless the Authority is first informed.
 - B. Remove or alter any fixtures or Personal Property from the Property listed on Exhibit G, unless the Authority is first notified and agrees to such removal or alteration.
 - C. Knowingly undertake any action, legal or otherwise, that may impact the Government's ability to convey the Property to the Authority, without first notifying the Authority in a timely manner and seeking the Authority's consultation.

9.02. Zoning, Annexation and Assessment. The Government acknowledges the Authority's beneficial ownership interest in the Property, as outlined in this Agreement, and recognizes the Authority's role in the economic development of the Property. The Government authorizes the Authority to take such land use planning activities as the Authority deems necessary to implement the FORA Base Reuse Plan. The Government agrees that it will not interfere with or protest or challenge any annexation, zoning petition or application or the imposition of any land-based financing district over the Property.
9.03. <u>Delivery Requirements</u> . Upon the Authority's written request, the Government shall make available to the Authority, not later than thirty (30) calendar days following the date of this Agreement, or as soon thereafter as they become available, true, correct and complete copies of the following, if not previously delivered to the Authority:
A. All non-proprietary information in Licenses and Contracts including all amendments relating to any portion of the Property;
B. Plans and specifications for the improvements on the Property;
C. Drawings of above and below ground utilities (including gas, sewer, well, septic, water, telephone and electrical service cables) located under or on the Property, wherever available;
D. Essential records with respect to the Property (including any records relating to transactions with taxing authorities, governmental agencies, utilities, and others with whom the Authority may be dealing following its acquisition of the Property);
E. The Environmental Baseline Survey and any maps, amendments or correspondence related thereto;
F. The available FOSTs and FOSETs, as appropriate, issued as to the Property; and
G. All documents required elsewhere to be delivered pursuant to this Agreement.
9.04. <u>Notification of Changes</u> . The Government shall notify the Authority if the Government becomes aware of any transaction or occurrence prior to the Closing which would make any of the representations of the Government contained in this Agreement not true in any respect.
9.05. Maintenance of the Property. The Government shall maintain or cause to be maintained the Property in accordance with the Federal Property Management Act and Regulations, subject to the availability of funds until such time as the Property is conveyed or leased to the Authority through the full performance of its obligations under the Cooperative Agreements effective as of July 1, 1999.

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ARTICLE 10. AUTHORITY'S OBLIGATIONS PRIOR TO CONVEYANCE:

10.01. Habitat Management Plan.

- A. The Authority shall execute the Installation-Wide Multispecies Habitat Management Plan ("HMP") for the Former Fort Ord, California, dated April 1997, concurrent with the execution of this Agreement.
- B. The Authority member jurisdictions shall execute the HMP within ninety (90) days following the execution of this Agreement.

ARTICLE 11. GOVERNMENT REPRESENTATIONS:

The Government hereby represents to the Authority on and as of the Effective Date of this Agreement and as of the Closing as follows:

- 11.01. Execution of Agreement. The Government has full capacity, right, power and authority to execute, deliver, and perform this Agreement and all documents to be executed by the Government pursuant hereto, and all required action and approvals therefor have been duly taken and obtained. This Agreement and all documents to be executed pursuant hereto by the Government are and shall be binding upon and enforceable against the Government in accordance with their respective terms.
- 11.02. <u>Complete Information</u>. To the best of the Government's knowledge, information and belief, the information included in the Exhibits hereto and the documents to be delivered to the Authority pursuant to this Agreement or previously delivered to the Authority are true, correct and complete in all material respects, and the same do not omit any material information required to make the submission thereof fair and complete.
- 11.03. <u>Possession.</u> To the best of the Government's knowledge, information and belief, the information included in the Exhibits hereto and the documents to be delivered to the Authority pursuant to this Agreement or previously delivered to the Authority acknowledge any leases in existence or persons who have possessory rights or any claims in respect to the Property that will survive Closing.
- 11.04. <u>Claims</u>. The Government will notify the Authority on or before each Closing and effective at such Closing of any claims, causes of action or other litigation or proceedings pending or threatened with respect to the ownership or operation of the Property or any part thereof (including disputes with mortgagees, governmental authorities, utilities, contractors or adjoining land owners).

11.05. <u>Notice</u>. To the best of the Government's knowledge, information and belief, the Government has not received any notice of (and is not otherwise aware of) any violations of any legal requirements with respect to the Property which have not been entirely corrected or are in the process of being corrected.

11.06. Environmental Baseline Survey. The Environmental Baseline Survey, and if available, the appropriate FOST, FOSET, and/or FOSL reflects all information in the possession or control of the Government with respect to the presence, or suspected presence, or any condition on or associated with the Property that presents, or could present, a risk to human health or the environment. Further, the Environmental Baseline Survey has been prepared, under the direction of the Government, in full compliance with all material requirements of all applicable directives, guidance documents, and other policies, and is based on thorough and comprehensive investigations and analyses of the historical uses and current conditions of the Property.

11.07. <u>Contracts, Leases or Licenses</u>. To the best of the Government's knowledge, information and belief, the information included in the Exhibits hereto and the documents to be delivered to the Authority pursuant to this Agreement or previously delivered to the Authority acknowledges any contracts, leases or licenses with respect to the Property that will survive Closing.

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ARTICLE 12. AUTHORITY REPRESENTATIONS:

 12.01. Representations. The Authority hereby represents to the Government on and as of the date of this Agreement and on and as of the Closing, that the Authority has full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by the Authority pursuant hereto, and all required action and approvals therefor have been duly taken and obtained. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of the Authority shall be duly authorized to sign the same on the Authority's behalf and to bind the Authority thereto. This Agreement and all documents to be executed pursuant hereto by the Authority are and shall be binding upon and enforceable against the Authority in accordance with their respective terms.

ARTICLE 13. SHARING OF SERVICES, UTILITIES AND ROADS:

13.01. Sharing of Services. The Government and the Authority shall grant to the other at no cost such easements or licenses as may be required (a) for the use of roads, utilities and other services necessary or desirable for the enjoyment and benefit of those portions of the Property owned by the other Party as shown on Exhibit M, and (b) for ingress and egress as may be necessary, as shown on Exhibit M.

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ARTICLE 14. RIGHT OF ENTRY:

- 14.01. Right of Entry. From the Effective Date of this Agreement to the Final Closing, the Government agrees to issue a license, right of entry, or other appropriate document to the Authority in the form set forth as Exhibit J, for Authority representatives, agents, employees, lenders, contractors, appraisers, architects and engineers designated by the Authority, access to and entry upon the Property and the improvements thereon to examine, inspect, measure, conduct infrastructure improvements, demolish infrastructure, hazardous and other material disposal and removal, construction of infrastructure and test the Property except where such entry would conflict or jeopardize personal safety or interfere with remediation activities. In exercising the right of entry granted by this section, the Authority shall: 1) provide reasonable notice to the Government of the date, time, and purpose of the entry; 2) obtain the Government's prior written consent to any infrastructure demolition, land-disturbing testing, including the taking of core samples, and hazardous and other material disposal; 3) ensure that any activities on the Property do not interfere with Government operations or activities; and 4) comply with terms and conditions specified by the Government (including reasonable insurance requirements), which the Government agrees it shall not unreasonably impose.
 - A. Any work and improvements by the Authority shall be subject to terms, conditions, and restrictions deemed necessary by the Government and set forth in the license, Right of Entry, or other appropriate document. The cost of said improvements shall be borne entirely by the Authority, and shall remain the property of the Government if the transfers anticipated herein do not occur. The Authority shall indemnify and hold the Government harmless from all claims, liability, loss, cost, environmental contamination, or damage that may occur as a result of the undertaking by the Authority of said improvements or site preparation, except where such claims, liability, loss, cost, environmental contamination, or damage is the result of the gross negligence or willful misconduct of the Government or its employees, agents, or contractors. It shall be the responsibility of the Authority at its expense to obtain all governmental permits and clearances and complete any environmental analysis or documentation required for the undertaking of said improvements or site preparation, including but not limited to:
 - 1. permits and clearances from the Army, the U.S. Environmental Protection Agency, and the California Department of Toxic Substance Control ("DTSC"), related to the ongoing environmental cleanup required under the Federal Facility Agreement for the former Fort Ord;
 - 2. air quality analysis and documentation; and
 - 3. any permits, analysis, and/or documentation required by the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the Endangered Species Act, the Coastal Zone Management Act, the Clean Air Act

and Amendments, the Clean Water Act, and other applicable Federal, state and local laws and regulations.

B. The Government shall cooperate with the Authority as necessary to obtain said permits, provided that the Authority shall discharge any expense or liability of the Government in connection therewith.

ARTICLE 15. ENVIRONMENTAL PROVISIONS:

15.01. Environmental Condition of the Property.

- A. For those Parcels where the Government has determined that no further remediation is necessary, the Government and the Authority hereby agree to be bound by the terms and conditions of the Deed, substantially in the form set forth in Exhibit B.
- B. For those Parcels to be conveyed with a deferred covenant as permitted by Section 120(h)(3)(C) of the CERCLA, the Government and the Authority hereby agree to be bound by the terms and conditions of a Deed that shall contain, at a minimum, the following (upon the mutual agreement of the Parties, the Deed(s) may be modified as necessary):
 - 1. Government Finding of Suitability: Finding by the Government that the Property is suitable for transfer for the intended use as set forth in the FOSET, and that the Government believes that the requirements of CERCLA Section 120(h)(3)(C) have been satisfied with the supporting evidence being provided in the FOSET package.
 - 2. <u>Property Description:</u> A description of the Real Property to be transferred. A map should also be attached.
 - 3. <u>Nature and Extent of Contamination:</u> A description of the nature and extent of the contamination that impacts the parcel of Property being transferred. The Department of Defense Environmental Condition Category of the Property should also be included. An extract from the EBS or a supplement to the EBS, which accurately delineates the areas of contamination shall be attached to the FOSET packet.
 - 4. Analysis of Future Use: A description of the intended use of the Property and a determination of whether the anticipated reuse is reasonably expected to result in exposure to CERCLA hazardous substances. If it is determined that exposure to hazardous substances is likely, the analysis must discuss restrictive measures contemplated or required (i.e., institutional and other controls), to prevent exposure

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FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

during the remediation of the Property. These restrictions must also be included in the deed for the Property.

- 5. <u>Response/Corrective Action and Remedial Action-Operations Requirements:</u> A description of any ongoing or planned remedial or corrective actions. The schedule for such actions, including the dates of certain milestones (e.g., the implementation of the remedy) should be included. The schedule should also contain the dates for the operation and maintenance of the remedy or response action.
- 6. <u>Deed Language:</u> Environmental remediation information that will be required in either the deed or contract for sale of the parcel of Property for review as follows:
- (i). Notice: a copy of the notice language required by CERCLA Section 120(h)(1) and (3) that will be inserted in the deed identifying: the type and quantity of hazardous substances on the Property; the time at which storage, release or disposal took place, and a description of the remedial action taken, if any. This information may be displayed in matrix form for ease of use.
- (ii). <u>Covenant</u>: a copy of the covenant language required by CERCLA Section 120(h)(3)(A)(ii)(II) stating, with respect to hazardous substances existing on the Property as of the date of transfer, that: "any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States."
- (iii). <u>Right of Access</u>: a copy of the language required by CERCLA Section 120(h)(3)(A)(iii) granting the United States access to the Property if remedial action or corrective action is found to be necessary after the date of Property transfer, as well as providing access to the Property to perform the cleanup for which the deferral is being sought.
- (iv). Response Action Assurances: a copy of the response action assurances required by CERCLA Section 120(h)(3)(C)(ii) (listed below) that will be included in the contract for sale of the parcel of Property and the Deed. These assurances are included in the contract for sale of the parcel of Property and the Deed to ensure that the transfer does not delay remedial activities; the reuse does not pose a risk to human health and the environment; and that the Government will request adequate funds to address schedules for investigation and completion of all response actions.
 - (a) provide for any necessary restrictions on the use of the Property to ensure the protection of human health and the environment;

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- (b) provide that there will be restrictions on the use necessary to ensure that required remedial investigations, response action, and oversight activities will not be disrupted;
- (c) provide that all necessary response action will be taken and identify the schedules for investigation and completion of all necessary response action as approved by the appropriate regulatory agency; and
- (d) provide that the transferring Federal agency responsible for the Property subject to transfer will submit a budget request to the Director of the Office of Management and Budget that adequately addresses schedules for investigation and completion of all necessary response action, subject to congressional authorizations and appropriations.
- 7. <u>Attachments</u>: To demonstrate that the Government has requested adequate funding for all response activities, a schedule and associated funding profile for response actions shall be attached to the FOSET. Any specific language required to ensure that cleanup activities will not be disrupted, and to implement institutional or other controls or impose use restrictions during the remediation period and that may be required by the final remedy decision, can either be included in or attached to the FOSET.
- 15.02. <u>Schedule</u>. The Government shall use its best efforts to complete the environmental remediation of the Property in the time schedule set forth in Exhibit L.
- 15.03. Ordnance and Explosives ("OE"). The former Fort Ord is a former military installation with a history of OE use and, therefore, there is a potential for OE to be present on the Property. In the event the Authority, its successors and assigns, should discover any ordnance on the Property, it shall not attempt to remove or destroy it, but shall immediately notify the local police department and the Directorate of Law Enforcement at the Presidio of Monterey. A competent Government or Government designated explosive ordnance professional will be dispatched promptly to dispose of such ordnance properly at no expense to the Authority, whenever OE may be discovered.
- administrative record, and all environmental documents relating thereto, concerning the environmental conditions of the Property shall be maintained in an accessible repository so that such records will be available for inspection, review and copying by the Authority and its successors and assigns. The Authority and its successors and assigns, at their own expense, shall have the right to inspect, review and copy such records with twenty-four (24) hour prior notice. The Government shall use its best efforts to locate the repository at or near the Property.

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ARTICLE 16. LEAD-BASED PAINT (LBP):

- 16.01. Disclosure. The Lead-Based Paint (hereinafter referred to as "LBP") Disclosure required by 24 CFR Part 35 (FR March 6, 1996) is shown as an Exhibit in the Deed.
- 16.02. Disclosure Removal. The parties agree that the Authority, or its successors or assigns, will seek approval of a procedure through the California DTSC, whereby once the LBP is removed from the Property in compliance with Federal and State standards, the LBP Disclosure can be removed from the Deeds. The Government agrees to cooperate with such procedure, and sign amended Deeds as necessary, provided, however, that such amendments shall be at no cost to the Government.
- 16.03. Liability. The Parties agree, that prior to occupancy for residential habitation, of any existing structure, the Authority will comply with the applicable lead based paint inspection and abatement provisions of 24 C.F.R. Part 35. The Government assumes no liability for remediation or damages for personal injury, illness, disability, or death, to the Authority, its successors and assigns, sublessees or to any other person, including members of the general public, arising out of exposure to lead-based paint in connection with the Authority's possession and/or use of any portion of the Property containing lead-based paint. The Authority, its successors and assigns, further agree to indemnify and hold harmless the Government, its officers, agents and employees, from and against all suits, claims, demands or actions liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death or property damage resulting from, related to, caused by or arising out of exposure to lead-based paint or lead-based paint hazards on the Property after the date of the conveyance of the Property, if used for residential purposes.

ARTICLE 17. ASBESTOS:

- 17.01. Disclosure. The Authority is hereby informed by the Government and does acknowledge that asbestos or asbestos-containing materials (ACM) have been found on the Property, as described in the Diagnostic Environmental, Inc. (now ATC Environmental, Inc.) report, Asbestos Survey Report, U.S. Army Corps of Engineers - Fort Ord Installation, Fort Ord, California, dated April 26, 1993. Appropriate disclosure statements for each parcel of Property will be included in each Deed.
- 17.02. <u>Disclosure Removal</u>. The parties agree that the Authority, or its successors or assigns will seek approval of a procedure through the California DTSC, whereby once the ACM is removed from the Property in compliance with Federal and State standards, reference to ACM can be removed from the Deeds. The Government agrees to cooperate with such procedure, and sign amended Deeds as necessary, provided, however, that such amendments shall be at no cost to the Government.

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17.03. Liability. The Government shall be responsible for the remediation of all damaged friable and accessible ACM which exists on the Property at the time of its conveyance to the Authority; the Authority shall be responsible for the remediation of all damaged friable and accessible ACM which becomes damaged friable and accessible ACM after the time of the conveyance of the Property to the Authority. The Authority further agrees to indemnify and hold harmless the Government, its officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, exposure to asbestos on any portion of the Property after this conveyance of the Property to the Authority or any future remediation or abatement of asbestos or the need therefor. The obligation of the Authority hereunder shall apply whenever the United States incurs costs or liabilities for actions giving rise to liability under this section.

ARTICLE 18. NOTICE OF HISTORIC PRESERVATION:

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18.01. <u>Historic Places</u>. In accordance with an agreement by and between the Department of the Army, the Advisory Council on Historic Preservation, and the California State Historic Preservation Officer ("SHPO") regarding Fort Ord, California ("Programmatic Agreement"; Exhibit F), certain areas of the Property are under consideration for eligibility for listing on the National Register of Historic Places. If a site is determined to be eligible for listing on the National Register of Historic Places, the Authority agrees, on behalf of itself and its successors and assigns, to consult with the SHPO and maintain and preserve the Historic Site as appropriate in accordance with the Programmatic Agreement.

ARTICLE 19. GOVERNMENT CONSENT TO SUBDIVISION OF PROPERTY/DEDICATION OF ROADS:

19.01. <u>Subdivision of Property.</u> The Government, as permitted by Federal statute, shall not unreasonably delay or withhold its consent to the recording by the Authority or the Authority member jurisdictions, of all documents necessary to subdivide all or portions of the Property, approve assessments, adopt redevelopment project areas, dedicate public roads, easements, and open spaces, and record covenants, conditions and restrictions regarding the future development and use of the Property, in accordance with the FORA Base Reuse Plan, or the recording of any subdivision plat, dedication plat, or declaration of covenants, conditions and restrictions concerning the Property. The Government agrees that it will not interfere with or protest or challenge any subdivision petition or application over the Property. Additionally, the Government acknowledges the Authority's role in the economic development of the Property and, as permitted by Federal statute, authorizes the Authority to vote in any election on the Property or otherwise indicate its views in such matters as the owner or contract purchaser of the Property, as the Authority deems appropriate.

ARTICLE 20. BROKERAGE; CONTINGENT FEES:

20.01. Contingent Fees. The Authority warrants that it has not employed or retained any party under an agreement or understanding for a commission, percentage, brokerage, or contingent fee tied to the successful conveyance of the Property from the Government to the Authority. Breach of this warranty shall give the Government the right to recover from the Authority the amount of such commission, percentage, brokerage or contingent fee in addition to the consideration herewith set forth actually paid by the Government to any such party retained by the Authority. This warranty shall not apply to commissions payable by the Authority upon the contract being secured or made through bona fide established commercial agencies maintained by the Authority for the purpose of doing business. A bona fide established commercial agency has been construed to include licensed real estate brokers engaged in the business generally.

ARTICLE 21. DESTRUCTION OR DAMAGE:

21.01. <u>Destruction or Damage</u>. In the event of significant damage or destruction of all or a portion of the Property prior to the Closing, the Authority retains the right to renegotiate the consideration and terms of this Agreement with regard to such damaged portion of the Property.

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ARTICLE 22. NOTICES:

22.01. Notices. Any notice, request, demand, instruction or other document to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be delivered personally (including by messenger) or sent by United States registered or certified mail, return receipt requested, postage prepaid or by courier, postage prepaid and addressed to the parties at their respective addresses set forth below, and the same shall be effective upon receipt if delivered personally or by messenger or two business days after deposit in the mail if mailed. A party may change its address for receipt of notices by service of a notice of such change in accordance herewith.

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Management and Disposal Branch 1 Phone: (916) 557-6870 2 Facsimile: (916) 557-7855 3 4 5 ARTICLE 23. ENTIRE AGREEMENT, AMENDMENTS AND WAIVER: 6 7 23.01. Entire Agreement. This Agreement contains the entire agreement and understanding of the Parties in respect to the purchase and sale of the Property, and may not be amended, modified 8 or discharged nor may any of its terms be waived except by an instrument in writing signed by the 9 Party to be bound thereby. The Parties hereto shall not be bound by any terms, conditions, 10 statements, warranties or representations, oral or written, not contained herein. 11 12 **ARTICLE 24. CONTRACT DISPUTES:** 13 14 24.01. Disputes. This Agreement is subject to the Contract Disputes Act of 1978, as 15 amended (41 U.S.C. 601-613). Failure of the Parties to this Agreement to reach agreement on any 16 request for equitable adjustment, claim, appeal or action arising under or relating to this Agreement 17 shall be a dispute to be resolved in accordance with Federal law. The Authority and the Government 18 shall proceed diligently with performance of this Agreement, pending final resolution of any dispute 19 arising under the Agreement. ٦) 21 ARTICLE 25. SURVIVAL AND BENEFIT: 22 23 25.01. Survival and Benefit. The Authority may not transfer or assign its rights and interests 24 under this Agreement, without the written consent of the Government. All representations, 25 warranties, agreements, obligations and indemnities of the Parties shall, notwithstanding any 26 investigation made by any Party hereto, survive Closing and the same shall inure to the benefit of 27 and be binding upon the respective successors and assigns of the Parties. Nothing in this Agreement 28 otherwise shall be construed as creating any rights of enforcement by any person or entity that is not 29 a Party hereto, nor any rights, interest, or third party beneficiary status for any entity or person other 30 than the Parties hereto. 31 32 ARTICLE 26. INTERPRETATION: 33 34 26.01. The headings and captions herein are inserted for convenient reference only and the 35 same shall not limit or construe the paragraphs or sections to which they apply or otherwise affect 36 the interpretation hereof. 37 38 26.02. The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms 39 shall refer to this Agreement, and the term "hereafter" shall mean after, and the term "heretofore" 40 shall mean before, the date of this Agreement.

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1	26.03. Words of the masculine, feminine or neuter gender shall mean and include the
2	correlative words of other genders, and words importing the singular number shall mean and include
3	the plural number and vice versa.
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5	26.04. Words importing persons shall include firms, associations, partnerships (including
6	limited partnerships), trusts, corporations and other legal entities, including public bodies, as well
7	as natural persons.
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9	26.05. The terms "include," "including" and similar terms shall be construed as if followed
10	by the phrase "without being limited to."
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12	26.06. This Agreement and any document or instrument executed pursuant hereto may be
13	executed in any number of counterparts each of which shall be deemed an original, but all of which
14	together shall constitute one and the same instrument.
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16	26.07. Whenever under the terms of this Agreement, the time for performance of a covenant
17	or condition falls upon a Saturday, Sunday or holiday observed by the performing Party, such time
18	for performance shall be extended to the next business day. Otherwise, all references herein to
19	"days" shall mean calendar days.
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21	26.08. This Agreement shall be governed by and construed in accordance with Federal law
22	and the laws of the State of California, as applicable.
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24	26.09. Time is of the essence of this Agreement.
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26	26.10. If any term or provision of this Agreement or the application thereof to any person
27	or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement,
28	or the application of such term or provision to persons or circumstances other than those as to which
29	it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision
30	of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
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32	ARTICLE 27. OFFICIALS NOT TO BENEFIT:
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34	27.01. Officials Not To Benefit. The Authority acknowledges that no member of, or
35	delegate to the Congress, or resident commissioner, shall be permitted to share any part of the
36	contract of sale, or to receive any benefit that may arise therefrom. This provision shall not be
37	construed to extend to the contract of sale if made with a corporation for its general benefit.
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28.01. Non-Discrimination. With respect to activities related to the Property, the Authority

hereby agrees that it will comply with the requirements of Title VI of the Civil Rights Act of 1964

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ARTICLE 28. NON-DISCRIMINATION:

(Public Law 88-352) and all requirements imposed by or pursuant to the regulations issued under that Act and now in effect, to the end that, in accordance with such Act and regulations, no person in the United States shall, on the ground of race, color, national origin, sex or handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the Authority, its successors and assigns.

ARTICLE 29. FURTHER ASSURANCES:

29.01. <u>Further Assurances</u>. The Government shall, upon the reasonable request of the Authority, execute, cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in order to carry out the intent and purpose of this Agreement.

ARTICLE 30. NO RIGHT OF RESCISSION:

30.01. No Right of Rescission. There shall be no right of rescission in the Government as to the Property, or any portion thereof, once conveyed to the Authority. The foregoing shall not be interpreted to limit any future exercise of the power of eminent domain by the Government.

ARTICLE 31. ANTI-DEFICIENCY ACT:

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31.01. <u>Anti-Deficiency Act.</u> The Government's obligation to pay or reimburse any money under this Agreement is subject to the availability of appropriated funds, and nothing in this Agreement shall be interpreted to require obligations or payments by the Government in violation of the Anti-Deficiency Act, Public Law 97-258, as amended.

ARTICLE 32. EFFECTIVE DATE:

32.01. Effective Date. This Agreement shall be final and binding upon the Parties following certification by the Authority that it has complied with the California Environmental Quality Act. Such certification shall be in writing and delivered to the Government no later than sixty (60) days after the execution of the Agreement by the Authority. Following execution of the Agreement by the Parties, the Agreement, and all exhibits thereto, may be released to the public.

[SIGNATURE PAGES FOLLOW]

1	In Testimony Whereof, witness the signature of the Government, acting by and through the
2	Secretary of the Army, United States Department of the Army, under and pursuant to the authority
3	provided in Section 2905(b)(4) of the Base Closure Act, and the implementing regulations of the
4	Department of Defense (32 CFR Parts 90 and 91), this zo 46 day of, 2000
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7	UNITED STATES OF AMERICA
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11	By: Jan W. Johnson
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13	Deputy Assistant Secretary of the Army (I&H)
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17	COMMONWEALTH OF VIRGINIA)
18) SS
19	COUNTY OF ARLINGTON)
20	
21	O m a O m a last way the syndergianed a Notary Public in and for said
22	On Ze June Zeed before me, the undersigned, a Notary Public in and for said state, personally appeared Paul W. Johnson personally known to me (or proved to me on the basis
23	of satisfactory evidence) to be the person whose name is subscribed to the within instrument and
24	acknowledged to me that he executed the same in his authorized capacity, and that by his signature
25	on the instrument the person, or the entity upon behalf of which the person acted, executed the
26	instrument.
27	mstrument.
28	WITNESS my hand and official seal.
29	Williams and official sour.
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31 32	
32 33	Your Il Comp
33 34	Notary Public, Commonwealth of Virginia
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MY COMMISSION EXPIRES November 30, 2002

In Testimony Whereof, witness the signature of the Fort Ord Reuse Authority, an organization organized and existing under the laws of the State of California under the Fort Ord Reuse Authority Act created under Title 7.85 of the California Government Code, Chapters 1 through 7, inclusive, commencing with Section 67650, et seq., and selected provisions of the California Redevelopment Law, including Division 24 of the California Health and Safety Code, Part 1, Chapter 4.5, Article 1, commencing with Section 33492, et seq., and Article 4, commencing with Section 33492.70, et seq., this 77 day of 2000.

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FORT ORD REUSE AUTHORITY LOCAL REDEVELOPMENT AUTHORITY

Edith Johnsen

STATE OF CALIFORNIA) ss COUNTY OF MONTEREY)

On Some 7, 2000 before me, the undersigned, a Notary Public in and for said state, personally appeared Edith Johnsen. personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

JOY P. JUNSAY
Commission # 1198120
Notary Public - California
Monterey County
My Comm. Expires Oct 10, 2002

WITNESS my hand and official seal.

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EXHIBIT "A" DESCRIPTION OF PROPERTIES

Search Results: Click Back Button on Browser to Search Again.

Parcels Database last updated on: 10/4/99 1:54:42 PM

Total Acreage from Query is: 5188.101 Acres

COE Number	Parcel Name	Acreage	Jurisdiction	Recipient	Transfer Status
Ella	Habitat management	154.5	County	EDC	in progress
Ellb.1	development / mixed use /ac limit	24.7	County	EDC	in progress
E11b.2	development / mixed use-ac limit	41.7	County	EDC	in progress
E11b.3	sewer treatment facility / development mix	6.2	County	EDC	in progress
E11b.4	water tank 147	0.1	County	EDC	in progress
E11b.6	development / mixed use-aac limit	129.4	County	EDC	in progress
E11b.7	development / mixed use-ac limit	255.3	County	EDC	in progress
E11b.8	ASP / development mixed use	58.8	County	EDC	in progress
E15.1	ROW / retail	49.1	Seaside	EDC	in progress
E15.2	open space	28.7	Seaside	EDC	in progress
E18.1	housing future	73	Seaside	EDC	in progress
E18.2.1	ROW Gigling road	4.9	Seaside	EDC '	in progress
E18.2.2	ROW Gigling road	0.1	County	EDC	in progress
E18.3	ROW Normandy/Parker Flats	6.2	Seaside	EDC	in progress
E18.4	water tank	2.2	Seaside	EDC	in progress .
E19a.1	housing SFD low density	265.7	County	EDC	in progress

E19a.2	housing SFD low density	218.4	County	EDC	in progress
E19a.3	housing SFD low density	209.3	County	EDC	in progress
E20b	housing Stilwell	101.8	Seaside	EDC	in progress
E20c.1.1.1	housing future	75	Seaside	EDC	in progress
E20c.1.1.2	housing future	113.9	Seaside	EDC	in progress
E20c.1.2	Cable TV area	0.3	Seaside	EDC	in progress
E20c.1.3	ROW N/S road	10.4	Seaside	EDC	in progress
E20c.2.1	housing future	92.5	Seaside	EDC	in progress
E20c.2.2	water tanks/pumps	2.3	Seaside	EDC	in progress
E21a	housing SF low density	138.7	County	EDC	in progress
E21b.1	housing SFD low density	156.7	County	EDC	in progress
E21b.2	housing SFD low density	134.2	County	EDC.	in progress
E21b.3	housing SFD low density	58.5	County	EDC ·	in progress
E23.1	ROW / retail	47.5	Seaside	EDC	in progress
E23.2	ROW / housing future SFD med density	72.6	Seaside	EDC	in progress
E24	ROW / housing future SFD med density	197.1	Seaside	EDC	in progress
E29	BP/LI/O//R&D	34.5	County/Monterey	EDC	in progress
E29a	visitor center / bus park	273.3	Del Rey Oaks	EDC	in progress
E29b.1	ROW future Hwy 68 / habitat	34.5	Del Rey Oaks	EDC	in progress
E29b.2	ROW/BP/LI/O/R&D	30.1	County/Monterey	EDC	in progress

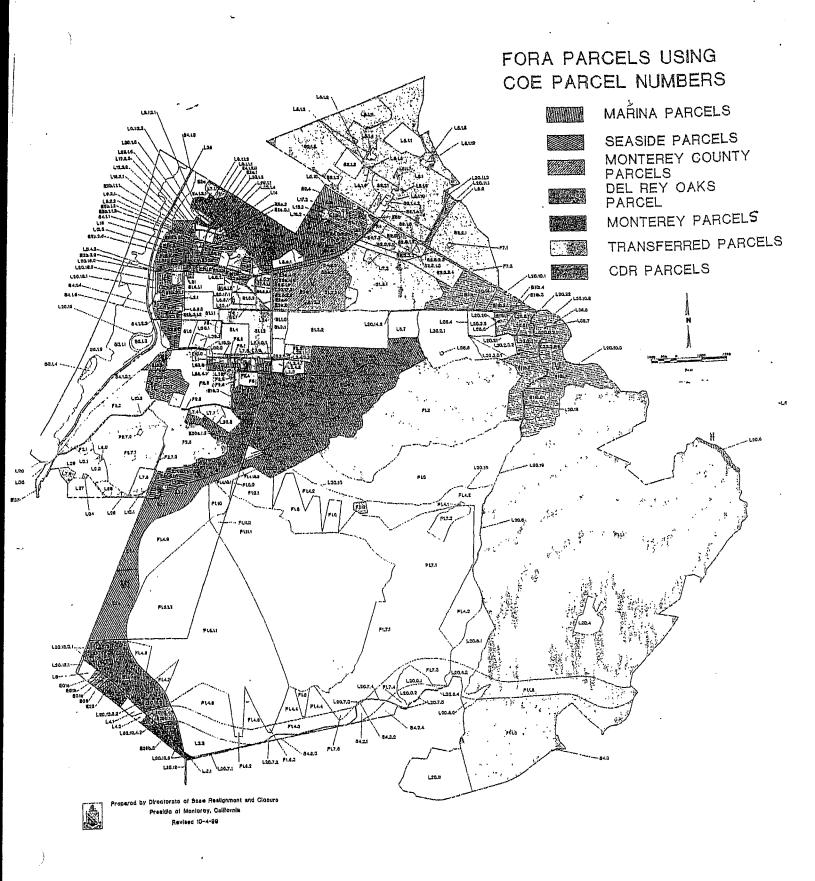
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E29b.3	BP/LI/O/R&D	28.4	County/Monterey	EDC	in progress
E29e	ROW/future Hwy 68/OP/R&D	9.5	County/Monterey	EDC	in progress
E2a	development / mixed use	63.7	Marina	EDC	in progress
E2b.1.1.1	development / mixed use	24	Marina	EDC	in progress
E2b.1.1.2	developmemt / mixed use	1.2	Marina	EDC	in progress
E2b.1.2	ROW road	10.6	Marina	EDC	in progress
E2b.1.3	development / mixed use	33.6	Marina	EDC	in progress
E2b.1.4	ROW road	2.2	Marina	EDC	in progress
E2b.1.5	development / mixed use	12.2	Marina	EDC	in progress
E2b.2.1	development / mixed use	71.1	Marina	EDC	in progress
E2b.2.2	ROW road	0.8	Marina	EDC	in progress
E2b.2.3	ROW road	4.4	Marina	EDC	in progress
E2b.2.4	development / mixed use	7.5	Marina	EDC	in progress
E2b.2.5	2/12 Pump and Treat Facility	1.5	Marina	EDC	in progress
E2b.3.1.1	development / mixed use	108.6	Marina	EDC ,	in progress
E2b.3.1.2	CID Building	1.6	Marina	EDC	in progress
E2b.3.2	ROW 8th St	0.1	Marina	EDC	in progress
E2c.1	development / mixed use	13.2	Marina .	EDC	in progress
E2c.2	OU2 Pump and Treat Facility	1.1	Marina	EDC	in progress
E2c.3.1	development / mixed use	10	Marina	EDC	in progress

E2c.3.2	ROW road	13.8	Marina	EDC	in progress
E2c.3.3	development / mixed use	31.7	Marina	EDC	in progress
E2c.4.1.1	ROW road	8.9	Marina	EDC	in progress
E2c.4.1.2	ROW road	2.8	Marina	EDC	in progress
E2c.4.2.1	development / mixed use	13.1	Marina	EDC	in progress
E2c.4.2.2	development / mixed use	2.4	Marina	EDC	in progress
E2c.4.3	ROW road	1.9	Marina	EDC	in progress
E2c.4.4	ROW road	1.1	Marina	EDC	in progress
E2d.1	development / mixed use	15.2	Marina	EDC	in progress
E2d.2	ROW	5.4	Marina	EDC	in progress
E2d.3	development / mixed use	46.6	Marina	EDC	in progress
E2e.1	ROW 6th Ave / 8th St Road	6.1	Marina	EDC	in progress
E2e.2	ROW Intergarrison road	0.2	County	EDC	in progress
E31a	bus park /LI/O/R&D	5.2	Del Rey Oaks	EDC	in progress
E31b	bus park /LI/O/R&D	3.1	Del Rey Oaks	EDC ,	in progress
E31c	bus park /LI/O/R&D	4.2	Del Rey Oaks	EDC ·	in progress
E34	ROW / housing future SFD med density	94.7	Seaside	EDC	in progress
E36	bus park /LI/O/R&D	6.3	Del Rey Oaks	EDC	in progress
E4.1.1	housing lower Patton	154	Marina	EDC	in progress
E4.1.2.1	housing lower Patton	13	Marina	EDC	in progress

E4.1.2.2	housing lower Patton	23	Marina	EDC	not started
E4.1.2.3	ROW Booker Str /lower Patton	1	Marina	EDC	not started
E4.2	housing upper Patton	64.2	Marina	EDC	in progress
E4.3.1	housing Abrams	179.6	. Marina	EDC	in progress
E4.3.2.1	housing Abrams	43.6	Marina	EDC	in progress
E4.3.2.2	Housing Lexington Court	7.9	Marina	EDC	in progress
E4.4	housing Preston	98.9	Marina	EDC	in progress
E4.5	water treatment facility	2.9	Marina	EDC	in progress
E4.6.1	ROW middle Imjin road	25	Marina	EDC	in progress
E4.6.2	ROW Imjin road	17.3	County	EDC	in progress
E4.7.1	ROW NE Imjin road	5	Marina	EDC	in progress
E4.7.2	ROW Imjin road	3.1	County	EDC	in progress
E5a	development / mixed use	45.7	Marina	EDC.	in progress
E5b	development / mixed use	3.2	Marina	EDC	in progress
E8a.l	Landfill, 75 acre development, HMP	304.1	County	EDC ,	in progress
E8a.2	Landfill carrot, Univ med density residential	4	County	EDC	in progress
L20.10.1	ROW / north Reservation road	26.2	County	EDC	in progress
L20.10.2	ROW / north Reservation road	5.2	County .	EDC	in progress
L20.10.3	ROW / north Reservation road	2.2	County	EDC	in progress
L20.11.1	ROW / Blanco road	31.2	County	EDC	in progress

L20.11.2	ROW Blanco road	7.7	Marina	EDC	in progress
L20.13.1	ROW N/S road	2	Del Rey Oaks	EDC	in progress
L20.13.3.1	ROW S Boundary / NS road	7.9	Del Rey Oaks	EDC	in progress
L20.13.3.2	ROW / part S Boundary Road	2.1	County/Monterey	EDC	in progress
L20:13.4.1	ROW S Boundary / future Hwy 68	0.8	Del Rey Oaks	EDC	in progress
L20.13.4.2	ROW / part S Boundary Road	0.8	County/Monterey	EDC	in progress
L20.13.5	ROW / S Boundary / York road	5.9	County/Monterey	EDC	in progress
L20.14.1	ROW / East Intergarrison road	16.2	County	EDC	in progress
L20.14.2	ROW / Mid Intergarrison road	3.2	County	EDC	in progress
L20.18	ROW / Eucalyptus road	7.2	County	EDC	in progress
L20.19	ROW / North Barloy Canyon road	10.3	County	EDC	in progress
L20.20	ROW / west Camp road	2.3	County	EDC	in progress
L20.21	ROW / part Watkins Gate road	4.4	County	EDC.	in progress
L20.22	ROW / Chapel Hill road	2.4	County	EDC	in progress
L20.9	ROW / south Reservation road	18.9	County	EDC	in progress
L23.3.1	development mixed use-ac limit	54.5	County	EDC/MPC	not started
L23.3.2.1	development mixed use-ac limit/historic district	83.2	County	EDC/MPC	not started
L23.3.2.2	development mixed use-ac limit	20.1	County .	EDC/MPC	not started v
L23.3.3	development mixed use-ac limit	36.4	County	EDC/MPC	not started
L31	Esselen Parcel Surplus II	. 11.7	Seaside	EDC	in progress

Γ	L32.1	public facilities/inst Surplus II	2.9	County	EDC	in progress	_
		development mixed use / retail Surplus II	52.4	Seaside	EDC	in progress	
		ROW / development mixed use / Surplus II	4.3	County	EDC	in progress	
L32.4.2	KOW / development xizze	H	\				



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Washington, D.C. 20306 Attention: George R. Schlossberg, Esq.

Kutak Rock LLP

WHEN RECORDED RETURN TO:

1101 Connecticut Avenue, N.W.

PREPARED BY AND

QUITCLAIM DEED FOR PARCEL X

THIS DEED, made and entered into between the UNITED STATES OF AMERICA, acting by and through the SECRETARY OF THE ARMY, (hereinafter referred to as the "GRANTOR"), under and pursuant to the power and authority contained in the Defense Base Closure and Realignment Act of 1990, as amended (Public Law No. 101-510, 10 U.S.C. §2687 note; hereinafter "DBCRA"), and the FORT ORD REUSE AUTHORITY ("FORA"), created under Title 7.85 of the California Government Code, Chapters 1 through 7, inclusive, commencing with Section 67650, et seq., and selected provisions of the California Redevelopment Law, including Division 24 of the California Health and Safety Code, Part 1, Chapter 4.5, Article 1. commencing with Section 33492, et seq., and Article 4, commencing with Section 33492.70, et seq., and recognized as the Local Redevelopment Authority for the former Fort Ord, California, by the Office of Economic Adjustment on behalf of the Secretary of Defense (hereinafter referred to as the "GRANTEE").

WITNESSETH THAT:

WHEREAS, the Secretary of the Army may convey surplus property to the Local Redevelopment Authority at a closing military installation for economic development purposes pursuant to the power and authority provided by Section 2905(b)(4) of the DBCRA and the implementing regulations of the Department of Defense (32 CFR Part 91);

WHEREAS, GRANTEE, by application, requested an economic development conveyance of portions of the former Fort Ord, California consistent with the redevelopment plan prepared by the GRANTEE:

WHEREAS, GRANTOR and the GRANTEE have entered into a Memorandum of Agreement Between the United States of America Acting By and Through the Secretary of the Army, United States Department of the Army and the Fort Ord Reuse Authority For the Sale of Portions of the former Fort Ord, California, dated the day of , 2000

FORT ORD QUITCLAIM DEED FOR PARCEL X

(hereinafter referred to as the "MOA") which sets forth the specific terms and conditions of the sale of portions of the former Fort Ord located in Monterey County, California; and

WHEREAS, the California State Historic Preservation Officer has determined that no structures, monuments, or other property within the subject Property, as hereinafter defined, were identified as having any historical significance; and

WHEREAS, Fort Ord, California, has been identified as a National Priority List Site under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) of 1980, as amended, the GRANTOR has provided the GRANTEE with a copy of the Fort Ord Base Federal Facility Agreement (FFA) and all amendments thereto entered into by EPA Region IX, the State of California, and the Department of the Army that were effective on November 19, 1990; and

WHEREAS, an Installation-Wide Multispecies Habitat Management Plan for former Fort Ord, California (HMP) dated December, 1994 as revised and amended by the "Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord, California" dated April 1997, has been developed to assure that disposal and reuse of Fort Ord lands is in compliance with the Endangered Species Act (ESA), 16 U.S.C. 1531 et seq. Timely transfer of these lands and subsequent implementation of the HMP is critical to ensure effective protection and conservation of the former Fort Ord lands' wildlife and plant species and habitat values while allowing appropriate economic redevelopment of Fort Ord and the subsequent economic recovery of the local communities; and

NOW, THEREFORE, the GRANTOR, for good and valuable consideration does hereby grant, remise, release, and forever quitclaim unto the GRANTEE, its successors and assigns, all such interest, rights, title, and claim as the GRANTOR has in and to the Property known as Parcel X, more particularly described in Exhibit "A" which is attached hereto and made a part hereof.

I. PROPERTY DESCRIPTION:

The Property includes:

 A. All buildings, facilities, roadways, and other, including the storm drainage systems and the telephone system infrastructure, and any other improvements thereon,

B. All appurtenant easements and other rights appurtenant thereto, permits, licenses, privileges and not otherwise excluded herein,

C. All hereditaments and tenements therein and reversions, remainders, issues, profits, privileges and other rights belonging or related thereto, and

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D. All Mineral Rights (to be resolved on a deed by deed basis).

II. APPURTENANT EASEMENTS:

A. GRANTOR hereby declares and grants easements appurtenant to the Property over, across, under and through the land retained by the GRANTOR for access, utilities and other uses which easements shall run with the land and be perpetually in full force and effect including, but not limited to, irrevocable non-exclusive access easements over North-South Road, Monterey Avenue, and Gigling Road, all as set forth in Exhibit "B".

B. The GRANTEE agrees to the following terms and conditions:

1. except in the case of an emergency, GRANTEE will provide the fee owner of the land subject to an easement prior notice of its entry onto the easement area;

2. in the utilization of any easement rights granted herein, exercise due care in the performance of excavations and other work required herein and restore the easement lands following such work to a safe and usable condition;

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3. to comply with all applicable federal, state and local laws and regulations;

4. to pay the GRANTOR the full value for all damages to the lands or other property of the United States caused by the GRANTEE or its employees, contractors, or employees of the contractors arising from its use, occupancy, or operations within the easement areas, provided that all work done as authorized under this grant of easement shall not be considered as damages to lands; and to indemnify the United States against any liability for damages to life, person, or property arising from the occupancy or use of the lands under the easements, except where such liability arises as a result of acts of the United States, its employees, or contractors, or where the easements are granted hereunder to a state or other governmental agency which has no legal power to assume such liability with respect to damages caused by it to lands and property, in which case such agency in lieu therefore agrees to pay all such damages;

5. to allow the occupancy and use by the GRANTOR, its grantees, permittees, or lessees of any part of the easement areas not actually occupied or required for the purpose of the full and safe utilization thereof by the GRANTEE, so long as such occupancy and use does not compromise the ability of the GRANTEE to use the easements for their intended purposes, as set forth herein;

6. that the easements granted shall be for the specific use described and may not be construed to include the further right to authorize any other use within the easements unless approved in writing by the fee holder of the land subject to the easement;

- 7. that any transfer of the easements by assignment, lease, operating agreement, or otherwise must-include language that the transferee agrees to comply with and be bound by the terms and conditions of the original grant of easement;
- 8. that, unless otherwise provided, no interest granted shall give the GRANTEE any right to remove any material, earth, or stone for consideration or other purpose except as necessary in exercising its rights hereunder;
- 9. that a rebuttable presumption of abandonment of any of the easements is raised by the failure of the GRANTEE to use for any continuous two (2) year period an easement for the purpose for which it was granted hereby; and that, in the event of such abandonment, the GRANTOR or its successor will notify the GRANTEE of its intention to terminate the easement for abandonment sixty (60) days from the date of the notice, unless prior to the end of said sixty (60) day period the GRANTEE either resumes its use of the easement or demonstrates conclusively that said resumption of use will occur within a reasonable amount of time thereafter, not to exceed an additional ninety (90) day period (for purposes of this subparagraph, flow of non-portable water through the piping system shall constituent continuous use of the easement); and
- 10. to restore any easement area so far as it is reasonably possible to do so upon abandonment or release of any easement as provided herein, unless this requirement is waived in writing by the fee owner.

III. EXCLUSIONS AND RESERVATIONS:

This conveyance is made subject to the following EXCLUSIONS and RESERVATIONS:

- A. All water allocations derived from the Salinas aquifer shall remain with the GRANTOR consistent with the MOA. With regard to the ultimate disposition of any water and water allocation rights, the GRANTOR shall cooperate with the GRANTEE, other grantees of former Fort Ord property, and the Monterey County Water Resources Agency (MCWRA), in seeking to ensure that GRANTEE and its successors and assigns, will continue to be provided an equitable supply of the water at former Fort Ord.
- B. With regard to the ultimate disposition of any rights or interests the GRANTOR has in wastewater discharge rights provided by the Monterey Regional Water Pollution Control Agency (MRWPCA), the GRANTOR shall cooperate with GRANTEE in accordance with the MOA, other grantees of property at Fort Ord, and the MRWPCA, in seeking to ensure that GRANTEE and all other Fort Ord grantees will continue to enjoy equitable utilization of the existing sewerage treatment capacity, including existing connections to the Fort Ord sewerage collection system.
- C. The GRANTOR retains ownership to all Government-owned sewer, and water utility systems located on the Property. The retention point for the GRANTOR'S retained

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ownership of the water systems will be to the meter location or future meter or utility box location at a point on or_near each building or facility. The retention point for the sewer is where the laterals enter the collection lines. The GRANTOR reserves transferable easements and access rights for all GRANTOR-owned utility systems and for utility company owned utility systems:

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The GRANTOR reserves assignable non-exclusive easements and rights-of-way, 12 feet in width, in, on, over and across the Property and centered on the existing utility systems owned and retained by GRANTOR at the time of this conveyance and located on the Property. Said easements and rights-of-way shall be for the purpose of locating, constructing, operating, maintaining, altering, repairing and patrolling utility systems together with the right to trim, cut, fell and remove therefrom, consistent with the Installation-Wide Multispecies Habitat Management Plan and applicable law governing protection of endangered species, all trees, underbrush, obstructions and other vegetation, structures, or obstacles within the limits of the easements and right-of-way; reserving, however, to GRANTEE and its successors and assigns, the right to relocate such easements and the rights-of-way at the expense of GRANTEE and its successors and assigns; and reserving the right to the GRANTEE to use and cross such easements and rights-of way; however, such rights of GRANTEE are subject to existing easements and rights-of-way.

D. The GRANTOR reserves an assignable non-exclusive easement, ___feet in width, in, on, over and across that portion of the Property lying along _____ Road and identified in Exhibit "B" for the purpose of _____ . GRANTEE does not assume any responsibility for the safety of the use of this easement.

E. Access from the Bureau of Land Management area out Eucalyptus Road, Watkins Gate Road, and Barloy Canyon Road to Reservation Road and access to public roads from the Presidio of Monterey Annex.

F. During the term of its existing franchise agreement, currently scheduled to expire on November 19, 2005, a reserved right for USA Media Group, LLC (formerly Coastside Cable TV), or its successor in interest, to occupy and use parcel ______ (their antenna parcel) and a portion of parcel _____ where their existing office trailers are located together with continued access to their cable TV lines all as more particularly described in Exhibit "____". It is understood by the GRANTOR and GRANTEE that any relocation of USA Media Group, LLC, for development purposes will be accomplished at the sole cost and expense of USA Media Group LLC or its successor in interest.

G. The Property is taken by the GRANTEE subject to any and all valid and existing recorded outstanding liens, licenses, leases, easements, and any other encumbrances made for the

purpose of roads, streets, utility systems, rights-of-way, pipelines, and/or covenants, exceptions, interests, liens, reservations, and agreements of record.

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- The GRANTOR Reserves a perpetual unassignable right to enter the Property for the specific purpose of treating or removing any unexploded shells, mines, bombs, or other such devices deposited or caused by the GRANTOR.
- The reserved rights and easements set forth in this Section are subject to the following terms and conditions:
 - 1. to comply with all applicable federal law and lawful existing regulations;
- 2. to allow the occupancy and use by the GRANTEE, its permittees, or lessees of any part of the easement areas not actually occupied or required for the purpose of the full and safe utilization thereof by the GRANTOR, so long as such occupancy and use does not compromise the ability of the GRANTOR to use the easements for their intended purposes, as set forth herein;
- 3. that the easements granted shall be for the specific use described and may not be construed to include the further right to authorize any other use within the easements unless approved in writing by the fee holder of the land subject to the easement;
- 4. that any transfer of the easements by assignment, lease, operating agreement, or otherwise must include language that the transferee agrees to comply with and be bound by the terms and conditions of the original grant:
- 5. that, unless otherwise provided, no interest granted shall give the GRANTOR any right to remove any material, earth, or stone for consideration or other purpose except as necessary in exercising its rights hereunder; and
- 6. to restore any easement area so far as it is reasonably possible to do so upon abandonment or release of any easement as provided herein, unless this requirement is waived in writing by the GRANTEE.
- TO HAVE AND TO HOLD the Property unto the GRANTEE and its successors and assigns forever, provided that this deed is made and accepted upon each of the following notices, covenants, restrictions, and conditions which shall be binding upon and enforceable against the GRANTEE, its successors and assigns, in perpetuity, as follows:
- "AS IS" IV.

The Property is conveyed in an "As Is, Where Is" condition without any representation, warranty or guarantee, except as required pursuant to applicable law or as otherwise stated herein, by the GRANTEE as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose for which intended, and no claim for allowance or deduction upon such grounds will be considered. There is no obligation on the part of the GRANTOR to make any alterations, repairs, or additions, and said GRANTOR shall not be liable for any latent or patent defects in the Property.

V. FEDERAL FACILITIES AGREEMENT (FFA)

By accepting this deed, the GRANTEE acknowledges that the GRANTEE has read the FFA, and recognizes that, should any conflict arise between the terms of the FFA and the terms of this Deed, the FFA will take precedence. Notwithstanding any other provisions of this conveyance, the GRANTOR assumes no liability to the GRANTEE should implementation of the FFA interfere with the GRANTEE'S use of the Property. GRANTOR shall give GRANTEE reasonable notice of its actions required by the FFA and GRANTOR shall, consistent with the FFA, and at no additional cost to the GRANTOR, endeavor to minimize the disruption of the GRANTEE'S, its successors' or assigns' use of the Property. The GRANTEE shall have no claim on account of any such interference against the GRANTOR or any officer, agent, employee, or contractor thereof.

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VI. CERCLA COVENANTS, NOTICE, AND ENVIRONMENTAL REMEDIATION

Pursuant to Section 120(h)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Section 9601 et seq. ("CERCLA"), a Finding of Suitability to Transfer (FOST) is attached as Exhibit "C" to the Deed; an Environmental Baseline Survey (EBS) report is referenced in the FOST and sets forth the existing environmental condition of the Property. The FOST sets forth the basis for the Government's determination that the Property is suitable for transfer. The GRANTEE is hereby made aware of the notifications contained in the EBS and the FOST. The GRANTOR represents that the Property is environmentally suitable for transfer to GRANTEE for the purposes identified in the March 1997, Fort Ord Base Reuse Plan approved by the Fort Ord Reuse Authority." If, after conveyance of the Property to GRANTEE, there is an actual or threatened release of a hazardous substance on the Property, or in the event that a hazardous substance is discovered on the Property after the date of the conveyance, whether or not such substance was set forth in the technical environmental reports, including the Environmental Baseline Study (EBS), GRANTEE or its successor or assigns shall be responsible for such release or newly discovered substance unless such release or such newly discovered substance was due to GRANTOR'S activities, ownership, use, presence on, or occupation of the Property, or the activities of GRANTOR'S contractors and/or agents. GRANTEE, its successors and assigns, as consideration for the conveyance, agrees to release GRANTOR from any liability or

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responsibility for any claims arising out of or in any way predicated on release of any hazardous substance on the Property occurring after the conveyance, where such substance was placed on the Property by the GRANTEE, or its agents or contractors, after the conveyance.

"NOTICE OF HAZARDOUS SUBSTANCE ACTIVITY"

The information contained in this notice is required under the authority of regulations promulgated under Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "Superfund"), 42 U.S.C. Section 9620(h).

[APPROPRIATE FOST LANGUAGE TO BE ADDED]

GRANTOR covenants that all remedial action necessary to protect human health and the environment with respect to any known hazardous substance remaining on the Property has been taken, or is in place and operating to the satisfaction of the States and Federal regulatory agencies, before the date of transfer.

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GRANTOR covenants that any additional remedial action due to the former activity on the Property by the GRANTOR found to be necessary after such date of transfer shall be performed by the United States unless the person or entity to whom the property is transferred is a potentially responsible party under CERCLA with respect to the property.

GRANTEE covenants that the GRANTOR, its officers, agents, employees, contractors and subcontractors, in accordance with section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, reserves a right of access to any and all portions of the Property for purposes of environmental investigation, remediation, or other corrective actions found to be necessary after the date of the conveyance of the Property. The GRANTOR and the GRANTEE agree to cooperate in good faith to minimize any conflict between necessary environmental investigation and remediation activities and GRANTEE'S or any Sublessee's operations. Any inspection, survey, investigation, or other response or remedial action will to the extent practicable, be coordinated with representatives designated by GRANTEE. Pursuant to this reservation, the GRANTOR and its officers, agents, employees, contractors, subcontractors shall have the right (upon reasonable notice to the GRANTEE or the then owner and any authorized occupant of the Property) to enter upon the Property, and perform surveys, drillings, testpitting, borings, data and/or record compilation, and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary under applicable authorities, including but not limited to installation of monitoring and extraction wells, and other treatment facility. These rights of access shall include but not be limited to:

[APPROPRIATE ACCESS LANGUAGE TO BE ADDED ON A DEED BY DEED BASIS]

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The GRANTOR covenants that upon completion of any removal or remediation action that removes the risk giving rise to any restriction on future use or any limitation of activities contained in a Deed or lease for the Property or in any other document relating to the Property, the GRANTOR, without any payment of funds by the United States, agrees to cooperate with the GRANTEE, its successors or assigns, in any application, permit, easement or effort to obtain approval from appropriate Federal, state or local authorities for the purpose of removing any such restriction or limitation, which the GRANTEE, its successors or assigns, shall seek to remove or eliminate.

The GRANTOR recognizes its obligation to hold harmless, defend, and indemnify the Authority and any successor, assignee, transferee, lender, or lessee of the Authority or its successors and assigns, as required by Section 330 of the National Defense Authorization Act of 1993, as amended (Pub. L. No. 102-484), and to otherwise meet its obligations under Federal law.

VII. NOTICE OF THE PRESENCE OF ASBESTOS

A. The GRANTEE is hereby informed and does acknowledge that friable and non-friable asbestos or asbestos-containing materials (ACM) have been found on the following general areas of the Property, as described more fully in the Final EBS and the Asbestos Survey Report of the Former Fort Ord dated ______ [LIST OF BUILDING NUMBERS]. To the best of GRANTOR'S knowledge, the ACM on the Property does not currently pose a threat to human health or the environment, all friable asbestos that posed a risk to human health having either been removed or encapsulated prior to this conveyance, except

(LIST BUILDING TO BE DEMOLISHED, RENOVATED, OR NOT OTHERWISE REMEDIATED BY AGREEMENT)

B. The GRANTEE covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos; and that the GRANTOR assumes no liability for future remediation of asbestos or damages for personal injury, illness, disability, or death, to the GRANTEE, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property after the date of this Deed, whether the GRANTEE, its successors or assigns have properly warned or failed to properly warn the individual(s) injured. The GRANTEE assumes no liability for damages or remediation for personal injury, illness, disability, death or property damage arising from (i) any exposure to asbestos or ACM that resulted prior to the GRANTOR'S conveyance of such portion of the Property to the GRANTEE pursuant to this Deed or any leases entered into between the GRANTOR and GRANTEE, or (ii)

any disposal of asbestos or ACM, prior to the GRANTOR'S conveyance of the Property to the GRANTEE.

C. The GRANTEE acknowledges that it has had the opportunity to inspect the property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto. The failure of the GRANTEE to inspect or be fully informed as to the asbestos condition of all or any portion of the property will not constitute grounds for any claim or demand against the United States.

D. The GRANTEE, its successors and assigns are hereby informed that unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration (OSHA) and the EPA regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

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E. The GRANTEE further agrees to indemnify and hold harmless the GRANTOR, its officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, exposure to asbestos on any portion of the Property after this conveyance of the Property to the GRANTEE or any future remediation or abatement of asbestos or the need therefor. The GRANTEE'S obligation hereunder shall apply whenever the United States incurs costs or liabilities for actions giving rise to liability under this section.

VIII. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT

A. The GRANTEE, and its successors and assigns, are hereby informed and acknowledge that the following buildings on the Property, constructed or rehabilitated prior to 1978, are presumed to contain lead-based paint: [LIST OF BUILDING NUMBERS]. GRANTEE, its successors and assigns are hereby informed that lead from paint, paint chips, and dust can pose health hazards if not managed properly. Every purchaser of any interest in Residential Real Property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. "Residential Real Property" means any housing constructed prior to 1978, except housing for the elderly (households reserved for and composed of one or more persons 62 years of age or more at the

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time of initial occupancy) or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

B. Available information concerning known lead-based paint and/or lead-based paint hazards, the location of lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces is contained in the Environmental Baseline Survey and (for residential properties) the lead-based paint risk assessment, which have been provided to the GRANTEE. Additionally, the federally-approved pamphlet on lead poisoning prevention and the Finding of Suitability to Transfer (FOST) (FOSET) have been provided to the GRANTEE. The GRANTEE hereby acknowledges receipt of all of the information described in this Paragraph.

C. The GRANTEE, its successors and assigns, covenants and agrees that they shall not permit the occupancy or use of any buildings or structures located on the Property, which were constructed or rehabilitated prior to 1978, as residential real property without complying with this Paragraph C.7. NOTICE OF THE PRESENCE OF LEAD BASED PAINT and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards.

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D. The GRANTEE covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on the Property as Residential Real Property without complying with this section and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and /or lead based paint hazards. Prior to permitting the occupancy of Residential Real Property, if required by law or regulation, the GRANTEE, its successors and assigns, at its sole expense, will: (i.) inspect for the presence of lead-based paint and/or lead-based paint hazards; (ii.) abate and eliminate lead-based paint hazards in accordance with all applicable laws and regulations; and (iii.) comply with all applicable notice and disclosure requirements under applicable federal and state law. The GRANTEE agrees to be responsible for all remediation of lead-based paint or lead-based paint hazards found to be necessary on the Property after conveyance to the GRANTEE.

E. The GRANTOR assumes no liability for remediation or damages for personal injury, illness, disability, or death, to the GRANTEE, its successors or assigns, sublessees or to any other person, including members of the general public, arising from or incident to lead-based paint located on the Property. The GRANTEE further agrees to indemnify and hold harmless the GRANTOR, its officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, remediation, personal injury, death or property damage resulting from, related to, caused by or arising out of lead-based paint on the Property. The GRANTEE'S obligation hereunder shall apply whenever the United States of America incurs costs or liabilities for actions giving rise to liability under this section. However, the GRANTEE assumes no liability for (i) remediation or damages for personal injury, illness, disability or death suffered or incurred by the GRANTOR, its officers, agents and employees or by any other person, including members

of the general public, arising from any exposure of any person to lead-based paint on any portion of the Property-occurring prior to the date of conveyance of such portion of the Property to the GRANTEE, or (ii) any failure of the GRANTOR to comply with any legal requirements applicable to lead-based paint conditions on any portion of the Property prior to the GRANTOR'S conveyance of such portion of the Property to the GRANTEE pursuant to the Agreement, or (iii) any lead-based paint or lead-based paint hazards which were located on the Property at any time prior to the date of the GRANTOR'S transfer of the applicable portion of the Property but are no longer located thereon at the time of such lease or transfer, or (iv) any disposal, prior to the GRANTOR'S transfer of the applicable portion of the Property, of any lead-based paint or materials contaminated by lead-based paint.

F. The GRANTEE'S obligation hereunder shall apply whenever the United States of America incurs costs or liabilities for actions giving rise to liability under this section.

G. The covenants, restrictions, and requirements of this Paragraph shall be binding upon the GRANTEE, its successors and assigns, and shall be deemed to run with the land.

IX. NOTICE OF THE PRESENCE OF PESTICIDES AND COVENANT

A. The GRANTEE is hereby informed that pesticides may be present on the Property, the presence of pesticides does not currently pose a threat to human health or the environment, and the use and application of any pesticide product by the GRANTOR was in accordance with its intended purpose, and in accordance with CERCLA § 107 (i), which states:

"No person (including the United States or any State or Indian tribe) may recover under the authority of this section for any response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.). Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance."

B. Upon request, the GRANTOR agrees to furnish to the GRANTEE any and all records in its possession related to the use of the pesticides necessary for the continued compliance by the GRANTEE with applicable laws and regulations related to the use of pesticides.

C. The GRANTEE covenants and agrees that its continued possession, potential use and continued management of the Property, including any demolition of structures, will be in

compliance with all applicable laws relating to hazardous substance/pesticides and hazardous wastes.

X. UNDERGROUND STORAGE TANK (if applicable)

There were _____ former underground storage tanks within the Property which have been removed; a map showing the location thereof has been provided to the GRANTEE.

XI. ORDNANCE AND EXPLOSIVES (if applicable)

An archival search conducted during compilation of the Fort Ord Comprehensive Environmental Response Facilitation Act (CERFA) Report found there are _____ potential ordnance-related training areas within or immediately adjacent to the Property. In the event GRANTEE, its successors, and assigns, should discover any ordnance on the Property, it shall not attempt to remove or destroy it, but shall immediately notify the local Police Department and the Directorate of Law Enforcement at the Presidio of Monterey and competent GRANTOR or GRANTOR designated explosive ordnance professional will be dispatched promptly to dispose of such ordnance properly at no expense to the GRANTEE, whenever OE may be discovered.

XII ENDANGERED SPECIES

The GRANTEE, its assigns, or successors shall comply with the requirements, if any and if applicable, of the Installation-Wide Multi-species Habitat Management Plan ("HMP") for Former Fort Ord, California.

- A. The Property contains wildlife and plant species listed or proposed for listing as threatened or endangered under ESA. Applicable laws and regulations restrict activities that involve the potential loss of populations and habitant of these listed species. To fulfill the GRANTOR'S commitment in the Fort Ord Disposal and Reuse Environmental Impact Statement Record of Decision, made in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq, this deed provides for mitigation measures to assure these regulatory requirements and the requirements of the USFWS Biological Opinion for disposal of the former Fort Ord lands in accordance with Section 7 of the ESA do not preclude economic redevelopment of portions of the Property.
- B. The GRANTEE acknowledges that it has received a copy of the HMP dated December, 1996. The HMP describes existing habitat and the likely presence of plant and animal species of special concern that are treated as target species in the HMP. Some of the target species presently have status as listed or proposed federal threatened or endangered species. The HMP acts as a prelisting agreement to cover the management requirements relating

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the Army disposal and development reuse actions, should any of the target species become proposed or listed. The GRANTEE agrees to treat each of the HMP target species as if they were listed as a federally listed species under the ESA. The HMP target species shall be given the same avoidance, protection, conservation, and restoration considerations and status as would apply if the species were already listed under the ESA. The GRANTEE will cooperate with adjacent property owners in implementation mitigation requirements identified in the HMP for adjacent sensitive habitat areas.

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> C. The HMP provides a basewide framework for disposal and development of development parcels with trade-offs for target species within other areas of former Fort Ord, to allow development of the HMP Development areas with respect to the target species. The HMP describes the Army responsibilities for the Army actions in disposal of former Fort Ord lands under Section 7 of the ESA. The transfer of the HMP Reserve and HMP Corridor parcels by the Army and management of the listed parcels to the GRANTEE is being accomplished to satisfy the Army's federal Endangered Species Act requirements for disposal of these and other lands at former Fort Ord. The GRANTEE must arrange for management agencies acceptable to USFWS to manage each required HMP Reserve and HMP Corridor parcel. The GRANTEE agrees to the conditions for the transfer of the listed HMP Reserve and Corridor parcels. The GRANTEE also agrees to fund and implement the management of these parcels and to conduct the monitoring and reporting requirements described in the HMP. Such efforts shall be accomplished by the GRANTEE or any future assignee by GRANTEE acceptable to USFWS and shall be in accordance with the HMP at GRANTEE'S expense. The requirements to implement and abide by the HMP for these HMP Reserve and HMP Corridor parcels will be included in all transfers, leases or other agreements associated with these lands.

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[THE FOLLOWING PARAGRAPHS OF THIS SECTION MAY BE ADDED ON A DEED BY DEED BASIS, AS APPROPRIATE]

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D. The GRANTEE or his designated management agent for the HMP Reserve and Corridor parcels, shall provide for the implementation, monitoring, analysis, and reporting on a continuing basis for all such parcels and perform any corrective actions or restoration actions for habitat disturbed or destroyed habitat and for protection, stabilization and salvage of individual plants and animals affected within subject HMP Reserve and Corridor areas, as described in the HMP. Annual monitoring reports shall be submitted by or on behalf of the GRANTEE by November 1 of each year to the BLM as described in the HMP.

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E. The following HMP parcels are the subject of the management requirements and development restrictions required by the HMP and will be transferred to and managed by the GRANTEE:

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(1)	Habitat Reserve parcel numbered:
(2)	Habitat Corridor parcels numbered:

- (3) Habitat reserves within the Development with Reserve Areas or Development Restrictions parcels numbered:
- F. The GRANTEE shall protect and conserve the HMP target species and manage these parcels as described in the HMP to avoid removing vegetation, cutting trees, disturbing soil, undertaking or allowing other actions that would diminish or restrict the full potential of the conservation and restoration of the habitat and target species populations within the parcels. The GRANTEE shall accomplish the other Resource Conservation Requirements and Management Requirements prescribed for the specific parcels within Chapter 4 of the HMP. The GRANTEE shall arrange for funding adequate to accomplish the required management action, shall budget in the future, and shall take other actions as may be needed to provide for future needs to implement the required HMP requirements.
- G. Any transfer or assignment of interest in the HMP Reserve and HMP Corridor parcels shall require the approval, of the U. S. Government (USFWS) whether by deed, lease, right of entry, or other conveyance, and such conveyance, as well as any future conveyance, shall contain all the covenants and restrictions concerning the HMP as this deed.
- H. The management responsibility of the parcels may only be transferred, if the arrangements proposed are acceptable to USFWS, as a condition of the right to transfer these parcels. USFWS may require the establishment of a perpetual trust fund to pay for management actions of others as a condition of transfer of management responsibility from the GRANTEE.
- If the USFWS determines that the management of the Reserve or Corridor areas are not in accordance with the HMP, the GRANTOR herein reserves a reversionary interest in all or part of the real property conveyed by this Quitclaim Deed. In the event those portions of the Property designated as Reserve areas or Corridor areas are not being managed in accordance with the requirements of the HMP, at the option of the FWS, the Property shall revert back to the United States for the purpose of complying with the HMP. In the event of a reversion, the GRANTOR, or its assigns or successor in interest, shall have the immediate right of entry and possession of the Property and the GRANTEE shall execute any and all documentation that the GRANTOR, or its assigns or successor in interest deems necessary to perfect or provide recordable notice of the reversion and for the full and complete transfer and reversion of all right, title, and interest in the those portions of the Property designated as Reserve areas or Corridor areas. The GRANTEE shall be liable for any and all costs incurred by the GRANTOR, or its assigns or successor in interest, in perfecting the reversion and transfer of title, including court costs, recordation fees, and other expenses. Any and all improvements on the those portions of the Property reverting back to the GRANTOR made by the GRANTEE shall become the property of the United States upon reversion, and the GRANTEE shall not be entitled to reimbursement or payment thereof.

- J. Although the USFWS will not require further mitigation if the GRANTEE is in compliance with the HMP, without incidental take authorization, the GRANTEE would be in violation of ESA if any of the GRANTEE'S actions resulted in the take of a listed animal species. The HMP does not authorize incidental take by the GRANTEE of any species listed as threatened or endangered under ESA. Section 9 of the ESA prohibits any taking of a threatened or endangered animal species. The definition of "take" includes to harness, harm, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct. Exemptions to Section 9 can be obtained through Sections 7 and 10 of the ESA. The GRANTEE shall apply to the USFWS for a Section 10(a)(1)(B) incidental take permits for the species covered in the HMP. For the USFWS to issue incidental take permit to the GRANTEE, the GRANTEE must provide all the information required by the USFWS at the time of the application.
- K. The GRANTEE covenants for itself, its successors, and assigns that it shall include, and otherwise make legally binding, the restrictions and requirements in this Section and in the HMP in all subsequent leases, transfers, or conveyance documents relating to the Property subject thereto or any portion thereof. The restrictions and projections provided for in this Section and the HMP shall run with the land. The restrictions and protections in this Section and the HMP benefit the lands retained by the United States that formerly comprised Fort Ord, as well as the public generally. The United States shall have the right to enforce the HMP restrictions and requirements by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the parcels to their condition prior to the time of the injury complained of (it being agreed that the GRANTOR may have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the GRANTOR.

XIII. AIR NAVIGATION RESTRICTION

The Monterey Airport and the former Fritzsche Airfield now known as the Marina Municipal Airport are in close proximity of the subject property. Accordingly, in coordination with the Federal Aviation Administration, the GRANTEE, covenants and agrees, on behalf of it, its successors and assigns and every successor in interest to the Property wherein described, or any part thereof, that, when applicable, there will be no construction or alteration unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration in accordance with Title 14, Code of Federal Regulations, Part 77, entitled, Objects Affecting Navigable Airspace, or under the authority of the Federal Aviation Act of 1968, as amended.

XIV. ENFORCEMENT AND NOTICE REQUIREMENT

A. The provisions of this Deed benefit the governments of the United States of America, the State of California, acting on behalf of the public in general, the local governments, and the lands retained by the GRANTOR and, therefore, are enforceable, by resort to specific performance or legal process by the United States, the State of California, the local Governments,

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and by the GRANTEE, and its successors and assigns. Enforcement of this Deed shall be at the discretion of the parties entitled to enforcement hereof, and any forbearance, delay or omission to exercise their rights under this Deed in the event of a breach of any term of this Deed, shall not be deemed to be a waiver by any such party of such term or of any subsequent breach of the same or any other terms, or of any of the rights of said parties under this Deed. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. The enforcement rights set forth in this deed against the GRANTEE, or its successors and assigns, shall only apply with respect to the Property conveyed herein and held by such GRANTEE, its successor or assign, and only with respect to matters occurring during the period of time such GRANTEE, its successor or assign, owned or occupied such Property or any portion thereof.

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B. The GRANTEE, its successors or assigns, shall neither transfer the Property, or any portion thereof, nor grant any interest, privilege, or license whatsoever in connection with the Property without the inclusion, to the extent applicable to the Property or any portion thereof, of the environmental protection provisions contained in Paragraphs [as applicable], Exclusions and Reservations, CERCLA Covenants, Notices and Environmental Remediation, Notice Of The Presence Of Asbestos and Lead-Based Paint; Underground Storage Tanks, Ordnance and Explosives; Endangered Species, Air Navigation Restriction, and shall require the inclusion, to the extent applicable, of such environmental protection provisions in all further deeds, transfers, leases, or grant of any interest, privilege, or license.

C. The obligations imposed in this Paragraph upon the successors or assigns of GRANTEE shall only extend to the property conveyed to any such successor or assign.

XV. NOTICE OF NON-DISCRIMINATION

With respect to activities related to the Property, the GRANTEE covenants for itself, its successors and assigns, that the GRANTEE, and such successors and assigns, shall not discriminate upon the basis of race, color, religion, sex, age, handicap, or national origin in the use, occupancy, sale or lease of the Property, or in their employment practices conducted thereon in violation of the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. Section 2000d); the Age Discrimination Act of 1975 (42 U.S.C. Section 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794). The GRANTOR shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Property hereby conveyed, and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

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XVI. ANTI-DEFICIENCY ACT STATEMENT

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The Army's obligation to pay or reimburse any money under this Quitclaim Deed of Conveyance is subject to the availability of appropriated funds to the Department of the Army, and nothing in this Quitclaim Deed of Conveyance shall be interpreted to require obligations or payments by the United States in violation of the Anti-Deficiency Act.

XVII. GENERAL PROVISIONS

- LIBERAL CONSTRUCTION. Any general rule of construction to the contrary notwithstanding, this Deed shall be liberally construed to effectuate the purpose of this Deed and the policy and purpose of CERCLA. If any provision of this Deed is found to be ambiguous, an interpretation consistent with the purpose of this Deed that would render the provision valid shall be favored over any interpretation that would render it invalid.
- SEVERABILITY. If any provision of this Deed, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this Deed, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.
- NO FORFEITURE. Nothing contained herein will result in a forfeiture or reversion C. of title in any respect.
- CAPTIONS. The captions in this Deed have been inserted solely for convenience D. of reference and are not a part of this Deed and shall have no effect upon construction or interpretation.
- RIGHT TO PERFORM. Any right which is exercisable by the GRANTEE, and its E. successors and assigns, to perform under this Deed may also be performed, in the event of default by the GRANTEE, or its successors and assigns, by a lender of the GRANTEE and its successors and assigns.

XVIII. THE CONDITIONS, RESTRICTIONS, AND COVENANTS

The conditions, restrictions, and covenants set forth in this deed are a binding servitude on the herein conveyed Property and will be deemed to run with the land in perpetuity. Restrictions, stipulations and covenants contained herein will be inserted by the GRANTEE verbatim or by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in the Property or any portion thereof. All rights and powers reserved to the GRANTOR, and all references in this deed to GRANTOR shall include its successor in interest. The GRANTOR may agree to waive, eliminate, or reduce the obligations contained in the covenants, PROVIDED, HOWEVER, that the failure of the GRANTOR or its successor to insist in any one or more instances upon complete performance of any of the said

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conditions shall not be construed as a waiver or a relinquishment of the future performance of any such conditions, but the obligations of the GRANTEE, its successors and assigns, with respect to such future performance shall be continued in full force and effect.

[Signature Pages Follow]

1		COLUMN A INTERPORTATION OF AMEDICA
2	IN WITNESS WHEREOF, th	e GRANTOR, the UNITED STATES OF AMERICA,
3	acting by and through the SECRETA	RY OF THE ARMY, has caused these presents to be
4	executed this day of	, 2000.
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7		UNITED STATES OF AMERICA
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10	•	By Paul W. Johnson
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12		Deputy Assistant Secretary of the Army
13		For Installations and Housing (I&H)
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16	ACKNOWLEDGMENT	
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18	COMMONWEALTH OF VIRGINIA)	
19) s	
Ĵ.	COUNTY OF ARLINGTON)	
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23	On	before me, the undersigned, a Notary Public in and for said
24	atata mercanally appeared Paul W Joh	nson personally known to me (or proved to me on the basis
25	of acticfactory evidence) to be the per-	son whose name is subscribed to the within instrument and
26		he same in his authorized capacity, and that by his signature
27	on the instrument the person, or the	entity upon behalf of which the person acted, executed the
28	instrument.	
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30		WITNESS my hand and official seal.
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35		Notary Public, Commonwealth of Virginia
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	ACCEPTANCE:
2 3 4 5 7 8 9 0	In Testimony Whereof, witness the signature of the Fort Ord Reuse Authority ("Authority"), an organization organized and existing under the laws of the State of California under the Fort Ord Reuse Authority Act created under Title 7.85 of the California Government Code, Chapters 1 through 7, inclusive, commencing with Section 67650, et seq., and selected provisions of the California Redevelopment Law, including Division 24 of the California Health and Safety Code, Part 1, Chapter 4.5, Article 1, commencing with Section 33492, et seq., and Article 4, commencing with Section 33492.70, et seq., this day of, 2000 hereby accepts and approves this Quitclaim Deed for itself, its successors and assigns, and agrees to all the conditions, reservations, restrictions, and terms contained therein.
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3 4	FORT ORD REUSE AUTHORITY
5	LOCAL REDEVELOPMENT AUTHORITY
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.8	By:
Q	Michael A. Houlemard, Jr.
J	Executive Officer
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22	ACKNOWLEDGMENT
23	ACKITOWELL
24 25	STATE OF CALIFORNIA)
25 26) ss
27	COUNTY OF MONTEREY)
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29	On before me, the undersigned, a Notary Public in and for said
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32	instrument and acknowledged to me that he executed the same instrument and acknowledged to me that he executed the same instrument the person, or the entity upon behalf of which the person acted, by his signature on the instrument the person, or the entity upon behalf of which the person acted,
33	by his signature on the instrument
34	executed the instrument.
35	WITNESS my hand and official seal.
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FINDING OF SUITABILITY TO TRANSFER (FOST) BUILDING 1021 PARCEL FORMER FORT ORD, CALIFORNIA

On the basis of the Community Environmental Response Facilitation Act (CERFA) Report for Fort Ord, I have determined that the Building 1021 Parcel (the Property), at former Fort Ord, California, is suitable for transfer to Monterey County for emergency management purposes. The Property to be transferred (Parcel E38) includes 1 building and comprises approximately 2 acres (Plate 1).

A determination of the environmental condition of the Property was made by the United States Army by reviewing existing environmental documents and making associated visual site inspections (4/18/96; 11/6/96). The documents reviewed included the final CERFA Report (April 1994), U.S. EPA Region IX's concurrence to the CERFA Report (Memorandum, 19 April 1994), and various remedial investigation/feasibility study documents. The results of this document review indicate that the Property is environmentally suitable for transfer to Monterey County. The results are as follows:

- There is one structure (Building 1021) located on the Property. The building was previously used by the Criminal Investigation Command (CID) for law enforcement purposes.
- An asbestos survey was completed for Building 1021 as part of a facility-wide asbestos survey. The survey shows the building contains nonfriable asbestos-containing materials (ACM). The nonfriable ACM (floor tile mastic) was rated 13 (of lowest concern) with a recommended 2-year (biannual) inspection cycle. The Army does not intend to remove the ACM in this building, but rather only discloses its condition. The recommended inspection of ACM present in this building is the responsibility of the recipient.
- Lead-acid batteries, used as a backup power source for lighting, are present in the building.
 They are in good condition with no signs of deterioration or release.
- Building 1021 was constructed in 1986, and is therefore not considered to contain lead-based paint.
- No radon levels above 4 picocuries per liter (pCi/L) were detected in the building during a 1990 survey at Fort Ord.
- No radiological surveys were conducted within the building because radioactive commodities were reportedly not used or stored in the building.
- There have been no reported releases of PCB-contaminated dielectric fluids from any transformers in the vicinity of the Property.
- Ordnance and explosives (OE) investigations, consisting of the Archive Search Report and Supplement No. I (December 1993 and November 1994, respectively), Site 39 Data Summary and Work Plan (February 1994). OE contractor after-action reports (December 1994, November 1995), working maps, Fort Ord Training Facilities Map, and associated interviews from various ordnance-related community relations activities, show no OE locations within or immediately adjacent to the Property. However, because OE were used throughout the history

of Fort Ord, the potential for OE to be present on the Property exists. This notice will be included in the deed.

- No underground or aboveground storage tanks or solid waste management units are present on the Property, and no studies associated with them have been conducted by the Army for this Property.
- No Installation Restoration Program (IRP) sites are located on the Property.
- · The final CERFA report identifies the Property as being within CERFA Parcel 211.
- · No groundwater monitoring wells are present on the Property.

National Environmental Policy Act (NEPA) requirements for this transfer were satisfied by a Record of Consideration based on analysis conducted in the June 1993 Fort Ord Disposal and Reuse Environmental Impact Statement (EIS).

Clean Air Act General Conformity Rule requirements for this transfer were satisfied by a Record of Non-Applicability based upon an exemption for property transfers where the proposed action is a transfer of ownership, interest and title in the land, facilities, and associated real and personal property.

On the basis of the above information, certain terms, conditions, reservations, restrictions, and notifications are required. Disclosure of conditions and use restrictions are described below and will be included in the deed.

NOTICE OF THE PRESENCE OF ASBESTOS

- A. The Grantee is hereby informed and does acknowledge that nonfriable asbestos or asbestos-containing materials (ACM) have been found on the Property, as described in the Diagnostic Environmental Inc. report, Asbestos Survey Report, U.S. Army Corps of Engineers Fort Ord Installation, Fort Ord, California, dated April 26, 1993.
- B. The Grantee covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos: and that the Grantor assumes no liability for damages for personal injury, illness, disability, or death, to the Grantee, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property described in this transfer, whether the Grantee, its successors or assigns have properly warned or failed to properly warn the individual(s) injured.

NOTICE OF THE POTENTIAL FOR THE PRESENCE OF ORDNANCE AND EXPLOSIVES

Ordnance and explosives (OE) investigations indicate that OE is not likely on this Property. However, because this is a former military installation with a history of OE use there is a potential for OE to be present on the property. In the event Grantee, its successors, and assigns, should discover any ordnance on the Property, it shall not attempt to remove or destroy it, but shall immediately notify the local Police Department and the Directorate of Law Enforcement at the Presidio of Monterey. Competent

U.S. Army Explosive Ordnance personnel will be dispatched promptly to dispose of such ordnance properly at no expense to the Grantee.

On the basis of the above information, I conclude that the Building 1021 Parcel should be assigned Department of Defense (DoD) Environmental Condition Category 1 (area where no release or disposal of hazardous substances or petroleum products has occurred [including no migration of these substances from adjacent areas]) and is transferable under CERCLA Section § 120(h)(4). The deed for this transaction will contain:

- The covenant under CERCLA § 120(h)(4)(D)(i) warranting that any response action under CERCLA or corrective action found to be necessary after the date of transfer shall be conducted by the United States.
- The covenant under CERCLA § 120(h)(4)(D)(ii) granting the United States access to the Property in any case in which response action or corrective action is found to be necessary after the date of transfer.

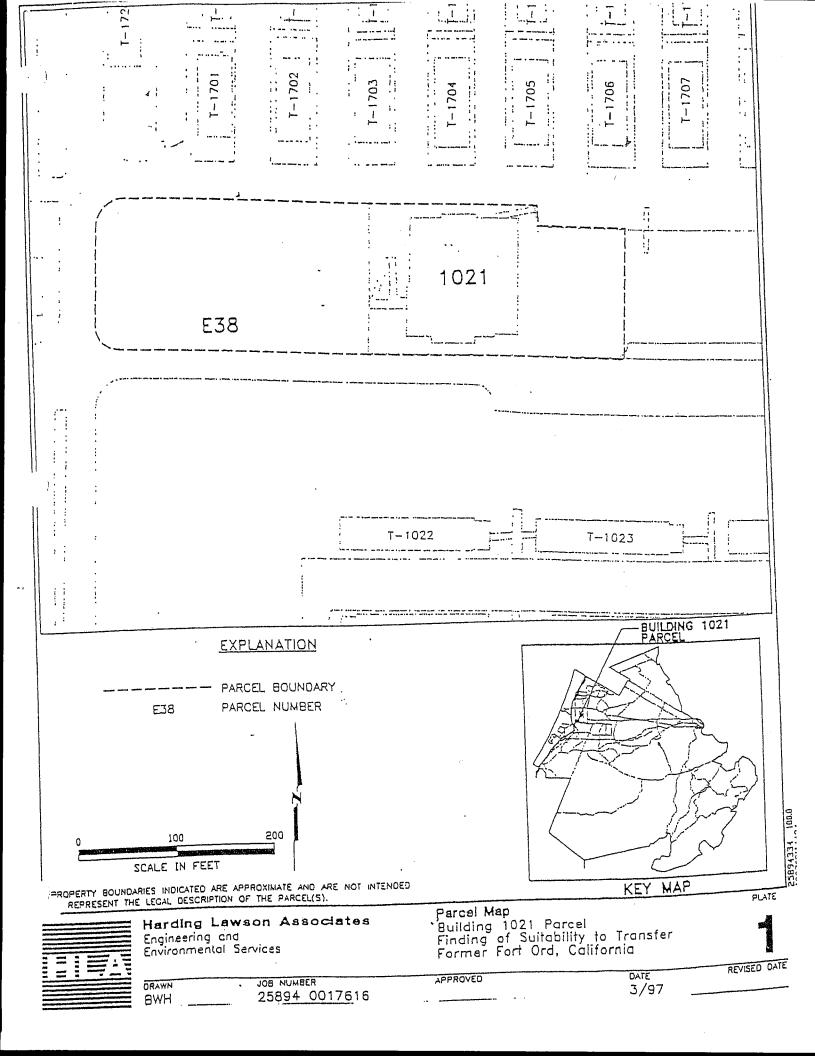
12 JUN 1997

Toni B. Wainwright

Acting Deputy Chief of Staff

for Base Operations Support

United States Army Training and Doctrine Command



UNRESOLVED AGENCY COMMENTS

US EPA 8 DECEMBER 1995 COMMENT:

Public Law 102-484, as amended by Public Law 103-160, provides for indemnification by the military services when property on closing military bases is transferred. This law provides that the military indemnify persons and entities acquiring ownership or control of property at a closing military base from liability for personal injury and property damage resulting from the release or threatened release of a hazardous substance (such as asbestos), unless the person or entity acquiring the property contributed to the release. It is unclear whether the FOST's statements on the Army not assuming liability for the transferee's contact with asbestos are consistent with the indemnification required by law. To avoid confusion over the indemnification that the Army is required to provide, EPA recommends that the mention of future liability be deleted and that the statutory language be relied on to determine any future liability.

Army Response:

Army believes that the standard Army indemnification language is legally sufficient.

GOVERNMENT REPRESENTATIONS AND WARRANTIES EXHIBIT D-1

EXHIBIT D-1

[GOVERNMENT REPRESENTATIONS AND WARRANTIES] »

[insert date]

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

Dear Mr. Houlemard:

I have reviewed the Memorandum of Agreement Between the United States of America Acting by and through the Secretary of the Army ("Government") and the Fort Ord Reuse Authority for the Sale of Portions of the former Fort Ord Located in Monterey County, California, dated the ____ day of ______, 2000 ("Memorandum Agreement").

To the best of the Government's information, knowledge and belief, I certify that all of the representations and warranties of the Government set forth within the Memorandum of Agreement are true and correct as of [insert date], the date of the Property Closing.

Sincerely,

Keneth L. Fox, Chief
Management and Disposal Branch
U.S. Army Corps of Engineers
Sacramento District

AUTHORITY REPRESENTATIONS AND WARRANTIES EXHIBIT D-2

EXHIBIT D-2

. JAUTHORITY REPRESENTATIONS AND WARRANTIES]

[insert date]

Mr. Keneth L. Fox, Chief Management and Disposal Branch U.S. Army Corps of Engineers 1325 J Street Sacramento, California 95814

Dear Mr. Fox:

I have reviewed the Memorandum of Agreement Between the United States of America Acting by and through the Secretary of the Army and the Fort Ord Reuse Authority for the Sale of Portions of the former Fort Ord Located in Monterey County, California, dated the ____ day of ____ 2000 ("Memorandum Agreement").

To the best of the Fort Ord Reuse Authority's information, knowledge and belief, I certify that all of the representations and warranties of the Fort Ord Reuse Authority set forth within the Memorandum of Agreement are true and correct as of [insert date], the date of the Property Closing.

Sincerely,

Michael A. Houlemard, Jr. Executive Officer Fort Ord Reuse Authority

PERMITTED TITLE EXCEPTIONS
(TO BE INSERTED AT A LATER TIME)
EXHIBIT E

PROGRAMMATIC AGREEMENT
EXHIBIT F

PROGRAMMATIC AGREEMENT AMONG

THE DEPARTMENT OF THE ARMY

THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
REGARDING

BASE CLOSURE AND REALIGNMENT ACTIONS AT FORT ORD, CALIFORNIA

WHEREAS, the Department of the Army (Army) has determined that the closure, interim lease, and transfer of certain portions of Fort Ord, California under the authority of the Defense Base closure and Realignment Act of 1990 (P.L. 101-510), commonly known as BRAC 91, may have an effect on properties eligible for inclusion in the National Register of Historic Places (historic properties); and

WHEREAS, the Army has consulted with the Advisory Council on Historic Preservation (Council) and the California State Historic Preservation Officer (SHPO) pursuant to 36 Code of Federal Regulations Part 800.13 of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and Section 110 (16 U.S.C. 470h-2) of the same Act; and

WHEREAS, the Area of Potential Effect (APE) for this undertaking is understood to be those lands within the contiguous boundaries of Fort Ord; and

WHEREAS, the terms of this agreement are to apply to those Fort Ord lands that are being disposed of as part of the BRAC 91 action; and

WHEREAS, the Army in consultation with the SHPO has designed and completed a Phase I Archeological Survey for prehistoric sites on land to be transferred out of Federal ownership and located no historic properties; and

WHEREAS, the Army, in accordance with the provisions of a Programmatic Memorandum of Agreement among the United States Department of Defense, the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers regarding the Demolition of World War II Temporary Buildings, effective June 7, 1986, as amended, has completed all mitigation required prior to the transfer of World War II temporary buildings (1939-1946); and

WHEREAS, the definitions for Archeological Survey, notice/notification, Archeologist, Architectural Historian and Historic Architect given in Appendix A are applicable throughout this Programmatic Agreement; and

WHEREAS, interested members of the public and Native Americans have been provided an opportunity to comment on the effects BRAC 91 may have on historic properties at Fort Ord.

NOW, THEREFORE, the Army, the Council and the SHPO, agree that the BRAC 91 closure, lease, and transfer of certain portions of Fort Ord shall be administered in accordance with the following stipulations in order to satisfy the Army's Section 106 and 110 responsibilities for all individual undertakings included in this programmatic Agreement.

STIPULATIONS

The Army will ensure that the following measures are carried out.

I IDENTIFICATION AND EVALUATION of HISTORIC PROPERTIES:

The Army will provide the SHPO with recommendations of National Register eligibility for properties within the APE on lands that will be transferred out of Federal ownership. Based upon the information obtained from testing and evaluation, the Army will determine, in consultation with the SHPO, the eligibility of the properties for inclusion in the National Register in accordance with 36 CFR 800.4(c). If the Army and the SHPO fail to agree upon the National Register eligibility of the property, the Army will obtain a determination from the Secretary of the Interior pursuant to 36 CFR 800.4 (c)(4).

II. TRANSFER OR INTERIM LEASE OF REAL PROPERTY AND IMPROVEMENTS THAT DO NOT INCLUDE HISTORIC PROPERTIES:

The Army will transfer and/or lease real property and improvements that do not include historic properties identified under Stipulation I, above, without further action under this Agreement.

III. TRANSFER OF REAL PROPERTY AND IMPROVEMENTS BY THE ARMY TO ANOTHER FEDERAL AGENCY THAT WILL ASSUME LAND MANAGEMENT RESPONSIBILITIES:

The Army will provide notification to the signatories of this agreement within forty-five (45) calendar days after the transfer of Fort Ord real property to Federal agencies that plan to assume land management responsibilities and use the land for purposes no more likely to adversely affect historic properties than those for which the lands were used by the Army prior to BRAC 91.

- IV. TRANSFER OF HISTORIC PROPERTIES IDENTIFIED UNDER STIPULATION I:
- A. Transfer to Another Federal Agency for Subsequent Transfer to Non-Federal Entities Under Federal Surplus Property Programs:
- 1. Transfer Under the Surplus Property Program for Historic Monuments: The Army will notify the signatories of this

agreement within forty-five (45) calendar days after the transfer of historic properties under the provisions of An Act to Facilitate the Preservation of Historic Monuments and Other Purposes (86 Stat. 503, 40 U.S.C. 484(k)(3) & (k)(4)), August 4, 1972, as amended, which require the preservation of those, properties as Historic Monuments.

- Transfer Under All Other Surplus Property Programs: with the exceptions noted in Stipulation V, separate preservation covenants enforceable under California State law and/or Federal Case law, if applicable, for each historic property will be developed jointly by the signatories to this agreement and attached to the transfer documents prior to the transfer of that property by the Army. The covenants will be enforced by the Federal Agency administering the surplus property program (sponsoring agency), the California State Office of Historic Preservation, or another entity acceptable to all the signatories of this agreement. If the sponsoring agency transfers the property without modifying the covenant(s) drafted by the signatories to this agreement and registers the deed in the proper office(s) in accordance with state and local law, no further actions under Section 110 or 106 of the National Historic Preservation Act will be required prior to transfer of the property. If the sponsoring agency proposes to modify the covenants, the proposed modifications will be considered a separate undertaking and the sponsoring agency shall comply with 36 CFR Part 800.4.
- B. Transfer by the Army to Non-Federal Entities: With the Exceptions noted in Stipulations IV and V., separate preservation covenants enforceable under California State law and/or Federal Case law, if applicable, for each historic property identified under Stipulation I, above, will be developed jointly by the signatories to this agreement and attached to the deed prior to the transfer of that parcel by the Army and the deed will be registered in the proper office (s) in accordance with state and local law. The covenant(s) will be enforced by the California State Office of Historic Preservation or another entity acceptable to all of the signatories of this agreement. The Army will make every reasonable effort to configure the boundaries of parcels that include historic properties in accordance with the purposes of the covenants.

Y. TRANSFER WITHOUT MANAGEMENT COVENANTS:

The Army will make a good faith effort to transfer each historic property with a preservation covenant. If such efforts fail and following consultation between the parties to this agreement, the properties may be transferred without a preservation covenant.

VI. LEASE OF HISTORIC PROPERTIES:

If the Army determines that the lease of real property that includes historic properties identified in Stipulation I, is required, the Army will, in consultation with the SHPO and the Council, develop and include clauses in the lease that require the management of the identified historic property or properties. The Army or other entity acceptable to all parties to this agreement will enforce the lease. If agreement on the provisions of a lease cannot be reached, the Army will treat that lease as a separate undertaking and comply with 36 CFR Part 800.5 prior to leasing the parcel in question.

VII. ENVIRONMENTAL TESTING AND CLEANUP:

- A. With the exception of Archeological and Architectural Monitoring stipulated in paragraph VII.C., the Army will proceed with environmental testing and cleanup, to include the disposal of unexploded ordnance, without further consultation under this Agreement.
- B. Prior to initiating testing, cleanup, or unexploded ordinance disposal, the work crew(s) will be made aware of the potential for currently unlocated archaeological sites.
- When the Army determines that archeological monitoring of an environmental cleanup site will not pose a risk to human health or safety, all ground disturbing activities inside National Register eligible sites, previously identified unevaluated sites, and sites discovered during the course of the work will be monitored by an archeologist. In the event that an archeological site(s) is located, a reasonable effort will be made to avoid or reduce adverse effects on the site(s). testing and cleanup has the potential to affect historic building materials, the Army will ensure that the work plans and specifications are reviewed by an Historic Architect or Architectural Historian and consider their recommendations to avoid or reduce adverse effects on the historic materials. Army will provide the SHPO and the Council with copies of a report(s) documenting these actions within minety (90) calendar days after monitoring at each property is completed.
- D. If, during the process of conducting environmental testing and cleanup and/or disposal of unexploded ordnance, a previously unidentified archeological site is discovered, the Army will, after the cleanup/disposal is complete but prior to the transfer from Federal ownership, evaluate the site and consult with the SHPO to determine if it is eligible for inclusion in the National Register.
 - E. If Native American cultural items, as defined in Section 2(3) of the Native American Graves Protection and Repatriation Act (NAGPRA) are encountered during the process of conducting

environmental testing and cleanup and/or disposal of unexploded ordnance, these activities will cease in the immediate vicinity of the discovery and the procedures in NAGPRA Section 3(d) will be followed. Headquarters Department of the Army (Army Environmental Center) and relevant Native American groups will be notified of the discovery.

VIII. HISTORIC RECORDS:

- A. All maps, drawings, prints, studies, and other written documentation that relate to Fort Ord historic properties and are currently located at the Fort Ord Directorate of Public Works and Public Affairs Offices, or are produced by the Army in connection with the implementation of this Agreement, will be transferred to, and retained by, the Presidio of Monterey Command Historian. An inventory of documents transferred under this stipulation will be provided to the SHPO, the U.S. Army Center for Military History, the Monterey County Public Library System, the Monterey County Historical Society and the Monterey History and Art Association.
- B. All materials and records resulting from archeological survey/data recovery conducted during the implementation of this Agreement shall be curated in accordance with 36 CFR Part 79, except for those items transferred pursuant to the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(c)).

IX. ANNUAL REPORT:

The Army will prepare an annual report first due on April 30, 1995 on its implementation of this Programmatic Agreement and last due ninety (90) days after this implementation is complete. The report will be provided concurrently to the SHPO and the Council for review, comment, and consultation as needed. The annual report shall include information on the undertakings implemented under this Agreement. If the Council and/or the SHPO do not object within thirty (30) days of receiving such report, it will be assumed that they concur with the implementation of this Agreement.

X. DISPUTE RESOLUTION:

Should the SHPO and/or Council object in writing within twenty (20) calendar days to any actions, plans, specifications, or reports provided for review pursuant to this PA, the Army shall consult with the objecting party or parties to resolve the objection; if it cannot be resolved, the Army shall forward relevant documentation, the Council will either:

1. Inform the Army that the Council intends to comment pursuant to 36 CFR 800.6(b), or

2. Provide the Army with recommendations that the Army shall take into account prior to a final decision

The Army's responsibility to carry out all actions under this agreement that are not subjects of the dispute will remain unchanged.

XI. SHPO/COUNCIL MONITORING AND REVIEW:

The Council and SHPO may review activities carried out pursuant to this agreement and will review such activities if so requested. The Army will cooperate with the Council and SHPO in carrying out their monitoring and review responsibilities.

XII. PUBLIC OBJECTION:

At any time during implementation of the measures stipulated in this Agreement, should an objection to any such measure or its manner of implementation be raised by any member of the public, manner shall take the objection into account and consult as the Army shall take the objection into account and SHPO to resolve needed with the objecting party, the Council and SHPO to resolve the objection.

XIII. AMENDMENTS:

Any party to this agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR Part 800.13 to consider such an amendment. No amendment to this agreement shall be effective until it has been executed by all consulting parties.

XIV. TERMINATION:

Any party to this Agreement may terminate it by providing thirty (30) days notice to the other parties, provided the parties consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the Army will comply with 36 CFR Part 800.4 through 800.6 with regard to individual undertakings covered by this Agreement.

XV. FAILURE TO EXECUTE THIS AGREEMENT: In the event the Army does not carry our the terms of this Programmatic Agreement, the Army will comply with 36 CFR 800.4 through 800.6 with regard to individual undertakings covered by this agreement.

Execution and Implementation of this Programmatic Agreement evidences that the Army has satisfied its Sections 106 and 110 responsibilities for all individual undertakings of the Base Closure and Realignment of Fort Ord. FORT ORD, CALIFORNIA Date: 18 April 1994 COMMANDING DEPARTMENT OF THE ARMY JOHN H. LITTLE, MAJOR GENERAL, USA, ASSISTANT CHIEF OF STAFF FOR INSTALLATION MANAGEMENT CALIFORNIA STATE HISTORIC PRESERVATION OFFICER ADVISORY COUNCIL ON HISTORIC PRESERVATION

-7

APPENDIX A

DEFINITIONS OF TERMS USED IN THIS AGREEMENT

In addition to the terms defined here, and unless otherwise indicated, all definitions given in 36 CFR Part 800.2 will be accepted for the purpose of this Agreement.

- 1. Archeological Survey: Systematic identification of surface or subsurface evidence of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archeological value regardless of the value of any existing structure.
- 2. Notice/Notification: Includes, as appropriate, a map, a legal description of the property transferred, a description of the intended use of the land, a letter from the receiving Federal agency stating that it will carry out the requirements of Section 110(a)(2) of the National Historic Preservation Act on the lands it receives, a list of historic properties transferred, the name and address of the entity to whom the property has been transferred, or the name and address of the Entity responsible for enforcement of preservation covenants.
- 3. Archeologist/Architectural Historian/Historic Architect: A professional who meets the minimum standards listed in Archeology and Historic Preservation, Secretary of Interior's Standards and Guidelines (Federal Register Vol. 48, No. 190 pp 44717 44742) in the appropriate field.

BILL OF SALE OF PERSONAL PROPERTY
EXHIBIT G

EXHIBIT G

BILL OF SALE FOR RELATED PERSONAL PROPERTY

The UNITED STATES OF AMERICA, acting by and through the Secretary of the Army, (hereinafter referred to as the "Vendor"), pursuant to the authority provided in Section 2905(B)(4) of the Defense Base Closure and Realignment Act of 1990, as amended, does hereby sell, grant and convey to the Fort Ord Reuse Authority, (hereinafter referred to as the "Vendee"), in accordance with the terms of the Memorandum of Agreement (MOA) between the Vendor and Vendee, dated
1. This Bill of Sale is for the specific purpose of conveying personal property related to, designed for, or specifically adapted to the productive reuse of the real property described in the aforesaid quitclaim deed in accordance with the Final Fort Ord Base Reuse Plan.
2. All related personal property is conveyed as is, where is, and without any warranty or representation whatsoever.
3. This Bill of Sale is effective when the deed of conveyance for Parcel(s), Fort Ord, to the Vendee has been executed.
IN TESTIMONY WHEREOF, witness the signature of the Vendor, acting by and through the authority of the Secretary of the Army, United States Department of the Army, this day of, 20
UNITED STATES OF AMERICA
BY:
Installation Commander

ACKNOWLEDGMENT

STATE OF CALIFORNIA	
COUNTY OF MONTEREY	•
basis of satisfactory evidence	before me, the undersigned, a Notary Public in and for said niel Devlin personally known to me (or proved to me on the e the person whose name is subscribed to the within instrument ecuted the same in his authorized capacity, and that by his son, or the entity upon behalf of which the person acted,
	WITNESS my hand and official seal.
	,
	Notary Public, State of California

ACCEPTANCE

In Testimony Whereof, witness the sign Vendee, an organization organized and existing the Fort Ord Reuse Authority Act created under Chapters 1 through 7, inclusive, commencing provisions of the California Redevelopment Law, and Safety Code, Part 1, Chapter 4.5, Article 1, Article 4, commencing with Section 33492.70, 20 does hereby accept and approve this Bi conditions therein.	with Section 67650, et seq., and selected including Division 24 of the California Health commencing with Section 33492, et seq., and et seq., this day of,
	FORT ORD REUSE AUTHORITY LOCAL REDEVELOPMENT AUTHORITY
	By: Michael A. Houlemard, Jr. Executive Officer
ACKNOWLEDGMENT	
STATE OF CALIFORNIA)) ss COUNTY OF MONTEREY)	:
on before me state, personally appeared Michael A. Houlemard the basis of satisfactory evidence) to be the person instrument and acknowledged to me that he executed the instrument the person, or the executed the instrument.	n whose name is subscribed to the within uted the same in his authorized capacity, and that
	WITNESS my hand and official seal.
	Notary Public, State of California

03-4791.01 03-41586.01 03-41586.01

EXHIBIT H

(RESERVED)

EXHIBIT I

(RESERVED)

EXHIBIT J RIGHT OF ENTRY

[Date]

TO: Fort Ord Reuse Authority
Dear:
You may consider this letter as a right-of-entry for the purpose of ingress, egress and operation and maintenance of as identified in Exhibit "A" attached hereto and made a part hereof, located at Fort Ord, California. This right-of-entry is subject to the following terms and conditions:
1. The Grantee, the Local Redevelopment Authority, shall be responsible for any and all utility service, security and operation/maintenance of
2. The Grantee shall comply with all applicable Federal, state, county, and municipal laws, ordinances and regulations wherein the property is located.
3. The Grantee will use all reasonable means available to protect the environment, historic and cultural resources and, where damage nonetheless occurs from activities of the Grantee, the Grantee shall be liable to restore the damaged resources.
4. Within the limits of their respective legal powers, the parties to this right-of-entry shall protect the premises against pollution of its air, ground, and water. The specific requirements are defined in the Record of Environmental Consideration as identified in Exhibit "B", attached hereto and made a part hereof. The Grantee shall comply with any laws, regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instruction in effect or prescribed by said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this right-of-entry. The Grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.
5. For such period as the Grantee is in possession of the premises pursuant to the

terms and conditions of this right-of-entry, the Grantee shall procure and maintain at the Grantee's cost a standard fire and extended coverage insurance policy on the premises to the full insurable value thereof, unless a lesser value is approved by the Secretary. The Grantee shall procure such insurance from a reputable company. The insurance policy shall provide that, in the event of loss thereunder, the proceeds or the policy, at the election of the United States, shall be payable to the Grantee to be used solely for the repair, restoration or replacement of the

Fort Ord Right of Entry

property damaged or destroyed, and any balance of the proceeds not required for such shall be paid to the United States. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore or replace the premises or any part hereof. The United States shall waive procurement of an insurance policy if a self-insured certificate can be provided to the United States.

- 6. The United States shall not be responsible for injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or injuries to the person of the Grantee's officers, agents, or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the Grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.
- 7. The Grantee shall not discriminate against any person or persons because of race, color, sex, national origin, handicap, age or religion in the conduct of operations on the premises.
- 8. This right-of-entry is issued prior to the conveyance of the described land pursuant to _______. Because of the urgency requiring the Grantee to proceed with use of said property in advance of the completion, execution and delivery of the formal transfer, the Grantee agrees to accept and be bound by the terms and conditions of the right-of-entry.

Please indicate your acceptance of the terms and conditions of this right-of-entry by signing all copies where indicated, and returning the original and one copy to this office.

Sincerely,

Keneth Fox Chief, Real Estate Division

The terms and conditions of this right-of-entry are hereby accepted on behalf of the Fort Ord Reuse Authority this ______ day of ______, 2000.

FORT ORD REUSE AUTHORITY LOCAL REDEVELOPMENT AUTHORITY

Michael A. Houlemard, Jr. Executive Officer

CONVEYANCE SCHEDULE
ENVIRONMENTAL REMEDIATION SCHEDULE
EXHIBIT K & L

COE Number	Parcel Name	Category ¹	OE Site	Track ¹	OE RI/FS Completion Date ²	Transfer Documentation
E4.1.2.3	ROW Booker Str /lower Patton	В		0	02/25/2000	08/23/2000
E11b.1	development / mixed use /ac limit	В	none	0	02/25/2000	08/23/2000
E11b.2	development / mixed use-ac limit	В	none	0	02/25/2000	08/23/2000
E11b.3	sewer treatment facility / development mix	В	none	0	02/25/2000	. 08/23/2000
E11b.4	water tank 147	В	none	0	02/25/2000	08/23/2000
E15.1	ROW / retail	В	none	0	02/25/2000	08/23/2000
E2b.1.1.1	development / mixed use	В	none	0	02/25/2000	08/23/2000
E2b.1.1.2	development / mixed use	В	none	0	02/25/2000	08/23/2000
E2b.1.2	ROW road	В.	none	0	02/25/2000	08/23/2000
E2b.1.3	development / mixed use	В	none	0	02/25/2000	08/23/2000
E2b.1.4 ·	ROW road	В	none	0	02/25/2000	08/23/2000
E2b.1.5	development / mixed use	В	none	0	02/25/2000	08/23/2000
E2b.2.1	development / mixed use	В	none	0	02/25/2000	08/23/2000
E2b.2.2	ROW road	В	none	0	02/25/2000 -	08/23/2000
E2b.2.3	ROW road ·	В	none	0	02/25/2000	08/23/2000
E2b.2.4	development / mixed use	В	none	0	02/25/2000	08/23/2000
E2b.2.5	2/12 Pump and Treat Facility	В	none	0	02/25/2000	08/23/2000
E2b.3.1.1	development / mixed use	В	none	. 0	02/25/2000	08/23/2000
E2c.1	development / mixed use	В	none	0	02/25/2000	08/23/2000
E2c.2	OU2 Pump and Treat Facility	В	none	0	02/25/2000	08/23/2000
E2c,3.1	development / mixed use	В	none	0	02/25/2000	08/23/2000
E2c.3.2	ROW road	В	none	0	02/25/2000	08/23/2000
E2c.3.3	development / mixed use	В	none	0	02/25/2000	08/23/2000
E2c.4.1.1	ROW road .	В	none	0	02/25/2000	08/23/2000℃

EDC Parcels OE RI/FS esti...ated completion dates

COE Number	Parcel Name	Category ¹	OE Site	Track ¹	OE RI/FS Completion Date ²	Transfer Documentation
E2c.4.2.1	development / mixed use	В	none	0	02/25/2000	08/23/2000
E2d.1	development / mixed use	В	none	0	02/25/2000	08/23/2000
E2d.2 ·	ROW	В	none	0	02/25/2000	08/23/2000\
E2e.1	ROW 6th Ave / 8th St Road	В	none	0	02/25/2000	08/23/2000
E2e.2	ROW Intergarrison road	В	none	0	02/25/2000	08/23/2000
E4.1.1	housing lower Patton	В	none	0	02/25/2000	08/23/2000
E4.1.2.1	housing lower Patton	В	none	0	02/25/2000	08/23/2000
E4.2	housing upper Patton	В	none	0	02/25/2000	08/23/2000
E4.3.1	housing Abrams	В	none	0	02/25/2000	08/23/2000
E4.5	water treatment facility	В	none .	0	02/25/2000	08/23/2000
E5a	development / mixed use	В	попе	0	02/25/2000	08/23/2000
E8a.1	Landfill, 75 acre development, HMP	• в	none	0	02/25/2000	08/23/2000
E8a.2	Landfill carrot, Univ med density residential	В	none	0	02/25/2000	08/23/2000
L20.10.1	ROW / north Reservation road	В	none	0	02/25/2000	08/23/2000
L20.10.2	ROW / north Reservation road	. В	none	0	02/25/2000	08/23/2000
L20.10.3	ROW / north Reservation road	В	none	0	02/25/2000	08/23/2000
L20.14.1	ROW / East Intergarrison road	В	none	0	02/25/2000	08/23/2000
L20.14.2	ROW / Mid Intergarrison road	В	none	0	02/25/2000	08/23/2000
L20.9	ROW / south Reservation road	В	none	0	02/25/2000	08/23/2000
L23.3.1	development mixed use-ac limit	В	none	0	02/25/2000	08/23/2000
L23.3.2.1	development mixed use-ac limit/historic district	В	none	0	02/25/2000	08/23/2000
L23.3.2.2	development mixed use-ac limit	В	none	0	02/25/2000	08/23/2000
L32.1	public facilities/inst Surplus II	В	none	0	02/25/2000	08/23/2000

Page 2 of 5

EDC Parcels OE RI/FS estin...ted completion dates

COE Number	· Parcel Name	Category ¹	OE Site	Track ¹	OE RI/FS Completion Date ²	Transfer Documentation
L32.4.1	development mixed use / retail . Surplus II	В	попе	0	02/25/2000	08/23/2000
L32.4.2 .	ROW / development mixed use / Surplus II	В	none	0	02/25/2000	08/23/2000 \
E4.1.2.2	housing lower Patton	С	· 1 ·	1	01/01/2002	06/30/2002
E2c.4.1.2	ROW road	С	2	1	01/01/2002	06/30/2002
E2c.4.2.2	development / mixed use	С	2	1	01/01/2002	06/30/2002
E2c.4.3	ROW road	С	2	1	01/01/2002	06/30/2002
E2c.4.4	ROW road	C	2	1	01/01/2002	06/30/2002
E2d.3	development / mixed use	С	2	1	01/01/2002	06/30/2002
L23.3.3	development mixed use-ac limit	C .	5	1	01/01/2002	06/30/2002
E15.2	open space	C ·	20	1	01/01/2002	06/30/2002
E29	BP/LI/O//R&D	С	43	1	01/01/2002	06/30/2002
E31a	bus park /LI/O/R&D	С	43	1	01/01/2002	06/30/2002
E31b	bus park /LI/O/R&D	С	43	1	01/01/2002	06/30/2002
E31c	bus park /LI/O/R&D	С	43	1	01/01/2002	06/30/2002
E36	bus park /LI/O/R&D	С	43	1	01/01/2002	. 06/30/2002
E2a	development / mixed use	С	1, 6	1	01/01/2002	06/30/2002
E4.3.2	housing Abrams	С	13A	1	01/01/2002	06/30/2002
E4.6.1	ROW middle Imjin road	С	13A	1	01/01/2002	06/30/2002
E4.6.2	ROW Imjin road	С	13A	1	01/01/2002	06/30/2002
E18.4	water tank	С	4A	2	09/01/2003	02/28/2004
E11a	Habitat management	С	TS-25 (27-Y)	1	01/01/2002	06/30/2002
E11b.8	ASP / development mixed use	Е	42	3	06/01/2005	11/28/2005
L31	Esselen Parcel Surplus II	E	49	3	06/01/2005	11/28/2005
E21b.2	housing SFD low density	E	53	3	06/01/2005	11/28/2005

EDC Parcels OE RI/FS estimated completion dates

COE Number	Parcel Name	Category ¹	OE Site	Track ¹	OE RI/FS Completion Date ²	Transfer Documentation
E11b.6	development / mixed use-aac limit .	E	59	3	06/01/2005	11/28/2005
E11b.7	development / mixed use-ac limit	E	11, 23, 33	3	06/01/2005	11/28/2005 \
E19a.1	housing SFD low density	E	13B, 45	3	06/01/2005	11/28/2005
E19a.2	housing SFD low density	E	13B, TS-1, TS-2, TS-3	3	06/01/2005	11/28/2005
E29a	visitor center / bus park	E	15DRO.1	3	06/01/2005	11/28/2005
E29b.1	ROW future Hwy 68 / habitat	E	15DRO.2	3	06/01/2005	11/28/2005
E29b.2	ROW/BP/LI/O/R&D	E	15MOCO.1	3	06/01/2005	11/28/2005
E21b.3	housing SFD low density	E	15MOCO.2	3	06/01/2005	11/28/2005
E24	ROW / housing future SFD med density	E	15SEA.1	3	06/01/2005	11/28/2005
E23.2	ROW / housing future SFD med density	E	15SEA.2	3	06/01/2005	11/28/2005
E34	ROW / housing future SFD med density	E	15SEA.2	3	06/01/2005	11/28/2005
E23.1	ROW / retail	E.	15SEA.3	3	06/01/2005	11/28/2005
E20c.1.1.2	housing future .	E	24A, 44	3	06/01/2005	· 11/28/2005
E20c.1.2	Cable TV area	E	24A, 44	3	06/01/2005	11/28/2005
E21b.1	housing SFD low density	. Е	3, 37, 52, 54, 55	3	06/01/2005	11/28/2005
E21a	housing SF low density	E	40, 44, 50, 53	3	06/01/2005	11/28/2005
E20c.2.1	housing future	E	44,49,50	3	06/01/2005	11/28/2005
E19a.3	housing SFD low density	E	4A, 4B, 51, 55	3	06/01/2005	11/28/2005
E18.1	housing future	E	4A, 50	3	06/01/2005	11/28/2005

EDC Parcels OE RI/FS estimated completion dates

COE Number	Parcel Name	Category ¹	OE Site	Track ¹	OE RI/FS Completion Date ²	Transfer Documentation
	i	1	·			

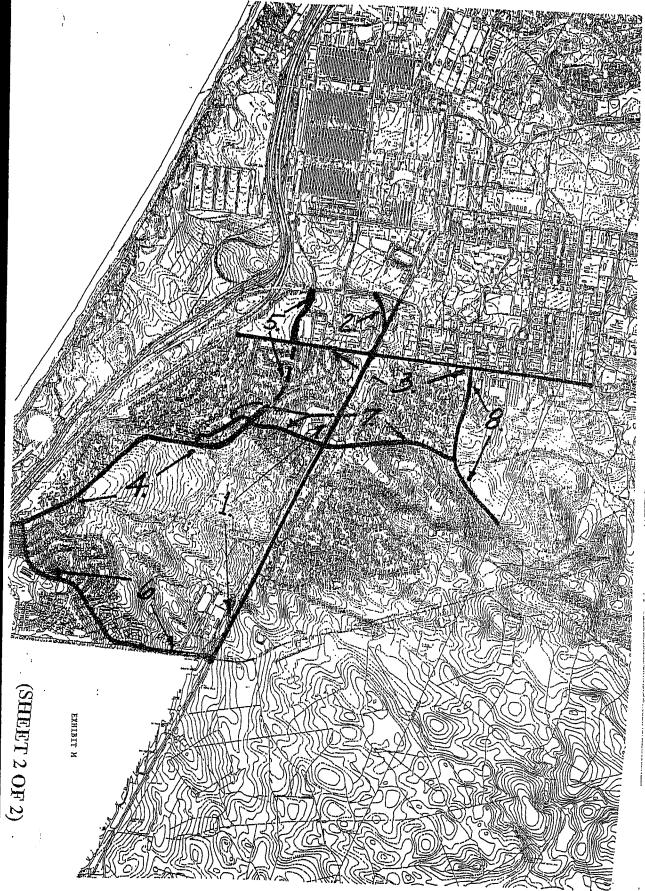
¹- As defined on 8/2/99. As removal actions proceed, sites could change Catergories and Track depending on information and evaluation conducted during the OE RI/FS.

Completion dates are also subject to change as the OE RI/FS proceeds.

² Date is based on either ROD signature or remediation completion.

1.	North-South Road	140 ft. wide easement
2.	North-South Road Realignment	140 ft. wide easement
3.	Gigling Road	122 ft. wide easement
4.	Monterey Road	122 ft. wide easement
5.	Monterey Road Realignment	122 ft. wide easement
6.	Coe Avenue	122 ft. wide easement
7.	Normandy Road	60 ft. wide easement
8.	Parker Flats Cutoff	60 ft. wide easement

Note: All easements are centered on existing roadway centerlines for existing roads. On realignment segments, all easements are centered on proposed centerlines of proposed roadways.



LIST OF GOVERNMENT ENVIRONMENTAL REMEDIATION DECISION DOCUMENTS

EXHIBIT N

Exhibit N

List of Government Remediation Decision Documents

Government Environmental Remediation Decision Documents

No Action Plug-In Record of Decision, Fort Ord, California, February 1995.

Record of Decision, Basewide Remedial Investigation Sites , Fort Ord, California, January 13, 1997.

Interim Record of Decision, Site 3 Beach Trainfire Ranges, Fort Ord, California, January 13, 1997.

Record of Decision, Operable Unit 2, Fort Ord Landfills, Fort Ord, California, July 15, 1994.

Decision Documents Relating to Clean Up of Ordnance and Explosives:

Explosive Safety Submission, Ordnance Removal Prior to Land Disposal, Inland Ranges, Fort Ord, California, November 17, 1994.

Land Disposal Site Plan (LDSP) for Base Realignment and Closure of Fort Ord, CA, February 17, 1994.

Amendment to the 1994 Land Disposal Site Plan (LDSP) for Base Realignment and Closure of Fort Ord, CA, March 2, 1998.

Amendment 2 to the 1994 Land Disposal Site Plan (LDSP) for Base Realignment and Closure of Fort Ord, California, August 4, 1998.

Explosive Safety Submission Ordnance Removal Prior to Land Disposal 5.9 Acres Within the Wolf Hill Parcel Former Fort Ord, California, 19 May 1995.

Engineering Evaluation/Cost Analysis – Phase I Former Fort Ord, Monterey County, California, September 1997.

Action Memorandum 1 Phase 1 engineering Evaluation/Cost Analysis Twelve Ordnance and Explosives Sites Former Fort Ord, Monterey, County, California, April 23, 1998.

Engineering Evaluation/Cost Analysis – Phase 2 Former Fort Ord Monterey County, California, April 1998.

Final Action Memorandum Phase 2 Engineering Evaluation/Cost Analysis Ordnance and Explosives Sites Former Fort Ord, Monterey County, California. June 28, 1999.

KUTAK ROCK EXECUTION	VERSION
	10/10/01

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UNITED STATES DEPARTMENT OF THE ARMY 13

THE FORT ORD REUSE AUTHORITY FOR THE SALE OF PORTIONS OF THE FORMER FORT ORD LOCATED IN MONTEREY COUNTY, CALIFORNIA

AMENDMENT NO. 1 TO THE

MEMORANDUM OF AGREEMENT

BETWEEN

THE UNITED STATES OF AMERICA

ACTING BY AND THROUGH

THE SECRETARY OF THE ARMY

AND

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THIS AMENDMENT NO. 1 to the Memorandum of Agreement between the United States of America acting by and through the Secretary of the Army, United States Department of the Army, and the Fort Ord Reuse Authority for the Sale of Portions of the Former Fort Ord Located in Monterey County, California dated June 20, 2000 ("Agreement") is entered into on this 23-d day of Ontoler 2001 by and between THE UNITED STATES OF AMERICA, acting by and through the Department of the Army ("Government"), and THE FORT ORD REUSE AUTHORITY ("Authority"), recognized as the local redevelopment authority by the Office of Economic Adjustment on behalf of the Secretary of Defense. Government and Authority are sometimes referred to herein collectively as the "Parties."

RECITALS

Development Conveyance ("EDC") to the Authority of a portion of the former Fort Ord,

California ("Property") pursuant to Section 2905(b)(4) of the Defense Base Closure and

Realignment Act of 1990, as amended, and the implementing regulations of the Department of

WHEREAS, the Parties did enter into the Agreement for the "No Cost" Economic

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38 39 Defense (32 CFR Part 175);

WHEREAS, subsequent to the execution and delivery of the Agreement, the Parties determined that in accordance with the Reuse Plan and in order to facilitate the economic redevelopment of the Property, it is desirable and necessary to include within the scope of the Agreement the Water and Wastewater Systems at the former Fort Ord ("Water Systems"), more particularly described in the Quitclaim Deed attached as Exhibit A to this Amendment No. 1, for transfer through the Authority to the Marina Coast Water District ("District") in lieu of a direct transfer of the Water Systems from the Government to the District under a Public Benefit Conveyance ("PBC");

WHEREAS, subsequent to the execution and delivery of the Agreement, Section 2905(b)(4) of the Defense Base Closure and Realignment Act of 1990 was amended by Section 2821 of the National Defense Authorization Act for Fiscal Year 2001 (Pub. L. No. 106-398) to change certain requirements regarding the use of proceeds from the sale or lease of the Property transferred under the Agreement.

NOW THEREFORE, in consideration of the foregoing premises and the respective representations, agreements, covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENTS

Article 1. Water and Wastewater Systems

a. In lieu of the Government transferring the Water and Wastewater Systems and all associated and ancillary rights directly to the District under the PBC dated August 26, 1997, as described in paragraph 5.01 of the Agreement, the Government, pursuant to paragraph 2.01 of the Agreement, shall transfer to the Authority at no-cost, as part of the Economic Development Conveyance, simultaneously with the execution of this Amendment No. 1, the Water and Wastewater Systems on the Property and the Ord Military Community, together with all their respective water rights and wastewater discharge rights and ancillary rights.

b. The Transfer to the Authority of the Water and Wastewater Systems on the Property and the Ord Military Community, together with all their respective water rights and obligations and wastewater discharge rights and obligations and ancillary rights and obligations, shall be accomplished upon the execution by the Government and the recordation by the Authority of the Deed attached as Exhibit A to this Amendment No. 1.

c. Immediately following the transfer of the Water and Wastewater Systems on the Property and the Ord Military Community, together with all their respective water rights and obligations and wastewater discharge rights and obligations and ancillary rights and obligations, from the Government to the Authority, the Authority shall transfer such Water and Wastewater Systems and all associated and ancillary rights and obligations to the District.

d. The Authority, through allocation instructions to the District, the Authority selected water purveyor, agrees to provide water service to the SunBay Housing Area ("SunBay"), in an amount up to 120 acre feet per year ("afy") in the same fashion as water service is provided to other users.

Article 2. Bay View Community/Brostrom Housing Area Water and Wastewater Systems

a. In the event the Government conveys the real property underlying the Bay View Community/Brostrom Housing Area ("Bay View") to The RINC Organization, then and upon the happening of that event, and notwithstanding Article 5.02 of the MOA, the Government and the Authority agree that the water rights reserved to the Government shall be reduced by 38 afy for a total reservation of water rights for the Government of 1691 afy. The Government and the Authority agree further that the Government shall then, and upon the happening of that event, convey such 38 afy of water rights to the Authority by quitclaim deed in a form substantially similar to the Deed attached as Exhibit A to this Amendment No. 1 for a total conveyance of water rights to the Authority of 4,909 afy.

b. In the event the Government conveys the real property underlying the Bay View Community/Brostrom Housing Area ("Bay View") to The RINC Organization, and simultaneously with the conveyance of the aforementioned 38 afy of water rights to the Authority, the Authority, through allocation instructions to the District, the Authority selected water purveyor, agrees to provide water service to the Bay View Community/Brostrom Housing Area ("Bay View"), in an amount equal to .21 afy per residential housing unit times 223 residential housing units, plus 38 afy [(.21 afy X 223) + 38 afy] as follows:

1. Under the same terms and conditions of any other existing residential development in the City of Seaside, California ("Seaside").

2. Bay View residents will have three years to reduce consumption at Bay View to meet Seaside's .21 afy per unit conservation requirement without penalty.

 3. Bay View residents will be charged at the then District rate as any other user will be charged for similar water services.

4. The same level of water service (.21 afy per residential housing unit times 223 residential housing units, and 38 afy) shall be available for future residential development on the Bay View site when and if a project is approved in conformity with Seaside's General Plan and Zoning requirements.

5. If a future development on the Bay View site can achieve a more efficient use of this amount of water service, credit for such conservation may be applied to an increase in units on the Bay View property in conformity with Seaside's General Plan and Zoning requirements if and when a project is approved.

Article 3. Reporting Period

In accordance with Section 2821 of the National Defense Authorization Act for Fiscal Year 2001 (Pub. L. No. 106-398) and the Agreement, the Agreement is hereby amended as follows:

1 2	a. In paragraph 1.20 of the Agreement, delete the definition of Reporting Period in its entirety and substitute the following:
3	
4	"A period of time, beginning with the recordation of the Deed or Lease in
5	Furtherance of Conveyance ("LIFOC") for the initial transfer of property and
6	ending seven (7) years thereafter, within which the Authority will submit annual
7	statements as described in paragraph 2.01(F) of this Agreement."
8	
9	b. In paragraph 2.01(F) of the Agreement delete the first sentence and substitute the
10	following:
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12	"The Authority shall prepare and submit to the Government an annual financial
13	statement certified by an independent certified public accountant. The statement
14	shall cover the Authority's use of proceeds it receives from the sale, lease, or
15	equivalent use of the Property. The first such statement shall cover the 12 month
16	period beginning on the date of recordation of the first Deed or LIFOC and shall
17	be delivered to Government within 60 days of the end of that period and annually
18	thereafter. The seven-year period will commence with the recordation of the
19	Deed or LIFOC for the initial transfer of property. The last such statement shall
20	cover the 12 month period beginning on the date seven years following the
21	recordation of the Deed or LIFOC for the initial transfer of property. The
22	financial statements shall cover all parcels of property that have been conveyed
23	during the seven-year period."
23 24 25	And I. A. Commissed and Danielit
	Article 4. Survival and Benefit
26	a. Unless defined separately, the terms used in this Amendment No. 1 shall be the
27	same as used and defined in the Agreement.
28	same as used and defined in the Agreement.
29	b. Except as set forth herein, and unless modified specifically by this Amendment
30	No. 1, the terms and conditions contained in the Agreement shall remain binding upon the
31	Parties and their respective successors and assigns as set forth in the Agreement.
32 33	rances and then respective successful than the
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39 40	[Signature Page Follows]
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1 2 3 4	In Witness whereof, authorized representatives to ewritten.	the Parties, intending to be legally bound, have caused their duly execute and deliver this Amendment No. 1 as of the date first above
5 6 7 8	· · · · ·	UNITED STATES OF AMERICA, Acting by and through the Department of the Army
9 10		h
11 12 13 14 15 16		By: Joseph W. Whitaker Acting Deputy Assistant Secretary of the Army Installations and Housing
17 18		FORT ORD REUSE AUTHORITY
19 20 21 22 23 24 25 26 27	; ;	By: MICHAEL A. HOULEMARD, JR. Executive Officer

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California	•	
M	ss.	
County of Vertara		
0.1.12	1. 21. 11.0	
on Oct 12, 2001, before me, personally appeared Michael	Name and Title of Officer (e.g., 'Jane Doe, Notary Public')	
Date Michael	A. Howle ma d	
personally appeared	Name(s) of Signer(s)	
	☑ personally known to me	
	proved to me on the basis of satisfactory	
	evidence	
	to be the person(s) whose name(s) is/are	
JOY P. JUNSAY Commission # 1198120	subscribed to the within instrument and	
Notary Public - California	acknowledged to me that he/she/they executed	
Monterey County My Comm. Expires Oct 10, 2002	the same in his/her/their authorized	
my cultini blues certo, 212	capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or	
	the entity upon behalf of which the person(s)	
	acted, executed the instrument.	
	WITNESS my band and afficial man	
	WITNESS my hand and official seal.	
Place Notary Seef Above	Signature of Noterry Jubilic	
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	aw, it may prove valuable to persons relying on the document and reattachment of this form to enother document.	
Description of Attached Document		
Title or Type of Document:		
Document Date:	Number of Pages:	
Signer(s) Other Than Named Above:		
Capacity(ies) Claimed by Signer		
Signer's Name:	RIGHT THUMEPRINT	
☐ Individual	OF SIGNER Top of Inumb here	
☐ Corporate Officer — Title(s):		
☐ Partner — ☐ Limited ☐ General ☐ Attorney in Fact		
☐ Trustee		
☐ Guardian or Conservator		
Other:		
Signer Is Representing:		
0.2. 0. 10 1 obi 000 iiii.3.		

- START -

DRAFT BOARD PACKET



REGULAR MEETING FORT ORD REUSE AUTHORITY (FORA) BOARD OF DIRECTORS

Thursday, January 13, 2020 at 2:00 p.m. | 910 2nd Avenue, Marina, CA 93933 (Carpenters Union Hall)

AGENDA

ALL ARE ENCOURAGED TO SUBMIT QUESTIONS/CONCERNS BY NOON JANUARY 9, 2020.

- 1. CALL TO ORDER
- 2. PLEDGE OF ALLEGIANCE (If able, please stand)
- 3. CLOSED SESSION
 - a. Conference with Legal Counsel—Gov. Code §54956.9(a), (d)(1): Resource Environmental, Inc v. Fort Ord Reuse Authority. Monterey County Superior Court Case No.: 19CV004499, Pending Litigation
 - b. Conference with Legal Counsel—Gov. Code §54956.9(a), (d)(1): Fort Ord Reuse Authority v. All Persons Interested in the Matter of the Issuance and Sale of Bonds by the Fort Ord Reuse Authority and the Tax Increment Revenue Pledged To, and to be Used for, the Repayment of Such Bonds. Monterey County Superior Court Case No.: 20CV000381, Pending Litigation
 - c. Conference with Legal Counsel –, Gov. Code §54956.9(d)(2): Anticipated Litigation, Significant Exposure to Litigation, one potential cases
- 4. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION
- 5. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE
- 6. ROLL CALL

FORA is governed by 13 voting members: (a) 1 member appointed by the City of Carmel; (b) 1 member appointed by the City of Del Rey Oaks; (c) 2 members appointed by the City of Marina; (d) 1 member appointed by Sand City; (e) 1 member appointed by the City of Monterey; (f) 1 member appointed by the City of Pacific Grove; (g) 1 member appointed by the City of Salinas; (h) 2 members appointed by the City of Seaside; and (i) 3 members appointed by Monterey County. The Board also includes 12 ex-officio non-voting members.

7. CONSENT AGENDA

INFORMATION/ACTION

CONSENT AGENDA consists of routine information or action items accompanied by staff recommendation. Information has been provided to the FORA Board on all Consent Agenda matters. The Consent Agenda items are normally approved by one motion unless a Board member or the public request discussion or a separate vote. Prior to a motion, any member of the public or the Board may ask a question or make comment about an agenda item and staff will provide a response. If discussion is requested, that item will be removed from the Consent Agenda and be considered separately at the end of the Consent Agenda.

- a. Approve January 10, 2020 Meeting Minutes
 - **Recommendation:** Approve January 10, 2020 Meeting Minutes.
- b. Administrative Committee
 - **Recommendation:** Receive a report from the Administrative Committee.
- c. Veterans Issues Advisory Committee
 - **Recommendation**: Receive a report from the Veterans Issues Advisory Committee.
- d. Habitat Working Group Ad-Hoc Committee
 - **Recommendation:** Receive a report from the Habitat Working Group Ad-Hoc Committee.
- e. Execution of Adoption Agreement with MidAmerica to Administer a Health Reimbursement Arrangement ("HRA") Program

Recommendation:

Authorize the Executive Officer to execute adoption agreement to implement an HRA program with plan administer, MidAmerica Inc.

f. Public Correspondence to the Board

Recommendation: Receive Public Correspondence to the Board.

8. BUSINESS ITEMS

INFORMATION/ACTION

BUSINESS ITEMS are for Board discussion, debate, direction to staff, and/or action. Comments from the public are <u>not to exceed 3 minutes</u> or as otherwise determined by the Chair.

- a. 2018 Transition Plan Implementation 2nd Vote
 - i. Assignment of a) FORA-ESCA contract obligation to Successor-In-Interest City of Seaside, b) Economic Development Conveyance ("EDC") Memorandum of Agreement and c) Local Redevelopment Authority ("LRA") Obligations and Responsibilities.
 - ii. Transition Planning Update.

Recommendation:

- 1. Receive a report regarding the FORA Federal government LRA obligations, including the implementation of the June 11, 2000 EDC agreement, and the March 2007 ESCA Agreement.
- 2. Approve the attached Memorandum of Agreement with the City of Seaside regarding its acceptance of FORA's obligations under the EDC and ESCA and designation as federal recognized LRA.
- b. Review Building Removal Bond Status

Recommendation:

Receive a report on the status of FORA's efforts to issue bonds for the remediation/removal of buildings, and the related validation action.

c. Draft Transition Plan Implementing Agreements ("TPIA") Review

Recommendation:

Receive a report on the updated Transition Plan Implementing Agreement ("TPIA") and proposed timeline for execution by agencies.

d. Consultant Services Contract Amendments

Recommendation:

Direct the Executive Officer to approve contract amendments for Denise Duffy & Associates, ICF Jones & Stokes, Inc., Kennedy Archer & Giffen, Reimer Associates Consulting, and Regional Government Services.

e. Revised Board Meeting Schedule

Recommendation:

9. PUBLIC COMMENT PERIOD

INFORMATION

Members of the public wishing to address the Board on matters within its jurisdiction, but <u>not on this agenda</u>, may do so for up to 3 minutes or as otherwise determined by the Chair and will not receive Board action. Whenever possible, written correspondence should be submitted to the Board in advance of the meeting, to provide adequate time for its consideration.

10.ITEMS FROM MEMBERS

INFORMATION

Receive communication from Board members as it pertains to future agenda items.

11. ADJOURNMENT

NEXT MEETING: Thursday, March 12, 2020 AT 2:00 P.M.

Persons seeking disability related accommodations should contact FORA 48 hours prior to the meeting. This meeting is recorded by Access Media Productions and televised Sundays at 9 a.m. and 1 p.m. on Marina/Peninsula Channel 25. The video and meeting materials are available online at www.fora.org

Placeholder for ltem 7a

Regular Board Meeting Minutes January 10, 2020

This item will be included in the final Board packet.

FORT ORD REUSE AUTHORITY BOARD REPORT							
CONSENT AGENDA							
Subject:	Administrative Committee						
Meeting Date: Agenda Number:	February 13, 2020 7b	INFORMATION/ACTION					
RECOMMENDATION: Receive a report from the Administrative Committee.							

BACKGROUND/DISCUSSION:

The Administrative Committee held meetings on January 2, 2020 and January 15, 2020. The approved minutes for these meetings are provided as **Attachments A and B**.

FISCAL IMPACT:		
Reviewed by the FORA Controller		
Staff time for the Administrative Committee is in	ncluded in the appi	roved annual budget.

COORDINATION: Administrative Committee								
Prepared byHeidi L. Gaddy	_ Approved by	Joshua Metz						
Heldi L. Gaddy		JUSTILIA IVIELZ						





FORT ORD REUSE AUTHORITY

SPECIAL ADMINISTRATIVE COMMITTEE MEETING MINUTES 8:30 a.m. Thursday, January 2, 2020 | FORA Conference Room

920nd Avenue, Suite A, Marina, CA 93933

1. CALL TO ORDER

Chair Joshua Metz called the meeting to order at 8:32 a.m.

The following were present:
Steve Matarazzo (UCMBEST)
Matt McCluney (CSUMB)
Debbie Hale (TAMC)
Patrick Breen (MCWD)

Hans Uslar* (City of Monterey) Layne Long* (City of Marina) Craig Malin* (City of Seaside) Lisa Rheinheimer (MST) *Voting Member

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Steve Matarazzo.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

• City of Monterey City Manager Hans Uslar announced Elizabeth Caraker has accepted a position at the Presidio Trust in San Francisco. A new Monterey City Planning representative will be appointed to replace Ms. Caraker in the Administrative Committee.

4. PUBLIC COMMENT PERIOD

Members of the public wishing to address the Administrative Committee on matters within its jurisdiction, but not on this agenda, may do so for up to 3 minutes.

No public comments were received.

5. APPROVAL OF MEETING MINUTES

ACTION

a. December 18, 2019 Meeting Minutes

MOTION: On motion by Committee member Malin, seconded by Committee member Uslar and carried by the following vote, the Administrative Committee moved to approve the December 18, 2019 meeting minutes with one abstention from Committee member Debbie Hale and one abstention from Committee member Matt McCluney.

MOTION PASSED UNANIMOUSLY

6. January 10, 2020 BOARD AGENDA REVIEW

Executive Officer Joshua Metz reviewed the upcoming January 10, 2020 Board Meeting Agenda and responded to comments from members.

*Mr. Metz noted Kutak Rock consultants Barry Steinberg and George Schlossberg will hold a workshop at the FORA office on January 9, 2020 from 9:00-12:00 to discuss Environmental Services Cooperative Agreement-Seaside transition issues.

*Deputy Clerk Heidi Gaddy noted a retirement party will be held at The Bayonet and Black Horse Golf Club in honor of former FORA Executive Officer Michael A. Houlemard, Jr. following the January 10, 2020 Board meeting. Tickets may be purchased on or before January 3, 2020 at www.eventbrite.com.

7. BUSINESS

a. Building Removal Bond Status Report

Senior Project Manager Peter Said reported the Board of Directors approved pursuing building removal bond issuance at the December Board meeting and will go forward with validation action and notifying all parties in interest. Mr. Said stated staff anticipates obtaining confirmation from the Department of Finance ("DOF") that DOF will not contest the bond issue at a hearing in January 2020.

i. Successor Entity Designation

Mr. Said stated the Administrative Committee recommended to the Board that the City of Marina act as bond administrator successor agency, responsible for bond funds distribution. In order for Marina to formally accept successor entity responsibilities Marina City Council must approve a Resolution confirming Marina's acceptance of tax increment from the County of Monterey ("The County") for distribution to trustees.

ii. Monterey County Regional Fire District Agreement & Issue Resolution

Mr. Metz reported The County has determined the Cities of Marina and Seaside are responsible for resolving Monterey County Regional Fire District ("MCRFD") revenue loss issues. Member Malin requested a third-party fiscal analysis performed by Economic & Planning Systems, Inc., which would inform a Seaside-Marina Memorandum of Understanding to make MCRFD "whole."

b. Habitat Planning Update

- i. Draft Habitat Conservation Plan
- ii. Habitat Working Group

Mr. Metz introduced the item, stating the draft Habitat Conservation Plan ("HCP") public comment period closed on December 16, 2019. Thirty-two public comment letters were received, including a thirty-six-page letter from Land Watch Monterey County ("Land Watch") and unexpected comments from California Department of Fish and Wildlife ("CDFW"). Staff and consultants are analyzing these comments to assess the HCP feasibility and CDFW will use them and as guidelines to inform preparations for the Habitat Working Group. Mr. Metz reported the Habitat Working Group will meet weekly on Friday mornings from 10:00-12:00 beginning January 10th. Mr. Metz and Denise Duffy & Associates HCP consultant Erin Harwayne responded to questions from members and public.

c. 2018 Transition Plan Status

No report. Regional Government Services consultant Kendall Flint will provide a 2018 Transition Plan status update at the January 10, 2020 Board meeting.

8. ITEMS FROM MEMBERS

None.

9. ADJOURNMENT at 9:28 a.m.

Minutes Prepared By:

Natalie Van Fleet Administrative Assistant

Placeholder for Attachement B to Item 7b

Regular Administrative Meeting Minutes January 15, 2020

This item will be included in the final Board packet.

FORT ORD REUSE AUTHORITY BOARD REPORT		
CONSENT AGENDA		
Subject:	Veterans Issues Advisory Committee	
Meeting Date: Agenda Number:	February 13, 2020 7c	INFORMATION/ACTION

RECOMMENDATION:

Receive a report from the Veterans Issues Advisory Committee (VIAC).

ı	, - ,
BACKGROUND/DISCUSSION: The VIAC met on January 23, 2020 a approved minutes are provided as Att	and approved the October 24, 2019 minutes. The achment A .
FISCAL IMPACT:	
Reviewed by FORA Controller	
Staff time for this item is included in the	approved annual budget.
COORDINATION:	
VIAC	
Prepared by	Approved by Joshua Metz
Natalie Van Fleet	Joshua Metz





FORT ORD REUSE AUTHORITY VETERANS ISSUES ADVISORY COMMITTEE (VIAC) MEETING MINUTES 3:00 P.M. October 24, 2019 | FORA Conference Room

920 2nd Avenue. Suite A. Marina CA 93933

1. CALL TO ORDER: Chair Ian Oglesby called the meeting to order at 3:07 P.M.

Committee Members Present:

Ian Oglesby, Seaside Mayor
Edith Johnsen, Veterans Families/Fundraising
James Bogan, Disabled American Veterans
Kai Yuan, US Army
Richard Garza, CCVC Foundation
Sid Williams, Monterey County Military and Veteran Advisory Commisson
Jack Stewart, Fort Ord Veterans Cemetary Advisory Committee

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by James Bogan.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

Assistant Executive Officer Josh Metz reported the Board is engaged in ongoing discussion regarding providing funds to the County of Monterey ("County") for ongoing support of the veterans community following FORA's dissolution.

4. PUBLIC COMMENT PERIOD

There were no comments from the public.

5. APPROVAL OF MEETING MINUTES

ACTION

- a. August 22, 2019 Regular Meeting Minutes
- b. September 26, 2019 Regular Meeting Minutes

MOTION: On motion by member Johnsen and second by member Bogan, the Veterans Issues Advisory Committee moved to approve the August 22, 2019 Regular Meeting Minutes and the September 26, 2019 Regular Meeting Minutes with corrections.

MOTION PASSED UNANIMOUSLY

6. BUSINESS ITEMS

INFORMATION/ACTION

a. Affordable Housing

i. Veterans Transition Center Housing Development

Marina Veterans Transition Center ("VTC") Deputy Executive Director Jack Murphy provided an update on supportive housing programs. Mr. Murphy reported final occupancy inspections

will be completed next week for an eight bedroom duplex. He stated due to funding limitations these units will be reserved for paroled veterans of the California Department of Corrections and Rehabilitation. Mr. Murphy explained the duplex has remained unoccupied since its 1998 transfer to VTC, which represents a net gain to the Hayes Circle development. Mr. Murphy reported VTC staff is optimistic regarding obtaining an enhanced use lease for the Former Fort Ord Clinic to provide housing and other veterans services.

b. Post-FORA VIAC Committee

i. Letter to FORA Board of Directors

Chair Oglesby reported that Executive Officer Houlemard is in discussions with the County to provide supportive funding for a post-FORA VIAC Committee liason. Mr. Oglesby stated he expects the Board to approve funding, as the Committee is vital to Monterey County's veterans community. In support of this cause, Mr. Metz encouraged the VIAC to compose a letter to the Board and attend Board meetings to express concerns.

c. California Central Coast Veterans Cemetery Status Report

i. CCVCF Status Report

California Central Coast Vetrans Cemetery ("CCCVC") Manager Erica Chaney reported applications for donor benches are no longer being accepted and all inquiries will be forwarded to CCVCF. The Memorials and Monuments Advisory Committee ("MMAC") may consider accepting donor applications after Phase Two completion in order to allow CCCVC's design team sufficient planning time. Ms. Chaney reported a tentative date of December 10, 2019 for the first MMAC meeting, and will notify members when confirmed. Veterans Day Ceremony will take place Monday, November 11, 2019 at CCCVC beginning at 10:30 a.m. with guest speaker William Zeigler, accomplished veteran and former NAACP Chapter President. Ms. Chaney stated a Phase Two construction start date remains to be determined. Committee member Jack Stewart suggested CCCVC hold a Phase Two groundbreaking ceremony and Ms. Chaney stated that she would take the suggestion to staff.

d. Ord Military Community

Presidio of Monterey ("POM") Retirement Services Officer Mr. Yuan stated POM Tax Center can no longer provide free support services to retired veterans. Due to 2020 budget constraints POM Tax Center will now provide free assistance to active duty servicemembers exlusively.

e. Fundraising Status

i. Central Coast Veterans Cemetery Foundation Status Report

Committee Member Richard Garza reported the Heroes Open will take place Saturday, October 26, 2019 at Bayonet and Black Horse Golf Club in Seaside. Mr. Garza reported the Epic Ride is in the process of determining funds raised and stated CCVCF fundraising is on target to address any Phase Two issues that may arise. CCVCF now plans to focus on ancillary projects, such as a chapel and amphitheater. Mr. Garza stated the MMAC will review proposals for an on-site donor recognition wall.

f. VA-DOD Clinic

Committee member James Bogan reported the next Town Hall meeting will be held at Post 593 in Prunedale. Mr. Bogan stated he is seeking more information regarding the Veterans Affairs Mission Act and will report back to the Committee.

g. Military & Veterans Affairs Office – Monthly Report No report.

h. Calendar of Events

- Mr. Murphy reported VTC was one of several local nonprofits selected to receive donations through the Monterey County Gives campaign. He urged donors to wait until the campaign begins on November 6, 2019 to ensure VTC receives maximum donations. Visit www.montereycountygives.com for additional information.
- Mr. Murphy noted VTC partnered with Dentistry for Veterans to provide free dental services for veterans on Veterans Day, November 11, 2019 at the office of Dr. Curtis Jansen at 34 Dormody Court, Monterey. The program has limited capacity, so please contact Mr. Murphy as soon as possible for treatment pre-screening.
- The 2nd Annual 11-11 Gala VTC fundraising event will take place on Veterans Day at the Monterey Marriott from 5:00 p.m.- 9:30 p.m. featuring keynote speaker Dr. Charles Hoge, an expert in post traumatic stress disorder and acute anxiety disorders. Visit www.vtcmonterey.org/11-11-gala for additional information.
- Mr. Bogan announced the 28th Annual Veteran of the Year Awards ceremony and dinner will be held Friday, November 8, 2019 at Bayonet Black Horse Golf Club. He noted Representative Sam Farr will be attending to honor three recipients with the 1st Annual Sam Farr Award for extraordinary service of the veterans community. Contact Mr. Bogan or Michael McFadden of MVAO at mcfaddenmm@co.monterey.ca.us for more information.
- The 10th Annual Heroes' Open golf tournament will be held on Saturday, October 26, 2019 with all proceeds donated to CCVCF. Visit www.heroesopenmonterey.com for details.
- Mr. Yuan reported POM will hold its annual Veterans Day ceremony beginning at 11:00 a.m. on Thursday, November 7, 2019 at the Berlin Wall.

7. ITEMS FROM MEMBERS

Mr. Oglesby stated the VIAC would receive an update regarding a letter to the Board at the next Committee meeting. Mr. Williams requested VIAC members receive notification if the Board has this item on any upcoming agendas.

8. ADJOURNMENT at 3:38 p.m.

Minutes Prepared by: Natalie Van Fleet

FORT ORD REUSE AUTHORITY BOARD REPORT		
BUSINESS ITEMS		
Subject:	Habitat Working Group Ad-Hoc Committee	
Meeting Date: Agenda Number:	February 13, 2020 7d	INFORMATION

RECOMMENDATION:

Receive report from the Habitat Working Group Ad-Hoc Committee.

BACKGROUND/DISCUSSION:

The Fort Ord Reuse Authority Board requested that staff assist and support the Habitat Working Group (HWG) Ad-Hoc Committee to identify possible options for agencies to address environmental compliance with state and federal endangered species laws (**Attachment A**). This would include discussions regarding the viability of implementation via a Habitat Management Plan, a Habitat Conservation Plan and/or other approach if possible.

The HWG consists of Board Members representing member agencies and members of the FORA Administrative Committee. Meetings will be jointly noticed to allow members of the FORA Board and Administrative Committee to attend and share information freely. Public comment will be allowed following each business item discussed.

Meetings were held on January 10: Potential Topics for Discussion (**Attachment B**), January 17: Presentation from Regulatory Agencies (**Attachment C**), January 24: Consideration of Revised Land Use Projections, and January 31: Possible Options for Future Collaboration/Discussion. Additional weekly meetings are scheduled through February.

FISCAL IMPACT:
Reviewed by FORA Controller

COORDINATION:

Authority Counsel, Administrative and Executive Committees, land use jurisdictions, relevant agencies.

ATTACHMENTS:

- A. DRAFT HWG Ad-Hoc Committee Charge
- B. January 10, 2020 HWG Minutes
- C. January 17, 2020 HWG Minutes

Prepared by and Approved by	
	Joshua Metz

Habitat Working Group Ad Hoc Committee

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

Committee Charge

The Habitat Working Group ("HWG") Ad Hoc Committee is comprised of FORA land use jurisdictions and potential Habitat Conservation Plan ("HCP") permitees, and is charged with understanding and evaluating questions and concerns regarding long-term habitat management options on the former Fort Ord, coming to agreement(s), and reporting back to the full Board. FORA staff supported by consultants will provide technical and administrative support to the HWG. The HWG effort is anticipated to have a limited duration, with goals of formulating agreements and forwarding priority recommendations to the Board in February or March 2020.

Placeholder for Item 7d Attachment B

Habitat Working Group Ad-Hoc Committee Meeting Minutes January 10, 2020

This item will be included in the final Board packet.

Placeholder for Item 7d Attachment C

Habitat Working Group Ad-Hoc Committee Meeting Minutes January 17, 2020

This item will be included in the final Board packet.

FORT ORD REUSE AUTHORITY BOARD REPORT		
CONSENT AGENDA		
Subject:	Execution of Adoption Agreement with Reimbursement Arrangement ("HRA") Pr	
Meeting Date: Agenda Number:	February 13, 2020 7e	ACTION

RECOMMENDATIONS:

Authorize the Executive Officer to execute adoption agreement to implement an HRA program with plan administrator, MidAmerica Inc.

BACKGROUND/DISCUSSION:

On November 11, 2019, the FORA Board unanimously approved setting up a health HRA program for administering post-employment health benefits for terminated employees. MidAmerica has been designated as the HRA plan administrator as provided in Attachment A.

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FISCAL IMPACT:
Reviewed by FORA Controller Funding for the HRA program is included in the approved FORA Budget.
COORDINATION:
None.
ATTACMENT:
MidAmerica, Inc HRA Adoption Agreement for Fort Ord Reuse Authority
Prepared by Approved by Joshua Metz

Information Form

Please complete this first page and the information provided will appear where applicable throughout the remaining documents. Not every space will be filled in, so please review the documents. If there is a space for you to complete, you may type directly in that area or click on the boxes that pertain to your plan.

Employer Name:			
Street Address:			
City:	State:	Zip:	
Employer Phone:			
Employer Fax:		<u></u>	
Tax ID Number:		<u></u>	
Effective Date:		<u></u>	
Plan Year End:		<u> </u>	
Employer Contact for Plan Document & Compli	ance Updates:		
Contact Name & Title:			
Contact Phone Number:			
Contact Email Address:			
Employer Contact for Payroll (Contributions, Da	ata Requiremen	ts and Billing)	
Contact Name & Title:			
Contact Phone Number:			
Contact Email Address:			
Employer Contact for Protected Health Informat	ion (HRA & FS	SA Only)	
Contact Name & Title:			
Contact Phone Number:			
Contact Email Address:			
Does Employer sponsor a FSA plan not administ If yes, please provide FSA Plan Administrator C			
FSA Administrator Name:			
FSA Administrator Address:			
FSA Administrator Phone:			
FSA Administrator Contact:			

0 HRA Information Form Page 1 of 1

Health Reimbursement Arrangement

IMPLEMENTATION BOOK



2855 Interstate Drive, Suite 115, Lakeland, FL 33805 863.688.4500 / (FAX) 863.686.9557 / 800.430.7999 www.MyMidAmerica.com

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^{*}Requires employer signature(s)

Overview

Our Plan allows the Employer to make deposits on behalf of active Employees and/or Retirees. Deposits are made tax-free, carry over year-to-year, earn interest tax-free and are used tax-free for qualified medical expenses and premiums. Our Plan can also be used in conjunction with our Special Pay Plan.

Source of Funds

The source of funds can be based on unused sick leave, unused vacation or other incentives. Applications can also include deposits in lieu of health insurance or as an incentive for plan design changes. Our Plan can also be used when transitioning from a defined benefit, such as continuing retiree health insurance, to a defined contribution by making annual deposits on behalf of Employees. There is flexibility as to eligibility and vesting schedules can apply.

Benefits to the Employer

The Employer obtains the intangible benefits of providing to participants a tax-free method of reimbursement for qualified medical expenses and premiums. The Employer also permanently saves the 7.65% FICA taxes (Social Security and Medicare) over the traditional payment method. Employers may also be able to reduce health insurance claims experience and premiums.

Benefits to the Employee

Employer contributions on behalf of participants are made on a tax-free basis. Because there are no taxes, the participant receives 100% of the value of each benefit dollar. Funds are invested in a fixed annuity with a guaranteed minimum rate of return. Other investments are also available. All earnings are tax-free! The participant has flexibility on the timing and eligible use of funds. The Plan Administrator provides a list of eligible fund uses as defined in IRS Publication 502 and IRC Section 213(d).

Administration

Simplicity of plan design reduces administrative costs. Plan documents, implementation materials and Plan Administration are provided to the Employer. Employer representatives have direct access to our administrative and management personnel.

Employee Communications/Account Information

Employee needs are serviced by a national service center through a toll-free number. Deposit confirmation and quarterly statements are provided. Employees also have access to their personal account information via the internet.

The Health Reimbursement Arrangement is provided by:





Securities offered through GWN Securities, Inc. 11440 Jog Road • Palm Beach Gardens, FL 33418 • 561/472-2700 • Member FINRA, SIPC

AUL HRA Overview Rev. 6.2.2011 Page 1 of 1

Sample Employer Resolution

Action Item

Authorize the Administration to establish a trust based Health Reimbursement Arrangement (HRA) in the name of the Employer. This Plan will save the Employer payroll taxes.

Supporting Information

Master contract agreements with various Employee groups and Employer Policy currently provide payments to Employees and/or retirement incentives. Enhancements to the IRS Tax Code allow the Employer to implement plans that save the Employer the 7.65% FICA taxes (Social Security and Medicare) on these payments. The Employee/Retiree also derives a tax-advantage as a result of implementing this Plan.

Contributions by the Employer into the trust based Health Reimbursement Arrangement are discretionary and can be made in any amount at any time.

The Administration, in cooperation with Employee group representatives and with legal review, has selected the Health Reimbursement Arrangement offered through National Insurance Services and administered by MidAmerica Administrative & Retirement Solutions, Inc. The Plan and Plan Administration best provides for the interests of the Employer and its Employees. It is the intent of the Administration that if this item is approved, the Plan be implemented as soon as practical.

Health Reimbursement Arrangement for Retirees ADOPTION AGREEMENT

for

Employer Address:	
Employer Telephone Number:	
Employer Identification Number:	
	• • • • •
Arrangement for Retirees (hereinafter ret	ing this Adoption Agreement, hereby adopts and implements the Health Reimbursement ferred to as the "Plan" or the "HRA") and agrees to abide by the terms of the Plan. With this d signature below, the Employer hereby makes the following designations.
Effective Date. The Plan's Original Effecti	ve Date is The Plan's Restated Effective Date is
. The Plan is	available to Retirees of the Employer effective
Plan Year. The Plan Year ends on	
<u> </u>	
Eligible Classes. The class or classes of R	etirees covered by this Plan are: (See attached Class Specifications.)
Class RetA:	Class RetB:
	Class RetD:
Class RetE:	Class RetF:
<u>Designation of Plan Administrator</u> . The <u>Retirement Solutions, Inc.</u>	Employer hereby designates the following initial Plan Administrator: MidAmerica Administrative &
Designation of Individuals to Have Acces	ss to Protected Health Information ("PHI"). The following Employees, classes of Employees, or
other persons shall be given access to the	
The Employer harshy agrees to the provision	ns of the Plan and has executed this Adoption Agreement on this day of
, 20	ils of the Fian and has executed this Adoption Agreement on thisday or
Name of Employer:	
Signature:	
Print Name:	
Title:	
Employer CONTACT (print):	
Title:	
E-Mail:	
Telephone:	Ext.
Fax:	Dat

IRS Circular 230 Notice: We are required to advise you no person or entity may use any tax advice in this communication or any attachment to (i) avoid any penalty under federal tax law or (ii) promote, market or recommend any purchase, investment or other action.

Employer Representations

- The Employer intends to reduce its Retirees' medical expenses by providing reimbursement of such expenses, in a limited capacity. The Employer anticipates that participation in the HRA will encourage prospective Retirees to retire earlier, as they will be better able to afford quality health care prior to the age at which they are Medicare eligible.
- The Employer may allow Retirees to participate in both the HRA and the Special Pay Plan (403(b)).
- Retirees are not permitted to make any election or choice between cash, the HRA, and/or the Special Pay Plan, or any other tax deferred program.
- The Employer will base HRA allocations on its estimates of the costs required to provide a certain amount of medical reimbursements to its Retiree population as that population approaches Medicare age.
- The Employer has discretion in determining classes of Employees eligible to participate in the Retiree HRA. Once determined, Retirees in the class shall be treated uniformly and be provided a uniform allocation to the HRA. Such class shall remain in effect for the Employer's entire fiscal year for all affected Retirees in such year and for all future contributions to such class. Each year, the Employer may reevaluate allocations and classes for new Retirees only.
- The Employer may gather information from the Retiree to determine the appropriate allocation to the HRA, but individual Participants are not allowed to elect or to determine their allocation.
- The Employer will monitor all rehires to ensure that less than two employees are in the Retiree HRA Plan.
- The Employer acknowledges that it has received the Plan document for the HRA and agrees with all the terms therein.
- The Employer understands that whether a contribution to the HRA is non-elective for tax purposes is a facts and circumstances determination, and the Employer is responsible for whether the contribution is truly non-elective or not. The Employer understands that MidAmerica Administrative & Retirement Solutions, Inc. and its agents and employees are not tax or legal advisors. They may provide general information regarding the tax treatment of health reimbursement arrangements, but the Employer should consult with its own tax or legal advisors as to how tax and other rules may apply to its own facts and circumstances.
- The Employer will not provide any information or forms or enter into any contracts inconsistent with the preceding.

Effective Date	Employer Initials	

	Health Reimbursement Arrangement for Retirees
Eligible Class RetA:	
Defined as:	
Employment Status Upon the initial contribution	to the Plan, Participant employment status shall be:
Retiree	Active with no access to benefit until retirement or separation of service
<u>Contribution Types</u> All funds for the Plan shall formula:	come exclusively from the Employer and shall be determined in accordance with the following
Dollar Amount	Percentage of Compensation or Retirement Pay
Contribution Frequency	
☐ One Time ☐ ☐ Semi-Annually ☐	Annually Quarterly Monthly Other
100% Immediate 100% upon Retirement, meeting the Emp	count balance in accordance with the following vesting schedule:
☐ 100% upon Separation of Service ☐ Other	tion to "other" above)
<u>Forfeitures</u> Employees who are not 100% vested of the death of the Participant, the Participant's sp	under the Vesting Schedule at the time of termination shall forfeit their unvested funds. In the event couse, and all of the Participant's qualifying dependents, any vested funds remaining in the account t opts out of participation in the Plan, all vested and unvested funds shall be forfeited. Forfeitures
☐ Reduce future Employer contributions☐ Be redistributed pro-rata at the end of eac	h Plan Year to all Plan Participants who are actively employed as of the end of the Plan Year
	ro) days to continue incurring expenses after the date that their Participation in the Plan ends. The eimbursement from funds that shall be forfeited will be 90 (ninety) days. The Run-off time for funds
Reimbursements Reimbursements shall be for:	
☐ All eligible Medical Expenses specified in ☐ Limited Purpose ☐ Post Deductible ☐ Premium Only Medical Expenses	n section 213(d) of the Internal Revenue Code
HRA/FSA Ordering	
☐ The Employer maintains a Flexible Spen☐ The Plan permits reimbursements for expenses exceeding the dollar amount of The Plan permits reimbursements for Lin	ding Account (FSA) plan in which Participants may elect to participate. benses eligible to be reimbursed by the FSA plan and therefore the HRA shall not reimburse before of any FSA have been paid. mited Purpose, Deductible or Premium Only expenses which are not eligible to be reimbursed by the imburse before the Participant's FSA account is exhausted.
Administration Fees: Administrative Fees are pa	id by the Employer for former employees.
Manual Claim Fees: Not Applicable.	
Reimbursement Eligibility A Participant shall b Immediate Upon becoming 100% vested Upon Retirement or Separation of Service	e eligible for reimbursement of medical expenses at the time selected below.
Investment Selection Investment Provi	der:
Type of Investment: ☐ Fixed annuity only	□ Variable annuities – Default Forfeiture Default □ Employer directed Participant directed; restrictions are: □ None 100% vested □ At Retirement Account balance in excess of \$ □ Other
Ties di Di	☐ Funds limited (see attachment)
Effective Date Employer Initia	als <u> </u>

Health Reimbursement Arrangement for Retirees PLAN DOCUMENT

The Plan's Original Effective Date is	. The Plan's Restated Effective Date is _	· '	The
Plan is available to Retirees of the Employer effective _	·		



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Introduction

The Employer has established and adopted the MidAmerica Administrative & Retirement Solutions, Inc. Health Reimbursement Arrangement for Retirees (the "Plan") to enable eligible former employees and their dependents to be reimbursed tax-free for eligible medical and dental expenses. Contributions to the Plan shall be made by the Employer and credited to Participants' accounts. Claims for reimbursement shall be processed and reimbursements paid out on a tax-free basis for medical expenses in accordance with Internal Revenue Service Guidelines for Health Reimbursement Agreements, IRS Publication 502, Internal Revenue Code (the "Code") Sections 213(d), 105 and 106 as described in Revenue Ruling 2002-41 and IRS Notice 2002-45.

Legal Status

This Plan is intended to qualify as an employer-provided medical reimbursement plan under Code Sections 105 and 106 and regulations issued thereunder, as a health reimbursement arrangement as described in IRS Notice 2002-45 and Revenue Ruling 2002-41, and to comply with IRS Notice 2013-54 and shall be interpreted to accomplish those objectives. The expenses reimbursed under the Plan are intended to be eligible for exclusion from Participants' gross income under Code Section 105(b).

Notwithstanding anything to the contrary, the portion of the Plan that reimburses Highly Compensated Individuals, as defined in Code Section 105(h), for premiums paid under an insured plan shall be treated as a separate plan that is not subject to the requirements of Code Section 105(h), pursuant to Treasury Regulation Section 1.105-11(b)(2).

Participation

Eligible former employees of the class or classes set forth by the Employer in the Plan Adoption Agreement will be Participants in the Plan. Notwithstanding any election in the Plan Adoption Agreement to the contrary, eligible former employees of the class or classes set forth by the Employer in the Plan Adoption Agreement who are Highly Compensated Individuals, as defined in Code Section 105(h), and whose benefits exceed those of other Plan Participants, will be Participants only in that portion of the Plan that reimburses Participants for "premium only medical expenses," as described below. Under no circumstances are such individuals eligible for reimbursements of any medical and dental expenses other than premium expenses. For purpose of this section, a retiree who was a Highly Compensated Individual prior to his or her retirement from the Employer shall be treated as a Highly Compensated Individual thereafter and during retirement.

Participation Opt Out

At least once per Plan Year, Participants shall be entitled to permanently opt out of participation in the Plan. Any such opt out will result in the forfeiture of the Participant's account balance, including any vested funds, and the waiver of any future reimbursements from the Plan. The Participant may, however, continue to submit claims for reimbursement of expenses incurred prior to the opt out date, pursuant to the Run-Off Times section of the Plan Adoption Agreement. Any forfeited amount shall be applied as elected by the Employer in the Plan Adoption Agreement.

In the event that the Participant is reemployed as an active employee of the Employer and terminates employment with the Employer, the Participant shall be entitled to permanently opt out of participation in the Plan at the time of termination. In addition to the forfeiture of unvested funds as provided for in the Forfeiture section of the Plan Adoption Agreement, any such opt out will result in the forfeiture of any vested funds and the waiver of any future reimbursements from the Plan. The Participant may, however, continue to submit claims for reimbursement of expenses incurred prior to the opt out date, pursuant to the Run-Off Times section of the Plan Adoption Agreement. Any forfeited amount shall be applied as elected by the Employer in the Plan Adoption Agreement.

HRA for Retirees – Rev. 01.2014 Page 3 of 11

Benefits and Eligibility for Benefits

A Participant shall be entitled to reimbursements of eligible medical and dental expenses upon the occurrence of the event selected in the Plan Adoption Agreement, but in no event until after expenses exceeding the dollar amount of any flexible spending arrangement ("FSA") in which the Participant shall also participate have been paid, or, if the medical or dental expense is reimbursable from a health savings account ("HSA"), amounts shall only be available from this Plan in accordance with paragraph 9 of the Administration section herein.

If the Employer indicates in the Adoption Agreement that Reimbursements shall be for "all eligible section 213(d) medical expenses," eligible medical and dental expenses for purposes of this Plan <u>are those expenses</u> that are:

- a. incurred by the Participant, spouse or tax dependent (as defined in paragraph 9 of the "Administration" section);
- b. incurred for Medical Care "Medical Care" shall have the same meaning as in section 213(d) of the Code, and shall include: (i) amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body, except that eligible medical and dental expenses shall specifically exclude expenses for a medicine or drug incurred on or after January 1, 2011, unless such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin, and (ii) premiums for medical and dental coverage, including premiums under part B and part D of title XVIII of the Social Security Act (relating to supplementary medical insurance for the aged and prescription drug coverage, respectively); and
- c. not compensated through insurance and not paid for with a tax-free distribution from a Medical Savings Account (MSA), Health Savings Account (HSA), or Health Flexible Spending Arrangement and not attributable to a deduction allowed under Code section 213(d) for any prior taxable year.

If the Employer indicates in the Adoption Agreement that reimbursements shall be for "premium only medical expenses," eligible medical and dental expenses for purposes of this Plan are those expenses that are:

- a. incurred by the Participant, spouse or tax dependent (as defined in paragraph 9 of the "Administration" section);
- b. premiums for medical and dental coverage, including premiums under part B and part D of title XVIII of the Social Security Act (relating to supplementary medical insurance for the aged and prescription drug coverage, respectively); and
- c. not paid for with a tax-free distribution from a Medical Savings Account (MSA) or Health Savings Account (HSA) and not attributable to a deduction allowed under Code section 213(d) for any prior taxable year.

Funding

All funds for the Plan shall come exclusively from the Employer and shall constitute either a specified dollar amount and/or a specific percentage of the former employees' compensation or retirement pay as the Employer shall from time to time determine. The amount or percentage to be determined by the Employer shall be subject to, and not in contravention of, the Employer's obligations to its former employees. Subject to any vesting schedule which may be elected in the Plan Adoption Agreement, all funds in the Plan belong to the individual Participants as allocated to their accounts. Also subject to any vesting schedule which may be elected in the Plan Adoption Agreement, once funds are allocated to the Plan, the Employer relinquishes all right, title, control, and interest to such funds.

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Interest Credit

Interest shall be credited on a daily basis to Participant accounts based on the rate credited by the underlying AUL fixed annuity investment option. If variable annuity investments are allowed pursuant to the Adoption Agreement, earnings and losses shall be credited on a daily basis based on the investment funds selected.

Vesting

Funds in a Participant's account shall vest and be available to pay eligible medical expenses in accordance with the vesting schedule elected by the Employer in the Plan Adoption Agreement. If a Participant is not fully vested in his account balance when participation hereunder of the Participant and his surviving spouse and/or dependents ends as described in the section hereof entitled "Death Benefit," any forfeited amount shall be applied as elected by the Employer in the Plan Adoption Agreement.

Continuation Coverage

COBRA continuation coverage ("COBRA coverage"). COBRA coverage shall be available on the same terms and conditions as described herein with respect to Participants upon payment of the applicable COBRA premium. Each qualified beneficiary (i.e., the Participant's former spouse and former eligible dependents) shall be entitled to COBRA coverage for a period of 36 months upon the qualifying events of death of Participant, divorce from Participant, or a dependent reaching an age under which he/she is ineligible under the terms of the Plan. The level of coverage will be the Participant's account balance at the time of the qualifying event (adjusted for investment earnings and losses), plus Employer contributions, and minus reimbursements for claims paid from the account. Contributions shall be made at the same times as they are made for similarly situated Participants who have not experienced a qualifying event. The balance of the Participant's account shall be available to all qualified beneficiaries electing continuation coverage on an aggregate basis.

The COBRA premium shall be a single premium regardless of the number of qualified beneficiaries electing COBRA coverage. That premium shall be as determined annually by the Employer. The Employer shall have no obligation to pay any portion of the COBRA premium.

Coverage in lieu of COBRA. As an alternative to COBRA continuation coverage, qualified beneficiaries may choose to continue to access the Participant's account via coverage in lieu of COBRA. No additional contributions will be made to the Participant's account during the coverage in lieu of COBRA period and no premium will be charged for the coverage. Administrative fees as indicated herein will be applied. The balance of the Participant's account shall be available to all qualified beneficiaries electing coverage in lieu of COBRA on an aggregate basis. Furthermore, if some qualified beneficiaries elect COBRA and others select coverage in lieu of COBRA, all qualified beneficiaries will have access to the Participant's account on an aggregate basis.

Plan Investments

Plan investments will be made in accordance with the Employer's elections in the Plan Adoption Agreement, and will consist of investments in either fixed or variable annuities.

Plan Administrator

The Employer designates as the initial Plan Administrator the entity named in the Plan Adoption Agreement. The initial Plan Administrator shall serve as Plan Administrator until such time as a new Plan Administrator is appointed.

Administrative Fees

An administration fee shall be payable by the Employer. Participants may be charged a distribution fee by the Plan's administrative services provider in such amount as shall be agreed to by the Employer.

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Administration

- 1. Health reimbursement requests may be made monthly with no minimum reimbursement dollar amount for recurring claims. There is a \$100 minimum claim amount for all other claims unless the participant account balance is less than \$100. Additionally, a reimbursement request can only be made for expenses incurred subsequent to the date the Participant first becomes enrolled in the Plan.
- 2. Participants are entitled to request reimbursements from their accounts as soon as the accounts are funded by the Employer, but only for medical expenses incurred subsequent to the date the Participant first becomes enrolled in the Plan. Hardship withdrawals or loans are not permitted under this Plan and Plan funds may only be used to reimburse Participants and their dependents for qualified medical expenses.
- 3. In order to receive reimbursement for eligible medical expenses, Participants shall provide the Plan Administrator with whatever information is reasonably required. This Plan shall not and cannot reimburse for any claims other than those allowed under Code Section 213(d) and the regulations thereunder, as generally described in IRS Publication 502.
- 4. When a request is approved it shall be scheduled for disbursement. Disbursements shall be made not later than the fifteenth (15th) day of each month for all reimbursement requests received by the Plan Administrator prior to the end of the preceding month.
- 5. Subject to the Claims Procedures rules below, decisions of the Plan Administrator shall be final on the issue of eligible expenditures and such decisions shall be based on Code Section 213(d) and the regulations thereunder, as interpreted by the IRS or court rulings or directives concerning the deductibility of medical expenses for Federal Income Tax purposes, which interpretations shall be controlling for purposes of determining reimbursement eligibility under this Plan.
- 6. Other than establishing this Plan and providing funding for the Plan, the Employer does not assume any responsibility for any aspect of any Participant's health care. Participant questions shall be directed to the Plan Administrator.
- 7. Each Participant shall be notified by the Plan Administrator of his or her account balance at the time a deposit is made to his or her account. The Plan Administrator shall provide each Participant with a quarterly statement setting forth the Participant's account balance and earnings and disbursements for the quarter. Additionally, the Plan Administrator shall provide a Participant with a statement of account balance in conjunction with each reimbursement distribution.
- 8. Funds in a Participant's account at the end of each year shall be rolled into the following year.
- 9. Reimbursement is available for the Participant, the Participant's spouse, the Participant's tax dependents as defined in Internal Revenue Code Section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof, and any child (as defined in Code Section 152(f)(1)) of the Participant who as of the end of the taxable year has not attained age twenty-seven (27). For purposes of this Plan, such qualified tax dependents and children shall collectively be referred to as "dependents." Submission of a request for reimbursement on behalf of someone other than the Participant shall be deemed a representation by the Participant that the request for reimbursement is made on behalf of a spouse or dependent.

Death Benefit

If a Participant dies prior to exhausting his vested account balance, the Participant's surviving spouse and/or dependents are eligible to be reimbursed under this Plan for their eligible medical expenses until the vested account balance is exhausted. In the event of the death of the Participant, the Participant's spouse, and all of

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the Participant's qualifying dependents, any funds remaining in the account shall be forfeited. Forfeitures shall be applied as elected by the Employer in the Plan Adoption Agreement.

Plan Amendments

The Employer has the authority to amend this Plan at any time, in whole or in part. Participants will be notified of any Plan changes. Any amendment to the Plan shall not adversely affect the rights of existing Participants. Changes imposed by the Internal Revenue Service, either by law change, regulations, or rulings, will be effective immediately and without notice.

Involuntary Access to Funds

Funds in a Participant's Plan account are not assignable by a Participant, either in law or in equity, or subject to estate tax, or to execution, levy, attachment, garnishment, or any other legal processes.

Plan Termination

In the event the Employer elects to terminate this Plan, which it may do, in its sole discretion, at any time and for any reason, amounts credited to Participants' accounts will remain in the Participants' accounts and Participants will continue to utilize their accounts as set forth in this Plan Document until their accounts are exhausted.

HIPAA Compliance

1. Disclosure of Summary Health Information to the Employer

In accordance with the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Standards") issued and pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), the Plan may disclose Summary Health Information to the Employer, if the Employer requests the Summary Health Information for the purpose of (a) obtaining premium bids from health plans for providing health insurance coverage under this Plan or (b) modifying, amending or terminating the Plan.

"Summary Health Information" may be individually identifiable health information and it summarizes the claims history, claims expenses or the type of claims experienced by individuals in the Plan, but it excludes all identifiers that must be removed for the information to be de-identified, except that it may contain geographic information to the extent that it is aggregated by five-digit zip code.

2. Disclosure of Protected Health Information ("PHI") to the Employer for Plan Administration Purposes

In order that the Employer may receive and use a Participant's individually identifiable health information or PHI (including electronic PHI) for "Plan Administration" purposes, the Employer agrees to:

- a. Not use or further disclose PHI other than as permitted or required by the Plan Documents or as Required by Law (as defined in the Privacy Standards);
- b. Ensure that any agents, including a subcontractor, to whom the Employer provides PHI received from the Plan agree to the same restrictions and conditions that apply to the Employer with respect to such PHI;
- c. Not use or disclose PHI for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Employer, except pursuant to an authorization which meets the requirements of the Privacy Standards;

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- d. Report to the Plan any PHI use or disclosure that is inconsistent with the uses or disclosures provided for of which the Employer becomes aware, including any security incident or actual or suspected breach that may compromise PHI.;
- e. Make available PHI in accordance with Section 164.524 of the Privacy Standards (45 CFR 164.524);
- f. Make available PHI for amendment and incorporate any amendments to PHI in accordance with Section 164.526 of the Privacy Standards (45 CFR 164.526);
- g. Make available the information required to provide an accounting of disclosures in accordance with Section 164.528 of the Privacy Standards (45 CFR 164.528);
- h. Make its internal practices, books and records relating to the use and disclosure of PHI received from the Plan available to the Secretary of the U.S. Department of Health and Human Services ("HHS"), or any other officer or employee of HHS to whom the authority involved has been delegated, for purposes of determining compliance by the Plan with Part 164, Subpart E, of the Privacy Standards (45 CFR 164.500 et seq);
- i. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI;
- j. If feasible, return or destroy all PHI received from the Plan that the Employer still maintains in any form and retain no copies of such PHI when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible; and
- k. Ensure that adequate separation between the Plan and the Employer, as required in Section 164.504(f)(2)(iii) of the Privacy Standards (45 CFR 164.504(f)(2)(iii)), is established as follows:
 - i. The employees, or classes of employees, or other persons under control of the Employer who are identified in the Plan Adoption Agreement, shall be given access to the PHI to be disclosed.
 - ii. The access to and use of PHI by the individuals described in subsection (i) above shall be restricted to the Plan Administration functions that the Employer performs for the Plan.
 - iii. In the event any of the individuals described in subsection (i) above do not comply with the provisions of the Plan Documents relating to use and disclosure of PHI, the Plan Administrator shall impose reasonable sanctions as necessary, in its discretion, to ensure that no further non-compliance occurs. Such sanctions shall be imposed progressively (for example, an oral warning, a written warning, time off without pay and termination), if appropriate, and shall be imposed so that they are commensurate with the severity of the violation.

"Plan Administration" activities are limited to activities that would meet the definition of payment or health care operations, but do not include functions to modify, amend or terminate the Plan or solicit bids from prospective issuers. "Plan Administration" functions include quality assurance, claims processing, auditing, monitoring and management of carve-out plans, such as vision and dental. It does not include any employment-related functions or functions in connection with any other benefit or benefit plans.

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3. Disclosure of Certain Enrollment Information to the Employer

Pursuant to Section 164.504(f)(l)(iii) of the Privacy Standards (45 CFR 164.504(f)(l)(iii)), the Plan may disclose to the Employer information on whether an individual is participating in the Plan or is enrolled in or has disenrolled from a health insurance issuer or health maintenance organization offered by the Plan to the Employer.

4. Disclosure of PHI to Obtain Stop-loss or Excess Loss Coverage

The Employer hereby authorizes and directs the Plan, through the Plan Administrator or its third party administrator, to disclose PHI to stop-loss carriers, excess loss carriers or managing general underwriters (MGUs) as directed by the Employer for underwriting and other purposes in order to obtain and maintain stop-loss or excess loss coverage related to benefit claims under the Plan, provided that genetic information will not be used for underwriting purposes Such disclosures shall be made in accordance with the Privacy Standards. The Employer certifies that such disclosures are for Plan administration purposes and that any third party to whom the Employer directs disclosure from the Plan has agreed to also comply with this amendment, as set out in Section 2.b.

5. Other Disclosures and Uses of PHI

With respect to all other uses and disclosures of PHI, the Plan shall comply with the Privacy Standards.

Claims Procedure

A Participant, spouse or dependent (the "Claimant") shall apply for Plan benefits in writing on a form provided by the Plan Administrator, or in such other manner as prescribed by the Plan Administrator. A communication regarding benefits that is not made in accordance with these procedures will not be treated as a claim under these procedures. Claims shall be evaluated by the Plan Administrator or such other person or entity designated by the Plan Administrator and shall be approved or denied in accordance with the terms of the Plan and Plan Adoption Agreement. All references to the Plan Administrator shall include any such delegate. No Claimant shall be entitled to benefits unless the Plan Administrator or its delegate determines in its discretion that the Claimant is entitled to benefits.

1. Claims

The Plan Administrator shall make a determination within a reasonable period of time, but not later than 30 days after receipt of the claim. This period may be extended one time by the Plan for up to 15 days, provided that the Plan Administrator both determines that such an extension is necessary due to matters beyond the control of the Plan and notifies the Claimant, prior to the expiration of the initial 30-day period, of the circumstances requiring the extension of time and the date by which the Plan expects to render a decision. If such an extension is necessary due to a failure of the Claimant to submit the information necessary to decide the claim, the notice of extension shall specifically describe the required information, and the Claimant shall be afforded at least 45 days from receipt of the notice within which to provide the specified information and the period for making the benefit determination shall be tolled from the date on which the notice of extension is sent to the Claimant until the date on which the Claimant responds to the request for additional information, or the deadline to submit the additional information, if earlier.

2. Notice of Denial

If the claim is denied in whole or in part, the Claimant will receive a written notice that includes:

a. The specific reason or reasons for the denial;

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- b. Reference to the specific Plan provision(s) on which the denial is based;
- c. A description of any additional material or information needed from the Claimant in connection with the claim and the reason such material or information is needed;
- d. An explanation of the claims review procedures and the applicable time limits, including a statement concerning the Claimant's right to bring a civil action following an adverse determination on review:
- e. A statement regarding any internal rule, guideline, protocol or other criterion that was relied upon in making the adverse determination (or a statement that a copy will be provided free upon request);
- f. If the denial is based on a medical necessity or experimental treatment or similar exclusion or limit, an explanation of the scientific or clinical judgment that led to this determination (or a statement that a copy will be provided free upon request);
- g. Any other information required by law.

3. Right to Request Review: Internal Appeal

The Claimant must make a written request for review to the Plan Administrator within 180 days of the initial denial of the claim. If a written request for review is not made within such 180- day period, the Claimant shall forfeit his or her right to review. The Claimant's written request for review may (but is not required to) include issues, comments, documents, and other records the Claimant wants considered in the review. All the information the Claimant submits will be taken into account on review, even if it was not reviewed as part of the initial decision. The appeal will be conducted by a person different from the person who made the initial decision. No deference will be given to the initial decision. The Claimant may ask to examine or receive free copies of Plan documents, records, and other information relevant to the claim by asking the Plan Administrator.

The Claimant will be given the identity of medical or vocational experts if requested, whose advice was obtained by the Plan in connection with the Claimant's initial claim denial, if any, even if their advice was not relied upon in making the initial decision. Where an adverse determination is based in whole or in part on a medical judgment, including determinations with regard to whether a particular treatment, drug or other item is experimental, investigational, or not medically necessary or appropriate, the Plan will consult with a health care professional who has experience in the field of medicine involved in the medical judgment to decide the Claimant's appeal. The Plan Administrator reserves the right to delegate its authority to make decisions.

4. Decision Upon Review: Internal Appeal

The Plan Administrator shall make a determination within a reasonable period of time, but not later than 60 days after receipt by the Plan of the Claimant's request for review of adverse determination.

5. Notice of Denial of Internal Appeal

If the decision on the appeal is denied, the Claimant will receive a written notice that includes:

- a. The specific reason or reasons for the denial;
- b. Reference to the specific Plan provisions on which the denial is based;

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- c. A statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to the Claimant's claim for benefits;
- d. A statement explaining any voluntary appeal procedures offered by the Plan and the Claimant's right to bring a civil action;
- e. A statement regarding any internal rule, guideline, protocol or other criterion that was relied upon in making the adverse determination (or a statement that a copy will be provided free upon request);
- f. If the denial is based on a medical necessity or experimental treatment or similar exclusion or limit, an explanation of the scientific or clinical judgment that led to this determination (or a statement that a copy will be provided free upon request);
- g. Any other information required by law.

6. External Appeal Process

Where required by law, a Claimant may be able to file an external appeal with an independent review organization. The independent review organization may overturn the Plan's decision, and the independent review organization's decision will be binding on the Plan. A Claimant must file a claim for external review within four (4) months of the date the Claimant receives the internal appeal denial notice. Filing a request for external review will not affect a Claimant's ability to bring a legal claim in court. When a Claimant files a request for external review, the Claimant will be required to authorize release of any medical records that may be required to be reviewed for the purpose of reaching a decision on the external review. Additional information on the external review process, where applicable, will be included in the internal appeal determination notice, or the Claimant may contact the Plan Administrator to request such additional information.

IN WITNESS WHEREOF, this Plan has been ex Administrative & Retirement Solutions, Inc.	secuted thisday of, 20, by MidAmerica		
	MIDAMERICA ADMINISTRATIVE & RETIREMENT SOLUTIONS, INC.		
	By:		
	Its: SVP Business Development		

IRS Circular 230 Notice: We are required to advise you no person or entity may use any tax advice in this communication or any attachment to (i) avoid any penalty under federal tax law or (ii) promote, market or recommend any purchase, investment or other action.

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Health Reimbursement Arrangement Section 115 Employee Benefit Trust

ADOPTION AGREEMENT

for

This Adopti	ion Agreemen	nt is executed o	on this, the	day of		, 20), by and
between						,	the Grantor,
and					as the	Trustee,	and sets forth
the designat	tions required	by the Trust.					
1.		istrator: MidA nated as the Tr		nistrative and F	<u>Retirement</u>	Solutions	s, Inc. is
2.	Custodian:	American Unit	ted Life is herb	y designated as	Custodian o	of the Tru	st assets.
By:							
Grantor & T	Trustee*:						
[* The Trust	tee may be a g	governmental er	mployer if perm	itted under appli	cable local a	authority.	This Adoption
Agreement	should be ex	ecuted below b	y a duly autho	orized representa	tive on beh	alf of the	governmental
employer. T	The employer:	representative is	s not the trustee	and is merely sig	ning for the	employer	the trustee.]
Si	gnature:						
Prin	nt Name:						
	Title:						
	Date:						

IRS Circular 230 Notice: We are required to advise you no person or entity may use any tax advice in this communication or any attachment to (i) avoid any penalty under federal tax law or (ii) promote, market or recommend any purchase, investment or other action.

Health Reimbursement Arrangement Trust for



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EMPLOYEE BENEFIT TRUST

THIS	S TRUST AGREEMENT is made this _	day of	, 20 by and between
		(the "Employer") and _	
as Tı	rustee ("Trustee").		
	W	ITNESSETH:	
	EREAS , the Employer has adopted loyees of the Employer, and	Benefit Plans and Pro	grams for Employees and Forme
by th	EREAS , the Employer desires to estable Employer and held for the benefit ordance with the Employer's Employee B	f the employees and the	eir eligible dependents under and ir
	EREAS, the Employer desires the Trustoold and administer such Trust, pursuant to		
	EREAS , the Employer, by action of its of tees to serve as the trustees for the Trust,	•	or governing body, has designated the
	W THEREFORE, in consideration of es agree as follows:	the mutual promises a	and covenants contained herein, the
1.	NAME AND PURPOSE. The name this Trust, shall be theAccount. The exclusive purpose of the employee welfare benefit obligations.		
2.	COMPLIANCE WITH LAWS. This State in which the Employer is located.		d in accordance with the laws of the
3.	ACCEPTANCE. The Trustee accepts by the terms and conditions set forth in		perform the obligations imposed on i
4.	RECEIPT OF CONTRIBUTIONS. contributed to it by the Employer. The Employer.		

5. <u>BENEFICIARIES</u>. The Trust assets, including any earnings accruing on them, shall be held solely for the purpose of providing funding for payment of the Employer's employee welfare benefit obligations and for payment of Trust expenses as provided for herein. It shall be impossible at any time for any part of the Trust to be used for or diverted to purposes other than to provide the benefits identified and contemplated under the Plans referenced herein for the exclusive benefit of covered employees and their dependents. No portion of the principal or income of this Trust shall revert to the Employer.

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- 6. <u>INVESTMENT POWERS</u>. Subject to applicable State law and its fiduciary responsibility, the Trustee has full discretion and authority with regard to the investment of the Trust assets, except with respect to an asset under the control or direction of a properly appointed investment manager, or with respect to an asset subject to Employer direction of investment.
- 7. <u>ADMINISTRATION</u>. The administration of the Trust shall be provided by the Trust Administrator designated by the Employer in the Adoption Agreement for this Trust. By its agreement to serve as Trustee, the Trustee accepts the Employer's designation of the Trust Administrator. The Employer may designate another Trust Administrator at any time, with proper notice to the Trustee and subject to the Trustee's approval. The Trust Administrator shall be responsible for all administrative aspects of the Trust, including the filing of all reports and tax returns, if any, required of the Trust.
- 8. <u>CUSTODIAN</u>. The Employer shall appoint a Custodian of the Trust Assets. The Custodian shall be designated and appointed in the Adoption Agreement. The Custodian shall invest the Trust assets as directed by the Trustee. The Custodian shall not have any discretion as to the investment of the Trust assets and shall at all times follow the direction and instruction of the Trustee. So long as the Custodian invests the Trust assets pursuant to the instructions of the Trustee, the Custodian shall not have any liability for following the Trustee's instructions.
- 9. <u>RECORDS AND STATEMENTS</u>. The records of the Trustee, Custodian, and Trust Administrator, pertaining to the Trust, must be open to the inspection of the Employer at all reasonable times and may be audited from time to time by any person or persons as the Employer may specify in writing.
- 10. <u>FEES AND EXPENSES FROM FUND</u>. The Trustee and Trust Administrator may receive reasonable annual compensation as may be agreed upon from time to time between the Employer and the Trustee and the Trust Administrator. The Trustee will pay, from the Trust Fund, all fees and expenses reasonably incurred by the Trust to the extent such fees and expenses are for the ordinary and necessary administration and operation of the Trust unless the Employer pays such fees and expenses directly. The above notwithstanding, the Trustee shall not be entitled to compensation if the Trustee is also the Employer.
- 11. <u>PARTIES TO LITIGATION</u>. Any final judgment entered in any court proceeding involving the Trust will be binding on the Employer, Trustee, Trust Administrator, and the Custodian.
- 12. <u>PROFESSIONAL AGENTS</u>. The Trustee may employ and pay from the Trust Fund reasonable compensation to, agents, attorneys, accountants and other persons, to advise the Trustee as in its opinion may be necessary. The Trustee may delegate to any agent, attorney, accountant, or other person selected by it, any non-Trustee power or duty vested in it by the Trust, and the Trustee may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.
- 13. <u>DISTRIBUTION OF CASH OR PROPERTY</u>. The Trustee may make distributions from the Trust in cash or property, or partly in each, at its fair market value as determined by the Trustee. No distributions shall be made from this Trust other than for the payment of benefits identified under the Plans, except that payments of reasonable expenses for the administration of the Trust shall be permitted in accordance with paragraph 10 above.
- 14. <u>DISTRIBUTION DIRECTIONS</u>. If no one claims a payment or distribution made from the Trust, the Trustee shall return the payment to the corpus of the Trust.

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- 15. THIRD PARTY / MULTIPLE TRUSTEES. No person dealing with the Trustee is obligated to see to the proper application of any money paid or property delivered to the Trustee, or to inquire whether the Trustee has acted pursuant to the terms of this Trust. Each person dealing with the Trustee may act upon any notice, request, or representation in writing by the Trustee, or by the Trustee's duly authorized agent, and is not liable to any person in so acting. If two persons act as Trustee and reach a deadlock, the Grantor shall appoint a third person as temporary Trustee to cast a vote in order to break the deadlock. A decision of the majority of the Trustees shall control with respect to any decision regarding the administration or investment of the Trust Fund or of any portion of the Trust Fund with respect to which such persons act as Trustees. However, the signature of only one Trustee is necessary to effect any transaction on behalf of the Trust.
- 16. <u>RESIGNATION</u>. The Trustee may resign its position at any time by giving 30 days written notice in advance to the Employer. If the Employer fails to appoint a successor Trustee within 60 days of its receipt of the Trustee's written notice of resignation, the Trustee will treat the Employer as having appointed itself as Trustee and as having filed its acceptance of appointment with the former Trustee.
- 17. <u>REMOVAL</u>. The Employer, by giving 30 days' written notice in advance to the Trustee, may remove any Trustee. In the event of the resignation or removal of a sole Trustee, the Employer must appoint a successor Trustee if it intends to continue the Trust. If multiple persons hold the position of Trustee and one or more, but less than all, are removed as Trustee, in the event of the removal of one such person, the remaining person or persons shall act as Trustee.
- 18. <u>INTERIM DUTIES AND SUCCESSOR TRUSTEE</u>. Each successor Trustee succeeds to the title to the Trust vested in his predecessor by accepting in writing his appointment as successor Trustee and by filing the acceptance with the former Trustee and the Employer without the signing or filing of any further statement. The resigning or removed Trustee, upon receipt of acceptance in writing of the Trust by the successor Trustee, must execute all documents and do all acts necessary to vest the title of record in any successor Trustee. Each successor Trustee has and enjoys all of the powers, discretionary and ministerial, conferred under this Agreement upon his predecessor. A successor Trustee is not personally liable for any act or failure to act of any predecessor Trustee, except as required under applicable law. With the approval of the Employer, a successor Trustee, with respect to the Plan, may accept the account rendered and the property delivered to it by a predecessor Trustee without incurring any liability or responsibility for so doing.
- 19. <u>VALUATION OF TRUST</u>. The Trustee must value the Trust Fund as of each Accounting Date to determine the fair market value of the Trust. The Trustee also must value the Trust Fund on such other valuation dates as directed in writing by the Employer. Accounting Date shall mean the last day of the Employer's fiscal year.
- 20. <u>RECORDS AND REPORTS</u>. The Trustee and the Trust Administrator shall create and maintain records that are appropriate to the administration of the Trust.
- 21. <u>TERMINATION OF TRUST</u>. This Trust shall terminate when all Trust funds have been expended for the fulfillment of the Employer's welfare benefit obligations to its employees, and the Employer notifies the Trustee and all other interested parties that the Employer will not be providing any additional funds to the Trust.
- 22. IRREVOCABLE. This Trust is irrevocable by the Employer.

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- 23. <u>SUCCESSORS and ASSIGNS</u>. This Trust Agreement and the rights and duties hereunder shall not be assignable by either of the parties hereto. The assets held under this Trust shall not be subject to the rights of the creditors of the Employer, the Trustees, or the Custodian, and shall be exempt from execution, attachment, prior assignment, or any other judicial relief or order for the benefit of creditors or other third persons.
- 24. <u>AMENDMENTS</u>. This Trust Agreement may be amended from time to time by an instrument in writing executed by duly authorized officers of the Employer and Trustee.
- 25. <u>NO THIRD PARTY BENEFIT</u>. This Agreement is intended for the exclusive benefit of the parties to this Agreement and nothing contained in this Agreement shall be construed as creating any rights or benefits in or to any other party.
- 26. <u>INCORPORATION OF ADOPTION AGREEMENT</u>. The Trust Adoption Agreement, any Appendix thereto, and any future modifications, are incorporated in this Trust Document and made a part thereof as though specifically set forth herein.
- 27. <u>EMPLOYER REPRESENTATION</u>. The Employer represents and warrants that:
 - (A) it is a State or political subdivision of a State or agency or instrumentality of the foregoing within the meaning of Code Section 414(d);
 - (B) it has authority under State law to enter into, maintain, and establish this Trust and the Plan(s).
 - (C) the funding of the Trust is from employer contributions or contributions of employees of the Employer;
 - (D) the Trust is exempt from taxes under Code Section 115; and
 - (E) the Trust and Plan is a governmental plan as defined in Code Section 414(d), established for the exclusive benefit of the employees of the Employer.

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IN WITNESS WH SEALED, and DELI					t to	be	SIGNED,
By:							
Employer Name:							
Signature:							
Print Name:							
Title:							
Date:							
and							
Trustee:							
Signature:							
Print Name:							
Title:	 						
Date:							

IRS Circular 230 Notice: We are required to advise you no person or entity may use any tax advice in this communication or any attachment to (i) avoid any penalty under federal tax law or (ii) promote, market or recommend any purchase, investment or other action.

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Health Reimbursement Arrangement for Retirees

SERVICE AGREEMENT

ISSUED BY

MIDAMERICA ADMINISTRATIVE & RETIREMENT SOLUTIONS, LLC

TO

Fort Ord Reuse Authority

THIS SERVICES AGREEMENT ("Agreement") is entered into between MidAmerica Administrative and Retirement Solutions, LLC ("MidAmerica"), and, **Fort Ord Reuse Authority** ("Employer"), (collectively the "Parties").

WHEREAS, Employer hereby appoints MidAmerica to provide administrative services on behalf of the Health Reimbursement Arrangement (the "Plan") for the benefit of its eligible employees and their dependents;

WHEREAS, MidAmerica shall at all times adhere to the terms and conditions of the Plan.

WHEREAS, Employer shall provide to MidAmerica any and all information which is necessary in order for MidAmerica to fulfill its obligations hereunder. Administrative Services are described in Appendix A.; and

NOW, THEREFORE, in consideration of the forgoing, MidAmerica and Employer agree that the services specified below will be provided under the following terms and conditions:

Definitions:

- (a) "Agreement" means this Administrative Service Agreement, including all Exhibits hereto.
- (b) "Card Transaction" means a transaction by a Participant making use of the debit card issued by MidAmerica though Payment Card Provider.
- (c) "Debit Card Claims" means the claims received through payment with a debit card issued by MidAmerica though Payment Card Provider.
- (d) "Employer" has the meaning given in the Recitals.
- (e) "Payment Card Provider" refers to the Payment Card issuer who shall produce and distribute Cards, Card carrier and Cardholder agreement to each new Participant.
- (f) "MidAmerica Payment Card" means the Payment Card issued by MidAmerica through a Payment Card Provider and used by Participants in the Plan.
- (g) "Payment Card" means a debit card or a stored-value card.
- (h) "Plan" means the Health Reimbursement Arrangement.

Section 1.0: Responsibilities of MidAmerica

MidAmerica accepts on behalf of the Employer the fiduciary responsibility for the following administrative, compliance and related services including those described in Appendix A:

- 1.1 **Provision of Plan Documents.** MidAmerica will provide a basic Plan Document and Agreement to the Employer. The Employer will complete and review the documents to assure that they reflect the intended operation of the Plan by the Employer. MidAmerica will also provide updates, amendments and restatements of these documents as it deems appropriate to conform to changing statutory and regulatory requirements.
- 1.2 **Participant Claims.** MidAmerica will review and approve all Participant claims, assuring compliance with the Plan provisions and in accordance with Internal Revenue Code (IRC) 213(d) eligibility guidelines.
- 1.3 **Employee Communications Materials.** MidAmerica will provide Plan Highlights for the Employer to provide to Plan Participants, which will include basic information about Plan features and participation procedures. The Plan Highlights will also provide any required notice to Participants of their eligibility to receive Plan benefits.
- 1.4 **Other Assistance.** MidAmerica may agree in writing to provide additional non-discretionary services as may be reasonably requested by the Employer to assist it in the administration of the Plan at an agreed fee.
- 1.5 **Basic Service Enhancements.** MidAmerica will provide any future service enhancements that MidAmerica makes available in its basic package of administrative and compliance services it offers to new and existing clients. Modifications in the basic duties of MidAmerica as set forth in this Agreement must be reflected in an amendment to the Agreement within 60 days advance written notice between MidAmerica and the Employer.

Section 2.0: Responsibilities of the Employer

The duties described below will remain the responsibility of Employer:

2.1 Participant and Plan Data. The Employer shall furnish the information requested by MidAmerica as determined necessary by MidAmerica for it to perform its functions hereunder, including information concerning the Plan and the eligibility of individuals to participate in and receive Plan benefits. Also, Employer will provide Participant dates of birth, addresses, Social Security Numbers, and will provide and verify information upon the request of MidAmerica on eligibility to participate in the Plan and such other information as MidAmerica may reasonably request for the administration of the Plan. Although some of this data may be provided by a prior administrative services provider or payroll vendor who may ultimately be responsible, as between Employer and MidAmerica, Employer is responsible for the accuracy, timeliness and completeness of all of this data. Data will be provided in a format acceptable to MidAmerica, in electronic media, unless otherwise agreed by Employer and MidAmerica. If MidAmerica specifically requests such data and Employer fails to deliver accurate information in a timely basis to MidAmerica, MidAmerica will not be responsible for benefits paid in error due to the Employer's failure to timely provide or update such information or for meeting regulatory deadlines or other compliance requirements and Employer will be responsible for any resulting fines, penalties or corrective actions.

- 2.2 Claims Appeals. The Employer shall make final determination regarding any claim for benefits on coverage that is appealed, including (a) any question of eligibility or entitlement of the claimant for coverage under the Plan, (b) any question with respect to the amount due; or (c) any other appeal.
- 2.3 **Authorized Representatives.** Employer will designate at least one individual to serve as a primary contact for the Employer, and at least one individual to serve as a backup contact. The authorized representatives for the Employer are

Unless the authority of these individuals is expressly limited by the Employer in writing, MidAmerica shall be entitled to rely on the authority of these individuals to act for the Employer, to rely on any information or authorizations provided by such individuals, and to receive any Plan or participant information and Plan reports or notices. MidAmerica will similarly designate primary and backup contacts but notes that only individuals who are designated as a Vice President or higher are authorized to execute contracts or amendments for MidAmerica.

Section 3.0: Duration of Agreement

- 3.1 **Termination.** Termination of this Agreement shall not terminate the rights or obligations of either party arising out of a period prior to such termination. If there is a breach in this Agreement which is not remedied to the satisfaction of the Employer and MidAmerica within sixty (60) days of written notification. Unless otherwise mutually agreed, termination will be effective two full month's after written notice is provided.
- 3.2 **Law, Rule, Regulation, Court or Administrative Decision**. If the application of any law, rule, regulation, or court or administrative decision prohibits the continuation of this Agreement or would cause a penalty to either party if the Agreement is continued, and if after meeting and conferring in good faith, the Agreement cannot be amended to conform to such law, rule, regulation, court or administrative decision in a manner that would preserve the original intent of the parties with respect to their rights and duties under this Agreement, this Agreement may be terminated within such time frame necessary to comply with any law, rule, regulation, or court or administrative decision prohibiting the continuation, or if such compliance allows for more than thirty (30) days, than upon thirty (30) days written notice.
- 3.3 **Force Majeure.** Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, power outages, failure of computer systems, machinery or supplies, vandalism, strikes, or other work interruptions, or any similar or other cause that is beyond the reasonable control of either party. Each party shall make a good faith effort to perform under this Agreement in the event of any such circumstances and shall resume full performance once the cause of the delay has abated.

Section 4.0: Confidentiality

4.1 **Confidential Work Product.** The services specific to the Employer performed by MidAmerica, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by MidAmerica, pursuant to this Agreement, are for the sole use of the Employer, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the Employer. This provision does not apply to information that (a) was publicly known, or otherwise known to MidAmerica, at the time that it was disclosed to MidAmerica by the Employer, (b) subsequently becomes publicly known through no act or omission of MidAmerica or (c) otherwise becomes known to MidAmerica other than through disclosure by the Employer. Except for any other parties that may be allowed upon prior agreement, neither the documents nor their contents shall be

released to any third party without the prior written consent of the Employer. The sole purpose of this section is to prevent disclosure of the Employer's confidential and proprietary information by MidAmerica.

Confidentiality. Both parties recognize that their respective employees and agents, in the course 4.2 of performance of this Agreement, may be exposed to confidential information and that disclosure of such information could violate the rights of private individuals and entities, including the parties and third parties. Confidential information is nonpublic information that a reasonable person would believe to be confidential and includes, without limitation, personal identifying information (e.g., social security numbers) and trade secrets, each as defined by applicable state law, and all other information protected by applicable law ("Confidential Information"). The party receiving Confidential Information ("Receiving Party") of the other ("Disclosing Party") shall not, and shall cause its employees and agents who are authorized to receive Confidential Information, not to, use Confidential Information for any purpose except as necessary to implement, perform or enforce this Agreement or comply with its legal obligations. Receiving Party will use the same reasonable efforts to protect the Confidential Information of Disclosing Party as it uses to protect its own proprietary information and data. The Receiving Party will not disclose or release Confidential Information to any third person without the prior written consent of the Disclosing Party, except for where required by law or for authorized employees or agents of the Receiving Party. The Receiving Party shall comply with all applicable laws regarding use and disclosure of Confidential Information, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996, Public Law 104-1991 ("HIPAA") and Florida Medical Records Laws (Florida Civil Rights Laws). Prior to disclosing the Confidential Information to its authorized employees or agents, Receiving Party shall inform them of the confidential nature of the Confidential Information and require them to abide by the terms of this Agreement. Receiving Party will as soon as reasonably practical notify Disclosing Party if Receiving Party discovers any improper use or disclosure of Confidential Information and will commence reasonable efforts to investigate and correct the causes of such improper use or disclosure. If Receiving Party believes the Confidential Information must be disclosed under applicable law, Receiving Party may do so provided that, to the extent permitted by law, the other party is given a reasonable notice and opportunity to contest such disclosure or obtain a protective order. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of the Receiving Party; (ii) the Disclosing Party regularly discloses to third parties without restriction on disclosure; or (iii) the Receiving Party obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation. Confidential Information does not include any information that is required to be provided to the public pursuant to the laws of the United States and/or Florida such as the Florida Medical Records Laws, The non-disclosure and non-use obligations of this Agreement will remain in full force with respect to each item of Confidential Information for a period of ten (10) years after the Receiving Party's receipt of that item.

Section 5.0: Security

5.1 **Implementation**. MidAmerica shall implement commercially reasonable administrative, technical and physical safeguards designed to: (i) ensure the security and confidentiality of data and information provided by the Employer or used in connection with providing services under this Agreement, including data or information about third parties ("MidAmerica's Data"); (ii) protect against any anticipated threats or hazards to the security or integrity of MidAmerica's Data; and (iii) protect against unauthorized access to or use of MidAmerica's Data. MidAmerica shall review and test such safeguards on no less than an annual basis.

- 5.2 **Network**. If MidAmerica makes MidAmerica's Data accessible through the Internet or other networked environment, MidAmerica shall be solely responsible for all aspects of Internet use, and shall maintain, in connection with the operation or use of MidAmerica's Data, adequate technical and procedural access controls and system security requirements and devices, necessary for data privacy, confidentiality, integrity, authorization, authentication and non-repudiation and virus detection and eradication.
- 5.3 Personal Data. If MidAmerica processes or otherwise has access to any personal data or personal information on the Employer's behalf when performing MidAmerica's services and obligations under this Agreement, then: (i) Employer shall be the data controller (where "data controller" means an entity which alone or jointly with others determines purposes for which and the manner in which any personal data are, or are to be, processed) and MidAmerica shall be a data processor (where "data processor" means an entity which processes the data only on behalf of the data controller and not for any purposes of its own); (ii) Employer shall ensure that it has obtained all necessary consents and it is entitled to transfer the relevant personal data or personal information to MidAmerica so that MidAmerica may lawfully use, process and transfer the personal data and personal information in accordance with this Agreement on the Employer's behalf in order for MidAmerica to provide the services and perform its other obligations under this Agreement; (iii) MidAmerica shall process the personal data and personal information only in accordance with any lawful and reasonable instructions given by the Employer from time to time and in accordance with the terms of this Agreement; and (iv) each party shall take appropriate technical and organizational measures against unauthorized or unlawful processing of the personal data and personal information or its accidental loss, destruction or damage so that, having regard to the state of technological development and the cost of implementing any measures, the measures taken ensure a level of security appropriate to the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction or damage in relation to the personal data and personal information and the nature of the personal data and personal information being protected. If necessary, the parties will cooperate to document these measures taken.
- 5.4 Information Security. MidAmerica represents and warrants that its collection, access, use, storage, disposal and disclosure of Confidential Information accessed and/or collected from the Employer does and will comply with all applicable federal and state privacy and data protection laws. In the event of any security breach, MidAmerica shall: (a) Provide Employer with the name and contact information for an employee who shall serve as Employer's primary security contact and shall be available to assist Employer twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a security breach; and (b) Notify Employer of a security breach as soon as practicable, but no later than twenty-four (24) hours after MidAmerica becomes aware of it. Immediately following MidAmerica's notification to Employer of a security breach, the parties shall coordinate with each other to investigate the security breach. Employer agrees to fully cooperate with MidAmerica in MidAmerica's handling of the matter. MidAmerica shall use best efforts to immediately remedy any security breach and prevent any further security breach at MidAmerica's own expense in accordance with applicable privacy rights, laws, regulations and standards. MidAmerica agrees to provide, at its expense, up to one year of credit monitoring services to third parties impacted by any data breach involving the loss of personally identifiable information.
- 5.5 **Indemnity.** Employer shall defend (with counsel acceptable to MidAmerica where such acceptability shall not unreasonably be withheld), indemnify and hold MidAmerica harmless from and against all claims, actions, proceedings, losses, costs (including attorney fees and other charges), liabilities, damages, judgments, settlements, and court awarded attorney's fees resulting from, arising out of or related to a security or data breach except to the extent the breach is caused by MidAmerica. The terms of this section shall survive termination of this Agreement. For purposes of this provision, "security breach" means any act or omission that compromises either the security, confidentiality, or integrity of Confidential Information or the physical, technical, administrative or organizational safeguards put in

place by MidAmerica or any authorized persons that relate to the protection of the security, confidentiality or integrity of Confidential Information or a breach or alleged breach of this Agreement relating to such privacy practices or privacy obligations imposed by any applicable law.

- 5.6 **Notice and Remedy of Breaches**. Each party shall promptly give notice to the other of any actual or suspected breach by it of any of the provisions of this Agreement, whether or not intentional, and the breaching party shall, at its expense, take all steps reasonably requested by the other party to prevent or remedy the breach.
- 5.7 **Enforcement**. Each party acknowledges that any breach of any of the provisions of this Agreement may result in irreparable injury to the other for which money damages would not adequately compensate. If there is a breach, then the injured party shall be entitled, in addition to all other rights and remedies which it may have, to have a decree of specific performance or an injunction issued by any competent court, requiring the breach to be cured or enjoining all persons involved from continuing the breach.

Section 6.0: Pricing

- 6.1 **Fees, Payment, Other Revenue.** MidAmerica will charge fees for its services in accordance with the Fee Schedule on the Adoption Agreement and will bill these fees to the Employer or to the Participants as provided in the Fee Schedule, or as specifically instructed by the Employer in writing. If the Employer agrees to pay the fees, but either (a) does not do so within 60 days from the date of the Fee Invoice, or (b) the Employer instructs MidAmerica to pay the fees from Plan contributions and MidAmerica accepts such instructions, the fees will be paid out of contributions and, if necessary, allocated to Participant accounts. If fees are Employer paid, such fees shall be invoiced to Employer on a quarterly basis by MidAmerica following the end of the quarter. The Fee Schedule shall remain in effect in the amounts described in Fee Schedule for a term of three (3) Plan years in which MidAmerica is providing administrative services. Thereafter, any changes to the fee agreement will be supplied to the Employer 60 days prior to the effective date of the changes. Additional ancillary fees are described in Exhibit A, hereto.
- 6.2 **Liability for Payment of Card Claims.** In the event a Payment Card is used for an ineligible expense, MidAmerica will attempt to recoup the funds from the Participant by requesting funds paid in error to be returned to MidAmerica. If such efforts fail, MidAmerica may deactivate Payment Card temporarily ceasing Payment Card transactions until the balance has been offset by manual claim(s), at which point the card will be reactivated. In no event will MidAmerica or the Payment Card Provider be liable for any ineligible transactions. If all attempts are exhausted, Employer will cover the loss of an uncollected amount.
- 6.3 **Employer's Failure to Maintain Sufficient Funds for Benefit Payments**. In the case that the participating Employer does not forward the monthly contribution amounts to MidAmerica in a timely manner, MidAmerica reserves the right to delay the payments of claims until monies are received. Employer is responsible for any and all third-party costs incurred by the Payment Card Provider as a result of not consistently maintaining the funding of the plan.

Section 7.0: Miscellaneous

- 7.1 **Hold Harmless Agreement, Indemnity and Limitation of Liability.** MidAmerica and the Employer agree that they will each be responsible for the prompt and complete performance of the services each has agreed to provide under this Agreement, as set forth above. In addition to these undertakings, the parties assume the following responsibilities:
 - (a) Hold Harmless Agreement of MidAmerica: MidAmerica shall indemnify and hold harmless the Employer, any member of the governing board, and Employees from every claim, demand or suit

which may arise out of, be connected with, or be made due to the negligence of MidAmerica or failure of MidAmerica to meet the requirements of this Agreement. However, this indemnification shall not cover any claim, demand, or suit based on erroneous information provided by the Employer or Employees or their willful misconduct or negligence. MidAmerica's liability hereunder shall be limited to actual damages and out-of-pocket legal fees and expenses only.

- (b) Other Providers: If the services provided by MidAmerica under this Agreement were previously provided by the Employer or a third party, the Employer agrees that MidAmerica shall not be responsible for any failure of the prior Plan document or administrative services to comply with the requirements for employer-provided medical reimbursement Plan under Code Sections 105 and 106 and regulations issued thereunder, and as a health reimbursement arrangement as described in IRS Notice 2002-45 and Revenue Ruling 2002-41, other applicable law, or the prior Plan. This does not exempt or diminish MidAmerica's responsibility as the active administrator and other responsibilities as described herein and required under IRS regulations. MidAmerica is also not responsible for the accuracy and completeness of participant and payroll data provided by the Employer or any third-party provider. Employer agrees that MidAmerica and its affiliates and employees will be indemnified by any responsible third parties from any claim asserted against any of them for any of these reasons, and will further be indemnified from any cost and expense they incur, including reasonable attorney's fees, due to the assertion of such a claim, or by the Employer if not adequately indemnified by third parties. Nothing herein will prevent the assertion of any claim directly against any third party by MidAmerica or the Employer.
- (c) Notwithstanding anything to the contrary in this Agreement, in no event shall either party be liable for any punitive damages, fines, penalties, taxes or any indirect, incidental damages incurred by the other party, its officers, employees, agents, contractors or consultants whether or not foreseeable and whether or not based in contract or tort claims or otherwise, arising out of or in connection with this Agreement even if advised of the possibility of such damage.
- 7.2 **Right to Audit.** MidAmerica reserves the right to perform an audit of Employer's Plan including services, process and accounts at the MidAmerica's expense. Employer agrees to provide all necessary data, access to information and assistance with such audit and to correct any identified items and concerns as determined by the audit in a manner and time frame as agreed upon by both parties.
- 7.3 **No Waiver.** No failure of either MidAmerica or the Employer to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement shall constitute a waiver of any such breach of such covenant, term or condition.
- 7.4 **Compliance with the law.** The Employer is responsible for the Plan's compliance with all applicable federal and state laws and regulations. The Employer acknowledges that MidAmerica is not providing tax or legal advice and that the Employer shall be solely responsible for determining the legal and tax status of the Plan.
- 7.5 **Severability.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision unenforceable, invalid, or illegal.
- 7.6 **Drafting Ambiguities.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each party. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement.
- 7.7 Notices and Communications.

- (a) **Notices**. All notices provided for herein shall be sent by confirmed facsimile, or guaranteed overnight mail with tracing capability or by first class United States mail, with postage prepaid, addressed to the other party at its respective addresses set forth below or such other addresses as either party may designate in writing to the other from time to time for such purposes. All notices provided for herein shall be deemed given or made when received.
- (b) Addresses. The MidAmerica address for notices as described above is MidAmerica Administrative & Retirement Solutions, 2855 Interstate Drive, Suite 115, Lakeland, FL 33805. The ___Plan/Employer address for notices as described above is _____
- (c) **Communications**. The Employer agrees that MidAmerica may communicate confidential, protected, privileged or otherwise sensitive information to the Employer through a named contact designated by the Employer ("Named Contact") and specifically agrees to indemnify MidAmerica and hold it harmless; (i) for any such communication directed to the Employer through the Named Contact attempted via fax, mail, telephone, e-mail or any other media, acknowledging the possibility that such communication may be inadvertently misrouted or intercepted; and (ii) from any claim for the improper use or disclosure of any health information by MidAmerica where such information is used or disclosed in a manner consistent with its duties and responsibilities hereunder.
- 7.8 **Entire Agreement, Supplements, and Amendments.** This Agreement (including the Appendix) generally constitutes the entire agreement between the parties, merging all prior discussions. It may be modified by written side agreements executed by all parties along with this Agreement. It may be further supplemented, but not modified, by MidAmerica from time to time with written procedures that provide a description of the ordinary processes for the parties to fulfill their obligations hereunder, which shall not exclude extraordinary processing in appropriate situations that produces comparable results. Finally, this Agreement may be amended at any time, but only by written agreement signed by the parties.
- 7.9 **Assignment.** Some or all of the rights and duties of MidAmerica hereunder may be assigned to an affiliate of MidAmerica, or to any successor through merger, reorganization, or sale of assets. Some or all of the duties of MidAmerica may also be performed by others under subcontract to MidAmerica, without the release of MidAmerica for responsibility for such services. MidAmerica may, by letter or other writing, agree to extend this Agreement to any other Plan of the Employer or Plans sponsored by affiliates of the Employer. Otherwise, no party may assign this Agreement nor any rights or duties hereunder without written consent from the other party.
- 7.10 **Standard of Care; Erroneous Payments.** MidAmerica shall use reasonable care and due diligence in the exercise of its powers and the performance of its duties under this Agreement. If MidAmerica makes any payment under this Agreement to an ineligible person, or if more than the correct amount is paid, MidAmerica shall make a diligent effort to recover any payment made to or on behalf of an ineligible person or any overpayment. However, MidAmerica will not be liable for such payment, unless MidAmerica would otherwise be liable under another provision of this Agreement.
- 7.11 **Compliance with the law.** The Employer is responsible for the Plan's compliance with all applicable federal and state laws and regulations. The Employer acknowledges that MidAmerica is not providing tax or legal advice and that the Employer shall be solely responsible for determining the legal and tax status of the Plan.
- 7.12 **Mandatory Arbitration.** Any controversy or claim arising out of or relating to this Agreement may be properly submitted to binding arbitration in accordance with the rules of the American Arbitration Association. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction. The cost and expenses of arbitration, including the fees of the arbitrators, shall be borne by

the losing party or in such proportions as the arbitrators may determine. The successful party shall recover as expenses all reasonable attorney's fees incurred in connection with the arbitration proceeding or any appeals therefrom.

7.13 **Governing Law.** Except to the extent governed by federal law, this Agreement shall be governed by and constructed according to the Laws of the State of Florida.

By the signature of its authorized agent below, Employer agrees to MidAmerica extending pricing, terms and conditions of this solicitation or this resultant Agreement to other governmental entities at the discretion of MidAmerica. MidAmerica agrees to provide all administrative services called for under the herein referenced Plan for the Employer and charge only those fees permitted under the Plan.

Name of Employer:	Fort Ord Reuse Authority						
Signature:							
Print Name:	Josh Metz						
Title:	Executive Officer						
Date:							
Date.							
MidAmerica Administrative & Retirement Solutions, LLC.							
Signature:							
Print Name:	Trenton Teesdale, CEBS						
Title:	SVP Business Development						
Date:	7						

Appendix A

Health Reimbursement Arrangement Administrative Services

This is an outline of the standard services offered by MidAmerica Administrative & Retirement Solutions, LLC to administer a Health Reimbursement Arrangement. MidAmerica will customize this standard service offering to accommodate Plan design at Employer's request.

- Post contributions to participant accounts in accordance with the terms of the Plan Adoption Agreement and any additional information provided by the Plan Sponsor.
- > Deposit funds to the selected funding choices of the Plan based on the latest allocation instructions.
- ➤ Daily valuation of the funding choices, including earnings, for the Plan and each Plan participant's account.
- > Daily post and process all transfers among the funding choices to the appropriate Plan and Plan participant account.
- > Daily post and process all distributions, forfeitures, and withdrawals from the appropriate Plan participant account.
- ➤ Prepare quarterly or annual (dependent on plan design) participant statements of account balances and distribute to each participant.
- ➤ Prepare annual year-end reports to the Plan Sponsor. The Plan Sponsor and Plan participants will have access to account and Plan level information daily through MidAmerica's website. Participants and Employer are able to print customized statements and reports via the website.
- ➤ Claims adjudication administration services for the Plan. MidAmerica reviews all claims for eligibility before processing. HRA claims are processed daily.
- > Issue distribution checks or Direct deposit to participants for claims payment.
- ➤ Participant Services Call Center for participants to communicate with a service representative who can answer questions about the Plan and the participant's account.
- > Dedicated Account Manager for Plan Sponsor who can answer questions about the Plan and plan related questions
- > To ensure proper monitoring and support of the program on an ongoing basis, MidAmerica will provide the following additional services at no additional cost:
 - A quarterly review of the investment performance experienced by the Plan, if necessary
 - Periodic meetings with employees to explain the program and answer questions, if necessary
 - Additional supplies of employee brochures to explain the program to newly eligible employees
 - Implementation and compliance support provided on an as-needed basis

EXHIBIT A Ancillary Fee Schedule

Fees			
Item	Description	Cost	Unit Measure
Returned Card Fee	Cost for undeliverable cards returned. Returned card fee shall be paid by:	\$5.00	Per card, per occurrence
	Employer or Participant		
Dependent, Replacement, or Additional Card	Cost per dependent, replacement (i.e. lost/stolen) or additional card issued. Fee shall be paid by:	\$5.00	Per card
Fee	Employer or Participant	Φ 2.5 .00	
Lost or Stolen Card Investigation	Cost for investigative reports and research on lost or stolen cards. Lost or stolen card investigation fees shall be paid by:	\$25.00	Per report, per occurrence
	Employer or Participant		
Chargeback Disputes	Cost for research on disputed transactions. Fees associated with chargeback disputes shall be paid by:	\$25.00	Per disputed transaction submitted
G IF I	Employer or Participant	Φ.5.00	D 1
Card Embossing Cancellation	Cost for cancellation of card orders that have already been submitted to the card issuer and are in the production process. Card embossing cancellation fess shall be paid by Employer or Participant, depending on which party initiated the initial request.	\$5.00	Per card, per occurrence
Card Redirect	Cost for a redirect request to pull a card and mail to a different address other than the address supplied. Redirected cards are shipped via US mail, unless otherwise specified. Express delivery fees apply if express delivery is requested. Costs associated with a card redirect request shall be paid by Participant.	\$5.00	Per card, per occurrence

HIPAA BUSINESS ASSOCIATE ADDENDUM

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recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with

respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

- e. "<u>Designated Record Set</u>" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. "<u>Treatment</u>" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- g. "<u>Payment</u>" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- h. "<u>Health Care Operations</u>" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

2. **Obligations of Business Associate.**

- a. Use or Disclosure of PHI. MidAmerica agrees not to use or disclose PHI, other than as permitted or required by the Agreement or as Required By Law.
- b. <u>Prohibited Uses and Disclosures</u>. MidAmerica shall not use PHI other than as permitted by the HIPAA Privacy & Security Rule or this Addendum. MidAmerica shall not disclose PHI in any manner that would constitute a violation of the Privacy Rule if disclosed by the Covered Entity, except that MidAmerica may disclose PHI in a manner permitted pursuant to this Addendum.
- c. <u>Appropriate Safeguards</u>. MidAmerica shall implement appropriate safeguards as are necessary to protect the confidentiality of PHI or to prevent its use or disclosure of PHI other than as permitted by this Addendum or the HIPAA Privacy & Security Rule.
- d. <u>Reporting of Improper Use or Disclosure</u>. MidAmerica shall report to Covered Entity any use or disclosure of PHI other than as provided for by this Addendum of which it becomes aware. MidAmerica further agrees to mitigate, to the extent possible, the harmful effects of the unauthorized disclosure.
- e. <u>Disclosure to Agents</u>. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), MidAmerica agrees to ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of MidAmerica agree to the same restrictions, conditions, and requirements that apply to MidAmerica with respect to such information.
- f. <u>Access to PHI</u>. MidAmerica agrees to provide individuals with access to their PHI, as held in a Designated Record Set by MidAmerica, in order to meet the requirements under 45 CFR 164.524.
- g. <u>Amendment of PHI</u>. MidAmerica agrees to make any amendment(s) to PHI it holds in a Designated Record Set, as directed by the Covered Entity pursuant to 45 CFR 164.526.

- h. <u>Accounting Rights</u>. MidAmerica agrees to document and provide a description of any disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. MidAmerica agrees to provide such information to Covered Entity, or to an individual at the direction of the Covered Entity, in order for Covered Entity to comply with the accounting requirements in 45 CFR 164.528.
- i. <u>Governmental Access to Records</u>. MidAmerica shall make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of the U.S. Department of Health and Human Services (the "**Secretary**") for purposes of determining Covered Entity's compliance with the HIPAA Privacy & Security Rule within a reasonable time of a request for the same.
- j. Covered Entity's Right to Restrict. MidAmerica agrees to comply, upon communication by Covered Entity, with any restrictions to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522.
- k. HIPAA Security Standards. MidAmerica agrees to comply with the HIPAA Privacy & Security Rule with respect to any Electronic PHI ("EPHI") that MidAmerica holds on behalf of the Plan.
 - 1. MidAmerica agrees to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to EPHI to prevent use or disclosure of PHI other than as provided for by the Addendum.
 - 2. MidAmerica agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it creates, receives, maintains, or transmits on behalf of Covered Entity, as required in the HIPAA Privacy & Security Rule.
 - 3. MidAmerica agrees to ensure that any agent, including a subcontractor, to whom it provides EPHI agrees to implement reasonable and appropriate safeguards to protect such information.
 - 4. MidAmerica agrees to report to Covered Entity any security incident under the HIPAA Privacy & Security Rule of which it becomes aware, including the identities of any individual whose EPHI was breached.
- l. Responsibilities If Security Breach. MidAmerica shall notify Covered Entity immediately if there is a breach by either MidAmerica or one of its agents of unsecured PHI, as defined in, and consistent with, the HITECH Act and any regulations or guidance issued thereunder, including 45 CFR Part 164, Subpart D. Such notification shall:
 - 1. Be made in writing to the Covered Entity's Privacy Officer or other designated party.
 - 2. Be made within sixty (60) days of discovery.
 - 3. Include the names of the individuals whose information was breached, the circumstances surrounding the breach, the date of the breach and date of discovery, the information breached, any steps the individuals should take to protect themselves, the steps MidAmerica (or its agent) is taking to investigate the breach, mitigate losses, and protect against future breaches, and a contact person for more information.

If requested by MidAmerica, Covered Entity shall allow MidAmerica to approve the content of any notification in advance.

If requested by Covered Entity, MidAmerica shall notify the individuals involved, or the media or the US Department of Health and Human Services, as applicable, in accordance with the HITECH Act, and regulations or guidance issued thereunder, including 45 CFR Part 164, Subpart D. For purposes of this provision, MidAmerica is considered an independent contractor of Covered Entity.

3. <u>Permitted Uses and Disclosures by Business Associate.</u>

- a. Disclosures Generally. Except as otherwise provided in this Addendum, MidAmerica may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the HIPAA Privacy & Security Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
- b. To Carry Out Covered Entity Obligations. To the extent MidAmerica is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164, MidAmerica agrees to comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.
 - c. Management and Administration.
 - 1. MidAmerica may use PHI for the proper management and administration of MidAmerica or to carry out the legal responsibilities of MidAmerica.
 - 2. MidAmerica may disclose PHI for the proper management and administration of MidAmerica, provided that disclosures are: (a) required by law or (b) MidAmerica obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it is disclosed to the person, and the person notifies MidAmerica of any instances of which it is aware in which the confidentiality of the information has been breached
- d. Data Aggregation and De-Identification. Except as otherwise limited in this Addendum, MidAmerica may use PHI to provide Data Aggregation services to Covered Entity or to de-identify PHI. Once information is de-identified this Addendum shall not apply.
 - e. Required By Law. MidAmerica may use or disclose PHI as required by law.

4. **Termination.**

a. <u>Material Breach</u>. A breach by MidAmerica of any material provision of this Addendum shall constitute a material breach of the Agreement and shall provide grounds for termination of the Agreement by Covered Entity. In the event of such breach, Covered Entity shall provide MidAmerica with written notice of the breach and thirty (30) days in which to cure the

breach. If the breach is not cured within thirty (30) days, Covered Entity shall terminate the Agreement.

b. <u>Effect of Termination</u>. Upon termination of the Agreement for any reason, MidAmerica shall return or destroy all PHI that MidAmerica or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, MidAmerica shall continue to extend the protections of Section 2 of this Addendum to such information, and limit further use or disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible.

5. **Amendment.**

- a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA Privacy & Security Rule and other applicable laws relating to the security or confidentiality of PHI. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Privacy & Security Rule or other applicable laws.
- b. <u>Amendment of Addendum</u>. This Addendum may be modified or amended by mutual agreement of the parties at any time without amendment of the Agreement.
- 6. <u>Conflicts.</u> The terms and conditions of this Addendum will override and control any conflicting term or condition of the Agreement. All non-conflicting terms and conditions of the Agreement will remain in full force and effect.
- 7. **Relationship of Parties.** The parties intend that MidAmerica is an independent contractor and not an agent of Covered Entity.

Covered Entity Health	Plan							
Name of Employer:								
Signature:								
Print Name:								
Title:								
Date:								
MidAmerica Administrative & Retirement Solutions, Inc.								
Signature:								
Print Name:	Trenton Teesdale, CEBS							
Title:	Sr. Vice President of Business Development							
Date:								

	, Acceptance, & New Business Agreement
American United Life Insurance Company® P. O. Box	Version 1.0 04/2008
Indianapolis, Indiana 46206-0368	
Contract Number	Contract Effective Date
Contract Suffix Number	Plan Sponsor's State of Domicile
-	by applies to American United Life Insurance Company (AUL) for the Group Annuity form must be approved by the AUL Corporate Office before a group annuity contract
Contract Type: ☐ Unallocated Fixed-Only (15FP)	
Select Governmental or Non-Governmental ☐ Governmental (non-registered) ☐ P	Plan Sponsor (select only one): Private Sector (registered)
• • • • • • • • • • • • • • • • • • • •	1or Special Pay or Employer-Sponsored 401(a)/403(b) ☐ (7) 3121 ☐ (T) GASB 45 OPEB Trust/VEBA
Select Product Type (select only one): □ E0 □ E1 □ R2 □ E	60B □ E1B □ R2B
Select Business Type (select only one): ☐ Start-up ☐ Takeover	
General Information	
Proposed Contractholder:	
Employer's Identification Number (EIN):	
Executive Contact:	Phone #: Fax #:
Executive Contact's Address:	
Executive Contact's Email Address:	
Administrative Contact:	Phone #: Fax #:
Administrative Contact's Address:	
Administrative Contact's Email Address:	
Producer Information	
Primary Producer:	Primary B/D:
Primary Producer Address:	
Primary Producer Email Address:	

Primary Fax:

Primary Phone:

TPA Information

MidAmerica, Administrative & Retirement Solutions, Inc.

2855 Interstate Drive, Suite 115 Lakeland, FL 33805 800.430.7999

Investment Option Selection

The AUL Fixed Interest Account(FIA) (I2) will be the only annuity investment option made available.

Withdrawal Charge

A withdrawal charge will not be applied under this contract.

Summary of Billable Expenses

Currently, there are none.

Contract Termination Provisions

Upon termination of the contract, the FIA Withdrawal Value must be taken in 5 equal annual installments. A cash lump-sum payment of monies invested in the FIA is not an available option. This restriction applies to all Contribution sources.

AUL Recordkeeping/Administrative Services Agreement

The Proposed Contractholder hereby requests **only** investment recordkeeping for assets held in the applied-for Contract, and does not request any other recordkeeping or administrative services. AUL will only maintain recordkeeping of assets at a contract/plan-level. Furthermore, AUL will not be providing statements, confirmations, or any other reporting to the Contractholder.

The Proposed Contractholder hereby acknowledges and agrees that, as Plan Fiduciary, it has the sole responsibility for assuring that the Plan complies with all applicable state and federal law, including ERISA, the Internal Revenue Code, and securities laws, both in form and in operation.

The Proposed Contractholder hereby acknowledges and agrees that MidAmerica Administrative & Retirement Solutions, Inc. is the Third Party Administrator (TPA) and Plan Administrator, and that, other than in this Unallocated Contract Application, Acceptance, and Agreement form, AUL shall accept direction and instructions regarding both the Plan and the Contract only from MidAmerica, and shall not accept direction and instructions directly from the Contractholder.

Facsimile/Electronic Media Acceptance Agreement

Instructions provided to AUL and its agents to execute, cancel, or otherwise proceed with transactions including those related to, but not limited to, enrollments, loan applications, distributions, and correspondence will be accepted via facsimile, copy, or via other electronic media. This agreement does not include retirement plan adoption agreements, group annuity contracts, amendments thereto, the annual census, and Notice, Election & Release or Contract Settlement Agreement documents.

This agreement includes instructions from the TPA, Plan Sponsor, Plan Administrator, and/or Contractholder. The Contractholder and TPA will indemnify and hold harmless AUL for all claims, losses, liabilities and expenses, including legal fees and expenses, resulting from any action taken or not taken by AUL in good faith in accordance with this agreement.

Preliminary Agreement for the Group Annuity Contract

- (1) Upon the date a contribution is made to the Contract following the Proposed Contractholder's receipt of the Contract (but no earlier than 60 days after the Contract Date of Issue), if AUL does not receive a signed acceptance of the Contract at its Corporate Office by that date, the Proposed Contractholder shall be deemed to have accepted the Contract and any accompanying amendment to the Contract by the making of such contribution. The Contract and any accompanying amendment shall be effective as of the effective dates shown on the Contract and amendment.
- (2) If the Contract is not accepted or deemed accepted, and if the Proposed Contractholder notifies AUL at its Corporate Office in writing that it will not accept the Contract, the following amount shall be paid in a single sum to the Proposed Contractholder on a mutually agreed-upon date: any contributions to the Contract which have been allocated to AUL's general asset account, plus interest credited thereon as determined pursuant to the Contract, which remain in AUL's general asset account as of such date of payment. AUL shall make such payment only upon receipt at its Corporate Office of a proper form signed by the Proposed Contractholder and, if applicable, by the employer sponsoring the retirement plan for which the Contract is to be a funding vehicle, releasing AUL, its agents, and its employees from any and all liability arising out of such payment by AUL.
- (3) This Preliminary Agreement shall terminate when:
 - (A) the signed Contract acceptance is received by AUL at its Corporate Office; or
 - (B) the Contract is deemed accepted under Section (1) above; or
 - (C) payment is made by AUL pursuant to Section (2) above.

Electronic Contribution Processing and Employee Data Gathering

The Employer/Plan Sponsor/TPA has elected to send contributions and employee information electronically using tools provided by AUL. The Employer/Plan Sponsor agrees to allow AUL to debit its checking account for the allocable contribution amount shown on each of its contribution listings submitted to AUL. Additionally, the Employer/Plan Sponsor/TPA agrees that AUL can rely on information provided through the electronic data transmission vehicles. To establish electronic data transmission accounts, you must first complete an Electronic Data Transmission Account Profile available from AUL.

Fiduciary Acceptance

Any reference to Contractholder in this Application, Acceptance, and Agreement should be read as Proposed Contractholder until the applied-for group annuity contract goes into effect.

I, the undersigned, as TPA/Plan Administrator of the _________Plan ('Plan''), hereby appoints AUL as the TPA/Plan Administrator's agent for the sole purpose of executing the Plan's investment instructions through the OneAmerica TeleServe® and Account Services systems. It is understood that AUL will execute the Plan's investment instructions received through the OneAmerica TeleServe® and Account Services systems effective as of the close of business on the valuation date, as referenced in your contract, in which AUL receives the request. It is further understood that AUL has no direction or authority to alter or decline to execute any Plan's investment instructions received through the OneAmerica TeleServe® or Account Services systems, unless such instructions are impossible to execute. If any such instructions are impossible to execute, AUL will so notify the TPA/Plan Administrator before the instructions are accepted by OneAmerica TeleServe® or Account Services. All investment instructions received and executed through the OneAmerica TeleServe® or Account Services system will be confirmed in writing to the TPA/Plan Administrator within ten business days.

The Contractholder, TPA/Plan Administrator, and AUL hereby agree by signing below, that they will be bound by the terms of this Application, Acceptance, and Agreement as of the date of AUL's acceptance. The terms of the Preliminary Agreement are superseded by the terms of the applied-for Contract as issued by AUL, and the Contract is accepted or is deemed accepted under the provisions of the Preliminary Agreement. If an amendment accompanies the issued contract, the Contractholder must sign and date the amendment and return a copy to AUL.

Electronic acceptance of this Application, Acceptance, and Agreement by AUL, Indianapolis, Indiana indicates that AUL has reviewed its contents along with all other required materials and has accepted its terms, and is equivalent to AUL's written signature.

NON-REGISTERED FIXED ANNUITY OFFERING REPRESENTATION (For governmental applicants with an HRA or a GASB 45 OPEB Plan)

The undersigned Employer and Trustee(s) understand that American United Life Insurance Company (AUL), in reliance on the following representations and warranties, will offer a non-registered fixed annuity contract to the Employee Benefit Trust or the VEBA Trust entered into by and between the Employer and the Trustee, dated _______, in connection with certain benefit plans offered by the Employer for the exclusive benefit of its employees. Such offer is based upon the governmental plan exception to securities registration under Section 3(a)(2) of the Securities Act of 1933.

REPRESENTATIONS AND WARRANTIES

EMPLOYER

The Employer hereby represents and warrants that:

- (1) the Employer is a State, or political subdivision of a State, or agency or instrumentality of a State or political subdivision, within the meaning of Section 414(d) of the Internal Revenue Code of 1986 ("Code");
- (2) the Employer has authority under applicable State laws and regulations to enter into, maintain, and establish said Employee Benefit Trust or VEBA Trust (and benefit plan(s) thereunder);
- any contributions to the Trust shall be made exclusively by the Employer or its employees and be held for the exclusive benefit of the employees;
- (4) the Employee Benefit Trust is exempt from taxes under Code Section 115, or the VEBA Trust is exempt from taxes under Code Section 501(c)(9); and
- (5) the Employee Benefit Trust or the VEBA Trust (and benefit plan(s) thereunder) is a governmental plan as defined in Code Section 414(d), established for the exclusive benefit of the employees of the Employer.

TRUSTEE

The Trustee hereby represents and warrants that:

- (1) the Employee Benefit Trust or the VEBA Trust was established to secure and hold funds to be contributed by the Employer under certain benefit plans sponsored by the Employer;
- (2) the Trust assets will be held for the exclusive benefit of the Employer's employees, and no portion of the corpus or income of the Trust will revert to the Employer or otherwise divert to third parties, except to pay for reasonable administrative expenses incurred by the Trust;
- (3) the Employee Benefit Trust is exempt from taxes under Code Section 115, or the VEBA Trust is exempt from taxes under Code Section 501(c)(9); and
- (4) the Employee Benefit Trust or the VEBA Trust (and benefit plan(s) thereunder) is a governmental plan as defined in Code Section 414(d), established for the exclusive benefit of the employees of the Employer.

IN WITNESS WHEREOF, the undersigned have executed this Representation on the signature page below, on the date(s) set forth on the signature page below.

Application for, and Acceptance of, the Contract:

APPLICATION TO THE AMERICAN UNITED LIFE INSURANCE COMPANY FOR A GROUP ANNUITY CONTRACT

A GROOT AUTOITT CONTRACT
STATE NOTIFICATION
All states excluding those states listed below: Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties.
In Colorado, any person who knowingly provides false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company commits a crime. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.
In Florida, any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.
In Louisiana, Pennsylvania, and Tennessee, any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.
In Maine and Washington, any person who knowingly provides false, incomplete or misleading information to an insurance company for the purpose of defrauding the company commits a crime. Penalties may include imprisonment, fines or denial of insurance benefits.
In New Jersey and Virginia, any person who includes any false or misleading information on any application for an insurance policy is subject to criminal and civil penalties.
In Florida: Does this group annuity contract replace any existing group annuity contract? Yes No If yes, submit any required replacement forms.

P-11104

Application, Acceptance, and New Business Agreement. Dated at on APPLICANT/PROPOSED CONTRACTHOLDER/PLAN FIDUCIARY AUL RETIREMENT SERVICES OFFICER Signature: Signature: Printed Name: Printed Name: Date: TPA/PLAN ADMINISTRATOR SOLICITING PRODUCER Signature: Signature: Printed Name: Printed Name: Title: Title: Date: Date: Florida License ID No. (for Florida Applications) For governmental employers applying for a fixed group annuity contract to be used with an HRA or a GASB 45 OPEB Plan, by signing and completing the information below, the following parties hereby agree to the "Non-Registered Fixed Annuity Offering Representation" above. "EMPLOYER" (with respect to Employer representations only) Dated: TRUSTEE(S) (with respect to Trustee representations only) Dated: By: Name: _____ Dated: _____ Name: Dated:

Name:_____

By signing and completing the information below, the following parties hereby agree to this Unallocated Contract

FORT ORD REUSE AUTHORITY BOARD REPORT						
CONSENT AGENDA						
Subject:	Public Correspondence to the Board					
Meeting Date: Agenda Number:	February 13, 2020 7f	INFORMATION/ACTION				

Public correspondence submitted to the Board is posted to FORA's website on a monthly basis and is available to view at http://www.fora.org/board.html

Correspondence may be submitted to the Board via email to board@fora.org or mailed to the address below:

FORA Board of Directors 920 2nd Avenue, Suite A Marina, CA 93933

FORT ORD REUSE AUTHORITY BOARD REPORT					
BUSINESS ITEMS					
Subject:	2018 Transition Plan Implementation – 2 nd Vote				
Meeting Date: Agenda Number:	February 13, 2020 8a	INFORMATION/ACTION			

i. Assignment of a) Fort Ord Reuse Authority ("FORA") – Environmental Services Cooperative Agreement ("ESCA") contract obligation to Successor-In-Interest City of Seaside, b) 2000 Economic Development Conveyance ("EDC") Memorandum of Agreement between The United States of America, acting by and through the secretary of the Army, United States Department of the Army and FORA, and c) Local Redevelopment Authority ("LRA") Obligations and Responsibilities.

ii. Transition Planning Update

RECOMMENDATION:

- 1) Receive a report regarding the FORA federal government LRA obligations, including the implementation of the June 11, 2000 EDC Agreement and the March 2007 ESCA Agreement.
- 2) Approve the attached Implementing Agreement with the City of Seaside regarding its acceptance of FORA's obligations under the EDC and ESCA and designation as federally recognized LRA.

BACKGROUND:

FORA was created under state law to be the LRA as required in federal law. Under the terms of that federal law, FORA was eligible to receive funding from the Department of Defense ("DoD") in the 1990s as well as in the last decade. Further, as the, FORA was the designated agency for receiving federal property under federal law that created EDCs of former military properties closed under the Base Realignment and Closure Act (BRAC"). As well, in 2005, special federal provisions allowed the U.S. Army ("Army") to negotiate contracts with federally recognized LRAs for cooperative services including environmental cleanup.

Given the federal provisions noted above, FORA implemented its three county obligations in compliance with these federal provisions. In particular, FORA negotiated the EDC for significant portions of the former Fort Ord for the purpose of creating jobs, housing, services, enterprises and other purposes under an adopted base reuse plan. FORA also negotiated an ESCA contract with the Army to complete munitions and explosives removal for 3,340 acres of former Fort Ord property. Each of these agreements require a FORA Successor-In-Interest ("Successor") be appointed and contain provisions outlining the terms and conditions for assigning FORA's responsibilities.

Discussion/Report:

As reported last month, Army BRAC Headquarters ("HQ") Chief Thomas Lederle requested FORA and City of Seaside ("Seaside") meet with BRAC and U.S. Secretary of DoD Office of Economic Adjustment ("OEA") to discuss ESCA status and FORA Successor requirements. Seaside has expressed interest in becoming FORA's Successor and sent Mayor Ian Oglesby, Councilmember Jon Wizard, City Manager Craig Malin, Assistant City Manager Leslie Milton-Rerig and Assistant City Attorney Sheri Damon to attend those meetings with the FORA Executive Officer and Senior Program Manager.

- On November 18, 2019, FORA and Seaside met with the Army BRAC HQ staff to discuss the following ESCA Successor Issues:
 - o FORA Transition/FORA Successor process/progress
 - Seaside as the proposed ESCA Successor
 - o ESCA Long-Term Obligation Management Program
 - ESCA Pollution Legal Liability Insurance
 - o ESCA Successor and EDC authorities, obligations and interdependence

At the meeting, FORA staff and Special Counsel provided an ESCA status and FORA Board Members, Executive Officer and Seaside Counsel Members/staff provided Mr. Lederle with an update on the ESCA Successor efforts. Mr. Lederle and Army attorneys provided FORA and Seaside with guidance on the Army's ESCA Successor requirements.

On November 19, 2019, FORA and Seaside met with Mr. Patrick Obrien, Director, OEA to discuss FORA's June 30, 2020 closure and FORA ESCA Successor plans. Since many of the ESCA obligations include multiple real property conveyance documentation and transfers that directly grow from the EDC, the attendees discussed the coordination required between these FORA responsibilities. An outgrowth of that conversation was the suggestion that FORA explore and conclude on the assignment of the EDC agreement obligations, the OEA LRA designation as well as the ESCA Successor issue.

Attached is an agreement between the FORA and Seaside outlining the basic terms for Seaside to become FORA's ESCA, EDC and LRA Successor. If Seaside were to become FORA's Successor, this has implications for future potential funding.

for future potential funding.
FISCAL IMPACT:
Reviewed by FORA Controller Funding for the ESCA contract is provided by the Army and funding for the 2018 transition plan are included in the 2019/2020) budget.
COORDINATION:
Administrative Committee; Executive Committee; Authority Counsel; Special Authority Counsel, Arcadis; Westcliffe Engineering, Inc., Weston Solutions, Inc., Army; EPA; and DTSC.
ATTACHMENTS:
Attachment A: Draft Implementing of Agreement

Joshua Metz

Stan Cook

RECITALS

WHEREAS, the Fort Ord Reuse Authority ("FORA") is a regional agency and a Corporation of the State of California established under California State Law Government Code Sections 67650, et seq., to plan, facilitate and manage the transfer of former Fort Ord property and is acknowledged as the federally recognized local reuse authority for property transfers from the Army, to the governing local jurisdictions or their designees; and

FORT ORD REUSE AUTHORITY AND CITY OF SEASIDE

ENVIRONMENTAL SERVICES COOPERATIVE AGREEMENT SUCCESSOR

TRANSITION PLAN IMPLEMENTING AGREEMENT

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WHEREAS Fort Ord, California was placed on the National Priorities List (Superfund) in 1990 due to leaking underground storage tanks, contaminated groundwater and a 150-acre landfill; and

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WHEREAS, in 1990, the Army executed a Federal Facility Agreement (FFA) under CERCLA Section 120 outlining the Army's Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") clean up responsibilities with respect to the former Fort Ord. The Army remains responsible for certain actions under that FFA. The FFA was amended on or about July 26, 2007, the effect of which suspends the FFA for FORA's ESCA obligations so long as FORA or its successors are in compliance with the AOC; and

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WHEREAS, the former Fort Ord was closed on September 30, 1994 pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101-510; hereinafter referred to as the "Base Closure Act").

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WHEREAS, in accordance with Section 2905(b)(4) of the Base Closure Act, as amended by Section 2821 of the Defense Authorization Act for Fiscal Year 2000, Pub. L. No. 106-65 (1999), and the implementing regulations of the Department of Defense (32 CFR Parts 90 and 91), FORA acquired portions of the former Fort Ord consisting of approximately five thousand two hundred (5,200) acres of land, including all buildings, personal property, appurtenances, rights-of-way, and drainage areas upon and subject to the terms and conditions of a June 23, 2000 Memorandum of Agreement (MOA) with the United States of America.

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WHEREAS, the MOA provided for transfers of property in accordance with the Army's clean-up schedule. Subsequent to the MOA execution, FORA and the local communities decided to pursue an early transfer process pursuant to Title 42 United States Code, section 9620(h)(3)(C) in order to expedite the property transfers and ultimate reuse and economic recovery for the communities affected by the Fort Ord closure.

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WHEREAS, in furtherance of the early transfer process, the Army, with the approval of the

EPA Administrator and the concurrence of the Governor of California, transferred title of 3,337 acres of munitions impacted Fort Ord property by quitclaim deed to FORA before all action to protect human health and the environment had been completed. Concurrent with this transfer without the otherwise required CERCLA covenant mandated by Title 42 United States Code, section 9620 (h)(3), FORA accepted title and agreed to perform the Army's environmental remediation with funding from the Army. Excluded from FORA's performance obligation are matters related to the groundwater at the former Fort Ord, as well as other Army responsibilities enumerated in the ESCA and elsewhere.

WHEREAS, in 2007 an "Administrative Order on Consent ("AOC") [Docket No. R9-2007-003] [was] entered into voluntarily by the United States Environmental Protection Agency ("EPA"), the California Department of Toxic Substances Control ("DTSC"), and the Fort Ord Reuse Authority. The AOC concerns the preparation and performance of potential removal actions, one or more remedial investigations and feasibility studies ("RI/FS") and one or more remedial designs and remedial actions ("RD/RA") for contaminants present on portions of the former Fort Ord located at Monterey, California ("Site") and the reimbursement for future response costs incurred by EPA and DTSC in connection with such CERCLA response actions.", and

WHEREAS, in 2007, the Army executed an amendment to the Federal Facilities Agreement; and

WHEREAS, in 2007 the Army and FORA executed an Environmental Services Cooperative Agreement W9128F 07 2-0l62 ("ESCA") under the authority of Title 10 United States Code, Section 2701(d)- Environmental Restoration Program (10 U.S.C. 2701) whereby FORA would perform the Army's environmental responsibilities as the Army Response Action Contractor pursuant to Title 42 United States Code, section 9619, with the Army providing funding to perform these services; and

 WHEREAS, the ESCA has been amended several times, the amendment in 2017 which provides approximately \$6.8 million to complete the property transfer process and to perform the required long-term land management tasks, including Munitions and Explosives of Concern ("MEC") Find Assessments, inspections, enforcement, monitoring and reporting through June 30, 2028; and

WHEREAS, due to changes and delays in the transfer of properties, modifications were made to the ESCA grant leaving post-June 30, 2020 funds available are ESCA Line Item Number 0004 Post Closure MEC Find Assessments \$528,651 and ESCA Line Item Number 0005 for Long-Term Management and Land Use Control (LUC) management are \$3,705,792, (Totaling \$4,234,443 available from June 30, 2020 through June 30, 2028), [need Stan and Helen to confirm these numbers. Stan/FORA/ARMY to confirm that Mods 10,11 and 12 do not affect the ability to fully implement the original task list of LTO which were estimated to require \$6.8 to complete (i.e. that Mods 10-12 do not re-allocate a portion of the 6.8 to current tasks); and

; |

 WHEREAS, in 2018 FORA adopted a Transition Plan as required by State Law that specifies that FORA engage the Successor-in-Interest ("Successor") provisions of the ESCA contract, and

WHEREAS, the Successor assumes responsibility and will be tasked with performing the remaining LTOs under the ESCA, including the recent amendment. It is assumed that all work under the previous \$98,000,000 contract will have been accomplished prior to FORA's dissolution as evidenced by the 2019 EPA Remedial Action Completion letters, per AOC Section XVII, Certification of Completion, housed in the Army Administrative Record located at: http://fortordcleanup.com/documents/administrative-record/, and

WHEREAS, the City of Seaside is prepared, subject to Army funding, to assume ESCA responsibility and attendant local reuse authority status, including the execution of the AOC in order to complete the ESCA obligations and any property-related transfer actions required after June 30, 2020;

NOW, THEREFORE,

- 1. Incorporation of Recitals. The above recitals are hereby incorporated herein by reference.
- 2. <u>Acknowledgement.</u> FORA agrees to acknowledge Seaside as the ESCA Successor-In-Interest under the 2018 Transition Plan.
- 3. <u>Insurance Policies.</u> FORA agrees to designate or transfer its insurance coverages to Seaside under the <u>Coverage A under the AIG PLL and the CHUBB policy.</u> FORA shall also transfer any self-insured retention funds to Seaside to be used exclusively for ESCA and claim-related obligations. Seaside acknowledges that these coverages will expire in 2022 and 2024, respectively, and that successor designations will be subject to approval by the insurers. Seaside's successful receipt of insurance coverage is a condition precedent to becoming FORA's ESCA and local reuse authority successor.
- 4. <u>ESCA LTO Program Evidence of Fiduciary and Technical Capability.</u> FORA agrees to provide technical and/or financial assistance to Seaside to meet the terms required by the Army, EPA, and DTSC that the Successor be a single entity and demonstrate technical and financial competence to complete the work.
- 5. <u>ESCA records and contracts funds.</u> FORA and Seaside shall establish a mechanism for transfer of all ESCA records, back-up documents, computer files and accounting records, and contract funds to Seaside for meeting FORA's ESCA obligations.

- 6. <u>Technical Assistance</u>. FORA agrees to continue to provide technical assistance and funding to complete the ESCA transfer process through June 30, 2020, including specialized legal, drafting and other staff or contract support.
- 7. Obligations. Seaside agrees to assume the local reuse authority designation and the remaining reporting, monitoring, and stewardship or other identified responsibilities associated with the FORA-Army 2007 ESCA as FORA's Successor through the end of the ESCA Contract June 30, 2028 in order to complete property transfers and the ESCA to the extent that ESCA performance does not obligate or put at risk Seaside's municipal non-ESCA funds. Exhaustion or unavailability of ESCA funds with which to compensate Seaside for the performance of ESCA obligations will constitute a force majeure under the ESCA and the AOC, thereby relieving Seaside of its obligations to perform the surviving FORA obligations.
- 8. <u>ESCA LTO Program Evidence of Fiduciary and Technical Capability</u>. Seaside agrees to provide evidence of its fiduciary and technical capability to comply with the terms of the ESCA and manage the contract financial assets with associated invoicing and reporting responsibilities, to assure the Army, EPA and DTSC of continued ESCA fiduciary capability.
 - a. To assume FORA's ESCA Long Term Obligations Management Program, as approved by the US Army, EPA and DTSC
 - i. <u>Personnel</u>. Hire (2) full-time qualified staff to manage ESCA as required under the contract provisions as currently amended through 2028, but with allowances for indirect administrative overhead to assure the Army, EPA and DTSC of continued ESCA technical capacity.
 - ii. <u>ESCA Long-Term Obligation Support Services Contract</u>. Enter into Support Services Contracts through 2028 with specialists Arcadis, Weston Solutions, Inc. and Westcliffe Engineers, Inc. (or other qualified vendors), including allowances for indirect administrative overhead to assure the Army, EPA and DTSC of continued ESCA technical capacity.
 - iii. <u>Representation</u>. Contract with Counsel reasonably qualified on environmental issues with experience in working with state and federal entities (Army, EPA and DTSC) for review and compliance as noted in the ESCA and the AOC.
- 9. <u>Coordination</u>. Enter into agreements with the ESCA underlying jurisdictions (Monterey Peninsula College, California State University Monterey Bay, Monterey County, the cities of Del Rey Oaks and Monterey and Marina Coast Water District) for the property transfers and other necessary property-related rights to effectuate the reuse and the oversight, reporting, response, and other long-term stewardship obligations listed in the ESCA through 2028 on behalf of the Army.

- 10. ESCA Amendment. The parties agree to work cooperatively to successfully receive Army, EPA and DTSC concurrence that Seaside is the formal ESCA Successor and execute the ESCA upon review and approval of terms and conditions. Seaside agrees to execute an ESCA Agreement and to comply to comply with the U.S. Army Corps of Engineers ("USACE") oversight and grant management requirements for funding to Seaside under the ESCA terms, provided however, that the Successor activities are fully funded, including without limitation provision for PLL insurance coverage, funding shall be provided from January 1, 2024 through June 30, 2028 or the completion of the ESCA obligations. Seaside will not pay for Regulatory Oversight unless it is a reimbursement funded by the Army through the end of the ESCA obligations.
- 11. <u>Administrative Order on Consent</u>. The parties agree to work cooperatively to successfully receive EPA and DTSC approval that Seaside is the formal Successor to execute an AOC upon review of terms and conditions.
- 12. .<u>Amendment</u>. This Agreement or any provision hereof may be changed, waived, or terminated only by a statement in writing signed by the Party against which such change, waiver or termination is sought to be enforced.
- 13. <u>No Waiver</u>. No delay in enforcing or failing to enforce any right under this Agreement will constitute a waiver of such right. No waiver of any default under this Agreement will operate as a waiver of any other default or of the same default on a future occasion.
- 14. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Agreement are to any extent declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, the Parties agree to amend the terms in a reasonable manner to achieve the intention of the Parties without invalidity. If the terms cannot be amended, the invalidity of one or several terms will not affect the validity of the Agreement as a whole, unless the invalid terms are of such essential importance to this Agreement that it can be reasonably assumed that the Parties would not have contracted this Agreement without the invalid terms. In such case, the Party affected may terminate this Agreement by written notice to the other Party without prejudice to the affected Party's rights in law or equity.
- 15. <u>Entire Agreement</u>. This Agreement is intended by the Parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof. Acceptance of or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing Party had knowledge of the nature of the performance and opportunity for objection.
- 16. <u>Choice of Law</u>. This Agreement will be construed in accordance with the laws of the State of California.

1 2		Party agrees to execute and deliver all further urther action that may be reasonably necessary					
3	to complete performance of its obligations hereunder and otherwise to effectuate the						
4	purposes and intent of this Agreement.						
5	parpoose and internet and righteenine						
6	18. Headings. The headings of t	he sections hereof are inserted for convenience					
7	only and shall not be deemed a part of this						
	only and shall not be deemed a part of this	Agreement.					
8	40 Nations Amy nation domain	d offer or other written instrument required or					
9		d, offer, or other written instrument required or					
10		greement shall be acknowledged by the Party					
11		tent reasonably practicable be sent by hand					
12		e to send by hand delivery, then by telecopy,					
13	overnight courier, electronic mail, or regist	ered mail, in each case to the other Party at the					
14	address for such Party set forth below (No	ote: A Party may change its place of notice by a					
15	notice sent to all other Parties in compliance	ce with this section):					
16	·						
17	City of Seaside	Fort Ord Reuse Authority					
18	Attn. City Manager	Attn: Executive Officer					
19	440 Harcourt Avenue	920 2nd Avenue, Suite A					
20	Seaside, CA 93955	Marina CA					
21	Ocasiac, 0/1 00000	Wallia O/					
22	w/ an email copy to cityattorney@c	oi seaside ca us					
	w an email copy to cityattomey@c	J. Seasiue. Ca. us					
23	Torm of Agreement: This Ag	reement shall be effective on the Effective Date					
24		reement shall be effective on the Effective Date					
25		ent and shall remain in effect unless and until					
26		Parties or upon the legal dissolution of the Fort					
27	· ·	ovide for survival beyond 30 June 2020? And					
28		would take the survivorship beyond FORA?					
29	LAFCO?]						
30							
31	21. <u>Authorization</u> . Each party af	firms that it is fully authorized to enter into this					
32	Agreement. The Seaside City Manager	is designated on behalf of Seaside, subject to					
33	review and approval of documents by t	he City Attorney, to enter into the terms and					
34	conditions of this Memorandum of Agreei	ment, the AOC and the ESCA and sign related					
35	ESCA and AOC reporting and financial do						
36	3						
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39	*************	******					
40	IN WITNESS WHEREOF each	Party has executed the Agreement with the					
40	approval of its governing body as of the da						
	approval of its governing body as of the da	tte iiist witten above.					
42	CITY OF SEASIDE:						
43	<u>CITY OF SEASIDE</u> :						
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45 46		Data:					
46		Date:					

DRAFT Document

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1	Craig Malin	
2	City Manager	
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4	APPROVED AS TO FORM:	
5		
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7		_
8	CITY ATTORNEY	
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11	FORT ORD REUSE AUTHORITY:	
12		
13		
14		Date:
15	Josh Metz	
16	Executive Officer	
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18	APPROVED AS TO FORM:	
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20		
21		_
22	AUTHORITY COUNSEL	
23		

FORT ORD REUSE AUTHORITY AND CITY OF SEASIDE ENVIRONMENTAL SERVICES COOPERATIVE AGREEMENT (ESCA) AND LOCAL REDEVELOPMENT AUTHORITY (LRA) SUCCESSOR IMPLEMENTING AGREEMENT

RECITALS

KEGIIKE

WHEREAS, the Fort Ord Reuse Authority ("FORA") is a regional agency and a Corporation of the State of California established under California State Law Government Code Sections 67650, et seq., to plan, facilitate and manage the transfer of former Fort Ord property and is acknowledged as the federally recognized local reuse authority for property transfers from the Army, to the governing local jurisdictions or their designees.

WHEREAS Fort Ord, California was placed on the National Priorities List (Superfund) in 1990 due to leaking underground storage tanks, contaminated groundwater and a 150-acre landfill.

WHEREAS, in 1990, the Army executed a Federal Facility Agreement (FFA) under CERCLA Section 120 outlining the Army's Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") clean up responsibilities with respect to the former Fort Ord. The Army remains responsible for certain actions under that FFA. The FFA was amended on or about July 26, 2007, the effect of which suspends the FFA for FORA's ESCA obligations so long as FORA or its successors are in compliance with the AOC.

WHEREAS, the former Fort Ord was closed on September 30, 1994 pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101-510; hereinafter referred to as the "Base Closure Act").

WHEREAS, in accordance with Section 2905(b)(4) of the Base Closure Act, as amended by Section 2821 of the Defense Authorization Act for Fiscal Year 2000, Pub. L. No. 106-65 (1999), and the implementing regulations of the Department of Defense (32 CFR Parts 90 and 91), FORA executed an economic development conveyance agreement and acquired portions of the former Fort Ord consisting of approximately five thousand two hundred (5,200) acres of land, including all buildings, personal property, appurtenances, rights-of-way, and drainage areas upon and subject to the terms and conditions of a June 23, 2000 Memorandum of Agreement (MOA) with the United States of America.

WHEREAS, the MOA provided for transfers of property in accordance with the Army's clean-up schedule. Subsequent to the MOA execution, FORA and the local communities decided to pursue an early transfer process pursuant to Title 42 United States Code, section 9620(h)(3)(C) in order to expedite the property transfers and ultimate reuse and economic recovery for the communities affected by the Fort Ord closure.

WHEREAS, in furtherance of the early transfer process, the Army, with the approval of the EPA Administrator and the concurrence of the Governor of California, transferred title

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of 3.337 acres of munitions impacted Fort Ord property by quitclaim deed to FORA before all action to protect human health and the environment had been completed. Concurrent with this transfer without the otherwise required CERCLA covenant mandated by Title 42 United States Code, section 9620 (h)(3), FORA accepted title and agreed to perform the Army's environmental remediation with funding from the Army. Excluded from FORA's performance obligation are matters related to the groundwater at the former Fort Ord, as well as other Army responsibilities enumerated in the ESCA and elsewhere.

WHEREAS, in 2007 an "Administrative Order on Consent ("AOC") [Docket No. R9-2007-003] [was] entered into voluntarily by the United States Environmental Protection Agency ("EPA"), the California Department of Toxic Substances Control ("DTSC"), and the Fort Ord Reuse Authority. The AOC concerns the preparation and performance of potential removal actions, one or more remedial investigations and feasibility studies ("RI/FS") and one or more remedial designs and remedial actions ("RD/RA") for contaminants present on portions of the former Fort Ord located at Monterey, California ("Site") and the reimbursement for future response costs incurred by EPA and DTSC in connection with such CERCLA response actions.".

WHEREAS, in 2007 the Army executed an amendment to the Federal Facilities Agreement.

WHEREAS, in 2007 the Army and FORA executed an Environmental Services Cooperative Agreement W9128F 07 2-0l62 ("ESCA") under the authority of Title 10 United States Code, Section 2701(d)- Environmental Restoration Program (10 U.S.C. 2701) whereby FORA would perform the Army's environmental responsibilities as the Army Response Action Contractor pursuant to Title 42 United States Code, section 9619, with the Army providing funding to perform these services.

WHEREAS, the ESCA has been amended several times, the ESCA Mod 9 amendment in 2017 which provided approximately \$6.8 million for Regulatory Oversight Through31 December 2019, FORA ESCA Administrative costs during the EPA/DTSC remedial-completion documentation, property transfer process through 30 June 2020 and to perform the required long-term land management tasks, including Munitions and Explosives of Concern ("MEC") Find Assessments, inspections, enforcement, monitoring and reporting through June 30, 2028.

ESCA Mod.	ESCA Contract Line Item Number (CLIN) and Description	Expiration Date	Amount
Number	•		
MOD 09	CLIN 02 – Department of Toxic Substance Control (DTSC) and United States EPA Technical Oversight Services	31 Dec. 2019	\$745,913
	CLIN 03 – FORA ESCA Administrative Funds	30 June 2020	\$1,865,848
	CLIN 04 – Post-Closure MEC Find Assessments	30 June 2028	\$528,651
	CLIN 05 – Long Term/LUCs Management	30 June 2028	\$3,705,792

Totals \$6,846,204

WHEREAS, due to changes and delays in the transfer of properties, modifications were made to the ESCA grant leaving post-June 30, 2020 funds available are ESCA CLIN 0004 Post Closure MEC Find Assessments \$528,651 and ESCA CLIN 0005 for Long-Term Management and Land Use Control (LUC) management are \$3,705,792, (Totaling \$4,234,443 available from June 30, 2020 through June 30, 2028),

ESCA Mod. Number	ESCA Contract Line Item Number (CLIN) and Description	Expiration Date	Amount
	CLIN 04 – Post-Closure MEC Find Assessments	30 June 2028	\$528,651
MOD 09	CLIN 05 – Long Term/LUCs Management	30 June 2028	\$3,705,792
		Totals	\$4,234,443

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WHEREAS, in 2018 FORA adopted a Transition Plan as required by State Law that specifies that FORA engage the Successor-in-Interest ("Successor") provisions of the ESCA contract.

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WHEREAS, the Successor assumes responsibility and will be tasked with performing the remaining LTOs under the ESCA, including the recent amendment. It is assumed that all work under the previous \$98,000,000 contract will have been accomplished prior to FORA's dissolution as evidenced by the 2019 EPA Remedial Action Completion letters, per AOC Section XVII, Certification of Completion, housed in the Army Administrative Record located at: http://fortordcleanup.com/documents/administrativerecord/.

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WHEREAS, the City of Seaside is prepared, subject to funding, to assume ESCA responsibility and attendant local reuse authority status, including the execution of the AOC in order to complete the ESCA obligations and any property-related transfer actions required after June 30, 2020.

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NOW, THEREFORE,

30 31 32

1. Incorporation of Recitals. The above recitals are hereby incorporated herein by reference.

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2. Acknowledgement. FORA agrees to acknowledge Seaside as the ESCA Successor-In-Interest under the 2018 Transition Plan.

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3. Insurance Policies. FORA agrees to designate and request the transfer its insurance coverages to Seaside. FORA shall also transfer any self-insured retention funds to Seaside to be used exclusively for ESCA and claim-related obligations. acknowledges that these coverages will expire in 2022 and 2024, respectively, and that successor designations will be subject to approval by the insurers. Seaside's successful

receipt of insurance coverage through June 30, 2028 is a condition precedent to becoming FORA's ESCA and local reuse authority successor.

- 4. ESCA LTO Program Evidence of Fiduciary and Technical Capability. FORA agrees to provide technical and/or financial assistance to Seaside to meet the terms required by the Army, EPA, and DTSC that the Successor be a single entity and demonstrate technical and financial competence to complete the work.
- 5. ESCA records and contracts funds. FORA and Seaside shall establish a mechanism for transfer of all ESCA records, back-up documents, computer files and accounting records, and contract funds to Seaside for meeting FORA's ESCA obligations.
- 6. Technical Assistance. FORA agrees to request the Army extend the funding expiration date on any remaining ESCA funds (not dedicated to Post-Closure MEC Find Assessments and Long Term/LUCs Management) for Seaside to utilize providing technical assistance and funding to complete the ESCA transfer process through June 30, 2020, including specialized legal, drafting and other staff or contract support. FORA agrees to establish and fund a pool of monies to support Seaside's assumption of responsibilities and obligations of the MOA.
- 7. Obligations. Seaside agrees to assume the Federal local redevelopment authority "LRA" designation and the remaining reporting, monitoring, and stewardship or other identified responsibilities associated with (i) the FORA-Army 2007 ESCA as FORA's Successor through the end of the ESCA Contract June 30, 2028 in order to complete property transfers and the ESCA to the extent that ESCA performance does not obligate or put at risk Seaside's municipal non-ESCA funds, and (ii) the MOA, as FORA's successor. Exhaustion or unavailability of ESCA funds with which to compensate Seaside for the performance of ESCA obligations will constitute a force majeure under the ESCA and the AOC, thereby relieving Seaside of its obligations to perform the surviving FORA obligations.
- 8. ESCA LTO Program Evidence of Fiduciary and Technical Capability. Seaside agrees to provide evidence of its fiduciary and technical capability to comply with the terms of the ESCA and manage the contract financial assets with associated invoicing and reporting responsibilities, to assure the Army, EPA and DTSC of continued ESCA fiduciary capability.

- a. To assume FORA's ESCA Long Term Obligations Management Program, as approved by the US Army, EPA and DTSC
 - i. Personnel. Hire (2) full-time qualified staff to manage ESCA as required under the contract provisions as currently amended through 2028, but with allowances for indirect administrative overhead to assure the Army, EPA and DTSC of continued ESCA technical capacity.

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ii. ESCA Long-Term Obligation Support Services Contract. Enter into Support Services Contracts through 2028 with specialists Arcadis, Weston

 Solutions, Inc. and Westcliffe Engineers, Inc. (or other qualified vendors), including allowances for indirect administrative overhead to assure the Army, EPA and DTSC of continued ESCA technical capacity.

- iii. <u>Representation</u>. Contract with Counsel reasonably qualified on environmental issues with experience in working with state and federal entities (Army, EPA and DTSC) for review and compliance as noted in the ESCA and the AOC.
- 9. <u>Coordination with other Entities</u>. Seaside agrees to enter into agreements with the Monterey Peninsula Community College District, the Board of Trustees of the California State University (on behalf of the Monterey Bay campus), the County of Monterey, the Cities of Del Rey Oaks, Marina and Monterey, and the Marina Coast Water District or others for the property transfers and other necessary property-related rights to effectuate the reuse and the oversight, reporting, response, and other long-term stewardship obligations listed in and consistent with (a) the ESCA through 2028 on behalf of the Army or (b) the MOA.
 - i. <u>Water Allocations</u>. Until such time as such allocations may be amended by agreements, Seaside agrees to honor and abide by the allocations of potable and recycled water set forth in <u>Exhibit A</u> attached hereto, subject to compliance with all applicable laws.
 - ii. <u>Creates No Land-Use Authority</u>. Nothing in this Agreement, nor Seaside's designation as the local redevelopment authority or as FORA's successor under the ESCA or MOA creates in Seaside any land-use decision-making authority with respect to any land not within Seaside's city limits. Further, Seaside shall not require that any landuse decisions of other entities be in compliance with the Fort Ord Base Reuse Plan.
- 10. <u>ESCA Amendment</u>. The parties agree to work cooperatively to successfully receive Army, EPA and DTSC concurrence that Seaside is the formal ESCA Successor and execute the ESCA upon review and approval of terms and conditions. Seaside agrees to execute an ESCA Agreement and to comply to comply with the U.S. Army Corps of Engineers ("USACE") oversight and grant management requirements for funding to Seaside under the ESCA terms, provided however, that the Successor activities are fully funded, including without limitation provision for PLL insurance coverage, funding shall be provided from January 1, 2024 through June 30, 2028 or the completion of the ESCA obligations. Seaside will not pay for Regulatory Oversight unless it is a reimbursement funded by the Army through the end of the ESCA obligations.
- 11. <u>Administrative Order on Consent</u>. The parties agree to work cooperatively to successfully receive EPA and DTSC approval that Seaside is the formal Successor to execute an AOC upon review of terms and conditions.

- 12. .<u>Amendment</u>. This Agreement or any provision hereof may be changed, waived, or terminated only by a statement in writing signed by the Party against which such change, waiver or termination is sought to be enforced.
- 13. <u>No Waiver</u>. No delay in enforcing or failing to enforce any right under this Agreement will constitute a waiver of such right. No waiver of any default under this Agreement will operate as a waiver of any other default or of the same default on a future occasion.
- 14. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Agreement are to any extent declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, the Parties agree to amend the terms in a reasonable manner to achieve the intention of the Parties without invalidity. If the terms cannot be amended, the invalidity of one or several terms will not affect the validity of the Agreement as a whole, unless the invalid terms are of such essential importance to this Agreement that it can be reasonably assumed that the Parties would not have contracted this Agreement without the invalid terms. In such case, the Party affected may terminate this Agreement by written notice to the other Party without prejudice to the affected Party's rights in law or equity.
- 15. <u>Entire Agreement</u>. This Agreement is intended by the Parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof. Acceptance of or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing Party had knowledge of the nature of the performance and opportunity for objection.
- 16. <u>Choice of Law</u>. This Agreement will be construed in accordance with the laws of the State of California.
- 17. <u>Further Assurances</u>. Each Party agrees to execute and deliver all further instruments and documents and take all further action that may be reasonably necessary to complete performance of its obligations hereunder and otherwise to effectuate the purposes and intent of this Agreement.
- 18. <u>Headings</u>. The headings of the sections hereof are inserted for convenience only and shall not be deemed a part of this Agreement.
- 19. <u>Notices</u>. Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to this Agreement shall be acknowledged by the Party giving such notice, and shall to the extent reasonably practicable be sent by hand delivery, and if not reasonably practicable to send by hand delivery, then by telecopy, overnight courier, electronic mail, or registered mail, in each case to the other Party at the address for such Party set forth below (Note: A Party may change its place of notice by a notice sent to all other Parties in compliance with this section):

1		
2	City of Seaside	Fort Ord Reuse Authority
3	Attn. City Manager	Attn: Executive Officer
4	440 Harcourt Avenue	920 2nd Avenue, Suite A
5	Seaside, CA 93955	Marina CA
6		
7	w/ an email copy to cityattorney@)ci.seaside.ca.us
8		
9	20. Term of Agreement: This A	greement shall be effective on the Effective Date
10	specified at the beginning of the Agree	ment and shall remain in effect unless and until
11	terminated by mutual agreement of the P	arties or upon the legal dissolution of the Fort Ord
12	Reuse Authority.	
13	·	
14	21. Authorization. Each party a	affirms that it is fully authorized to enter into this
15	Agreement. The Seaside City Manage	r is designated on behalf of Seaside, subject to
16		the City Attorney, to enter into the terms and
17	conditions of this Memorandum of Agre-	ement, the AOC and the ESCA and sign related
18	ESCA and AOC reporting and financial d	
19		
20	22. Third-Party Rights. Each	of the Monterey Peninsula Community College
21	District, the Board of Trustees of the Cali	fornia State University (on behalf of the Monterey
22	Bay campus), the County of Monterey, the	ne Cities of Del Rey Oaks, Marina and Monterey,
23	and the Marina Coast Water District are in	tended third-party beneficiaries of this Agreement
24	and shall have the right to enforce the pro	visions hereof as if they were direct parties hereto.
25	Nothing in this Agreement is intended to	confer upon any individual or entity, other than the
26	parties and the above-identified third	d-party beneficiaries, any rights or remedies
27	whatsoever.	
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31	***************	********
32	IN WITNESS WHEREOF, each Pa	arty has executed the Agreement with the approval
33	of its governing body as of the date first v	vritten above.
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35	CITY OF SEASIDE:	
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37		
38		Date:
39	Craig Malin	
40	City Manager	
41		
42	APPROVED AS TO FORM:	
43		
44		
45		
46	CITY ATTORNEY	

T		
2		
3	FORT ORD REUSE AUTHORITY:	
4		
5		
6		Date:
7	Joshua Metz Executive Officer	
8		
9	APPROVED AS TO FORM:	
10		
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12		
13	AUTHORITY COUNSEL	

EXHIBIT A

Current Water Allocations & Potential* Future Percentage-based Allocations

	Current Potable Water Allocation in Acre Feet	Future Water Allocation Based on Percentage of Current Water Allocation	Current Recycled Water in Acre Feet	Future Recycled Water Allocation Based on Percentage of Current Recycled Water Allocation
City of Marina	1340	29%	345	25%
City of Monterey	65	1%	0	0%
City of Seaside	1012.5	22%	453	33%
County of Monterey	720	15%	134	10%
CSUMB	1035	22%	87	6%
City of Del Rey Oaks	242.5	5%	280	21%
CA State Parks	44.5	1%	0	0%
UCMBEST	230	5%	60	4%

*In the unlikely event of availability of additional water from the US Army it would be distributed following the percentage-based allocation provide above. These allocations reflect previously agreed water distribution as per FORA Board Resolution No. 07-1 (potable water) and No. 07-10 (recycled water) (2007), and are consistent with the Marina Coast Water District Urban Water Management Plan (2105). They also incorporate the Memorandum of Understanding between the County of Monterey, the City of Seaside, and the FORA allocating 10 acre-feet (af) to the Central Coast Veterans Cemetery (2009), and includes the transference of 15 af to the City of Marina for Veterans Transition Center housing (effective Nov 20, 2017).

FORT ORD REUSE AUTHORITY BOARD REPORT BUSINESS ITEM Subject: Review Building Removal Bond Status Meeting Date: Agenda Number: February 13, 2020 8b INFORMATION/ACTION

RECOMMENDATION:

Receive a report on the status of FORA's efforts to issue bonds for the remediation/removal of buildings, and the related validation action.

BACKGROUND:

At the December 13, 2019 Fort Ord Reuse Authority ("FORA") Board meeting, the FORA Board adopted Resolution No. 19-13, authorizing the issuance and sale of bonds in a principal amount not to exceed \$55,000,000 to finance building removal and related costs, approving the form and authorizing the execution of an indenture of trust, authorizing judicial validation proceedings relating to the issuance of such bonds, and authorizing actions related thereto.

FORA Staff, working with Authority Counsel, have proceeded to implement the Board's direction by meeting with various State and local entities to inform them of FORA's efforts relating to the bond issuance and validation action, and instituting the validation action itself.

On January 28, 2020, Authority Counsel filed the Complaint for Validation in the Superior Court of the State of California, County of Monterey, captioned *Fort Ord Reuse Authority v. All Persons Interested in the Matter of the Issuance and Sale of Bonds by the Fort Ord Reuse Authority and the Tax Increment Revenue Pledged to, and to be Used For, the Repayment of Such Bonds (Case No.: 20CV000381) (the "Validation Action") (Attachment A). At its core, the Validation Action seeks to obtain judicial validity of (1) the legality of FORA's proposed issuance of bonds, and (2) the associated availability and use of FORA's tax increment revenues to repay the Bonds, even post-dissolution. On January 30, 2020, Authority Counsel obtained an Order of Publication of Summons and Other Notice in Validation Action, authorizing FORA to proceed with service of the Validation Action by publication in the <i>Monterey Herald*, and service of the summons and complaint upon various State and local entities who may have an interest in the action. FORA is proceeding with this endeavor. The deadline for any interested parties to respond to the Validation Action is March 9, 2020.

In conjunction with FORA's efforts relating to the Validation Action, FORA Staff and Authority Counsel have begun meeting with various individuals and representatives of various entities, to educate them on the benefits that the bond issuance would bring to the region. To date, this includes the following individuals/representatives of the following entities:

- California Department of Finance
- California Treasurer's Office
- California Attorney Generals Office
- Governors Office of Business and Economic Development
- Senator Bill Monning
- Assemblymember Mark Stone
- Assemblymember Robert Rivas

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Reviewed by FORA Controller	
Staff time to support the proposed bond issuance is included in th	e approved annual budget.

COORDINATION:

Authority Counsel, Bond Counsel, County of Monterey, the County Fort Ord Committee, Cities of Seaside and Marina, Administrative Committee, Executive Committee, NHA Advisors.

ATTACHMENTS:

- A. Complaint for Validation
- B. List of Public Entities to be Noticed
- C. Building Removal Bond Information Memo
- D. State Leadership Communication Template

Prepared by and Approved by	
	Joshua Metz

1 2 3 4 5 6 7 8 9	Jon R. Giffen (SBN 142158) Robert G. Simpson (SBN 67556) Crystal M. Gaudette (SBN 247712) KENNEDY, ARCHER & GIFFEN Attorneys at Law 24591 Silver Cloud Court, Suite 200 Monterey, CA 93940 Telephone (831) 373-7500 Facsimile (831) 373-7555 jgiffen@kaglaw.net / cgaudette@kaglaw.net Paul J. Thimmig (SBN 101442) QUINT & THIMMIG LLP 900 Larkspur Landing Circle, Suite 270 Larkspur, CA 94939 Telephone (415) 925-4200 Facsimile (415) 925-4201	Fee Exempt—Public Entity, Gov. Code §6103 ELECTRONICALLY FILED BY Superior Court of California, County of Monterey On 1/28/2020 3:18 PM By: Christina Flores, Deputy
11	pthimmig@qtllp.com	
12	Attorneys for Plaintiff FORT ORD REUSE AUTHORITY	
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14	SUPERIOR COURT OF THI	E STATE OF CALIFORNIA
15	COUNTY OF I	MONTEREY
16	EODE ODD DEVISE (VIEWO)	G N. 2001/202221
17	FORT ORD REUSE AUTHORITY,	Case No:20CV000381
18	Plaintiff,	COMPLAINT FOR VALIDATION (§860 et seq. of the Code of Civil
19	vs.	Procedure)
20	ALL PERSONS INTERESTED IN THE	
21	MATTER OF THE ISSUANCE AND SALE OF BONDS BY THE FORT ORD REUSE	Entitled to Calendar Preference Under
22	AUTHORITY AND THE TAX INCREMENT REVENUE PLEDGED TO, AND TO BE	Code of Civil Procedure Section 867
23	USED FOR, THE REPAYMENT OF SUCH	
24	BONDS,	
25	Defendants.	
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Plaintiff, Fort Ord Reuse Authority ("FORA"), brings this action against all interested persons pursuant to § 860 *et seq.* of the Code of Civil Procedure and § 53511 of the Government Code and alleges as follows:

INTRODUCTION

- 1. FORA was created by the California Legislature in 1994, pursuant to the Fort Ord Reuse Authority Act ("FORA Act"), to facilitate the transfer and reuse of certain real and other property comprising the Fort Ord Military Reservation after its closure by the federal government. Gov. Code, § 67650 *et seq*. When the government shut down the Fort Ord military base, the United States Army left behind several thousand abandoned buildings. While FORA has successfully removed or reused approximately 90% of the former military buildings, the remaining 10% mostly fire-prone buildings (some remote) contaminated with friable asbestos, lead-based paint, and other toxins remains in the region. The cost of removal of these buildings is estimated to range between \$50–\$60 million based on the historical per square foot cost of remediation in the former Fort Ord project area over the last fifteen years.
- 2. On December 13, 2019, the FORA Board of Directors ("Board"), at a regular meeting of the Board, adopted Resolution No. 19-13 ("Bond Resolution") by a unanimous vote of the Board, which Bond Resolution approved the issuance of bonds ("Bonds") by FORA under the Marks-Roos Local Bond Pooling Act ("Marks-Roos Act"), codified at Government Code Section 6584 *et seq*. The Bonds have the immediate potential to raise up to \$55 million in net Bond proceeds, which proceeds will be expended towards the remediation of the remaining blighted property at the former Fort Ord military base.
- 3. FORA is scheduled by statute to dissolve on June 30, 2020. As such, the issuance of the Bonds is a matter of the highest priority both to FORA and the general public in the Monterey Bay area.
- 4. An inseparable part of the validity of the Bonds under the Marks-Roos Act is confirmation of the revenues that will be used to repay the Bonds. The Bonds are to be secured by a pledge of, and are to be repaid with, tax increment funds that are allocated by statute to FORA under Health and Safety Code ("HSC") Section 33492.71, subdivision (c)(1). These tax

increment funds have been allocated and remitted to FORA for its governmental purposes each year. This same statute provides that, after FORA's dissolution, these funds continue to be paid to the accounts of FORA as needed to pay any debt obligations of FORA incurred before its dissolution.

5. The purpose of this action is to obtain a judicial validation of the legality of the Bonds and the associated availability and use of the tax increment revenues to repay the Bonds. Such an action is authorized by Code of Civil Procedure Section 860 *et seq.* and Government Code Section 53511, as well as Section 7 of the Bond Resolution.

PARTIES

- 6. Plaintiff FORA was established, pursuant to the Fort Ord Reuse Authority Act, Title 7.85 of the Government Code, to oversee the economic recovery of the Monterey Bay area from the closure of and reuse planning of the former Fort Ord military base. FORA is governed by the Board composed of representatives of the public agencies with land use jurisdiction over property within the boundaries of Fort Ord and includes representatives from the County of Monterey, local cities and other taxing entities. FORA's principal office is in Monterey County.
- 7. Defendants ALL PERSONS INTERESTED IN THE MATTER OF THE ISSUANCE AND SALE OF BONDS BY THE FORT ORD REUSE AUTHORITY AND THE TAX INCREMENT REVENUE PLEDGED TO, AND TO BE USED FOR, THE REPAYMENT OF SUCH BONDS are an undefined class of persons who have an interest in the validation of the subject matter herein. Naming and serving these Defendants is authorized by Sections 861.1 and 862 of the Code of Civil Procedure.

JURISDICTION AND VENUE

- 8. This Court has jurisdiction over these validation proceedings pursuant to Code of Civil Procedure Section 860 *et seq.*, and Government Code Section 53511, subdivisions (a) and (b).
- 9. Venue is proper in this Court in the first instance, under Code of Civil Procedure Section 860, because FORA's principal office is in Monterey County.

- 10. The matters stated herein are ripe for a judgment of validation because for purposes of the statutory validation procedures at Code of Civil Procedure Section 860 *et seq.*, bonds are deemed authorized as of the date of adoption of a resolution or ordinance authorizing bond issuance. Gov. Code, § 864. The FORA Board of Directors adopted the Bond Resolution on December 13, 2019 authorizing issuance of the Bonds referred to herein.
- 11. This action is timely under Code of Civil Procedure Section 860 because it was brought within 60 days of the authorization of the Bonds on December 13, 2019.

FACTUAL BACKGROUND

- 12. The State Legislature created FORA in 1994 to accomplish several goals, including, as stated in a section of the FORA Act (Government Code Section 67651):
 - To facilitate transfer and reuse of the property comprising the former Fort Ord,
 with "all practical speed";
 - To minimize the disruption of the base's closure on the civilian economy and the Monterey Bay area;
 - c. To provide for reuse and development of the base's area in ways that enhance the economy and quality of life of the Monterey Bay area; and
 - d. To protect the environmental resources of the area.
- 13. In Government Code Section 67657, subdivision (c), the State Legislature declared that "the planning, financing, and management of the reuse of Fort Ord is a matter of statewide importance...."
- 14. Under Government Code Section 67657, subdivision (a), FORA is an independent public corporation. The powers of FORA stated in the FORA Act are granted "[n]otwithstanding any other provision of law." Although FORA is tasked with the redevelopment of the former Fort Ord, FORA is not a "redevelopment agency" as such agencies are referenced in the HSC.
- 15. The FORA Act empowers FORA with the authority to issue bonds to fund basewide improvements. Gov. Code, § 67679, subdivision (d).

- 16. One particularly urgent goal of FORA is to remediate blighted structures on the former Fort Ord military base. Some of these structures are clearly visible to the casual observer from State Route 1 – a scenic byway that is otherwise known as one of the most recognizable roads in the nation. Based on FORA's hazardous material surveys of the buildings, substantially all the remaining blighted structures harbor materials hazardous to human health and the public welfare, such as friable asbestos, lead paint, and creosote. Remediation of this blight falls squarely within FORA's mandate from the State Legislature and is an urgent matter of the highest priority. Remediation activities consist of building removal, including the costs of waste characterization, abatement, building demolition, building removal, building repair, waste disposal, and remediation of buildings and building sites located at certain parcels of property within the boundaries of the former Fort Ord; and building removal costs, including costs of all planning, engineering, management and risk management including but not limited to insurance premiums, legal fees and litigation costs associated with building removal, and the associated administrative services required to remove blighted buildings from certain parcels of property within the boundaries of the former Fort Ord.
- 17. The State Legislature has, in HSC Section 33030, subdivision (a), a statute governing redevelopment agencies that were established pursuant to the Health and Safety Code, found that remediation of blight is necessary in the interest of health, safety, and the general welfare. While FORA does not meet the statutory definition of a redevelopment agency under the HSC, remediating blight is an equally crucial component of its governmental mission.
- 18. FORA has limited time in which to commence work on this vital goal stated by the State Legislature. Pursuant to Government Code Section 67700, subdivision (a), FORA will be dissolved effective June 30, 2020.
- 19. In October 2018, the Board directed FORA staff to investigate the legality and feasibility of issuing debt to be repaid with FORA's statutory share of property tax revenue provided to FORA by the State Legislature as codified in Section 33492.71 of the California Health and Safety Code. This code section gives FORA authority to encumber the tax revenues allocated to it as necessary to repay indebtedness incurred by FORA.

- 20. FORA engaged the municipal advisory firm of NHA Advisors ("NHA") to determine the feasibility of the issuance of bonds by FORA to be repaid with its statutorily allocated tax revenues. In June 2019, NHA provided a legal and financial feasibility memorandum regarding FORA's statutory property tax authority. NHA found that FORA is able to issue up to \$55 million in bonds under the authority of the Marks-Roos Act.
- 21. At July 3, 2019 and July 17, 2019 meetings of the FORA Administrative Committee, the Committee voted to recommend that the Board authorize all necessary preparatory work to issue bonds the proceeds of which would be used for remediation of blighted buildings and related costs.
- 22. On August 9, 2019, the Board met and received the Administrative Committee's recommendation. At that meeting, the Board authorized its Executive Officer at that time, Michael Houlemard, to commence the work to prepare the documents necessary for the issuance of bonds by FORA to provide funds for blight remediation activities.
- 23. After holding a duly noticed public hearing on December 10, 2019, the Monterey County Board of Supervisors unanimously voted to adopt Resolution No. 19-412, determining that FORA's assistance in financing the project by the issuance and delivery of the Bonds would result in significant public benefits of the type described in Section 6586(a)–(d), inclusive, of the Marks-Roos Act. The Board of Supervisors expressly approved the project and the financing of the project using proceeds of the Bonds. The foregoing action satisfied a procedural requirement of Section 6586.5(a)(2) of the Mars-Roos Act, to be accomplished prior to the issuance of bonds under the Marks-Roos Act.
- 24. On December 13, 2019 the FORA Board unanimously voted to adopt Resolution No. 19-13, previously identified as the "Bond Resolution," authorizing issuance of up to \$55 million dollars in bonds, approving the bond indenture, retaining bond and disclosure counsel, and approving the executive officer to issue sale and deliver bonds pursuant to validation.
- 25. HSC Section 33492.71, subdivision (c) provides for the allocation of a portion of certain property tax revenues to FORA and various other taxing entities, and further provides that such revenues will continue to be paid to the accounts of FORA to the extent needed to pay

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FORA's debt obligations following FORA's dissolution.

- 26. FORA's member agencies, which include the Cities of Seaside and Marina and the County of Monterey, and whose several redevelopment project areas generate property tax revenues, including those allocated to FORA, have consistently treated FORA as being entitled to a share of tax increment as prescribed by statute.
- 27. Remediation of blight is in the best interest of Monterey County, all the cities in the area of and surrounding the former Fort Ord military base, and the entire Monterey Bay region. If the Bonds are issued, all such public agencies as well as all citizens of Monterey County will benefit from the remediation of blight.
- 28. FORA's allocation of property tax revenue has remained unaffected by the February 2012 dissolution of redevelopment agencies in California. Health and Safety Code Section 34189, subdivision (a) provides that as of February 1, 2012, "all provisions of the Community Redevelopment Law that depend on the allocation of tax increment to redevelopment agencies, including, but not limited to, Sections 33445, 33640, 33641, and 33645, and subdivision (b) of Section 33670, shall be inoperative." (emphasis added). However, under the plain terms of this section of the HSC, FORA's allocation of tax increment revenues is unaffected by the dissolution of redevelopment agencies because FORA is not a redevelopment agency and because Section 33492.71 is not listed as one of the inoperative sections of the HSC.
- 29. A "redevelopment agency" is defined in HSC Section 33003 as an "agency created by this part or its predecessor, or a legislative body which has elected to exercise the powers granted to an agency by this part." FORA was created by Section 67650 et seq. of the Government Code, a fact explicitly recognized by HSC Section 33492.70, subd. (b). FORA is not a redevelopment agency under the HSC, and only bears superficial resemblance to a redevelopment agency by virtue of its allocation of tax increment revenue.
- 30. FORA's entitlement to the tax increment revenue that has been allocated to it for many years is fully supported by the following:
 - First, the FORA Act and HSC Section 33492.78, which provide for the allocation of tax increment revenues generated within Fort Ord to school and community college districts,

have both been amended by the State Legislature since the dissolution of redevelopment agencies in February 2012. The act of amendment indicates that the Legislature knew that FORA existed and intended that it continue to receive its tax increment pursuant to HSC Section 33492.71 following the dissolution of redevelopment agencies. A contrary interpretation would render the Legislature's amendments a nullity.

- Second, HSC Sections 33492.71 and 33492.78, which provides for the allocation of property tax increment to FORA and school entities, respectively, both provide that redevelopment agencies will make the payments provided for in those sections instead of the otherwise-applicable statutory pass-through payments provided for under HSC Sections 33607.5 and 33676. This indicates that the allocations of property tax revenues generated within local agency redevelopment project areas provided for under HSC Sections 33492.71 and 33492.78 serve the same purpose and apply in lieu of the typical statutory pass-through provisions set forth in the HSC. The State Legislature presumably assumed that this explicit statutory guidance would be enough to ensure FORA's continuing receipt of allocated tax revenues and thereby its financial ability to carry out its governmental purposes.
- Finally, to date, all entities interested in the allocation of tax revenues to FORA, including the County of Monterey and the cities of Seaside and Marina, have treated FORA as being entitled to tax increment payments and the Monterey County Auditor-Controller has distributed these payments to FORA every year since redevelopment agencies were dissolved in 2012. The Monterey County Auditor-Controller has indicated to FORA that the California Department of Finance has been aware of the tax increment payments to FORA and has effectively acquiesced in them.
- 31. Because FORA is statutorily entitled to receive property tax increment revenue to the extent necessary to pay principal and interest on FORA's debt incurred pre-dissolution, the tax revenue will continue to be allocated to FORA as long as debt remains outstanding.

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- 32. In order to issue the Bonds, FORA requires that the Court issue a judgment validating not only the legality of the Bonds themselves, but also the continuing validity of the tax increment revenues pledged by FORA to repay the Bonds.
- 33. The Monterey Herald is a newspaper of general circulation published in the County of Monterey and is the newspaper most likely to give notice to persons interested in these proceedings. Publication of the summons for these proceedings in said newspaper should be ordered by the Court pursuant to § 861 of the Code of Civil Procedure and § 6063 of the Government Code. The only other notice of this action reasonably practicable is notice given by (1) posting a copy of the Summons in FORA's administrative office, (2) mailing a copy of the Summons and this Complaint to the State Department of Finance, the Monterey County Auditor-Controller, the Cities of Seaside, Marina, Monterey, and Del Rey Oaks, the Marina Coast Water District, Monterey Peninsula College, California State University – Monterey Bay, the Monterey Peninsula Unified School District, the Transportation Agency for Monterey County, the Monterey-Salinas Transit District, the Monterey County Water Resources Agency, the Monterey Peninsula Regional Parks District, the Monterey Peninsula Waste Management District, the Moss Landing Harbor District, the Monterey County Regional Fire District, the North Salinas Valley Mosquito Abatement District, the Castroville Cemetery District, the Monterey County Library, Hartnell College, the Monterey Peninsula Airport District, the Monterey County Office of Education, the Monterey Peninsula Water Management District, Salinas-Union High School District, Salinas Valley Memorial Healthcare System, Spreckels Union School District, and Washington Union School District, being entities known to FORA to be interested in the tax increment revenues otherwise allocated to FORA to repay the Bonds; (3) as required by Section 6599(a) of the Government Code, mailing a copy of the Summons and this Complaint to the State Attorney General and State Treasurer; and (4) mailing copies of the Summons and Complaint to those persons, if any, or their attorneys of record, who either have expressly notified the attorneys of record herein of their interest in this matter or have filed and served legal actions against Plaintiff challenging, inter alia, the validity of the Bonds and the allocation of tax revenues to FORA to repay the Bonds.

CAUSE OF ACTION FOR VALIDATION

(By Plaintiff FORA Against Defendants All Persons Interested)

- 34. FORA realleges and incorporates by reference the facts stated in Paragraphs 1 through 33, inclusive, above.
- 35. FORA has completed all the steps necessary to issue the Bonds under the Marks-Roos Act. At a December 10, 2019 regularly-scheduled public hearing before the Monterey County Board of Supervisors, the Board of Supervisors voted unanimously to approve the remediation project and the funding of the remediation with the Bonds and made a finding of significant public benefit that would arise from the project as funded by the Bonds.
- 36. The State Legislature provided for an allocation of tax revenues to FORA pursuant to Health and Safety Code Section 33492.71. Subdivision (c)(1)(D) of that Section expressly provides that FORA may continue to receive this allocation of tax revenues following FORA's dissolution, as necessary to pay FORA's obligations incurred before its dissolution, including any bonded indebtedness of FORA.
- 37. FORA is able to issue bonds to be repaid from the tax revenues allocated to FORA. FORA desires a judgment of validation from the Court affirming the validity of FORA's present and future allocation of tax revenues under HSC Section 33492.71, subdivision (c), as a payment authorized to be distributed by the Monterey County Auditor-Controller continuing until the Bonds have been paid in full.
 - 38. Whereupon, FORA prays for relief as set forth below.

PRAYER

Wherefore, on the foregoing cause of action, FORA prays as follows:

1. That the Court order that the jurisdiction of interested persons be by publication of the summons pursuant to § 861 of the Code of Civil Procedure and § 6063 of the Government Code in the Monterey Herald commencing as soon as is practicable; by mailing a copy of the Summons and this Complaint to the State Department of Finance, the Monterey County Auditor-Controller, the Cities of Seaside, Marina, Monterey, and Del Rey Oaks, the Marina Coast Water District, Monterey Peninsula College, California State University – Monterey Bay, the Monterey

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Peninsula Unified School District, the Transportation Agency for Monterey County, the Monterey-Salinas Transit District, the Monterey County Water Resources Agency, the Monterey Peninsula Regional Parks District, the Monterey Peninsula Waste Management District, the Moss Landing-Harbor District, the Monterey County Regional Fire District, the North Salinas Valley Mosquito Abatement District, the Castroville Cemetery District, the Monterey County Library, Hartnell College, the Monterey Peninsula Airport District, the Monterey County Office of Education, the Monterey Peninsula Water Management District, Salinas-Union High School District, Salinas Valley Memorial Healthcare System, Spreckels Union School District, and Washington Union School District; by posting a copy of the Summons in FORA's executive offices prior to completion of publication; and by mailing a copy of the Summons and this Complaint to the State Attorney General and the State Treasurer; and that said jurisdiction shall be complete ten (10) days after completion of publication of the Summons pursuant to § 6063 of the Government Code and the mailing of a copy of the Summons and this Complaint to the entities described above.

- 2. That the Court find that this action is properly brought under § 860 et seq. of the Code of Civil Procedure.
 - 3. That judgment be entered determining that:
 - (a) This action is properly brought under § 53511 of the Government Code and § 860 of the Code of Civil Procedure;
 - (b) All proceedings by and for Plaintiff in connection with the Bond Resolution and the Bonds and any related agreements approved by the Bond Resolution in connection with the issuance of the Bonds, including the Indenture of Trust referenced therein, were and are valid, legal and binding obligations in accordance with their terms and were and are in conformity with the applicable provisions of all laws and enactments at any time in force or controlling upon such proceedings, whether imposed by law, constitution, statute or ordinance, and whether federal, state or municipal;

- (c) That all conditions, things and acts required by law to exist, happen or be performed precedent to the adoption of the Bond Resolution, and the terms and conditions thereof, and including the authorization for the issuance of the Bonds and the execution and delivery of all related agreements approved by the Bond Resolution, including the Indenture of Trust, have existed, happened and been performed in the time, form and manner required by law;
- (d) FORA has the authority under California law to issue the Bonds and to execute and deliver all agreements enacted pursuant thereto, including the Indenture of Trust;
- (e) The Bonds and the Indenture of Trust, and any and all contracts and agreements executed and delivered in connection therewith, are valid and binding obligations of FORA under the Constitution and laws of the State of California;
- (f) That the payments to FORA under HSC Section 33492.71(c)(1)(A) and (D) are valid payments and shall continue as necessary to repay the Bonds at issue herein; and
- (g) That the Monterey County Auditor-Controller is entitled and obligated to distribute amounts described in HSC Section 33492.71, subdivisions (c)(1)(A) or (D), as applicable, to FORA to repay the Bonds until the Bonds have been paid in full.
- 4. For litigation costs under Code of Civil Procedure Section 868;
- 5. For attorney fees under Code of Civil Procedure Section 1021.5; and
- 6. For such other and further relief as this Court believes just and appropriate.

Dated: January 28, 2020

KENNEDY, ARCHER & GIFFEN

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Attorneys for Plaintiff

FORT ORD REUSE AUTHORITY

FORA Validation Action – List of Public Entities to be Noticed

I. Sacramento Entities

A. State Attorney General

https://oag.ca.gov/services-info Office of the Attorney General 1300 "I" Street Sacramento, CA 95814 (916) 445-9555

B. State Treasurer

https://www.treasurer.ca.gov/inside/directory.asp

State Treasurer's Office

Physical Address:

915 Capitol Mall C-15

Sacramento, CA 95814

Office Location and Telephone Number:

915 Capitol Mall, Room 110

Sacramento, CA 95814

(916) 653-2995

C. State Department of Finance

http://www.dof.ca.gov/documents/ChartofResponsibilities.pdf

Jennifer Whitaker, Program Budget Manager

State Capitol, 8th Floor

Sacramento, CA 95814

(916) 445-3274, ext. 3102

II. Monterey County Entities

1. Monterey County Auditor-Controller

 $\underline{https://www.co.monterey.ca.us/government/departments-a-h/auditor-controller}$

168 West Alisal Street, 3rd Floor

Salinas, CA 93901

(831) 755-5040

2. City of Seaside

http://www.ci.seaside.ca.us/

City Clerk

City of Seaside City Hall

440 Harcourt Avenue

Seaside, CA 93955

(831) 899.6700

3. City of Marina

https://cityofmarina.org/16/City-Clerk

City Clerk 211 Hillcrest Ave Marina, CA 93933 (831) 884-1278

4. City of Monterey

https://monterey.org/City-Hall/City-Clerks-Office

City Clerk's Office City Hall 580 Pacific Street, Room 6 Monterey, CA 93940-2806 (831) 646-3935

5. City of Del Rey Oaks

https://www.delreyoaks.org/cityhall

City Clerk 659 Canyon Del Rey Blvd Del Rey Oaks, CA 93940 (831) 394-8511

6. Marina Coast Water District

https://www.mcwd.org/customer_service_contact.html

Paula Riso

Executive Assistant/Clerk to the Board 11 Reservation Road Marina, CA 93933-2099 (831) 384-6131

7. Monterey Peninsula College

 $\underline{https://www.mpc.edu/admissions/contact-us-hours}$

Monterey Peninsula College 980 Fremont St Monterey, CA 93940 (831) 646-4002

8. California State University – Monterey Bay

https://csumb.edu/everything

California State University, Monterey Bay 5108 Fourth Avenue, Marina, CA 93933 Office of the CSU System Chancellor 401 Golden Shore Long Beach, CA 90802-4210

(562) 951-4000

9. Monterey Peninsula Unified School District

https://www.mpusd.net/apps/staff/

700 Pacific St.

Monterey, CA 93942

(831) 645-1200

10. Transportation Agency for Monterey County

https://www.tamcmonterey.org/contact/staff/

Elouise Rodriguez

Senior Administrative Assistant & Clerk of the Board

(831) 775-4401

55-B Plaza Circle

Salinas, CA 93901

(831) 775-0903

11. Monterey-Salinas Transit District

https://mst.org/contact-us/

Administrative Offices

19 Upper Ragsdale Drive, Suite 200

Monterey, CA 93940

(888) 678-2871

12. Monterey County Water Resources Agency

www.mcwra.co.monterey.ca.us

1441 Schilling Pl., North Bldg.

Salinas, CA 93901

(831) 755-4860

13. Monterey Peninsula Regional Parks District

https://www.mprpd.org/contact-us

4860 Carmel Valley Rd

Carmel-By-The-Sea, CA 93923

(831) 372-3196

14. Monterey Peninsula Waste Management District

https://www.mrwmd.org/contact-us/

14201 Del Monte Blvd

Marina, CA 93933

Administration:

(831) 384-5313

15. Moss Landing Harbor District

http://www.mosslandingharbor.dst.ca.us/contact.htm

7881 Sandholdt Road

Moss Landing, CA 95039

(831) 633-5417

16. Monterey County Regional Fire District

https://www.mcrfd.org/administrative-staff

Administrative Staff: 19900 Portola Drive Salinas CA 93908

(831) 455-1828

17. North Salinas Valley Mosquito Abatement District

https://www.montereycountymosquito.com/contact-us/

342 Airport Blvd Salinas, CA 93905 (831) 422-6438

18. Castroville Cemetery District

https://capc.info/members.html

8442 Moss Landing Rd

Moss Landing, California 95039

(831) 633-5186

19. Monterey County Free Libraries

https://www.co.monterey.ca.us/government/departments-i-z/library/locations/administration-office

188 Seaside Circle Marina, CA 93933 831-883-7573

20. Hartnell College

https://www.hartnell.edu/about/president/presidents-profile-cv.html

Patricia C. Hsieh - Superintendent/President

411 Central Avenue Salinas, CA 93901

(831) 755-6700

21. Monterey Peninsula Airport District

https://montereyairport.specialdistrict.org/the-airport-district

200 Fred Kane Drive, Suite 200 Monterey CA 93940

(831) 648-7000

22. Monterey County Office of Education

https://www.montereycoe.org/about/

Dr. Deneen Guss, County Superintendent

901 Blanco Circle

Salinas, CA 93901

(831) 755-0300

23. Monterey Peninsula Water Management District

https://www.mpwmd.net/who-we-are/about-mpwmd/

5 Harris Court, Building G Monterey, CA 9394 (831) 658-5600

24. Salinas Union High School District

https://www.salinasuhsd.org/

431 W. Alisal Street Salinas, CA 93901 831-796-7000

25. Salinas Valley Memorial Healthcare System

https://www.svmh.com/about-us/

 $\underline{https://www.svmh.com/about-us/healthcare-district-information-reports/board-of-directors/}$

450 E Romie Lane Salinas, CA 93901 (831) 757-4333

26. Spreckels Union School District

https://spreckelsdistrict.org/

PO Box 7362 130 Railroad Ave. Spreckels, CA 93962 (831) 455-2550

27. Washington Union School District

https://www.washingtonusd.org/domain/3

43 San Benancio Road Salinas, CA 93908 (831) 484-2166



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

MEMORANDUM

TO: Potential Bond Issue Stakeholders

FROM: Josh Metz, Executive Officer

RE: Building Removal/Remediation Bond Validation Action

DATE: *January* 8, 2020

One of the primary governmental purposes of the Fort Ord Reuse Authority ("FORA") is removal and remediation of buildings located on the former Fort Ord military base. While FORA has successfully removed or reused approximately 85% of the former military buildings, the remaining 15% not only comprise fire hazards, but are contaminated with lead-based paint, asbestos and other hazardous materials. FORA seeks to issue bonds, prior to its June 30, 2020 dissolution, in order to provide funds to the public agencies that now own the land on which the buildings are located for the sole purpose of enabling these public agencies to remove and remediate these buildings. Without FORA's proposed bond issue, these public agencies will not otherwise have the funds needed to remove and remediate these buildings.

In furtherance of this effort, at its December 13, 2019 meeting, FORA's Governing Board unanimously approved the issuance of bonds and start what is called a "judicial validation" process for the proposed FORA bond issue. A judicial validation is a way provided under state law for public entities to clarify potentially ambiguous legal issues, by asking the local superior court to "validate" such legal issues in their favor. In this case, as has been reported to the FORA Board, recent statements made by staff members of the State Department of Finance ("DOF") have called into question the legal ability of FORA to use tax increment to pay debt service on the proposed bonds. FORA intends to use the judicial validation process to resolve this question in a way that enables it to issue these bonds before it dissolves on June 30, 2020.

The judicial validation process here requires (1) that FORA file a complaint in Monterey County Superior Court clearly stating the legal issue in question, and (2) that potential stakeholders be notified in writing of their ability to challenge the validation process. Importantly, if no stakeholders file a challenge to FORA's validation action, this will enable FORA to request the Court's validation of FORA's proposed course of action. Based on long experience with judicial validations, FORA's finance team believes it to be very likely that if there is no response to the validation action from

potential stakeholders, then the Monterey County Superior Court will grant FORA's request for a validation. This will then enable FORA to issue the bonds.

There is a schedule for a validation process specified in the statutes. The entire process usually takes about 60 days. Potential stakeholders are formally notified at the beginning of the validation process. The notices include a required summons regarding the validation litigation. FORA staff and finance team want to make it clear to the many stakeholders in FORA's bond issuance that if they want the bond issuance to go forward, they should not respond to the validation summons. The only consequence of not responding to the validation summons for any FORA stakeholder is that the FORA bond issuance is more likely to take place.

It is very important to note in this regard that DOF, the State Treasurer and the State Attorney General's office will be notified of the judicial validation process for the FORA bond issue. It is the hope of both the FORA Board and FORA staff that neither DOF, nor the State Treasurer, nor the Attorney General, or any other entity will respond to the summons in any way challenging the validation action. If that is the case, it is very likely that FORA will be able to issue the bonds to fund building removal and remediation before it dissolves.

Please call Jon Giffen, FORA Authority Counsel, at 831-373-7500 with any questions.





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

Dear			,

I write in support of the issuance and sale of bonds of the Fort Ord Reuse Authority ("FORA"). FORA's bonds are both legally valid and practically necessary in order to fund the elimination of blight and hazards to public health. The bonds are presently in the process of being validated in judicial proceedings to affirm their validity. The most important act necessary to support this endeavor is to allow FORA to validate its bonds without legal interference.

One of the primary governmental purposes of FORA is the removal and remediation of buildings located on the former Fort Ord military base. While FORA has successfully removed or reused approximately 85% of the former military buildings, the remaining 15% not only comprise fire hazards, but are also contaminated with lead-based paint, asbestos and other hazardous materials. FORA seeks to issue bonds before its June 30, 2020 dissolution date in order to provide funds to remediate these blighted buildings. Absent the issuance and sale of FORA's bonds, remediation is unlikely in the foreseeable future.

FORA's Governing Board unanimously approved the issuance of bonds on December 13, 2019, and on January 28, 2020, FORA commenced what is called a "judicial validation" process. A judicial validation is a way provided under state law for public entities to clarify potentially ambiguous legal issues, by asking the local superior court to "validate" such legal issues in the agency's favor.

FORA will be providing notice of this action by publication, as well as courtesy mail notice to certain public entities that may be interested in the issue. If no other party responds to the validation action, then the bonds may be issued and the much-needed remediation project can begin.

	e 1 .1 .1	.11			•	4
ı	I hope that you	W111 101n	me in sui	pporting this	important	endeavor.

Respectfully,	

FORT ORD REUSE AUTHORITY BOARD REPORT			
BUSINESS ITEMS			
Subject: Draft Transition Plan Implementing Agreement (TPIA) Review			
Meeting Date: Agenda Number:	February 13, 2020 8c	INFORMATION	

RECOMMENDATION(S):

Receive report on the updated Transition Plan Implementing Agreement ("TPIA") and proposed timeline for execution by agencies.

BACKGROUND/DISCUSSION:

The purpose of the TPIA is to memorialize responsibilities of local jurisdictions and agencies following sunset of the Fort Ord Reuse Authority on June 30, 2020. Members of the RGS consultant team, FORA Executive Officer, and FORA legal counsel have reviewed the document and made changes to reflect input and concerns expressed by jurisdictions and members; as well as legal requirements related to FORA's sunset. Upon execution by all jurisdictions and agencies, this agreement will supersede the 2001 Fort Ord Transition Plan Agreement which will become null and void.

The Multi-Agency TPIA addresses issues relevant to each FORA land use jurisdiction (Del Rey Oaks, Marina, Monterey, Monterey County, Seaside) and agencies with property on the former Fort Ord (University of California Santa Cruz, California State University Monterey Bay, Transportation Agency of Monterey County, Marina Coast Water District and Monterey Peninsula College).

The intent is to have legal representatives from each signatory review the document and provide final comments to FORA not later than March 1, 2020. Should any revisions be required, FORA will coordinate with signatories and provide a final agreement for execution not later than March 15, 2020. FORA will request that all agencies provide an executed copy not later than April 30, 2020.

FISCAL IMPACT:

Reviewed by FORA Contro	oller	
Funding for staff time and I	RGS Consultants included in the	e approved FORA budget.

COORDINATION:

Executive Officer, FORA Legal Counsel, City of Del Rey Oaks, City of Marina, City of Monterey, Monterey County, University of California Santa Cruz, California State University Monterey Bay, Transportation Agency of Monterey County, Marina Coast Water District and Monterey Peninsula College.

ATTACHMENTS:

Draft Transition Implementing Agree	ement (January 31, 2020)
Prepared by and Approved by	
	Joshua Metz

TRANSITION PLAN IMPLEMENTING AGREEMENT

This Transition Plan Implementing Agreement (this "Agreement") is dated for reference purposes ______, 2020 and is entered into by and among:

- (a) County of Monterey ("County"),
- (b) City of Marina ("Marina"),
- (c) City of Seaside ("Seaside"),
- (d) City of Del Rey Oaks ("Del Rey Oaks"), and
- (e) City of Monterey ("Monterey"),
- (f) California Department of Parks and Recreation ("State Parks"),
- (g) Regents of the University of California ("UC"), and
- (h) Board of Trustees of the California State University on behalf of the Monterey Bay campus (("CSUMB"), and collectively with County, Marina, Seaside, Del Rey Oaks, Monterey, State Parks, and UC, the "Parties")

RECITALS

- **A.** The Fort Ord Reuse Authority ("FORA") was established pursuant to the Fort Ord Reuse Authority Act (California Government Code Section 67650 *et seq.* and referred to herein as the "FORA Act") as a regional agency to, among other things, plan, facilitate, and manage the transfer of former Fort Ord property from the United States Army (the "Army") to various municipalities and other public entities or their designees.
- **B.** FORA acquired portions of the former Fort Ord from the Army under an Economic Development Conveyance Memorandum of Agreement between FORA and the Army dated June 20, 2000 (the "EDC Agreement"). FORA has delivered to each of the Jurisdictions a complete copy of the EDC Agreement as executed and including all amendments and attachments.
- C. Section 67700(a) of the FORA Act provides that the FORA Act will become inoperative, at the latest, on June 30, 2020. Concurrently with the FORA Act becoming inoperative, FORA will dissolve ("FORA's Dissolution").

AGREEMENT

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

1.0 2001 IMPLEMENTATION AGREEMENTS SUPERSEDED.

Effective as of July 1, 2020, this Agreement supersedes each of the following agreements, which shall be of no further force or effect:

Implementation Agreement between FORA and County dated May 8, 2001 and recorded October 18, 2001 as Document 2001088380 in the Official Records of the Recorder of the County of Monterey

Implementation Agreement between FORA and Del Rey Oaks dated May 31, 2001 and recorded October 18, 2001 as Document 2001088379 in the Official Records of the Recorder of the County of Monterey

Implementation Agreement between FORA and Marina dated May 1, 2001 and recorded October 18, 2001 as Document 2001088377 in the Official Records of the Recorder of the County of Monterey as amended by Amendment #1 dated September 13, 2012 and recorded September 14, 2012 as Document 2012054071 in the Official Records of the Recorder of the County of Monterey

Implementation Agreement between FORA and Monterey dated August 10, 2001 and recorded October 18, 2001 as Document 2001088378 in the Official Records of the Recorder of the County of Monterey

Implementation Agreement between FORA and Seaside dated May 31, 2001 and recorded October 18, 2001 as Document 2001088381 in the Official Records of the Recorder of the County of Monterey.

2.0 WATER ALLOCATIONS

Until such time as such allocations may be amended as provided herein, each of the Parties agrees to honor and abide by the allocations of potable and recycled water set forth in Exhibit A attached hereto, subject to compliance with all applicable laws including, but not limited to, the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) and the Sustainable Groundwater Management Act (Water Code Section 10720 et seq.). Each of the Parties listed in Exhibit A shall meet and confer in good faith to cooperatively develop one or more agreements between the Parties and Marina Coast Water District regarding the provision of potable and recycled water services and to establish parameters for amending the allocations in the future, as may be appropriate.

3.0 ROADWAY PROJECTS

3.1 Local Roads. After FORA's Dissolution, no further funding will be available from FORA for local road improvement projects that may be required to mitigate the adverse impacts of development projects on property at the former Fort Ord owned by or subject to the control or land use approval authority of any of the Parties (each a "Party Property"). Accordingly, if any development project on one but not more than one Party Property requires mitigation in the form of a roadway project or otherwise, the Party undertaking or approving the development project shall have sole responsibility to arrange for the funding of all required mitigation measures from such Party's own resources, from the project developer(s), or from grants or other resources available to such Party.

3.2 Regional Roads. It is anticipated that effective July 1, 2020, the Transportation Agency for Monterey County will be responsible for the collection of Regional Development Impact Fees for the FORA Zone (Zone 5). Thereafter, for developments within the boundaries of the former Fort Ord that are entitled but not required to pay community facilities district charges after FORA's Dissolution, the Party with permitting authority over such development will either assess the Regional Development Impact Fee or collect a comparable development impact fee equal to the amount of the Regional Development Impact Fee and remit that amount to the Transportation Agency for Monterey County as mitigation for impacts to regional roads.

4.0 HABITAT MANAGEMENT

After FORA's Dissolution, no further funding will be available from FORA for implementation of the Fort Ord Multispecies Habitat Conservation Plan ("HCP"). All funds accumulated before FORA's Dissolution for the purpose of habitat mitigation shall be transferred in the following order of priority. If before April 1, 2020 a Habitat Conservation Plan Cooperative (the "HCP Cooperative") has been established, all the habitat mitigation 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 HCP being administered by the HCP Cooperative. If no HCP Cooperative is in existence, then FORA will prepare a program to distribute the habitat mitigation funds to one or more recipients for long-term management of the area located within the habitat reserve areas, the habitat corridors, and the restricted development parcels pursuant to the revised "Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord" issued by the U.S. Army Corps of Engineers in April 1997.

5.0 RECORDS RETENTION AND MANAGEMENT

Except for records transferred to (a) FORA's successor-in-interest under Environmental Services Cooperative Agreement W9128F 07 2-0162, as amended, entered into between FORA and the Army or (b) to the local redevelopment authority designated as FORA's successor in connection with that economic development conveyance Memorandum of Agreement entered into between FORA and the Army dated June 23, 2000, as amended, all FORA records, including personnel files, documents, and meeting records will be transferred to County for retention and management.

6.0 COMMUNITY FACILITIES DISTRICT REVENUES

Immediately prior to FORA's Dissolution, any then unexpended community facilities district revenues and unencumbered other fund balances shall be transferred to County. County shall promptly thereafter disburse those community facilities district revenues and other fund balances to the Parties in such amounts and in such reasonable manner as the Parties may collectively agree.

7.0 OUTSTANDING DEBT

If FORA has any remaining outstanding debt at the time of FORA's Dissolution, property tax revenues shall continue to be paid to County 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 retirement of the debt, any remaining property tax revenues shall be transferred to the auditor-controller of County for appropriate distribution. County 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 to be disbursed.

8.0 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.

9.0 DISPUTE RESOLUTION

If any dispute arises between the Parties under this Agreement, the Parties shall resolve the dispute in accordance with this Section 9.

- 9.1 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 Parties all the information in its possession that is relevant to the dispute, so that all Parties have the information needed to reach agreement. If these negotiations fail to produce agreement after fifteen (15) days from the initial demand, any disputing Party may demand mediation.
- **9.2 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. Any disputing 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 disputing Parties.
- 9.3 Arbitration. If the dispute has not been resolved by mediation, and if all disputing 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, any disputing 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 disputing Parties otherwise agree. The disputing Parties shall jointly select a single arbitrator.

- (ii) Before commencement of the arbitration, the disputing Parties may elect to have the arbitration proceed on an informal basis; however, if the disputing Parties are unable so to agree, then the arbitration shall be conducted in accordance with Code of Civil Procedure Section 1280 *et seq.*, 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 subsection (iii) below 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.
- 9.4 Attorneys' 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 any disputing 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 attorneys' fees in connection therewith, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing Party.
- 9.5 Judicial Resolution. If the dispute is not or cannot be resolved by mediation, and if there is not agreement between the disputing Parties to pursue arbitration, then any disputing 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. For purposes this Section 9.5, "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.

10.0 MISCELLANEOUS

- 10.1 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof. No other statement or representation by any employee, officer, or agent of any Party, which is not contained in this Agreement, shall be binding or valid.
- 10.2 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.
- 10.3 Modifications. This Agreement shall not be modified except by written instrument executed by and between the Parties.

- 10.4 Interpretation. This Agreement has been negotiated by and between the representatives of all Parties, 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.
- 10.5 Relationship of the Parties. Nothing in this Agreement shall create a joint venture, partnership or principal-agent relationship between the Parties.
- 10.6 Waiver. No waiver of any right or obligation of any Parties 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 any 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.
- **10.7 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.
- 10.8 Days. As used in this Agreement, the term "days" means calendar days unless otherwise specified.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth beside the signature of each, the latest of which shall be deemed to be the effective date of this Agreement.

Dated:	, 2020	COUNTY OF MONTEREY
		By: County Administrative Officer
		Approved as to form:
		By:County/Deputy County Counsel
Dated:	, 2020	CITY OF MARINA
		By:_
		City Manager

		Approved as to form:
		By: City Attorney
Dated:	, 2020	CITY OF SEASIDE
		By:City Manager
		Approved as to form:
		By:City Attorney
Dated:	, 2020	CITY OF DEL REY OAKS
		By:City Manager
		Approved as to form:
		By:City Attorney
Dated:	, 2020	CITY OF MONTEREY
		By:City Manager
		Approved as to form:
		By: City Attorney
		City Attorney

Dated:	, 2020	UNIVERSITY OF CALIFORNIA
		By: Secretary to the Regents
		Approved as to form:
		By: General Counsel
Dated:	, 2020	CALIFORNIA STATE UNIVERSITY
		By:President
		Approved as to form:
		By: General Counsel
Dated:	, 2020	CALIFORNIA DEPARTMENT OF PARKS AND RECREATION
		By: Regional Manager
		Approved as to form:
		By: General Counsel

EXHIBIT A

Water Allocations by Percentage for Additional Army Supply*

	Current Potable Water Allocation in Acre Feet	Future Water Allocation Based on Percentage of Current Water Allocation	Current Recycled Water in Acre Feet	Future Recycled Water Allocation Based on Percentage of Current Recycled Water Allocation
City of Marina	1340	29%	345	25%
City of Monterey	65	1%	0	0%
City of Seaside	1012.5	22%	453	33%
County of Monterey	720	15%	134	10%
CSUMB	1035	22%	87	6%
City of Del Rey Oaks	242.5	5%	280	21%
CA State Parks	44.5	1%	0	0%
UCMBEST	230	5%	60	4%

^{*}In the unlikely event of availability of additional water from the US Army it would be distributed following the percentage-based allocation provide above. These allocations reflect previously agreed water distribution as per FORA Board Resolution No. 07-1 (potable water) and No. 07-10 (recycled water) (2007), and are consistent with the Marina Coast Water District Urban Water Management Plan (2105). They also incorporate the Memorandum of Understanding between the County of Monterey, the City of Seaside, and the FORA allocating 10 acre-feet (af) to the Central Coast Veterans Cemetery (2009), and includes the transference of 15 af to the City of Marina for Veterans Transition Center housing (effective Nov 20, 2017).

Placeholder for Item 8d

Consultant Services Contract Amendments

This item will be included in the final Board packet.

Placeholder for ltem 8e

Revised Board Meeting Schedule

This item will be included in the final Board packet.

- END -

DRAFT BOARD PACKET