



FORT ORD REUSE AUTHORITY

AMENDED MEETING

FORT ORD REUSE AUTHORITY (FORA) BOARD OF DIRECTORS

Friday, December 13, 2019 at 2:00 p.m. | 910 2nd Avenue, Marina, CA 93933 (Carpenters Union Hall)

AGENDA

ALL ARE ENCOURAGED TO SUBMIT QUESTIONS/CONCERNS BY NOON DECEMBER 12, 2019.

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—Anticipated Litigation—Initiation of litigation pursuant to ¶ (4) of subdivision (d) of CA Gov't Code §54956.9—one potential case
- c. Public Employment, Government Code section 54959.7(b) – Personnel – Executive Officer Succession Planning Report

4. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

5. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

- a. Adopt Resolution 19-XX Acknowledging Michael A. Houlemard, Jr.
- b. Fiscal Year 2018-19 Audit

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 November 8, 2019 Meeting Minutes [\(p.1\)](#)
Recommendation: Approve November 8, 2019 Meeting Minutes.
- b. Administrative Committee [\(p.5\)](#)
Recommendation: Receive a report from the Administrative Committee.
- c. Water/Wastewater Oversight Committee [\(p.13\)](#)
Recommendation: Receive an update from the Water/Wastewater Oversight Committee (“WWOC”).

- d. Habitat Conservation Plan Update (p.43)
Recommendation: Receive a Fort Ord Multi-Species Habitat Conservation Plan (“HCP”) report regarding United States Fish and Wildlife Service (“USFWS”) HCP and California Department of Fish and Wildlife (“CDFW”) 2081 Incidental Take Permit (“ITP”) developments.
- e. Environmental Services Cooperative Agreement/Base Realignment and Closure Headquarters Meeting Report (p.45)
Recommendation: Receive a report on the November 18, 2019 FORA trip to Washington, DC to meet with US Army (“Army”) Base Realignment and Closure (“BRAC”) Head Quarters (“HQ”) and US Department of Defense (“DoD”) Office of Economic Adjustment (“OEA”) to discuss Environmental Services Cooperative Agreement (“ESCA”) status and ESCA Successor requirements.
- f. Economic Development Report (p.53)
Recommendation: Receive an Economic Development (“ED”) Report.
- g. Local Agency Formation Commission of Monterey County (“LAFCO”) Indemnification Agreement (p.57)
Recommendation: Authorize Executive Officer to execute attached Indemnification Agreement with LAFCO.
- h. 2020 Fort Ord Reuse Authority Board Meeting Calendar (p.61)
Recommendation: Approve the 2020 FORA Board meeting schedule.
- i. Public Correspondence to the Board (p.63)
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 **not to exceed 3 minutes** or as otherwise determined by the Chair.*

- a. Review Building Removal Bond Legal Status (p.64)
Recommendation:
 - i. Receive an update and report on the status of issuing bonds and related documentation required to finance remaining building removal and related activities.
 - ii. Adopt resolution 19-XX 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.
- b. 2018 Transition Plan and Draft Implementing Agreements Status Report (p.145)
Recommendation:
 - i. Receive a Fort Ord Reuse Authority (“FORA”) Transition Plan Implementing Agreements Progress Report.
 - ii. Receive a Habitat Conservation Plan (“HCP”) – Joint Powers Authority (“JPA”) Formation Progress Report.
- c. Eucalyptus Road Storm Water Infiltrator Repair (p.158)
Recommendation: Authorize the Executive Officer (“EO”) to execute all bidding requirements and associated contracts for the completion of Eucalyptus Road infiltrator repairs not to exceed a project budget of \$1,082,500.

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

9. PUBLIC COMMENT PERIOD

INFORMATION

*Members of the public wishing to address the Board on matters within its jurisdiction, but **not on this agenda**, 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: January 10, 2020 AT 2:00 P.M.

Persons seeking disability related accommodations should contact FORA 24 hrs. prior to the meeting. This meeting is recorded by Access Monterey Peninsula and televised Sundays at 9 a.m. and 1 p.m. on Marina/Peninsula Chanel 25. The video and meeting materials are available online at www.fora.org.



FORT ORD REUSE AUTHORITY
BOARD OF DIRECTORS REGULAR MEETING MINUTES
2:00 p.m., Friday, November 8, 2019 | Carpenters Union Hall
910 2nd Avenue, Marina, CA 93933

1. CALL TO ORDER

Chair Supervisor Jane Parker called the meeting to order at 2:00 p.m.

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Councilmember Jan Reimers.

3. CLOSED SESSION

- a. Public Employment, Gov. Code §54957(b)(1) Personnel-Executive Officer position.
- b. Conference with Legal Counsel—Anticipated Litigation—Initiation of litigation pursuant to ¶ (4) of subdivision (d) of CA Gov't Code §54956.9—one potential case.

Time Entered: 2:06 p.m.

Time Exited: 2:57 p.m.

4. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

Authority Counsel Jon Giffen reported no action was taken in closed session.

5. ACKNOWLEDGMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

Executive Officer Michael A. Houlemard, Jr. announced the following:

- 2019 Monterey Bay Opportunity Zone Investment Forum will be held on Friday, November 15, 2019 from 8:00am to 12:30pm at the CSUMB Salinas City Center.
- Fort Ord Multi-Species Habitat Conservation Plan (“HCP”) was published in the Federal Registry on November 1, 2019 and is under public review until December 16, 2019. A public review period is established in order to receive written comments regarding the accuracy and adequacy of the HCP.
- HCP All Permittees meeting will be held on November 20, 2019 from 9:00am to 12:00pm at the Soper Field Community Center in Seaside.
- HCP Public Meeting on November 20, 2019 from 6:00pm to 8:00pm at Soper Field Community Center, pursuant to the public participation goals of California Environmental Quality Act and National Environmental Policy Act.

6. ROLL CALL

Voting Members Present:

Supervisor Jane Parker (County of Monterey), Supervisor John Phillips (County of Monterey), Supervisor Mary Adams (County of Monterey), Councilmember John Gaglioti (City of Del Rey Oaks), Councilmember Frank O’Connell (City of Marina), Mayor Pro-Tem Gail Morton (City of Marina), Councilmember Alan Haffa (City of Monterey), Mayor Ian Oglesby (City of Seaside), Councilmember Jon Wizard (City of Seaside), Mayor Joe Gunter (City of Salinas), Councilmember Jan Reimers (City of Carmel-by-the-Sea), Councilmember Cynthia Garfield (City of Pacific Grove)

Ex-officio (Non-Voting) Board Members Present:

Kathleen Lee (20th Congressional District), Nicole Hollingsworth (17th State Senate District), Debbie Hale (TAMC), Dr. P.K. Diffenbaugh (Monterey Peninsula Unified School District), Steve Matarazzo (University of California, Santa Cruz), Colonel Gregory Ford (United States Army), Bill Collins (BRAC), Lisa Rheinheimer (Monterey-Salinas Transit), Dr. Matt Zefferman (Marina Coast Water District)

7. CONSENT AGENDA

- a. Approve August 15, 2019 Meeting Minutes
- b. Approve October 11, 2019 Meeting Minutes
- c. Administrative Committee
- d. Veterans Issues Advisory Committee
- e. Water/Wastewater Oversight Committee
- f. Oak Woodlands Conservation Planning Status
- g. Public Correspondence to the Board

Chair Parker introduced the consent agenda items and asked if any Board members had items to pull for discussion. Director Morton requested to pull item 7a for a separate vote.

MOTION: On motion by Board member Gunter and seconded by Board member Oglesby and carried by the following vote, the Board moved to approve the consent agenda items 7b – 7g.

MOTION PASSED UNANIMOUSLY

MOTION: On motion by Board member Phillips and seconded by Board member Carbone and carried by the following vote, the Board moved to approve the consent agenda item 7a, with one no vote by Director Morton.

MOTION PASSED

8. BUSINESS ITEMS

a. 2nd Vote Terminated Employee Health Benefit Options and Retiree Medicare Reimbursement

Mr. Houlemard introduced the two-part item, explaining that at the October 11, 2019 Board meeting, members expressed no objections to the first part of the item: Authorize the Executive Officer to execute liability release terms for retiring staff upon authority counsel recommendation and approval, to include recent retirees. The Board requested more information regarding the second part of the item: Approve health reimbursement account option to clarify administering post-employment health benefits for terminated employees in order to have a second vote. To address these concerns, Regional Government Services (“RGS”) consultant Mi Ra Park provided an in-depth review of health reimbursement account options previously presented, as well as some additional alternatives. Ms. Park informed the Board that the FORA staff expressed a majority preference of using a Health Reimbursement Account (“HRA”) for funds administration.

MOTION: On motion by Board member Morton and seconded by Board member Gunter and carried by the following vote, the Board moved to approve the following:

- 1) Authorize the Executive Officer to execute liability release terms for retiring staff upon authority counsel recommendation and approval, to include recent retirees.
- 2) Approve Option A (HRA) to clarify how post-FORA employee health benefits for terminated employees is administered.

MOTION PASSED UNANIMOUSLY

b. Review Building Removal Bond Legal Documents

Chair Parker advised this item has been removed from the November 8, 2019 Regular Board Meeting Agenda.

c. Habitat Conservation Plan (“HCP”) Status Report and Joint Powers Authority (“JPA”) Formation

Mr. Houlemard introduced the item and reviewed HCP timeline from 1991 to the present. Mr. Houlemard reported following the close of HCP public review/comment period on December 16, the Board will be asked to take action on the HCP Environmental Impact Statement/Environmental Impact Report (“EIS/EIR”) in spring 2020. Mr. Houlemard discussed the main purpose of the HCP, namely to provide local control of the Fort Ord Installation Wide Multi-Species Habitat Management Plan (“HMP”) implementation through comprehensive, coordinated, holistic base-wide resource conservation/management and provide Incidental Take Permits required for Base Reuse Plan implementation. Denise Duffy & Associates consultant Erin Harwayne reviewed the HCP and EIS/EIR schedule, noting a finalization and publication date of January 2020, followed by FORA Board action in March 2020, and subsequent Permittee actions taken in May 2020. Public review comments on the HCP and draft EIS/EIR must be submitted to U.S. Fish and Wildlife Services by mail, email, or fax no later than 5:00 p.m., December 16, 2019. RGS consultant Kendall Flint reviewed the next steps in the process as it pertains to the formation of the Joint Powers Authority (“JPA”). Mrs. Flint noted at the request of the FORA Board members and the Administrative Committee, she has been reviewing other Joint Powers Authorities within the state of California to see how the JPA might function, how it may be funded, and what type of organizational tools may be needed to make it more efficient. Mrs. Flint provided an overview of four that are most similar to FORA, noting that all are made up of a collective of Cities, Counties, Educational facilities, and in some cases Special Districts. In addition, the four JPAs reviewed all have HCPs that are currently implemented and performed by a JPA. The next steps in the JPA finalization will be to hold the all permittees meeting November 20, 2019, in addition to City/Counsel review during November, and the execution of the agreement between January and February 2020. If the JPA agreement is executed several additional things will need to be addressed such as: appointing JPA members, discussion/adoption of member contributions in March and then the JPA will have to convene to discuss staff planning, and an operating budget that is in compliance with HCP parameters, and meeting date schedules. Mrs. Flint and staff answered questions and comments from the Board and public.

d. 2018 Transition Plan and Implementing Agreements Progress Report

Ms. Flint gave a brief 2018 Transition Plan Progress Report and provided the Committee with an updated version of the Transition Plan Implementing Agreement (“TPIA”). She thanked Board members and jurisdictions’ legal counsels for submitting comments and questions and stated updated Agreements will be reviewed at the Administrative Committee meeting November 13, 2019. Ms. Flint discussed the TPIA finalization timeline, noting a final TPIA version will undergo City/County legal review in December, followed by execution in first quarter 2020. Ms. Flint stated there remain about twelve agreements that will be finalized by the end of the year, including agreements regarding water/wastewater, CSUMB, MPC, MBEST, and Marina Dunes. There were no questions or comments from Board members or public.

e. 2020 Transition Transportation Study

Senior Project Manager Peter Said presented an overview of the 2020 Transition Transportation Study. Mr. Said explained the study was conducted in compliance with the 2018 Transition Plan Resolution 18-11 which states FORA, in coordination with Transportation Agency of Monterey County (“TAMC”), must prepare a regional traffic modeling analysis of the inclusion of FORA lead agency on-site roads and the impact of removing FORA lead agency roads on remaining roads within

the network. The purpose of the study is to inform the Board of the 2020 transition of specific transportation improvements within the Capital Improvement Program (“CIP”). Mr. Said reviewed the scope and key steps in the study’s completion and provided comparative analysis of five CIP Buildout scenarios. He stated a connector road is estimated to be necessary by 2027 and increased public transit would not sufficiently delay or remove the need for a connector road. Mr. Said provided a summary of the study’s key findings and answered questions from members and public.

**Marina City Manager Layne Long, speaking as a member of the public, asked if the 2020 Transition Transportation Study includes the several planned roundabout improvements to Highway 68, and whether these projects would significantly shift more traffic to Highway 68 from more impacted roads. Kimley-Horn consultant Frederik Venter confirmed Highway 68 improvements were factored into the Study, showing an increase in operational efficiency, but no capacity increase, as no additional lanes are planned.*

**Director Cynthia Garfield stated CSUMB representatives expressed concern during the October 30, 2019 Administrative Committee meeting regarding CIP projects creating additional traffic through campus. Director Garfield asked if any of the proposed CIP scenarios avoided going through CSUMB entirely. Mr. Venter stated the traffic model was designed to discourage traffic through campus, however it allowed for Gigling Road, Inter-Garrison Road and 8th Street to remain open.*

f. Resolution to Terminate CalPERS Contract and Agreement

Mr. Houlemard reported staff’s recommendation to approve this item in order to be consistent with the 2018 Transition Plan and State Law. FORA controller Helen Rodriguez and staff answered questions from members.

MOTION: On motion by Board member Phillips and seconded by Board member Wizard and carried by the following vote, the Board moved to adopt Resolution 19-13, a Resolution to Terminate the CalPERS Contract and Agreement.

MOTION PASSED UNANIMOUSLY

9. PUBLIC COMMENT

No public comments were received.

10. ITEMS FROM MEMBERS

None.

11. ADJOURNMENT at 4:27 p.m.

Minutes Prepared by:
Heidi L. Gaddy
Deputy Clerk

Approved by:

Michael A. Houlemard, Jr. Executive Officer

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject: Administrative Committee	
Meeting Date: December 13, 2019	INFORMATION/ACTION
Agenda Number: 7b	

RECOMMENDATION:

Receive a report from the Administrative Committee.

BACKGROUND/DISCUSSION:

The Administrative Committee held meetings on October 30, 2019 and November 13, 2019. 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 included in the approved annual budget.

COORDINATION:

Administrative Committee

Prepared by 
Heidi L. Gaddy

Approved by 
Michael A. Houlemard, Jr.



FORT ORD REUSE AUTHORITY
ADMINISTRATIVE COMMITTEE MEETING MINUTES
8:30 a.m., Wednesday October 30, 2019 | FORA Conference Room
 920nd Avenue, Suite A, Marina, CA 93933

1. CALL TO ORDER

Chair Dino Pick called the meeting to order at 8:30 a.m.

The following were present:

- Dino Pick* (City of Del Rey Oaks)
- Anya Spear (CSUMB)
- Patrick Breen (MCWD)
- Layne Long* (City of Marina)
- Todd Muck (TAMC)
- Craig Malin* (City of Seaside)
- Lisa Reinheimer (MST)

- Mike Zeller (TAMC)
- Melanie Beretti* (County of Monterey)
- Steve Matarazzo (UCSC)
- Vicki Nakamura (MPC)
- Hans Uslar* (City of Monterey)
- *Voting member

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Seaside City Manager Craig Malin.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

- Assistant Executive Officer Josh Metz announced a property transfer status update that may be accessed at www.fora.org.
- Mr. Metz reported an Oak Woodland Conservation Plan project update will be added to the November Board meeting consent agenda, pending Executive Committee approval.

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. October 16, 2019 Meeting Minutes

MOTION: On motion by Committee member Malin, second by Committee member Beretti and carried by the following vote, the Administrative Committee moved to approve the October 16, 2019 meeting minutes.

MOTION PASSED UNANIMOUSLY

6. NOVEMBER 8, 2019 REGULAR BOARD MEETING AGENDA REVIEW

Mr. Metz reviewed the items proposed to appear on the draft Board agenda for November 8, 2019. Mr. Metz noted a second vote is required for Business Item 8a, Terminated Employee Health Benefit Options and Retiree Medicare Reimbursement. Mr. Houlemard stated the Executive Committee will likely approve adding Oak Woodland Conservation Plan update as a Consent Item.

7. BUSINESS ITEMS

INFORMATION/ACTION

a. Overall Capital Improvement Program

i. Habitat Conservation Plan and Schedule

FORA Habitat Conservation Plan (“HCP”) consultant Erin Harwayne reviewed the HCP schedule and confirmed an estimated publishing date of Friday, November 1, 2019. An All Permittees meeting will be held on November 20, 2019 from 9:00 a.m. to 12:00 p.m., followed by a public meeting to review the draft Environmental Impact Statement/Environmental Impact Report (“EIS/EIR”) from 6:00 p.m. to 8:00 p.m. at Soper Field Community Center in Seaside. The Committee was provided a list of invitees to the All Permittees meeting and Mr. Metz encouraged permittees’ legal counsels and executive staff members attend to discuss Joint Powers Authority (“JPA”) formation details.

Economic Planning Systems consultant Ellen Martin presented refined cost allocation scenarios and discussed three potential cost allocation approaches, noting inclusion of additional supporting data may lead to further refinements. Ms. Martin discussed the following potential cost allocation alternatives:

- **Alternative #1:** Community Facilities District (“CFD”) replacement revenues; continuation of the current HCP financing model by allocating costs based on current FORA Capital Improvement Plan (“CIP”) development projections and CFD rates.
- **Alternative #2:** Costs allocation based on remaining developable acres determined by:
 - a) Short Term Planning Pipeline; costs allocated based on FORA CIP forecasts, development projections and average land use density assumptions or;
 - b) Long Term Development Pipeline; costs allocated based on the parcel’s full acreage for development taking place within the fifty-year HCP permit term.
- **Alternative #3:** Water Allocation; costs allocated based on either:
 - a) Potable water allocation based on current potable water for development capacity or;
 - b) Total water allocation based on current potable and recycled water allocation for development capacity.

Ms. Martin provided in depth analysis of the proposed cost allocation alternatives, detailing how costs could be distributed amongst jurisdictions under each scenario. She noted there may be other cost allocation alternatives proposed, as determined by the JPA. Executive Officer Michael A. Houlemard, Jr. noted this is a policy question that will need to be approved by the Board as it pertains to the decision about the application of remnant CDF funding for HCP or other priorities. Ms. Martin and staff answered questions and received feedback from members.

Regional Government Services (“RGS”) consultant Kendall Flint provided a brief review of the JPA finalization timeline, noting the Agreement’s current version does not include the term “successor entity” or reference FORA. Individual agreements between the permittees will be negotiated and

included in the JPA moving forward. Ms. Flint reported RGS continues to monitor comparable instances of JPA implementation statewide, specifically in the counties of San Joaquin, Yolo, Santa Clara and Contra Costa, which have similar habitat conservation concerns as FORA. These four JPAs are also similar in that they involve HCP implementation between multiple agencies, multiple species, sizeable acreage and comparable formation. Ms. Flint provided a analysis of these four counties' JPA formations, management/staffing structures, jurisdiction count, species count, Habitat Management Areas and various HCP fee calculation methods. Per the Committee's request at the October 16, 2019 meeting, Ms. Flint provided comparative analysis of JPA vs. Memorandum of Understanding ("MOU") agreements, noting RGS found all other HCPs are being run through JPA or another governing agency, as opposed to MOU. She reported the primary advantage to JPA over MOU is shielding member agencies from liability and separating them from possible litigation. Ms. Flint reviewed an updated JPA finalization timeline, noting the permittees will be in charge of the JPA, which is a sole entity, and not a successor entity to FORA. She emphasized the JPA would not be associated with FORA in any way other than as recipient of FORA endowment funds. Ms. Flint and staff answered questions from members.

**Marina Mayor Pro-Tem Gail Morton requested additional information regarding what provisions must be included in the JPA if a permittee leaves the JPA. Ms. Flint stated that she would research whether any of the JPAs discussed at this meeting had such provisions. In addition, an analysis of housing development costs and how estimated remaining funds are to be allocated.*

ii. Review Building Removal Bond Legal Documents

Executive Officer Michael A. Houlemard, Jr. introduced the item, noting staff is working with Bond Counsel and Department of Finance to clarify whether obligations will be on individual jurisdictions' Recognized Obligation Payment Schedule ("ROPS") or a statutory pass-through. He reported FORA bond consultants are moving forward in preparing necessary legal documents and anticipates bond issuance in the coming months. Mr. Houlemard emphasized the bonds create a regional benefit by providing jurisdictions enough revenue to complete building removal after FORA's June 30, 2020 dissolution. He noted Monterey County's concern regarding determination of the bond's public benefit, and stated staff anticipate providing a recommendation to the Board in December. Senior Project Manager Peter Said stated bond counsel presented the following technical items to the Board for clarification at the October 11, 2019 meeting: 1) acceptance of a successor agency, 2) establishment of covenant to put bond issue on the ROPS, and 3) scheduling a county public hearing. Mr. Said reported draft legal documents were sent to the Administrative Committee for review on October 8th and requested any feedback or questions from members be submitted to staff for consideration/incorporation. Mr. Said and staff answered questions from members.

**Lisa Reinheimer of Monterey-Salinas Transit ("MST") requested clarification regarding MST's 1.75% allocation and associated estimated building removal cost. Mr. Said stated he would provide a current cost assumption list.*

iii. Review Final Draft Transportation Study

Mr. Said presented an updated final draft Transportation Study. Per the Committee's request, Kimley-Horn planning consultants analyzed the impact of alternative transportation modes on gridlock. A summary of this analysis was included in the 2020 Transportation Study Key Findings and will be presented to the Board as an informational item at the November 8, 2019 regular Board meeting. Mr. Said explained the Transportation Study informs the CIP and FORA's mid-year budget. The Committee received a list of transportation projects currently within the budget for the next six months

and a recommendation from staff to allocate \$70,000 to complete the NE/SW connector. Mr. Said explained several environmental studies are being conducted on the site and in order for that data to be usable the project must be closed out before FORA's sunset. Mr. Said reviewed a draft summary table of the CIP, divided by estimated CFD funds and estimated land sales funds. He reported an estimated 2020 final balance of \$3,691,458 in CFD funds and asked the Committee to consider recommendations regarding allocation, with the understanding that CFD funds may only be used for CFD approved projects. Mr. Said and Ms. Flint agreed the best use of these funds is investment in HCP. Regarding land sales Mr. Said reported 100% of the \$7,364,085 will be used to complete project expenditures and general CIP/FORA costs. The Committee was asked to consider the information provided and discuss staff's proposed recommendation to invest the 2020 CFD fund balance into HCP. Mr. Said and staff answered questions from members.

8. ITEMS FROM MEMBERS

9. ADJOURNMENT at: 10:38 a.m.

Minutes Prepared By:
Heidi Gaddy
Deputy Clerk

Natalie Van Fleet
Administrative Assistant



APPROVED

FORT ORD REUSE AUTHORITY
ADMINISTRATIVE COMMITTEE MEETING MINUTES
8:30 a.m., Wednesday November 13, 2019 | FORA Conference Room
920nd Avenue, Suite A, Marina, CA 93933

1. CALL TO ORDER

Chair Michael A. Houlemard, Jr. called the meeting to order at 8:33 a.m.

The following were present:

- | | |
|-------------------------------------------------|---------------------------------------|
| Dino Pick* (City of Del Rey Oaks) | Mike Zeller (TAMC) |
| Anya Spear (CSUMB) | Melanie Beretti* (County of Monterey) |
| Patrick Breen (MCWD) | Debbie Hale* (TAMC) |
| Layne Long* (City of Marina) | Steve Matarazzo (UCMBEST) |
| Matt Mogensen (City of Marina) | Gage Dayton (UCMBEST) |
| Todd Muck (TAMC) | Vicki Nakamura (MPC) |
| Craig Malin* (City of Seaside) | Hans Uslar* (City of Monterey) |
| Lisa Reinheimer (MST) | Elizabeth Caraker (City of Monterey) |
| Nicole Hollingsworth (Senator Monning’s Office) | *Voting member |

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by City of Monterey Community Development Department Manager Elizabeth Caraker.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

- Assistant Executive Officer Josh Metz announced the Monterey Bay Opportunity Zone Investment Forum will take place Friday, November 15, 2019 from 8:00 a.m. to 12:30 p.m. at the CSUMB Salinas City Center. Visit www.mboz.eventbrite.com for more information.
- Executive Officer Michael Houlemard reported Assembly Bill (“AB”) 1486 passed and goes into effect January 1, 2020. The Bill imposes requirements regarding the disposal or reuse of public land by local agencies. AB 1486 may affect housing goals in the Cities of Marina, Seaside, Del Rey Oaks and the County of Monterey, particularly on former military-owned land. Mr. Houlemard encouraged Committee members to research the Bill and discuss its possible impacts with jurisdictions’ counsels.
- Mr. Houlemard announced the Habitat Conservation Plan (“HCP”) was published November 1, 2019 and is currently under public review. An “all permittees” meeting is scheduled for 9:00 a.m. on November 20, 2019 at Soper Field Community Center in Seaside. Public meeting will be held from 6:00 p.m.- 8:00 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. October 30, 2019 Meeting Minutes

MOTION: On motion by Committee member Malin, second by Committee member Beretti and carried by the following vote, the Administrative Committee moved to approve the October 30, 2019 meeting minutes.

MOTION PASSED UNANIMOUSLY**6. NOVEMBER 8, 2019 BOARD MEETING FOLLOW-UP**

Mr. Houlemard reviewed items discussed during the November 8, 2019 regular Board meeting. The Board pulled Building Removal Bond Legal Documents Review from the agenda to allow jurisdictions' attorneys and Authority Counsel time to determine revenue stream options for discussion at the December 13, 2019 regular Board meeting. Mr. Houlemard reported the Board received an in-depth HCP and Habitat Management Plan ("HMP") review and schedule. The Board approved the proposed personnel actions and agreed to postpone the proposed November 21, 2019 special Board meeting due to scheduling conflicts. Reimer Associates consultant Kristie Reimer noted the purpose of the special meeting was to discuss the HCP and address jurisdictions' questions and concerns. She informed the Committee a hard copy of the HCP document is available to Permittees at FORA's office. Ms. Reimer stated the HCP consultant team is available to meet individually with jurisdictions and encouraged representatives to submit questions and concerns to staff prior to the November 20th All Permittees and Public meetings.

7. BUSINESS ITEMS**INFORMATION/ACTION**a. **Capital Improvement Program**i. **Habitat Conservation Plan Update**

Mr. Houlemard introduced the item and reviewed the history of the HMP and HCP, noting the many challenges FORA overcame in order to achieve HCP publication this year. Following the 45-day public review process there will be a decision regarding the Environmental Impact Statement/Environmental Impact Report ("EIS"/ "EIR") to accompany the HCP. Denise Duffy & Associates Senior Planner Erin Harwayne informed the Committee the HCP and EIS/EIR public review period ends December 16, 2019 and a public meeting will be held on November 20, 2019 to review California Environmental Quality Act ("CEQA") and National Environmental Policy Act ("NEPA") documentation in the HCP. Ms. Harwayne explained Fish and Wildlife Services ("FWS") are collecting public questions and comments and the HCP consultant team is working to respond to these concerns in a final CEQA/NEPA document. She stated the HCP and EIS/EIR will be finalized late January 2020, after which she anticipates the Board to take action in March, followed by Permittee actions on the two documents and their associated implementing ordinances in May. Written comments may be submitted via mail, email, or fax to FWS. Regional Government Services consultant Kendall Flint reviewed the November 20, 2019 All Permittees meeting agenda and answered questions from members.

ii. **Building Removal Bond Update**

This item was discussed during the November 8, 2019 Board Meeting Follow-up.

b. 2018 Transition Plan Progress Report

Ms. Flint gave a brief 2018 Transition Plan Progress Report and provided the Committee with an updated version of the Transition Plan Implementing Agreement (“TPIA”). She noted the TPIA was edited significantly to reflect comments received from Monterey County and other local agencies. Ms. Flint requested all Permittees’ counsels review the Agreement and submit any final comments/concerns so that a final TPIA may be executed. Ms. Flint and staff heard questions from members.

**Member Debbie Hale of the Transportation Agency for Monterey County (“TAMC”) expressed concern regarding changes to verbiage in section 3.2, Roadway Projects- Regional Roads, and requested the language return to that of the previous draft in the final TPIA. Ms. Flint requested TAMC submit a written request for changes, and stated she would provide Members with additional information regarding this section prior to the next Board meeting.*

**Member Beretti requested the latest draft Marina Coast Water District Implementing Agreement be distributed to Committee members.*

8. ITEMS FROM MEMBERS

- Committee Member Layne Long noted the California Coastal Commission will meet November 14, 2019 at Marina City Council Chambers.
- Mr. Houlemard noted comprehensive Certificates of Completion will be distributed for all properties regulated under the Environmental Services Cooperative Agreement and Deeds for Transfer will be executed in December.

9. ADJOURNMENT at: 9:32 a.m.

Minutes Prepared By:
Heidi Gaddy
Deputy Clerk

Natalie Van Fleet
Administrative Assistant

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject:	Water/Wastewater Oversight Committee	
Meeting Date:	December 13, 2019	INFORMATION/ACTION
Agenda Number:	7c	

RECOMMENDATION:

Receive an update from the Water/Wastewater Oversight Committee ("WWOC").

BACKGROUND/DISCUSSION:

The WWOC approved minutes from its October 24, 2019 meeting. (**Attachment A**)

The WWOC considered the proposed Marina Coast Water District ("MCWD") Draft Capacity Fee Report ("DCFR") (**Attachment 1-4**). District Engineer, Mike Wegley of MCWD reviewed the DCFR roadmap highlighting the draft release in June and the multiple public meetings held with stakeholders over the last six months. Doug Dove of Bartle Wells Associates ("BWA") presented the DCFR, reviewed the estimated growth projections, discussed the change in BWA's fee methodology, and compared the proposed fees to other Central Coast water districts. At a past meeting, the WWOC completed their review of the Master Plans which are the basis for the capacity fees and approved the Master Plans on the condition MCWD hold a technical engineer's meeting with the development community to refine the plans. As a result of this technical meeting, MCWD reported decreased scope in the master plans which translated into a ~\$13M decrease in proposed fees. MCWD then reviewed the remaining timeline and next steps for the adoption and implementation of the capacity fees, which require FORA Board approval of a compensation plan.

The Building Industry Association ("BIA") requested an agenda item to discuss the impacts of the fees on the development community. Representatives from Shea Homes, Wathen Castanos, and Century homes voiced strong concerns about the methodology, and the planning level contingency of 48%, while critiquing the quality of the meetings. BIA submitted letters outlining the development community's position (**Attachment B**), and requested MCWD hold an additional technical meeting for developers to further refine capacity fees.

The WWOC listened to the public comments and reviewed the answers provided by MCWD (**Attachment C**). The WWOC then unanimously approved (with a CSUMB member abstention) to recommend the Draft Capacity Fees to the FORA Board, noting if a 10% or more reduction occurs within the next two months from another technical meeting between MCWD and the developer community, the WWOC would support that reduction.

The WWOC then appointed Brian McMinn Public Works Director of the City of Marina as the Chair of the WWOC and Scott Ottmar, City of Seaside Engineer, as the new Co-Chair of the WWOC.

FISCAL IMPACT:

Reviewed by FORA Controller 

Staff time for this item is included in the approved FORA budget.

COORDINATION: WWOC, Marina Coast Water District

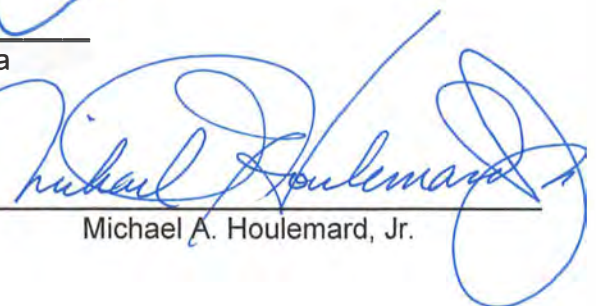
Prepared by


Harry Tregenza

Reviewed by


Peter Said

Approved by


Michael A. Houlemard, Jr.



**FORT ORD REUSE AUTHORITY
WATER/WASTEWATER OVERSIGHT COMMITTEE
MEETING MINUTES**

920 2nd Avenue, Suite A, Marina CA 93933 | FORA CIC
10:00 A.M., Thursday, October 24, 2019

1. CALL TO ORDER/ESTABLISHMENT OF QUORUM

Chair Reidl called the meeting to order at 10:01 AM

Committee Members Present:

Mike Lerch, California State University Monterey Bay (CSUMB)
Brian McMinn, City of Marina
Steve Matarrazo, University of California Santa Cruz (UCSC)
Melanie Beretti, County of Monterey
Dino Pick, City of Del Rey Oaks
Rick Riedl, City of Seaside

Committee Members Absent:

Elizabeth Caraker

Other Attendees:

Kelly Cadiente, Marina Coast Water District (MCWD)
Mike Wegley, Marina Coast Water District
Andre Racz, Marina Coast Water District
Doug Dove, Bartle Wells Associates
Abigail Seaman, Bartle Wells Associates
Tony Akel, Akel Engineering Group
Kevin Tuttle, Akel Engineering Group
Ray Pyle, California State University Monterey Bay (CSUMB)

Jeff Cooks, Nathen Castanos Homes
Mary Kelasen, Shea Homes
Dennis Martin, Building Industry Association Bay Area

FORA Staff

Peter Said, Senior Project Manager
Harrison Tregenza, Administrative Assistant

2. PLEDGE OF ALLEGIANCE

The pledge of Allegiance was led by Committee member Mike Lerch from CSUMB.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

Peter Said noted that FORA staff have received multiple correspondences, which he passed along to the WWOC. The first was an email from Doug Yount, the second was a letter from Wanger, Jones, Helsley, and the third was a letter from BIA Bay Area. All three pieces of communication were a request to the WWOC to delay voting on the capacity fee item.

4. PUBLIC COMMENT PERIOD

There were no public comments

5. APPROVAL OF MEETING MINUTES

MOTION: On motion by Committee member McMinn and second by Committee member Pick the Water/Wastewater Oversight Committee (WWOC) approved the September 19, 2019 meeting minutes.

MOTION PASSED: UNANIMOUSLY

- 6. BUSINESS ITEMS** **INFORMATION/ACTION**
 a. **Consider Final Draft Water, Sewer, and Recycled Water Master Plans as the Basis for Capacity Fees**

District engineer Mike Wegley reported there were no changes to the Master Plans since the last stakeholder input meeting. A discussion occurred regarding the contingency and soft costs associated with the Master Plan. With the permission of the chair, Jim Brezack gave a quick presentation on the developer community’s concerns regarding the master plan during public comment.

MOTION: On motion by Committee member Pick and second by Committee member Beretti, the WWOC moved to consider final draft water, sewer, and recycled water master plans as the basis for capacity fees with the amendment that MCWD hold a meeting with the developer’s engineers before the next WWOC meeting.

Motion Passed by Majority (5 AYES; 1 ABSTENTION)

<i>Item 6a: Motion</i>	
<i>Member Pick</i>	<i>YES</i>
<i>Member McMinn</i>	<i>YES</i>
<i>Member Reidl</i>	<i>YES</i>
<i>Member Beretti</i>	<i>YES</i>
<i>Member Matarrazo</i>	<i>YES</i>
<i>Member Lerch</i>	<i>Abstention</i>

- b. **Consider Recommending the Draft Capacity Fees Report**

The WWOC received a presentation from Abigail Seaman regarding the draft capacity fees report. A robust discussion ensued regarding many different aspects of the report, including changes, CFDs, and the report’s timeline with regard to FORA’s sunset.

MOTION: On motion by Committee member Beretti and second by Committee member McMinn, the WWOC moved to continue the discussion until December 2 so that MCWD can inform the WWOC of the engineers meeting with the intention to vote on recommending the Capacity Fees to the FORA Board.

Motion Passed by Majority (5 AYES; 1 ABSTENTION)

<i>Item 6b: Motion</i>	
<i>Member Pick</i>	<i>YES</i>
<i>Member McMinn</i>	<i>YES</i>
<i>Member Reidl</i>	<i>YES</i>

<i>Member Beretti</i>	<i>YES</i>
<i>Member Matarrazo</i>	<i>YES</i>
<i>Member Lerch</i>	<i>Abstention</i>

7. ITEMS FROM MCWD

None.

8. ITEMS FROM MEMBERS

Chair Rick Reidl also noted that his last day with the City of Seaside will be November 27, and that Vice-Chair McMinn will take over as acting chair until a new chair is voted on.

9. ADJOURNMENT: Chair Reidl adjourned the meeting at 11:55 AM.

Minutes Prepared by:
Harrison Tregenza
Administrative Assistant

Attachments 1-4 to Item 7d
Water/Wastewater Oversight Committee

- https://fora.org/WWOC/2019/Materials/1_MCWD_Capacity_Fee_Report_DRAFT_%2011-25-19.pdf
- https://fora.org/WWOC/2019/Materials/2%20_MCWD_Capacity_Fee_Tables_DRAFT_11-25-19.pdf
- https://fora.org/WWOC/2019/Materials/3_Appendix_C.pdf
- https://fora.org/WWOC/2019/Materials/4_MP-Capacity_Fee_Study_Comments-Responses.pdf



November 18, 2019

MCWD
Mr. Michael Wegley, PE, District Engineer
2840 4th Avenue
Marina, CA 93933
mwegley@mcwd.org

RE: Building Industry Associates (BIA) comments regarding MCWD Draft Capacity Fee Study for Water, Wastewater and Recycled Water

Executive Summary

BIA has formed and coordinated the development of a review team to obtain insights and identify issues that need to be addressed in MCWD's Draft Capacity Fee Study for Water, Sewer and Recycled Water. Pursuant to our September 20, 2019, letter to you we are now providing you with additional information for your consideration as you seek to finalize the Capacity Fee study and its associated master plan reports.

This Peer Review Technical Memorandum is intended to provide an initial review of the proposed Capacity Fees and master plan reports prepared by MCWD and its consultants. Conclusions of these documents are understood to be the basis of Capacity Fee planned for adoption by MCWD's Board of Directors.

While recognizing that there remain many facility as well as policy issues yet to be evaluated, we offer the following five key observations to the continued review and resolution of issues of the Capacity Fee Study:

- 1. Collaboration and Transparency:** Currently, the water and sewer rate increase proposed by MCWD is approximately 228% for Ord and 124% for Marina. BIA and its affiliates are therefore justifiably emphatic on the need to actively participate with MCWD in a collaborative and transparent process for the review and further development of the Capacity Fee Report and its underlying master plan documents. We have offered our time and expertise to meet with MCWD and its consultants to understand impediments to implementation and to collaborate in problem solving. We believe that further issue identification and resolution requires that MCWD to commit to a schedule of active meetings and workshops.
- 2. Future Development:** The Master Plans include areas for future growth not included in MCWD's existing service area. The amount of work and need for additional funds to extend water, sewer and recycled water facilities to this areas is not identified in the Master Plan Reports. BIA and its affiliates believe that the work in MCWD's existing service area should be the priority focus of these reports. We request that you provide additional details on the potential costs and impacts to the proposed Capacity Fees for

future work in areas outside of the service area or remove them from the studies.

3. **Cost Estimating Contingencies:** Estimated Construction costs developed in the Master Plan Reports include a 48.5 percent contingency above baseline construction costs to account for unforeseen events and unknown field conditions, and for Contractor's overhead and profit, general conditions, and sales tax. Additionally, Capital Improvement Costs also include an additional 25 percent of the estimated construction costs to account for administration, construction management, and legal costs. Therefore, the overall impact of project-related unknown conditions amounts to approximately \$26M of capital costs for water, sewer and recycled water while providing no meaningful benefits to the community.

We therefore strongly support MCWD doing everything it can to eliminate or reduce the 48.5 percent contingency by working to complete the engineering design for the CIPs. This would de-risk the projects by identifying previously unforeseen events and unknown field conditions. The 25 percent contingency is expected to remain in place to meet the engineering, legal and administrative needs of the CIPs including Contractors overhead and profit and sales tax.

4. **Alternative Project Delivery:** The opportunity exists for MCWD to procure Design-Build entities and deliver water, sewer and recycled water projects at potentially lower costs than by traditional Design-Bid-Build methods. The DB would be required to develop and submit to MCWD, proposals for the project design and construction under a single contract. DB entities would be required to develop and submit a Guaranteed Maximum Price (GMP) increasing the surety that the work would be completed potentially at or below master planned level cost estimates. DB entities would prepare a project design of 10% to as much as 30% to facilitate their development of the GMP.
5. **Recycled Water Supplies:** Available recycled water to the Tier 3 (Immediate Term) and Tier 4 (Long Term) users are insufficient to meet projected demands. The report identifies that:
 - a. “..currently identified Tier 3 users exceed the allocation and thus additional allocation would be required or portions of these users will be excluded pending the expanded allocation.”
 - b. The “Tier 4 users are in excess of the current capacity allocation agreement with M1W and will require additional recycled water entitlements and improvements prior to service.”

We are unsure the remedy that MCWD has adopted to ensure the availability of recycled water to meet identified demand.

6. **Population Projections:** None of the recent reports include a significant discussion of the demographics of MCWD’s service area. No studies were apparently used to reach the population conclusions as to the volume and timing of future growth throughout MCWDs service area. We believe that this is a key set of assumptions that requires evaluation. The Master Plan Reports appear to have identified a 3% per year growth pace with no significant discussion or analysis. Through a quick review of the data from several credible sources we have determine the growth has not been and is not being projected at

3%. There is no contingency provided to meet scenarios of different (positive or negative) growth that may occur and the impact that would have on the cost and schedule for CIP implementation.

We appreciate this opportunity to submit our initial concerns and look forward to a process of collaboration and problem solving with MCWD and its consultants.

Administrative Issues

MCWD Community Collaboration

7. We strongly believe that the Builders Group and its members should be active participants in the review and approval process of these reports working and their underlying assumptions. BIA and its members should be allowed to work in partnership with MCWD to achieve common goals and objectives. Additionally, we believe that it is important to include FORA in this process based on overlapping responsibilities with MCWD. This is especially true regarding the administration and disposition of the Community Facilities District (CFD) the 3-Party Agreement that significantly limits the cost participation in the recycled water program, and on CFD and dissolution.
8. At the October 10, 2019 meeting BIA requested the formation of a technical advisory group to consist of engineering and planning experts from both MCWD and the Builders who could meet in a manner of collaboration similar to a systematic review process, similar to a value engineering review. We are pleased to have MCWD set a date of November 8 for a workshop.
9. BIA and representatives of the building community have stressed to MCWD the necessity of collaboration in the Capacity Fee and facility master plan review process. In its 2018 Year In Review, MCWD states that the review is “.. *share(d) with you as part of our ongoing commitment to communication, transparency and collaboration with our community.*”
10. It was generally agreed that fire flows dictate the size of the system. However, there was no receptivity to the idea of collaborating with the Fire Marshals from the service area to see if lower (cheaper) cost facilities could be used (flow rates & durations, storage volumes, pipeline diameters).

Fee Increase Schedule

11. MCWD had hoped to have process of master plan updates and fee establishment completed by December 2019. We understand the decision may be delayed a month. Unfortunately, the time provided by MCWD for our review and participation in the Capacity Fee Increase is inadequate for a true identification, communication and review of Fees and Master Plan Documents. The master plan and Capacity Fee study reports are the work products of more than 3-years of effort. Yet there have only been three opportunities to date to meet with MCWD on this topic. In some cases, MCWD has made significant and important changes to some of the CIPs without making any redistribution to public or more specifically to the Builders.
12. Builder Community would like more outreach. These issues with FORA should be worked out before fees are tripled to development committee. Getting this completed even by January seems too fast. Requested to extend the timeline out to this spring that provide several months before the sunset of FORA. Development community needs to have time to complete their own analysis.
13. If this 3-fold increase is rushed it will not be amicable. Policy choices included in these increases need to be debated.
14. Transparent Review Period and Collaboration Between MCWD & the Builders community Draft Capacity Fee Study was released June 25, 2019 and then revised and released in October 2019 without any announcement to group being invited by MCWD to outreach meetings.

Administrative Recommendations

15. We make the following recommendations regarding administrative issues associated with the review of the Capacity Fee Study and its associated reports:
 - a. BIA recommends that a Technical Advisory Group be convened to be made up of technical area experts from the Builders Community and MCWD. We appreciate MCWD efforts of setting working group meeting on November 8, 2019. These efforts need to continue beyond this meeting to reduce some of the unknowns included in the cost estimates.
 - b. Identify & schedule additional follow-up requirements.

Planning and Engineering

Planning

16. There are **6,160** residential units in the cap plus commercial and industrial uses to generate jobs. How many of the units are part of the future remaining units as of 2018? (Table 2.1 of the Water Master Plan).
17. The previous master plan assumed full build-out. The current plan uses FORA Planned and Entitled developments.
18. Near term projection is year 2035 and full buildout is year 2050.
19. Acres used should not have been included because outside irrigation would not use potable water. However, we understand the landscaping costs have been lowered in the latest revisions.
20. How many new homes are being estimated? The Base Reuse Plan was used not for full buildout but for 15 years of growth. The Plan for future growth is based on the number of jobs that can be created on the base to move forward with additional development. Development stops until 18,000 job generation goal is met.
21. Planned use and entitled use are included in the Reuse Plan.
22. Would it have been more equitable to separate the three uses rather than combined especially since everyone benefits from recycled water? CIP portions have been separated but total assets portions have not been separated.

Cost Estimates

23. The cost of FORA's obligation to the Water Augmentation Project was estimated to be \$40M in year 2008-2009. Using the ENR Construction Cost Index to update this estimate to year 2019 results in a cost estimate over \$50M. Therefore, the increase by \$9.7M represents a large cost for that project alone. Given the impact to the importance on ratepayers it seems reasonable to have MCWD perform an updated cost estimate rather than relying solely on indexing. MCWD's last water system CIPs includes over 20-miles of pipeline, 4-million gallons of storage and 5,000 gpm of boosting capacity and should therefore be revaluated.
24. The cost of facilities constructed by the Builders should be reimbursed by MCWD where the Builders have designed and constructed the capital improvements.
25. The costs mainly focused on backbone infrastructure.
26. We understand from our October 23, 2019 meeting that costs for landscaping have been lowered in the latest version of the Water Master Plan.

EDU's

27. What background data, demographic studies of projected populations, residential and commercial numbers of EDU's have been developed for referenced for the Capacity Fee study? It appears as if the only source for population projections is the Base Reuse Plan. The accuracy of the near-term (year 2035) and full build-out (year 2050) are among the most important in the Capacity Fee report. Through a quick review of the data from several credible sources we have determined the growth has not been and is not projected at 3%. Marina has grown 1.52% in the last five years.

- ABAG updated its Region Growth forecast in 2018 for its Sustainable Community Strategy. Their current forecasts expect 20% less population growth and a 2% increase in housing.
28. The Master Plan Reports present a 3% Growth Rate. When last discussed, the engineering team (11-08-19) responded that the actual populations were unimportant to the engineering analysis. However, the connection fees and the FORA development limits are based on population and population rate projections.
 29. Appendix C provides the updated water demand for calculation of equivalent dwelling. There are 20 fixture units included in one EDU.
 30. There will be 175 gpd returning to the wastewater treatment plant per EDU. An EDU has dropped from 0.33 to 0.28. AF/EDU. One EDU designated for a hotel or condo would have less consumption than the single-family unit EDU. It appears to be unknown how much it will cost at the counter for 1 building permit (.01 EDU or 28% of an EDU)?

Sea Water Intrusion

31. Monterey 1 Water completed their Pure Water Project. The RUWAP will serve both the MCWD Water Augmentation Program and Pure Water Monterey with 1,427 AFY water from sources other than groundwater within MCWD and up to 3,700 AFY to the Peninsula
32. Augmentation with recycled is intended to stop seawater intrusion. Wells can continue to be used rather than abandoned. Currently, the plan is to use Monterey One recycled water. We understand the injections wells were removed from the CIPs based on feedback from the Development Community.

Planning & Engineering Recommendations

33. MCWD should consider preparing new cost estimates to improve connection fee accuracy for projects with cost estimates more than 10-years old.
34. Conduct or research recent demographic information that is available to use a more accurate estimate than 3%.
35. Upon review of a detailed study of water use in the Monterey Peninsula and other nearby water agencies to develop estimates, it is apparent more granularity can be done to develop more precise equivalent dwelling unit consumptions.

Financial

Planning Assumptions

36. It appears that the costs for CIPs should be lower because some of the units identified as future use have already been built. It is therefore essential to identify the basis for estimating existing and future users and how future users have been determined. Ongoing development is moving forward, however Builders are generally unsure of their proportionate Capacity Fees will be determined for works in progress.
37. The current total cost of the Water, Sewer and Recycled Water CIP at build-out has been estimated at \$178 million. The near-term CIP projects (including some interest from existing loans) is \$136 million.
38. Did the alternative water sources discussed in the Water Master Plan get included in the costs for water service infrastructure requirements to service potential future development?
39. Current calculation is an average based on total buildout.
40. Water system existing users share \$29.3 million of the costs and \$44.0 million to be shared by future users.
41. Methodology overview looks like future users are carrying the burden. Who is paying debt?
42. Why is Marina recycled water use less than Ord? -It is mostly going to be development in the Ord Community.

43. Over \$10,000 has been allocated for water augmentation.

Where is the Money?

44. BIA requests details to identify how much FORA should be collecting and providing to MCWD for the RUWAP. It appears that money has not been provided to MCWD and may have been spent on other things. It appears that the FORA and MCWD are doubling fees for water augmentation.
45. Aren't the current EDUs paying for a portion of the future infrastructure?
46. MCWD has a three-party agreement with FORA, Marina and M1Water to receive only \$4.3M as committed to date for the groundwater barrier project. What funds have been set aside by FORA for the Water Augmentation Project?
47. Because of FORA's dissolution, no future funding from FORA has been assumed in new CIP calculations. FORA's obligation of \$3,491 is an estimate of what is being charged for water augmentation at full build-out.

FORA and the Fee Increase

48. On January 18, 2002, FORA adopted Resolution No. 02-1 establishing the Fort Ord Reuse authority Base-wide Community Facilities District (CFD) to collect fees for, among other impacts caused by development, 2,400 AFY of water augmentation to support the BRP; and,
49. Important relationships between FORA and MCWD (such as the three-party agreement placing a limit on FORA's cost participation in the recycled water project and the collection and disbursement of fees for the CIP) have yet to be defined within the context of the dissolution of FORA.
50. If FORA still states that they are collecting fees for water they should provide the associated funds to MCWD.
51. Additionally, it is unclear to us who will be responsible for the management of the housing cap after FORA is gone.

Fees

52. What is the basis for using such high contingency fees (+50 to -30%)
53. Current Sewer Capacity Fees are \$6,859 Marina and \$11,332 for Ord.
54. Where is the draft report that formed the basis for CFD Apportionment in July and how does it relate to the proposed Capacity Fees?
55. What was the response to seeing the capital increase to four times the current development fees? Were lower cost alternatives or alternative approaches sought?

Financial Recommendations

56. Recommend that MCWD get money from FORA before they are dissolved.
57. The money collected by FORA should be put in different restricted funds rather than comingled in one account.
58. Identify other non-MCWD Projects that the service area will need to absorb after FORA sunsets?
59. Identify costs for future buildout in future service areas.
60. Identify EDU fees upfront for facilities other than one single family home to present a more transparent fee structure to the building community.

Legal

61. Water and sewer charges cannot exceed the reasonable cost of providing service unless approved as a special tax by two-thirds of the electorate.
62. It is essential that the proposed Capacity Fee be prepared in strict compliance with the requirements of the Mitigation Fee Act. To that end, a nexus study is required to be made in written form and must be updated whenever new fees are imposed, or existing fees are increased. The report must establish the relationship between the amount of any capital facilities fee and the use for which it is collected.
 - a. Has MCWD made the use of Best Information Available; that is defensible; and, equitable to existing & future users?
63. Apparently, holding an approved Tentative Map and development agreement does not render a developer immune from Capacity Fee increases. The legality of this assertion should be verified for its impact on fully entitled projects.

Recommendations on Legal Issues

64. Identify if MCWD made a determination as to the effects of the proposed Capacity Fee with respect to Marina's housing needs as established in the housing element of the General Plan and the FORA Base Reuse Plan.
65. Recommend that MCWD develops a nexus study for any Capacity Fee increases moving forward.

Fee Methodology

The following are the key components to the increase in system Capacity Fees:

66. The increased costs for the Master Planned Facilities (potable water, sewer and recycled water). The methodology that is now being used includes "depreciation indexing" using ENR values.
67. Contingency factors for unknowns have increased capital costs by 185%.
68. MCWD has changed methods of analysis from the use of Average Cost to Hybrid Method.

Recommendations on Fee Methodology

69. BIA has requested analysis of the above and resulting impacts on fees from MCWD but these requests have not received response. Much of the methodology has been used in previous Capacity Fee studies. Apparently, MCWD continued the use of these items rather than making prudent adjustments to them.
70. It has not been made clear why the Hybrid cost methodology is better than the Average Cost method of analysis.



Contra Costa Centre Transit Village
1350 Treat Blvd., Suite 140
Walnut Creek, CA 94597
TRANSMITTED VIA EMAIL

WATER/WASTEWATER OVERSIGHT COMMITTEE (WWOC)
Brian McMinn, Co-Chair
FORT ORD REUSE AUTHORITY
920 2nd Avenue, Suite A, Marina CA 93933 | FORA CIC

November 20, 2019

RE: December 2, 2019 WWOC Agenda: Consideration of Extension to Recommendation of the Draft Capacity Fees Report.

Dear Chair McMinn and Members of the WWOC,

BIA Bay Area (BIA) respectfully requests that the WWOC defer action at its December 2, 2019 meeting on the Draft Capacity Fees Report. Continuation of this item is requested to permit sufficient time for BIA member builders in the Fort Ord Reuse Area and MCWD Staff to work together on solutions to resolve concerns, discrepancies and differences in the Draft Capacity Fee Study. Also, due to the Thanksgiving Holiday, the hastily scheduled special WWOC meeting is highly inconvenient for many of the BIA member builders in the Ord Community, and, judging from committee remarks at the October meeting, the December 2nd special meeting is inconvenient for WWOC members as well.

BIA continues to be highly concerned that the Draft Capacity Fee Study endorses massive increases in connection fees for new homes and businesses in the Ord Community. BIA urges the WWOC to

- 1) recognize the severe impact of these massive fee increases and acknowledge the need for a much more detailed review of the Draft Capacity Fee Study to validate fee methodology, existing facility costs, growth projections, water demand, etc., and
- 2) to ask MCWD to return with reductions in the maximum justifiable fee calculations.

BIA is submitting a Memorandum of Comments and Concerns regarding the Draft Capacity Fee Study for Water, Wastewater, and Recycled Water. This memorandum details many of the concerns that BIA member builders continue to express regarding the Draft Capacity Fee Study.

Early Outreach to Ord Builders Should Have Been Planned from the Beginning

After the long process of drafting water, recycled water and wastewater master plans, MCWD finally conducted two stakeholder workshops (September 5, 2019 and again on October 10, 2019). A third workshop, requested by BIA and the WWOC, was held on November 8, 2019 and focused on the Draft Water, Wastewater, and Recycled Water Master Plans. During these workshops, BIA member builders raised numerous questions and concerns regarding the Draft Master Plans and the Draft Capacity Fee Study.

While BIA has appreciated that MCWD offered these opportunities to provide questions, concerns, and recommendations to the Master Plans and Fee Study, there's been frustration that the Agency failed to adequately outreach to home builders and commercial developers during the process of compiling the Master Plans and the Draft Capacity Fee Study.

MCWD should have conducted long range outreach and collaboration with the developers that were building homes, paying fees and installing improvements during the drafting of the Master Plans and Fee Study. If this outreach had occurred, it is likely BIA and MCWD would be able to present a unified recommendation to the WWOC at this time. However, several builders have commented that although they were in nearly daily contact with MCWD as they have constructed homes during the last three years, no one at MCWD mentioned the Draft Master Plans and Draft Capacity Fee process.

Among the items that BIA has stated and continues to question:

- Contingencies: All projects in all three Master Plans are burdened with a construction contingency allowance of 48.5% plus 25% project related contingency allowances, an accumulated contingency of 85%. When asked to justify these extremely high contingency allowances, MCWD replied:
“Based on previous project experience, MCWD maintains these contingencies are consistent with previous planning efforts.”
- Collaboration: Stronger communication, coordination and collaboration with the building community is needed as the FORA transition proceeds. As of yet BIA has not seen commitment from FORA on this issue.
- Assumptions: Future development and pace of growth are out of step with neighboring agencies such as AMBAG which projects a much lower growth rate for the region over a similar time frame.
- Alternative project deliveries such as design/build that would offer cost savings are not considered.
- Fee methodology: The recommendation by Bartle Wells to abandon the Average Cost methodology in favor of the Hybrid Buy In methodology is a significant contributor to the huge escalation in capacity fees.

Fee increases of the magnitude of the proposed MCWD capacity fee increase have major reverberations throughout the development process. This proposal to add thousands of dollars to the cost of residential units should not be enacted without strong outreach and should be balanced vis-a'-vis project feasibility.

Thank you for your attention to this issue. We look forward to working with you over the next several months to reach consensus on fair study and application of fee levels.

Yours truly,

Dennis Martin
BIA Bay Area

No.	Report Section/Issue	Report Statement	BIA Review Question/Concern	Response
Comments from BIA received September 20, 2019				
1	Compliance with the requirements of the Mitigation Fee Act	"...the local agency shall determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed."	Has MCWD established the reasonable relationship of fee of the facilities to the developments?	Yes, a reasonable relationship between capacity fees and public facilities has been created through a hybrid buy-in plus marginal future fee calculation. Total assets and shared capital costs are divided among current and future users, while future capital costs are divided among future users only. (BWA)
1A		(g) A fee shall not include the costs attributable to existing deficiencies in public facilities, but may include the costs attributable to the increased demand for public facilities reasonably related to the development project in order to (1) refurbish existing facilities to maintain the existing level of service or (2) achieve an adopted level of service that is consistent with the general plan.	Has MCWD presented the costs attributed to existing deficiencies?	Yes, this is included in respective Master Plan CIPs and in accordance with AB1600. (AKEL)
1B		(a) Any local agency which levies a fee subject to Section 66001 may adopt a capital improvement plan, which shall indicate the approximate location, size, time of availability, and estimates of cost for all	Is MCWD's fee estimate based on a cost for all facilities/improvements?	Yes, the capacity fee study accounts for the proportionate share of all improvements to be financed with the fees. (BWA)

		<i>facilities or improvements</i> to be financed with the fees.		
1C			Has a Value Engineering Study been completed and have the results been included in the reporting and or made available for public review?	No, costs are based on typical master planning level unit costs, and in accordance with the Association for the Advancement of Cost Engineering Order of Magnitude classification. (AKEL)
1D			Is there a detailed Engineers Cost Estimate for each of the CIP's and have they been made available for public review?	No, costs are based on typical master planning level unit costs, and in accordance with the Association for the Advancement of Cost Engineering Order of Magnitude classification. (AKEL)
1E			Have the following project delivery methods been considered as a way of reducing project costs: Design-Build; Construction Manager at Risk; Public-Private Partnerships; or are the cost estimates based on the use of traditional Design-Bid-Build methods of project delivery?	No, these costs are based on typical design-bid-build. Improvements that may be associated with a single development have been removed from the Capacity Fees, though the improvements remain in the CIP as a placeholder for MCWD staff. (AKEL)
2	MCWD's Annexation of Former Fort Ord into MCWD's Service Area	This year MCWD, through LAFCO was able to secure the annexation of the Former Fort Ord into its Service area.	It seems reasonable that if not already completed, MCWD will need to go through an election to select a new Board member.	No, Board members are elected at-large for four-year terms staggered on even years. Two members are elected in one election and 3 in the next. (MCWD)
2A			Is it fair to the residents on Former Fort Ord lands to have new capacity fees established ahead of seating a local representative?	Elections are at large. Board members represent the voters at large. (MCWD)
2B			Could the future makeup of MCWD's Board potentially impact the process and outcome for approving new utility fees?	The future MCWD Board makeup could impact future fees when revisited. (MCWD)
2C			Wouldn't it be prudent for the fee increase to wait until the entire MCWD service area	Service area residents have MCWD Board representation because they represent the

			residents had Board representation and before approval of new fees on those lands would be imposed?	voters at large. They also have FORA Board Representation at least through June 30, 2020. (MCWD)
3	Section 1 Introduction, Background, & Government Code	District operations are further split between water and sewer, resulting in four cost centers, Marina Water, Marina Sewer, Ord Water and Ord Sewer.	Therefore, there are no cost centers for Marina Recycled Water and Ord Recycled Water	The Recycled Water Master Plan CIP is included in the Water Cost Center Portfolio. The use of recycled water offsets groundwater usage thereby remaining all one water supply. (MCWD)
4	Section 2.1 Current Capacity Fees	“Recycled Water infrastructure and capital are included in the water capacity fee calculation.”	What is the basis for not having cost centers for Marina Recycled Water & Ord Recycled Water?	The Recycled Water Master Plan CIP is included in the Water Cost Center Portfolio. The use of recycled water offsets groundwater usage thereby remaining all one water supply. (MCWD)
4A	Section 2.1 Current Capacity Fees	Table 1 includes a footnote that Marina and Ord Water and Wastewater capacity fees do not include regional wastewater fees.	How / where are the regional wastewater fees accounted for?	“Regional wastewater fees” refers to the Monterey One Water Fee of \$3,507 per EDU. They are reflected in the survey but are not part of MCWD’s capacity fee calculation. (BWA)
4B			Are they in addition to the capacity fees shown in Table 1?	Yes, Marina and Ord customers are subject to the Monterey One Water Fee as well. A credit is currently available to Ord developers for the Monterey One Water Fee. (BWA)
5A	2.1.1 EDU Calculation Methodology	The Existing Assigned Water Use rate is assigned 0.33 AFY regardless of the type of residence (single family, multiple dwelling, condominium, trailer spaces and mobile homes).	What is the basis for the Proposed Assigned Water Use Rate by AFY? What is the basis for estimating water demands for residences that are larger and smaller than a single-family unit?	The MCWD water use factors in Appendix C have not been updated in many years. BWA surveyed the water use factors used by other coastal California water agencies and a 2011 consultant’s analysis for MPWMD to see how MCWD’s Appendix C compares. The other coastal water agencies included Soquel Creek Water District (near Santa Cruz), the City of Santa Barbara, Monterey Peninsula Water Management District (MPWMD), Cal-American Water District – Monterey and a 2011 study by A&N Technical Services for MPWMD. (BWA)

5B		Because the precise number of EDUs for each zone in the District was not available at the time of this study, BWA estimated EDUs based on an AKEL Engineering and District Updated estimation of current average demand at 0.28AF/Y/EDU.	Why is precise number of EDUs for each zone in the District not available?	EDU estimates for Marina and Ord were updated using a calculation factoring in water and wastewater demand (AKEL) and water use estimates (BWA/MCWD). Previous EDU estimates were based on outdated information. This will be clarified in the final Capacity Fee Study.
5C			<p>Reviewing MCWDs EDU estimates: $(0.28AF/Y/EDU) \times (325,851 \text{ gpd}/AF) / 365 \text{ days}/Y = 250 \text{ gpd}/EDU$.</p> <p>Using the Districts typical household population of 2.8 persons per unit results in an estimate of 90 gpcd. The state indoor water use standard is 55 gpcd. 90 gpcd INTERIOR water demand - 63 gpcd sewer flow leaves 27 gpd for all EXTERIOR demand or 0.03 AFY/EDU. Is that sufficient?</p>	The calculation of 0.03 AFY appears to have neglected to account for population (2.8 people per EDU). Accordingly, the outdoor water use is calculated at 0.084 AFY/EDU. 30% of total water use attributed to outdoor uses is consistent with current MCWD trends. (AKEL)
6	3.4 Current and projected customers to Near-Terms	The report anticipates that 79% of Ord's growth will occur in the next 16 years and only 17% of growth in Marina in that same near-term timeframe?	What is the basis for the growth projections used? Are they consistent with actual growth experienced to date?	Growth estimates are based on the City of Marina General Plan and the FORA CIP development limits. (AKEL)
6A			MCWD's 2005 UWMP anticipated growth of approximately 40% over a 20-year period that was not realized.	The Master Plans referenced the 2015 UWMP, however, growth is based on the buildout of the Central Marina cost center, in accordance with the City of Marina General Plan, and the FORA CIP development limits. (AKEL)
7	3.6 Estimated Plumbing Fixture Units per EDU	Table 8 identifies Toilets with 1.28 gallons per flush at a rate of 3 DFU per toilet.	MCWDs specification and the CPC identifies that new toilets should have an effective flush volume not to exceed 1.28 gallons per flush. The District should cross check the estimate of fixture units against its specifications to determine if the numbers of fixture units would be reduced on this basis.	This is a typo that will be revised in the final Capacity Fee Study. A 1.28 gallon toilet is 3 DFU. Sections 3.6 and 3.7 to be updated accordingly. (BWA)

8	Landscape Water Use	Fees are collected based on an EDU conversion factor instead of a cost per gallon	The lower water use per EDU proposed will increase this irrigation conversion amount, and thus increase the fees collected.	Updated landscape irrigation factors were requested by the development community and BWA recommended a lowered amount. This would lower the EDU assessment and result in a lower fee. (BWA)
8A		Landscape irrigation with potable water is not modeled for system capacity as its use is off peak and fire demand is much greater.	Capacity fees should take this into consideration and not double dip on landscape capacity fees.	Please clarify – what report statement is this referring to?
8B		Equivalent Landscape EDUs are not accounted for in the financial analysis, even though the District would be collecting these fees.	Landscape EDUs should either be counted as revenue for the District to lower other EDU fees, or they should not be collected at all.	Landscape demand is factored into total water demand and the water capacity fees. (BWA)
8C			Why not separate out recycled water fees (paid for with new irrigation meter connections) instead of lumping them in with potable water?	The use of recycled water offsets groundwater usage thereby remaining all one water supply. (MCWD)
8D			How will monthly charges for recycled water compare to potable water?	The anticipation is that the recycled rate will be the same as the potable water rate. (MCWD)
9	Table 5 of the Capacity Fee Study	The average existing and near-term wastewater EDUs are more than the average water EDUs.	These numbers should be checked as it would seem that wastewater EDUs should be less than water EDUs.	The total existing and near-term water EDUs (12,962 and 18,842) are higher than the existing and near-term wastewater EDUs (11,494 and 16,494, respectively). (BWA)
9A			How are EDUs accounted for with regard to the estimated rates to be collected? Are they included in the estimated growth?	Yes, growth EDUs were used to estimate development. Development-related costs are divided among these users. (BWA)
10	Equivalent Dwelling Unit (EDU)		If the District has acknowledged that different housing types use different amounts of water, will different EDU types pay different fees?	Yes. Different housing types will have a different water EDU assessment based on the determined water use for that housing type. See Appendix C. (BWA)
10A			Sewer fees should be scaled in a similar fashion to the different water EDUs to account for a more accurate representation of sewer generation based on house size and use types.	Sewer EDUs are estimated based on number of fixture units and the California Plumbing Code. (MCWD)

10B			EDUs seem appropriate for budget estimates on a master plan level, but given the high dollar amounts at stake for individual fees it seems more appropriate to charge actual capacity fees on a fixture unit basis (for sewer and water) so that they are more fairly applied.	Water fixture units are helpful in determining flow rate (for pipe and meter sizing) but not for annual volume of use (for annual capacity). Drainage fixture units adequately describes the capability for sanitary sewer. (MCWD)
10C			Water use factors should be included to account for university-type buildings such as classrooms and dormitories.	The proposed update to Appendix C includes water use factors for group housing (dormitories). Classrooms are proposed to be classified as Office (government, education). (BWA)
11		Many near-term CIP projects are adjacent to long-term build-out areas (such as Eucalyptus Road and General Jim Moore Blvd). Capacity Fee	Calculations for near-term CIP projects that are adjacent to long-term development areas should consider the larger population that will utilize those projects as the costs would otherwise be disproportionately covered by near-term development. Costs for long-term CIP projects that expand the network beyond the current near-term development area would obviously be covered by a future fee, but there is a distinct benefit that some near-term CIP projects are providing future long-term development.	The near-term CIP has appropriately sized the projects for near-term development only. The water and sewer master plans include a separate improvement schedule noting the buildout improvement size requirement and the appropriate cost sharing, as adjusted for long-term growth. Should MCWD choose to construct the long-term improvement recommendation, an oversizing agreement would be used. (AKEL)
12	Water Demand Factors	MCWD has developed Water Demand Factors that are used in their Urban Water Management Plan. Additionally, MCWD has developed a set of Proposed Assigned Water Use Rate By Acre-Ft.	The 2015 UWMP Update Table 3.4 presents "Water Demand Factors Applied in the UWMP. Many of these unit values are the same as the ones proposed. However, in residential and several non-residential categories, the unit values are different than what has been proposed in the Capacity Fee Study. Why aren't these unit demands proposing the same value as what is in the UWMP?	The 2015 Urban Water Management Plan did not consider other factors. The proposed update to water use factors represent the most up to date information available. (BWA)

12A			What unit values will be used for future Water Supply Assessments and Written Verification of Supply Availability?	The proposed water use factors would have to be adopted by the District Board of Directors before they can be used in future water supply assessments. (MCWD)
13	Population Projections	The District is expecting significant growth to near-term buildout in 2035 per the projections in the latest Sewer Master Plan. BWA evaluated several methodologies for customer growth and concluded that the most reasonable methodology to apply is the projected change in average day demand from 2019 to near-term buildout, representing 24% growth in Marina and 79% growth in Ord between now and 2035.	Please describe the procedures used to develop 24% and 79% growth in Marina and Ord respectively. Have the growth projections been corroborated with the County, US Census Bureau, or other agencies for accuracy?	The growth projections are based on adopted policy documents for the City of Marina and Fort Ord Reuse Authority. (AKEL)
Additional Comments from Stakeholder Meeting on October 10, 2019				
14			Why are all residential types and hotel rooms charged one EDU for sewer? They should be charged according to the number of fixture units (a fraction of the typical SFR like proposed for water).	MCWD is planning to amend the water code as follows: Plumbing Code for non-residential, minimum of 1 EDU (hotels are included in Non-Residential) SF Residential: 1 EDU MF Residential: 0.8 EDU per unit with 1 EDU minimum
15			One of the attendees claimed to be told at a Council Meeting that The City of Marina will be collecting the CFD fee for water augmentation on MCWD's behalf when FORA ceases to exist.	At this time, no other agency has been authorized to collect fees for water augmentation on behalf of MCWD, at the sunset of FORA's operations, currently planned for June 30, 2020.
16			The construction contingency allowance of 48.5% and project related cost allowance of 25% is over inflated. MCWD should use	Based on previous project experience, MCWD maintains these contingencies and consistent with previous planning efforts.

			recent real project data to develop detailed estimates.	
17			Developers shouldn't have to pay FORA CFD for water supply and then pay MCWD for water supply again. That's double charging.	MCWD does not plan to implement the Capacity Fees until July 1, 2020, and at the sunset of FORA. Developers did not pay FORA CFD fees for Water Supply Augmentation other than the \$4.3 million. Developers have paid FORA CFD fees for those projects that were completed as part of the FORA CIP, per their decision.
18			If MCWD settled for \$4.3 Million on recycled water from FORA developers, shouldn't have to pay. Collect it from the ratepayers.	\$4.3 million is the minimum amount MCWD will receive for Water Augmentation from FORA, and is thus not a Settlement Agreement. CFD money paid to date was allocated based on FORA project priorities, and is independent of MCWD project readiness.
19			Does Injection Barrier really need to be in the Capacity fee? Everyone (ratepayers benefit from it).	It is needed to ensure there is sufficient water supply within the near-term planning horizon. However, MCWD is agreeable to updating its fees and rates following the GSP adoption in January 2022.
20			Capacity fees should not have to pay the for the replacement cost of the existing system infrastructure. MCWD is just inflating the Carollo figure of \$24M to \$36 M to make a profit.	The asset value is based on the 2018 CAFR and includes replacement cost for each asset less depreciation, water rights, easements, and any capital contributions. This value has been escalated to 2019 based on the change in the ENR CCI. The buy-in portion of the Capacity Fee represents new growth's benefit share of the existing system assets.
21			BIA would like to extend an offer to have a technical committee review of the masterplans with Whitson, C3, RJA and Brezack with the MCWD and master planning consultants.	The Master Plans were developed following a competitive bidding process, with MCWD selecting a qualified engineering firm to update these master plans. Akel Engineering Group is a specialty firm, with staff having a combined 55 years of master planning experience, and having worked on over 450 master plans throughout the United States.

				Nevertheless, MCWD has also requested other engineering firms to review the draft master plans in a technical capacity, and their comments were reflected in the final reports.
22			Rates should be updated concurrent with the Capacity Fees. These documents should be adjusted at the same time.	The rate study was last updated in 2018 and has no impact on these Capacity Fees. The rates are typically updated every five years.
23			Why is MCWD not using updated water use information based on the new development standards and reduced water use?	<p>This response was previously provided on October 10, 2019, and pertaining to item 5A: The MCWD water use factors in Appendix C have not been updated in many years. <i>BWA surveyed the water use factors used by other coastal California water agencies and a 2011 consultant's analysis for MPWMD to see how MCWD's Appendix C compares. The other coastal water agencies included Soquel Creek Water District (near Santa Cruz), the City of Santa Barbara, Monterey Peninsula Water Management District (MPWMD), Cal-American Water District – Monterey and a 2011 study by A&N Technical Services for MPWMD. (BWA)</i></p> <p>As a supplement to this response, MCWD performed an analysis and as a part of this master planning effort that evaluated existing water meter records based on water meter size and consumption. This study, in conjunction with the results of the Coastal Community Survey, justified the reduction from 0.33 AFY/EDU to 0.28 AFY/EDU.</p>
Additional Comments from WWOC Meeting on October 24, 2019				
24			The contingency factor represents over \$27 mil out of \$167 million in capital projects. This represents no benefit to the development community. Will refunds be available if project costs are lower than expected?	No, capacity fee refunds are not available. The contingency factor is a part of the total project cost and MCWD can verify that the contingency amount is reasonable. By the same token, project costs that come in higher

				than expected will not face retroactive capacity fee increases.
25			What is the source of the 3% population growth projection across the 2035 near term horizon?	The population growth projection is based on consideration of the 2015 Urban Water Management Plan population and demographic factors as well as the FORA development projections.
26			The groundwater injection barrier project represents existing deficiencies within the system and should not be attributed to development.	The groundwater injection barrier project is no longer included in the capacity fee calculation and will be revisited as part of the Groundwater Sustainability Plan in 2022.
27			Are fixture units an appropriate measure for sewer capacity fee calculations? Has MCWD considered using flow monitoring?	Fixture units are an accepted method for calculating sewer capacity fees. Flow monitoring would not be practical for most customers to implement.
28			Is it possible to phase in capacity fees over time?	No – the proposed capacity fees recover funding needed for the developer share of existing assets and project costs.
29			What are the changes between the prior capacity fee report and the current report?	Changes between the prior draft capacity fee report and the latest update are summarized in the updated capacity fee report.
Additional Comments from Master Plan Technical Review Meeting on November 8, 2019				
30			It seems prudent to review and confirm the master plan assumptions that lead to the demand projections by walking through base assumptions with engineering point of view to understand how the Master Plan was developed and what is typically looked for in the Master Plans.	Noted.
31			Identify demand and are facilities the correct size and is the timing correct. This is more fundamental than the contingency. What is the size of the facility and what is needed for development to cast a validity of the master Plan?	Noted.
32			Review Tables 2.1, 2.2, and 5.2 and Figures 2.2 and 2.3 (water master plan) for consistency to project entitlements and the	Tables 2.1 and 2.2 are based on the FORA CIP for near-term growth.

			projections used in FORA CIP planning and local agency general plans	Table 5.2 is based on this growth and the MP unit factors. Figure 2.2 is based on a review of aerial imagery, and parcel level QA/QC by MCWD staff and Schaaf and Wheeler. Figure 2.3 is based on relevant General Planning documents and the FORA CIP.
33			Anything that is over-stated or has timing that is too aggressive should be flagged	The timing in the master plan is subject to development timing.
34			The back-up data for the master plan and CIP project list has not been included – summary tables only are provided without detailed system data from the model	Project sheets were included in the final draft master plans and detail the improvement recommendations. These sheets show master plan level detail.
35			There is not enough information provided in the master plans to fully evaluate how they arrived at the summary results and stated projects. Looking back at previous master plans there were much more detailed explanations of each CIP project, so it was clear on the purpose.	Same response as Item 5.
36			MCWD should provide a summary explanation of all the new CIP projects and how they differ from the previous master plan. Summary should include a detailed explanation of why the project is needed and what the triggers were.	Same response as Item 5.
37			After this summary is provided, if we are not satisfied with the explanations, we could request that the system model outputs be provided for a closer review.	Same response as Item 5.
38			The proposed rate study should be compared to the last study (2013?) to evaluate the changes in assumptions	This objective of this meeting is to focus on the technical aspect of the master plans.
39			A review of unit cost estimates based on district provided recent project bids should occur to challenge the high inflators that are used in the estimates.	Akel was provided recent project costs to refine the unit costs. Unit costs were reviewed and approved by MCWD and Schaaf and Wheeler staff.

40			<p>As stated previously, it would seem that no new district rates should be established until the close-out with FORA is complete and payment for water supply mitigation is settled as it appears that a large portion of the increased costs have to do with this</p>	<p>Response addressed in “Additional Comments from Stakeholder Meeting on October 10, 2019” item 17, and as follows: <i>MCWD does not plan to implement the Capacity Fees until July 1, 2020, and at the sunset of FORA. Developers did not pay FORA CFD fees for Water Supply Augmentation other than the \$4.3 million. Developers have paid FORA CFD fees for those projects that were completed as part of the FORA CIP, per their decision.</i></p>
41			<p>Note that the FORA presentation forwarded earlier today included \$17M for MCWD</p>	<p>This objective of this meeting is to focus on the technical aspect of the master plans. FORA has a Capital Improvement Project listed costing \$17M. FORA has not designated funding for it. FORA has committed \$4.3M for the Regional Urban Water Augmentation Project.</p>
42			<p>Note that early Fort Ord MCWD customers have a surcharge on their monthly bills and I do not believe there is an end date for this payment</p>	<p>This objective of this meeting is to focus on the technical aspect of the master plans.</p>
43			<p>Campustown units have been undercounted. 1,485 units are planned. The master plan used 388 housing units and the actual number is 1,485 units. This is a big difference, and the Master Plans need to reflect the actual anticipated units analyzed in the project’s EIR.</p>	<p>Master Plans are typically based on approved General Plans and their associated amendments. The additional units will require their own water supply. If Campustown is approved as a General Plan amendment, the Master Plans can be amended accordingly.</p>
44			<p>The growth is not 3% but the MCWD choose to use 3%. What would the impact to the fee be for lower growth?</p>	<p>The capacity improvements are linked to the land acreages they serve and therefore independent of annual population growth rates. The population growth rates included in this master plan are intended to estimate the</p>

				buildout horizon (assuming that the FORA job cap is met).
45			Size of facilities, fewer people paying and should we be asking for a 2%. It should be based on reality and not an assumption. What is the most defensible and make the most sense? AMBAG has the most current numbers which is the most reasonable projection. MCWD should be comparing with AMBAG's Sustainability Strategy (2018) for growth projections. Growth rate is an area that we need to focus on for Friday.	Same response as Item 13.
46			Another area that has been brought up is the use of high contingency allowances. 25% ELA and 48% which adds up to an increase of 85% per project.	These markups have been reviewed and confirmed as reasonable by MCWD staff.
47			The analysis they did was a GIS based dynamic flow model with adequate samples was better than what they are projecting. If they find the highest elements of the estimate can't they work to get them down?	Question is not complete.
48			The contingency issue is clear and they need to be convinced to bring that down.	Same response as Item 17.
49			There has been quite a bit of work on CIPs that take away the some of the costs.	Correct.
50			Using a DB procurement will allow for cost control on CIP projects.	DB procurement is not reasonable or economical in a master planning effort, since improvements are phased over a period of 15 years and development conditions will likely modify the layout and corresponding design of the improvements.
51			What the agencies have done is taking the highest contingency for each project. When they hire a contractor the 25% can be dropped off.	Same response as Item 17.

52			Rebates and reimbursements.	MCWD considers reimbursement and oversizing agreements for the portion of developer installed improvements that benefit others.
53			Getting reimbursed for money that was not used. Builders should be reimbursed for items they build. Parts of system will be built by builders and they should be reimbursed.	Same response as Item 23.
54			MCWD is collecting fees every time an irrigation meter is installed. I don't think those fees are considered in their analysis even though they are receiving large fees. EDUs should include those fees. Where is this statement in the report? Questions 8a, 8b of the matrix.	Irrigation usage and the capacity fees derived from them are considered as EDUs in the masterplans and capacity fee study.
55			The amount of 12" water mains in the Campus Town Area seems excessive, and should be reviewed.	This is based on the 4,000 gpm industrial fire flow requirement, and as dictated by local fire agencies based on the current zoning. The associated in-tract improvements for Campus Town, O-P4 & O-P5, are not a part of capacity fees
56			Receive a project by project overview of each near-term CIP project so we can understand the assumptions used, timing triggers, system benefits provided (what need is the project accomplishing), and how the project relates to the previous CIP and Master Plan. Perhaps there are supplemental Project Description sheets for each CIP project available that would contain this type of information and can be a reference.	Same response as Item 5.
57			Specific CIP projects that I suspect could be trimmed down and that I would like to get a better understanding of include:	See responses to individual questions in the following (Items 28a-f)
57a			<ul style="list-style-type: none"> O-P2 – Sewer improvements in the vicinity of the East Garrison Lift Station 	This is related to East Garrison Phase 4 (per table 8.4). This is not in the near-term.

			(seems to be related to future growth only).	
57b			<ul style="list-style-type: none"> O-P15, O-P9, and O-P10 – Improvements along Eucalyptus Rd (I was under the impression that this was a future growth area). 	These improvements service Seaside East (O-P15 is not in the near-term CIP).
57c			<ul style="list-style-type: none"> O-P12 – Improvements along Parker Flats Road (Please confirm assumptions used are only for the Veterans Cemetery and the MPC Training Facility). Can it be shortened? 	This pipeline is intended to service the Veterans Cemetery and the MPC Facility. The portion serving MPC is a single project and will be removed from capacity fees.
57d			<ul style="list-style-type: none"> O-P18 – improvements along Inter-Garrison Rd (I was under the impression that the 1800’ length that is being constructed right now is all that is required before the new B-Zone tanks are constructed). 	This pipeline is intended to serve the future planned commercial development in east garrison.
57e			<ul style="list-style-type: none"> O-P25 – Improvements at UCMBEST East Campus (I was under the impression that this was a future growth area). 	UCMBEST is in the FORA CIP and therefore included in the near-term (Table 2.3)
58	Alternatives		The reports don’t explain how alternatives were evaluated.	Water Master Plan section 5.2 provides a description for near-term (FORA Base Reuse Plan) development and full buildout alternatives. Section 7.4 provides the description of two water system alternatives. The Sewer Master Plan provides a description for near-term development and full buildout alternatives utilizing the existing sewer collection system. Recycled Water Master Plan alternatives were evaluated in prior reports as mentioned in section 5.1 and were also evaluated with the Regional Urban Water Augmentation Project Environmental Impact Report.
59	Storage Analysis		Can the master plan use storage from higher elevation zones for lower storage zones?	No, that is not allowed to meet available storage requirements.

60			Can the Campus Town EDU's be included in the capacity fees?	Campus Town is included to the extent of the FORA development limits. The expanded development proposed in the draft EIR will require it's own water supply and FORA consistency determination.

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject:	Habitat Conservation Plan Update	
Meeting Date:	December 13, 2019	INFORMATION
Agenda Number:	7d	

RECOMMENDATION(S):

Receive a Fort Ord Multi-Species Habitat Conservation Plan ("HCP") report regarding United States Fish and Wildlife Service ("USFWS") HCP and California Department of Fish and Wildlife ("CDFW") 2081 Incidental Take Permit ("ITP") developments.

BACKGROUND:

To complete the reuse of former Fort Ord as envisioned in the 1997 Fort Ord Base Reuse Plan ("BRP"), the Fort Ord Reuse Authority ("FORA") must complete an HCP for "take" of Federally-listed species and a 2081 ITP for take of State-listed species as required by the Endangered Species Act ("ESA") and California Endangered Species Act ("CESA"), respectively. Since 1997, FORA pursued a base-wide HCP, and worked through many challenges in its pursuit, including impediments to conducting habitat restoration burns, State listing of California Tiger Salamander ("CTS"), changing CDFW and USFWS staffing, added funding requirements, and adjustments to HCP/2081 ITP requirements.

Funding the HCP program is based on building to a habitat endowment that would generate sufficient annual interest earnings to fund protection "in perpetuity," restoration and enhancement of habitat as mitigation for take, and management of the funds. The Cities, County, and other members of a future JPA, called the "Cooperative," would be issued Federal and State ITPs and oversee stay-ahead provisions so that species take would not exceed completed mitigations.

HCP preparation and environmental review has been paid for by FORA, using Community Facilities District ("CFD") special taxes collected from former Fort Ord development. FORA has paid several million dollars for the environmental review and document preparation so far as performed by consultants and staff. The required Endowments were originally projected to be \$9 million but are now expected to cost \$48 to \$66 million. By FORA sunset, about \$17 million is expected to be collected for this use. FORA has set 30% of CFD funds aside for HCP funding. Given the June 30, 2020 FORA sunset, permittees/jurisdictions must determine how to generate the remaining \$27 to \$45 million required to demonstrate to USFWS/CDFW ("Wildlife Agencies"). Wildlife Agencies provided strong input into the design of the HCP so that funding is scalable and must fund Habitat Management Area management and additional mitigations five percent ahead of impacts.

In late 2016, USFWS issued FORA a comment letter outlining nine general recommendations for changes to the draft Fort Ord HCP which resulted in major revisions to the species covered and the areas included as Federal permit "preserved" habitat. In July 2017, FORA distributed a second screen check draft HCP to Wildlife Agencies and Permittees, because the edits were significant. CDFW took eleven months to send in comments on the July 2017 HCP draft document. Many of CDFW staff comments brought up issues that were already resolved through discussions with prior CDFW staff. FORA Staff met with CDFW several times in 2018 to resolve the issues. FORA staff and consultants made edits in response to CDFW and the other stakeholders.

Because USFWS is the lead agency on the HCP under the National Environmental Policy Act ("NEPA"), their solicitor does the final screen check review before release of the Public Draft. Those editorial comments from the USFWS came in late November and early December of 2018. The comments included the request to remove the Implementing Agreement, updates to mitigation summaries in the Conservation Strategy chapter to better align with the current assessment framework, and a redraft of the Funding chapter to more explicitly depict BLM's role. USFWS completed the solicitor review of the HCP Environmental Impact Statement/ Environmental Impact Report ("EIS/EIR") in October 2019.

DISCUSSION:

At the March 2019 Board Meeting, staff presented an update to the HCP project timeline that forecasted a Spring 2019 Public Draft release date and an estimated completion for a Record of Decision ("ROD") in Fall, 2019. These dates were not achieved, and the schedule was again delayed addressing further solicitor and technical edits. The HCP EIS/EIR Public Draft was released on November 1, 2019 and the ROD is scheduled for March 2020. FORA Board Action being requested to be concurrent. Staff and the consultant team has been very responsive to agency information requests and document updates and is optimistic that these dates will be met.


FORA Staff, HCP and EIS/EIR Consultants, USFWS Staff, and CDFW Staff held a DRAFT HCP EIS/EIR Public Meeting from 6-8pm Wednesday, November 20, 2019 at the Soper Field Community Center in Seaside. Staff and consultants presented an overview of the HCP and DRAFT EIS/EIR. The team answered questions and directed stakeholders to submit written comments on the DRAFT EIS/EIR no later than 5:00pm December 16, 2019 to the mailing address, fax number, or email address listed below.

By Mail:
Stephen P. Henry, Field Supervisor
Ventura Fish and Wildlife Office
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B, Ventura, CA
93003

By Email:
fw8fortordhcp@fws.gov

By Fax:
805-644-3958 (please also send a physical copy of the correspondence to ensure receipt)

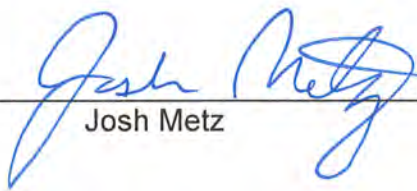
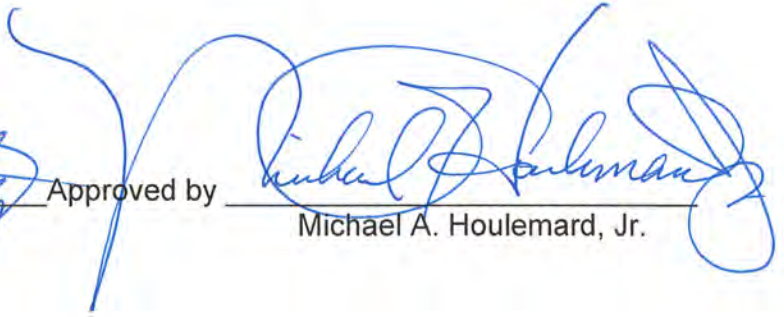
FISCAL IMPACT:

Reviewed by FORA Controller 

Staff and Authority Counsel time for this item is included in the approved annual budget.

COORDINATION:

Authority Counsel, Administrative Committee, ICF, Denise Duffy & Associates, Reimer Associates Consulting, Inc., CDFW, and USFWS.

Prepared by  Approved by 
Josh Metz Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject:	Environmental Services Cooperative Agreement/Base Realignment and Closure Headquarters Meeting Report	
Meeting Date:	December 13, 2019	INFORMATION/ACTION
Agenda Number:	7e	

RECOMMENDATION:

Receive a report on the November 18, 2019 FORA trip to Washington, D.C. to meet with U.S. Army ("Army") Base Realignment and Closure ("BRAC") Headquarters ("HQ") and U.S. Department of Defense ("DoD") Office of Economic Adjustment ("OEA") to discuss Environmental Services Cooperative Agreement ("ESCA") status and ESCA Successor requirements.

BACKGROUND:

In Spring 2005, the Army and the Fort Ord Reuse Authority ("FORA") entered into negotiations toward an Army-funded ESCA for removal of remnant Munitions and Explosives of Concern ("MEC") on 3,340 acres of the former Fort Ord. FORA and Army signed the ESCA agreement in early 2007. Under the ESCA terms, the Army awarded FORA approximately \$98 million to perform Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") MEC cleanup on those parcels. FORA also entered into the Administrative Order on Consent ("AOC") with U.S. Environmental Protection Agency ("EPA") and California Department of Toxic Substance Control ("DTSC") (collectively referred to as "Regulators") defining FORA's contractual conditions to complete the Army remediation obligations for the "ESCA parcels." FORA received ESCA parcel ownership after EPA approval and gubernatorial concurrence under a Finding of Suitability for Early Transfer in 2009.

To complete the ESCA and AOC obligations, FORA entered into a Remediation Services Agreement in 2007 by competitively selecting LFR Inc. (now Arcadis) to provide MEC remediation services. Arcadis remediation services are executed under a cost-cap insurance policy through American International Group assuring financial resources to complete the work and offer other protections for FORA and the jurisdictions. Arcadis ESCA contracting team included Westcliffe Engineers and Weston Solutions to provide Engineering, MEC Remediation and Public/Regulatory outreach services.

The ESCA requires FORA, acting as the Army's contractor, to address safety issues resulting from historic Fort Ord munitions training operations. Through the ESCA, FORA and the ESCA Remediation Program team have successfully addressed three (3) historic concerns: 1) yearly federal appropriation funding fluctuations that delayed Army cleanup and necessitated costly mobilization and demobilization expenses; 2) Regulator questions about protectiveness of previous actions for sensitive uses; and 3) the local jurisdiction, community and FORA's desire to reduce MEC property access risks.

The ESCA properties have received Records of Decision ("ROD") documenting the cleanup and controls required to protect public health and safety and Land Use Control Implementation Plan/Operation and Maintenance Plans ("LUCIP/OMP") implementing, operating and maintaining ROD controls tailored to individual site conditions and historic MEC use. The Final ESCA LUCIP/OMP documents were accepted by the Army and Regulators in February 2019. The staff of future property owners (California State University Monterey Bay, City of Del Rey Oaks, Monterey County, City of Monterey and Monterey Peninsula College) received LUCIP/OMP site-specific training workshops. The ESCA properties received the final remaining EPA Remedial Action Completion letter February 2019. EPA is currently outlining the requirements for a site-wide ESCA remedial completion and associated site-wide EPA Remedial Action Completion documents. ESCA property cannot be transferred to the jurisdictions and remain closed for public access until DTSC Covenants Restricting Use of Property amendments, Army deed modifications and issuance of the Army CERCLA Warrantees are completed. In September/November 2019, FORA requested the Army deed modifications and issuance of the Army CERCLA Warranty for the ESCA CSUMB Off-Campus, Monterey Peninsula College and Seaside properties.

Discussion/Report:

Army BRAC HQ Chief Thomas Lederle requested FORA meet with BRAC and U.S. Secretary of DoD OEA to discuss ESCA status and FORA Successor requirements. The City of Seaside, who has stepped up to be the Successor-in -Interest, sent Mayor Ian Oglesby, Councilmember Jon Wizard, City Manager Craig Malin, Assistant City Manager Leslie Milton and Assistant City Attorney Sheri Damon to attend.

On November 18, 2019, FORA and Seaside met with the Army BRAC HQ staff. Topics discussed:

- ESCA Grant Reporting to the U.S. Army Corps of Engineers (USACE)
- ESCA Financial Status
- ESCA Fieldwork and Document Status
- FORA ESCA Regulator/U.S. Army Interface
 - EPA Coordination
 - DTSC Coordination
 - Army HQ/Base Realignment/ USACE
- ESCA Successor Issues
 - FORA Transition/FORA Successor-In-Interest
 - Seaside – Proposed ESCA Successor
 - ESCA Long-Term Obligation Management Program
 - ESCA Pollution Legal Liability Insurance
 - ESCA Successor-in-Interest and Economic Development Conveyance (“EDC”)

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 both FORA and Seaside with guidance on the Army’s ESCA Successor requirements. The FORA/Seaside/BRAC HQ meeting notes with ESCA status and meeting/interaction/ discussion/follow-up are included as **Attachment A**.

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 are 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 and the OEA Local Redevelopment Authority designation as well as the ESCA successor issue.

FISCAL IMPACT:

Reviewed by FORA Controller 

The ESCA Grants Officer approved travel costs for two FORA Board members, the Executive Officer and the Senior Program Manager before the trip. The City of Seaside, as the proposed ESCA Successor, paid for its City Manager, Assistant City Manager and Assistant City Attorney to attend the meetings.

COORDINATION:

Administrative Committee; Executive Committee; Authority Counsel; Special Counsel, Arcadis; Westcliffe Engineering, Weston Solutions, U.S. Army; EPA; and DTSC.

Prepared by  Stan Cook Approved by  Michael A. Houlemard, Jr.

**BASE REALIGNMENT AND CLOSURE (BRAC) HEADQUARTERS (HQ) /
ENVIRONMENTAL SERVICES COOPERATIVE AGREEMENT (ESCA) MEETING**

Location: BRAC HQ, Washington, D.C.
Monday, November 18, 2019

9:00 A.M. – 12:00 P.M.

STATUS OF ESCA NOVEMBER 2019

*Meeting Summary
(Follows Meeting Agenda Format)*

1. BACKGROUND/ESCA STATUS

Grant Reporting to U.S. Army Corps of Engineers (USACE)

ESCA March 2019 Quarterly Report – *submitted Spring 2019*

ESCA June 2019 Quarterly Report – *submitted Nov. 1, 2019*

ESCA September 2019 Quarterly Report – *FORA preparing Form 270 for submittal to USACE*

Background

ESCA Quarterly Reports include information required by the Grants Officer and BRAC HQ to provide FORA with guidance in eligible ESCA work items. Reports also include Quarterly request for advances (see "Finances").

Meeting Interaction/Discussion/Follow-up

Stan Cook apprised Mr. Lederle and Army HQ of the status of ESCA Quarterly Reports to date.

Financial Status*

ESCA March 2019 Quarterly Report Form 270 – *submitted April 30, 2019 – Army paid September 2019*

ESCA June 2019 Quarterly Report – *submitted Nov. 1, 2019*

ESCA September 2019 Quarterly Report – *FORA preparing Form 270 for submittal to USACE*

Background: ESCA is currently using Army Contingent Funds from Mods 9, 10 and 11 that require invoicing Army six (6) months in advance. Without the Grants Officer having the Forms 270 requesting these funds, FORA do not have the funds in-house to pay for Arcadis invoices when they arrive.

Arcadis has changed bookkeeping programs in early 2019 which has caused company-wide problems producing invoices and invoicing delays.

Environmental Protection Agency (EPA) was notified that FORA is not authorized to pay regulatory reimbursement past December 31, 2019. EPA provided FORA with estimates for their reimbursement expenses to June 30, 2019, but will not invoice until later in 2019. FORA requested that EPA produce an invoice up to December 2019.

Department of Toxic Substances Control (DTSC) was notified that FORA is not authorized to pay regulatory reimbursement past December 31, 2019. FORA requested that EPA produce an invoice up to December 2019.

FORA has submitted and the Army received, a request for ESCA Army Contingent Funds from September to December 31, 2019.

Meeting Interaction/Discussion/Follow-up

Mr. Lederle was apprised of the status of EPA and DTSC invoicing to date and provided with an estimate of remaining regulatory oversight reimbursement cost anticipated to December 31, 2019. Mr. Lederle was briefed on the details concerning the ESCA legal description costs and which ESCA/Army documents were supported by the ESCA legal descriptions. Mr. Lederle agreed that the legal descriptions digital coordinate point-of-beginning enhancement costs were necessary to complete FORA and Army ESCA property transfer documents.

Fieldwork and Document Status

The Army authorized lump sum funding for the ESCA team biologist to perform the 2019 ESCA property habitat monitoring, now completed. The draft Annual ESCA Habitat Monitoring report is anticipated to be submitted to the Army in November 2019.

Parker Flats Group 1 Land Use Control Implementation Plan/Operation and Maintenance Plan (LUCIP/OMP) update incorporating Parker Flats Phase 1. Parker Flats Phase 1 LUCIP/OMP was designed and approved as an intermediate LUCIP/OMP to be updated as needed. The surrounding ESCA properties' LUCIP/OMPs underwent significant information and direction evolution for future land owners. This resulted in a discrepancy in information between Phase 1 and adjacent Phase 2 properties. To make ESCA LUCIP/OMPs consistent across ESCA properties, the Parker Flats LUCIP/OMP is being revised to incorporate Phase 1 and 2 properties. Final revised document currently out for Army and Regulatory review.

EPA, after reviewing Administrative Order on Consent (AOC) Chapter 17, determined that an EPA Site-Wide ESCA Certificate of Completion is required, as supported by a Site-Wide ESCA Completion Report.

DTSC released the California State University Monterey Bay (CSUMB) Covenants Restricting Use of Property (CRUP) as Final in 2018, the Seaside CRUP in October 2019. The Monterey Peninsula College (MPC) CRUP is ready to be finalized. The Monterey, Del Rey Oaks and Monterey County (County) CRUP are in the draft final stages.

FORA has requested the Army to issue Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Warrantees/Deed Amendments for CSUMB, Seaside and MPC ESCA properties. The Army is in the process of developing and circulating these documents for their Environmental Law Division (ELD), Office of General Counsel (OGC) approval and USACE execution.

Meeting Interaction/Discussion/Follow-up

Mr. Lederle was provided with the status of the above documents. Mr. Houlemard asked if all meeting participants to make these property transfer support documents/deeds/attachments a top priority until December 31, 2019. Participants received a list of remaining Fort Ord properties needing transfer and agreed to prioritize these property transfers during the biweekly Fort Ord Property Transfer telephone conferences. Meeting attendees from ELD and HQ will be added to the future Bi-weekly Fort Ord Property Transfer telephone conferences to aid processing coordination.

2. REGULATOR/U.S. ARMY INTERFACE

EPA Coordination*

Current ESCA Regulatory reimbursement funds are authorized for EPA to perform ESCA work until December 31, 2019. ESCA Regulatory reimbursement work may be required after this date. Currently, there is no Regulatory reimbursement funding identified through the 2020 to June 30, 2028 ESCA Long-Term Obligation (LTO) period.

EPA, after reviewing AOC Chapter 17, has determined that an EPA Site-Wide ESCA Certificate of Completion is required supported by a Site-Wide ESCA Completion Report. The ESCA team met with EPA to determine the format and content of a Site-Wide ESCA Completion Report. EPA asked that the Report be "summary-level" referencing the previous individual EPA Site Certificates of Completion. EPA requested and the ESCA team is currently developing a report outline for EPA to approve, before the report is drafted.

ESCA Successor future enforcement ... how will that be documented? Will the form be an AOC Amendment or Scope Adjustment, Letter Agreement, CRUP compliance or combination? It was generally agreed that the AOC Scope revision would likely be the best approach to avoid the lengthy processing time to secure an EPA HQ/Department of Justice approval of a substitute/new AOC.

Meeting Interaction/Discussion/Follow-up

Mr. Lederle was provided with a description of the limitations in ESCA Regulatory oversight funding and the limitations for FORA to release these funds for work by EPA and DTSC after December 31, 2019. Mr. Lederle will investigate his options for ESCA Regulatory oversight costs after January 1, 2020 and share that information with FORA.

CA Department of Toxic Substance Control (DTSC) Relationship*

Current ESCA Regulatory Reimbursement funds are authorized for DTSC to perform ESCA work until December 31, 2019. ESCA Regulatory reimbursement work may be required after this date. Currently, there is no Regulatory reimbursement funding identified through the 2020 to June 30, 2028 ESCA LTO period.

In March 2019, during DTSC's review of the ESCA CRUP amendments they required map coordinates for the CRUP Legal Description Points of Beginning. This required engaging a licensed land surveyor and agreement by DTSC on the form that this information would be presented. DTSC initially requested the Legal Descriptions have the coordinates added which would have required recreating all ESCA Legal Descriptions. Instead, ESCA team and surveyor proposed that the legal descriptions be summarized in the CRUP in a table which was reviewed and accepted by DTSC. This was agreed upon as a reasonable approach.

As noted above in "Documents," DTSC finalized and released the California State University Monterey Bay (CSUMB) in 2018. The Seaside CRUP was finalized in October 2019. The MPC CRUP is ready to be finalized. The Monterey, Del Rey Oaks and County CRUP are in the draft final stages.

Meeting Interaction/Discussion/Follow-up

Mr. Lederle was provided with a description of the limitations in ESCA Regulatory oversight funding and the limitations for FORA to release these funds for work by EPA and DTSC after December 31, 2019. Mr. Lederle will investigate his options for ESCA Regulatory oversight costs after January 1, 2020 and share that information with FORA.

Army Headquarters/Base Realignment/ U.S. Army Corps of Engineers (USACE)

The Army gave CSUMB and Seaside the Final CRUP for their use. FORA requested that the Army issue CERCLA Warrantees/Deed Amendments for CSUMB, Seaside and MPC ESCA properties. The Army is in the process of developing and circulating these documents for their ELD, OGC approval and USACE execution.

Should the Army and the ESCA Successor amend the existing ESCA or craft a new ESCA?

Meeting Interaction/Discussion/Follow-up

Mr. Steinberg provided Mr. Lederle with options to consider for the ESCA Successor to enter into an agreement with the Army.

3. ESCA SUCCESSOR ISSUES**FORA Transition/FORA Successor-In-Interest (Successor)**

FORA will cease to exist June 30, 2020 (8 months away). The current FORA Executive Officer will retire December 2019. The FORA Board adopted the 2018 FORA Transition Plan and is in the process of transitioning their resources and responsibilities to the Fort Ord Jurisdictions as FORA's Successor through "Implementing Agreements." The FORA Board requested an Implementing Agreement with the City of Seaside that focused only on the transition of ESCA Responsibilities to Seaside as the proposed FORA ESCA Successor.

FORA must notify EPA of the transition to an ESCA Successor 120 days before FORA terminates in June 30, 2020 (FORA must submit notification by February 28, 2019.)

Meeting Interaction/Discussion/Follow-up

Mr. Steinberg provided Mr. Lederle with options to consider for the ESCA Successor to enter into an agreement with the Army. Mr. Steinberg also provided a briefing on EPA's current thoughts on the ESCA Successor entering into an AOC-like agreement with the ESCA Successor. The Army anticipates a new ESCA draft contract to be ready in December for briefing to the FORA Board in January. Board briefing anticipated to require Kutak Rock attorneys' expertise. It was agreed that a new ESCA Agreement would be crafted by the Fort Ord BRAC staff and USACE to replace the existing. Once drafted will be shared with FORA and Seaside Counsel for review. Language would be shared to incorporate in the new ESCA addressing concerns that Seaside expressed about its general fund. Mayor Oglesby reiterated his jurisdiction's decision to provide leadership in stepping up to accept these Successor to FORA responsibilities with Army funding.

Seaside – Proposed ESCA Successor

Seaside was named as a potential FORA ESCA Successor in the original ESCA agreement. Seaside requested to be the ESCA Successor. FORA, Seaside, County attorneys and management have been meeting to identify the elements of an agreement between FORA and Seaside designating Seaside as FORA's ESCA Successor. That agreement is being drafted by FORA and Seaside Counsel.

FORA ESCA staff began developing a Scope of Work and identifying capable contractors to separate and migrate the FORA ESCA files/archives system from the FORA servers and migrate the ESCA files/archives system to the cloud-based repository. When enacted, a cloud-

based repository will enable an efficient conversion of the ESCA file/archive system for use during and after the ESCA Successor transition process.

Seaside indicated a desire to be the FORA ESCA Successor, depending on completing its due diligence. City created temporary ESCA staff positions at the City similar to the FORA ESCA Senior Program Manager and ESCA Program Coordinator. Seaside assigned Counsel to work with FORA's Special Counsel to create FORA/Seaside an ESCA Successor Implementing Agreement. They will also develop agreements with the other ESCA Jurisdictions acknowledging Seaside as the ESCA Successor with the FORA/Army ESCA property LTO rights/responsibilities for access/management.

Seaside is concerned that by becoming the FORA ESCA Successor they may inadvertently take on unforeseen ESCA obligations that would negatively impact their General Fund. Seaside, if confirmed as the FORA ESCA Successor, is concerned that a Pollution Legal Liability (PLL) insurance policy or funding, be available until June 30, 2028. Seaside and FORA Counsel are exploring other potential ESCA items/issues that may negatively impact Seaside's General Fund.

Meeting Interaction/Discussion/Follow up

Seaside provided Mr. Lederle with an update on their work with FORA to develop a FORA/Seaside ESCA Successor Implementing Agreement and agreements with the local jurisdictions acknowledging Seaside as the ESCA Successor including funding, responsibilities and property access. Mr. Lederle and Seaside were provided with information on the FORA ESCA staff's current efforts to migrate FORA ESCA files and archives to a cloud-based repository for use during and after the ESCA Successor transition. Discussions with the Army led by Kutak Rock identified that a FORA local reuse authority (LRA) Successor may be required to retain FORA LRA powers required for retaining certain rights in the Economic Development Conveyance Agreement and may be needed in the ESCA LTO management and property transfer obligations. It was agreed that FORA and Seaside would follow up with the Office of Economic Adjustment on this matter and get back to Mr. Lederle.

ESCA LTO Management Program

The jurisdictions received briefings (beginning in 2018) on the long-term stewardship of their properties. The briefings outlined the Record of Decisions (RODs) and Land Use Controls (LUC) and LUCIP/OMP that pertain to reviewing the roles of all parties in managing the ESCA property LUC and reporting.

FORA ESCA staff developed an Annual ESCA integrated reporting/inspection/meeting calendar that was reviewed by the FORA Administrative Committee to ensure that ESCA properties, LTO and reporting are done in a regular, thorough and timely manner. FORA has begun sending invitations and identifying required Inspection/meeting personnel and time frames for the year 2020.

Meeting Interaction/Discussion/Follow-up

Stan Cook provided Mr. Lederle a description and calendars of FORA's ESCA LTO implementation efforts to date.

ESCA PLL Insurance*

The FORA ESCA AIG "Coverage A" PLL insurance will expire in 2022. The FORA base-wide Chubb PLL policy which also includes coverage for ESCA property will expire in 2024. The

ESCA agreement requires FORA (or its ESCA Successor) to have PLL insurance through the term of the ESCA, June 30, 2028. Seaside, if confirmed as the FORA ESCA Successor, is concerned that a PLL insurance policy or funding, be available until June 30, 2028.

Meeting Interaction/Discussion/Follow-up

Mr. Lederle was provided with current FORA PLL insurance expiration dates (AIG 2022, Chubb 2024) and ESCA agreement references noting that PLL policy is an ESCA requirement until the 2028 ESCA Successor transfer of ESCA LTO to the Army. Mr. Lederle will work with the ESCA Grant Administrator to identify language that would provide Seaside, as ESCA Successor with assurances that PLL insurance funds will be available to purchase PLL insurance from 2024 to 2028.

DRAFT

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject: Economic Development Report	
Meeting Date: December 13, 2019	INFORMATION
Agenda Number: 7f	

RECOMMENDATION(S):

Receive an Economic Development (“ED”) Report.

ECONOMIC DEVELOPMENT QUARTERLY UPDATE

Background/Discussion:

The primary goal of the Fort Ord Reuse Authority’s (“FORA’s”) ED program, as originally referenced in the 1997 Base Reuse Plan (“BRP”) and amplified in the 2012 Reassessment Report (“RR”), is to assist the three-county (Monterey/Santa Cruz/San Benito) region in general and FORA jurisdictions specifically. This assistance is to provide leadership and support for regional economic recovery from the employment, business, and other economic losses resulting from the departure of soldiers, civilians, and families post Fort Ord closure. BRP projections to achieve full recovery include: 36-38,000 in replacement population; 15,000+ jobs to replace military employment and soldiers; 11-12,000 homes (6160 new units); and approximately 3 million sf commercial/office.

Prior to establishing the current ED program in 2015, extensive groundwork was directed by the FORA Board and overseen by FORA staff including:

- securing funding, implementation, and completion of the \$98M Environmental Services Cooperative Agreement;
- reuse and/or removal of 3614 of 4370 military buildings (including reopening 500+ units for affordable workforce housing);
- transfer of 10,013 of 17,652 habitat acres for permanent preservation;
- construction of \$66.5M worth of new transportation infrastructure (including \$40M in grant funding), 32 miles of roadway capacity added using grants and developer fees;
- storm water outfall removal (including securing \$6M in grant funding);
- continued and ongoing support for the veteran’s community leading to the Central Coast Veterans Cemetery; and
- the nation’s first Joint Department of Defense/Veterans Administration Veterans Clinic built a new in the City of Marina.

Staff led survey and research (in concert with former Fort Ord jurisdictions) results show progress toward the above noted BRP goals to date: *15,717 population; 6047 jobs; 5649 homes (1458 new + 4191 reused); and 691k sf commercial.* When coupled with the educational and institutional growth, these accomplishments demonstrate a strong foundation and equitable basis for realizing new economic development gains.

FORA’s ongoing ED strategy, established with the creation of the ED Program in 2015, is based on the following key components:

- **Build upon regional economic strengths** (Agriculture, Tourism, Higher Education/ Research, Military Missions)
- **Pursue new & retain existing businesses/enterprises.**
- **Engage internal & external stakeholders.**
- **Develop and maintain information resources.**
- **Report success metrics.**

This report summarizes key progress and success metrics for partnerships that have benefited from Board investment and staff engagement since 2015.

- **Start-up Challenge Monterey Bay/California State University Monterey Bay (“CSUMB”) Collaboration.** FORA Board investment and staff engagement have supported expansion of the Monterey Bay regional entrepreneurship ecosystem through collaboration with the CSUMB Institute for Innovation & Economic Development (“iiED”) on the Start-up Monterey Bay ecosystem. Since 2015, the FORA Board has invested \$325,000 in this partnership. Key outcomes include:
 - New digital information and online activity hub: <https://StartupMontereyBay.com>;
 - iiED Annual Cycle of Innovation: Hackathon, Startup Weekend, Startup Challenge, Startup Investment Forum;
 - 2200+ aspiring entrepreneurs;
 - 638 participating companies;
 - 150+ jobs created;
 - \$400,000 prizes awarded;
 - \$10 million raised by participating companies;
 - \$850,000 Economic Development Administration (“EDA”) grant to support operation of a regional business incubator (Startup Launchpad);
- **Small Business Development Center (“SBDC”) support.** FORA Board investment has supported the continuous operation of the Monterey County SBDC, focused on providing small business support and consultancy services to strengthen and retain existing small businesses in the region. Since 2015, the FOR A Board has invested \$100,000 in this partnership. Key outcomes include:
 - \$17.5 million client capital accessed;
 - 32 new businesses started;
 - 1912 jobs supported (created and retained);
 - 1370 training attendees;
 - 364 businesses counseled.
- **Monterey Bay Economic Partnership.** FORA Board investment and staff engagement have supported strengthening of the Monterey Bay Economic Partnership, a triple-bottom line, public-private partnership to advance regional vitality. Since 2015, the FORA Board has invested \$54,500 in this partnership. Key outcomes include:

- New regional data resource, information and online hub: <https://Mbep.biz>;
 - Creation of \$12 million Monterey Bay Housing Trust, funding 4 projects to date;
 - Launch of Monterey Bay Career Connect website: <https://mbcareerconnect.org/>, supporting 500+ career assessments & resumes;
 - Launch of Monterey Bay Internships website: <http://mbinterns.org/>, supporting 4000+ users and filling 200+ internships;
 - Launch MBEP Action Center advocating for 700+ new homes.
- **Central Coast Marketing Team.** FORA Board investment and staff engagement have supported strengthening of the Central Coast Marketing Team, a regional public-private non-profit partnership focused on business retention, attraction & site location assistance. Since 2015, the FORA Board has invested \$10,000 in this partnership. Key outcomes include:
 - New site location assistance digital presence, information and online activity hub: <https://SelectCentralCoast.org>;
 - 1st Monterey Bay Opportunity Zone Investment Forum;
 - 1st Monterey Bay Cannabis Policy Forum. Supported growth of cannabis businesses and increasing tax revenue in Seaside and Salinas;
 - Regular convening of economic development professionals from cities of Marina, Seaside, Salinas, Monterey County, and City of Santa Cruz;
 - Supported site location searches for: autonomous vehicle R&D facility, international cosmetics manufacturing facility, wine warehouse & hospitality center;
- **Monterey Bay Drone, Automation & Robotics Technology (“DART”) initiative.** FORA Board investment and staff engagement have supported strengthening of the Monterey Bay DART initiative, a regional public-private non-profit organization focused on advancing a DART focused economic development strategy for jobs growth, new venture formation & regional vitality. Since 2018, the FORA Board has invested \$10,000 in this partnership. Key outcomes include:
 - New digital presence, information and online activity hub: <https://MontereyBayDART.org>;
 - On-going series of DART Meet-ups to be hosted at the University California Monterey Bay Education Science & Technology (“UCMBEST”) Center;
 - Partnership with the UC Ag & Natural Resources Division (“UCANR”) to host the 2019 Drone Camp the week of June 17-20, 2019 on the former Fort Ord at UCMBEST and CSUMB campus. Set to return June 22-25, 2020.
 - 1st Monterey Bay DART Symposium Friday June 21, 2019, which brought together 160+ industry, academia, military and government stakeholders and highlighted regional strengths, challenges and opportunities. Set to return, Friday June 26, 2020;

- o Workforce development working group to meet immediate and near-term workforce demands of DART companies and industry expanding in the region;
- o Actively supporting the successful establishment of the Joby Aviation manufacturing facilities at the Marina Airport, with a focus on inter-governmental relations, infrastructure and planning needs, and workforce development opportunities and partnerships.

In addition to the programs and investments listed above, FORA ED staff engagement has produced a number of valuable outcomes including:

- **Annual Jobs Surveys.** Completed on behalf of its member jurisdictions from 2015-2019. Results of these surveys indicate continued jobs growth on the former Fort Ord.

Jobs	2015	2017	2018	2019
<i>Full-time</i>	3374	3462	4165	4363
<i>Part-time</i>	711	1497	1487	1684
Total	4085	4959	5652	6047

- **Housing Starts.** New residential development at the Dunes on Monterey Bay, Sea Haven, and East Garrison continues. A summary of Community Facilities District (“CFD”) permits pulled and fees collected thru October 2019 is provided below:

New Residential	FY 14/15	FY 15/16	FY 16/17	FY 17/18	FY 18/19	FY 19/20*
Total Units	89	256	317	273	289	89
Total CFD Fees	\$1,982,669	\$5,202,626	\$7,329,706	\$6,507,501	\$7,115,469	\$2,257,218

*thru October 2019

- **University of California Santa Cruz (“UCSC”) Coordination.** Since 2015, FORA staff have played a central role in regular coordination with UCSC personnel to advance the long-dreamed of jobs growth at the UC Monterey Bay Education Science & Technology (“UCMBEST”) center. New leadership at UCSC has renewed focus on UCMBEST.

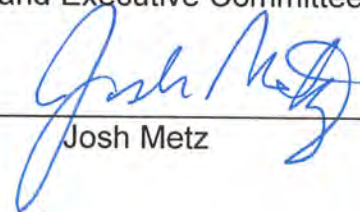
FISCAL IMPACT:

Reviewed by FORA Controller 

Funding for staff time and ED program activities is included in the approved FORA budget.

COORDINATION:

Administrative and Executive Committees, UCSC, City of Marina, City of Seaside

Prepared by 
Josh Metz

Approved by 
Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject:	Local Agency Formation Commission of Monterey County ("LAFCO") Indemnification Agreement	
Meeting Date:	December 13, 2019	INFORMATION/ACTION
Agenda Number:	7g	

RECOMMENDATION:

Authorize Executive Officer to execute attached Indemnification Agreement with LAFCO.

BACKGROUND:

LAFCO of Monterey County staff have forwarded a request to the Fort Ord Reuse Authority ("FORA") that we cooperatively move ahead with executing an Indemnification Agreement pursuant to which FORA would hold LAFCO harmless against costs and liabilities relating to FORA's dissolution. LAFCO has requested that FORA deposit with LAFCO (1) a \$2,000,000 litigation reserve to cover legal expenses incurred in connection with implementation, oversight, or defense of the dissolution and (2) a \$100,000 deposit toward LAFCO's long-term administrative expenses for oversight of dissolution-related matters. LAFCO has also requested inclusion of language in the draft Multi-Agency Implementing Agreement calling for FORA to establish a mechanism for additional litigation defense funding as may be necessary. We anticipate that the signatories to the proposed Multi-Agency Implementing Agreement will not agree to commit any of their funds to supplementing LAFCO's litigation reserve or the deposit toward LAFCO's administrative expenses. LAFCO contends that these measures are necessary to their work in "oversight of dissolution proceedings and related actions."

LAFCO has duly noted that its role was outlined in the legislation that defined the FORA dissolution and that the Legislature thereby created an unfunded mandate, which LAFCO is unwilling to cover through LAFCO's existing litigation reserves or by other LAFCO sources for litigation protection.

DISCUSSION/REPORT:

The FORA Board has included \$500,000 from reserves for this purpose in the FY 2019-2020 Annual Budget and the attached Indemnification Agreement (**Attachment A**) addresses payment of this amount. Future funding for any additional amounts would have to be considered by the FORA Board at the Mid-Year Budget Review. However, there remains an open debate on the question about the request for such a significant (\$2,000,000) litigation reserve by Board members and Authority Counsel that should be deliberated at the mid-year budget discussion. FORA staff agrees that the oversight costs may accrue at some point and that the \$100,000 is not unreasonable for this task.

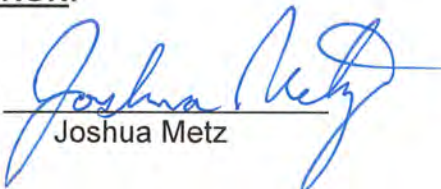
FISCAL IMPACT:

Reviewed by FORA Controller 

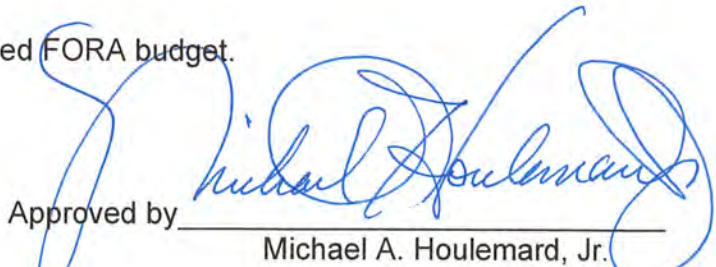
Staff time for this item is included in the approved FORA budget.

COORDINATION:

Prepared by


Joshua Metz

Approved by


Michael A. Houlemard, Jr.

DRAFT INDEMNIFICATION AGREEMENT

This Indemnification Agreement (this "Agreement") dated this ____ day of ____, 2019 is entered into by and between the Local Agency Formation Commission of Monterey County, a governmental agency ("LAFCO"), and the Fort Ord Reuse Authority, a governmental agency ("FORA"), with reference to the following facts.

A. FORA was established pursuant to the Fort Ord Reuse Authority Act (California Government Code Sections 67650 through 67700), hereinafter sometimes referred to as the "FORA Act." Section 67700(a) 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.

B. Pursuant to the requirement expressed in Section 67700(b)(2), FORA's Board of Directors approved and on December 27, 2018 submitted to LAFCO a transition plan (the "Transition Plan"). As required by Section 67700(b)(2), the Transition Plan assigns assets and liabilities, designates responsible successor agencies, and provides a schedule of remaining obligations.

C. Pursuant to the requirement expressed in Section 67700(b)(1), LAFCO is required to provide for the orderly dissolution of FORA (the "Dissolution"), including ensuring that all contracts, agreements, and pledges to pay or repay money entered into by FORA are honored and properly administered, and that all assets of FORA are appropriately transferred. Given LAFCO's statutory requirement, the Parties have agreed to enter into this Agreement whereby FORA will indemnify LAFCO against certain expenses arising from legal actions challenging the Dissolution and providing funds to LAFCO to pay for litigation-related expenses.

D. LAFCO maintains a separate litigation reserve to protect itself in the event of litigation related to its normal operations, which is funded by its local agencies. A majority of LAFCO's local agencies do not have an interest in the Fort Ord property within FORA's purview. Should LAFCO be named in a legal action or initiate legal action related to the Dissolution, LAFCO has no designated funds to defend the Dissolution. As such, LAFCO will create another litigation reserve fund to hold funds received from FORA to be used solely for the purposes set forth in this 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, LAFCO and FORA (each a "Party" and collectively, the "Parties") agree as follows:

Section 1. Indemnification.

In the event any legal action or proceeding is instituted against LAFCO (or naming LAFCO as a real party in interest), its officers, employees, attorneys or agents (collectively, the "Indemnitees"), the purpose of which is to attack, set aside, void, or annul, in whole or in part, actions taken to effectuate the Dissolution, or in the event that LAFCO initiates litigation reasonably required to ensure the Dissolution is properly implemented, FORA agrees to defend, indemnify, and hold harmless the Indemnitees from any costs, fees, damages, or liabilities incurred as a result of any such action or proceeding, including any award to opposing counsel of attorneys' fees or costs (collectively, "Losses"). FORA also agrees to reimburse LAFCO for its reasonable expenses incurred as a result of any such legal action or proceeding. Such expenses include LAFCO's counsel's charges for representing LAFCO in any such action, costs of preparing the administrative record in any such action (including LAFCO staff costs), and all other reasonable expenses incurred by LAFCO as a result of any such action or proceeding.

LAFCO reserves the right to utilize or retain its own attorneys to represent it in any such action; however, LAFCO will coordinate the defense of any action with FORA.

Notwithstanding any other provision of this Agreement to the contrary, FORA shall have no obligation pursuant to this Section 1 with respect to: (a) any proceeding instituted by any Indemnatee if a court of competent jurisdiction determines that such proceeding was not made in good faith or was frivolous; or (b) losses arising from or relating to any Indemnatee's gross negligence or willful misconduct.

Section 2. Litigation Reserve Funds.

FORA will designate funds to address the potential that LAFCO will need to initiate or defend against litigation to ensure the Dissolution is properly implemented. The monies designated to indemnify LAFCO, transmitted to LAFCO as set forth herein, and held by LAFCO in trust are to be used solely for the purposes set forth in this Agreement until all litigation is resolved and no further litigation is necessary to fully implement the Transition Plan and the Dissolution is fully implemented. FORA will transfer five hundred thousand dollars (\$500,000) to LAFCO within thirty (30) days of the execution of this Agreement for use as a litigation reserve fund. Upon resolution of all litigation, all unexpended legal contingency funds shall be equally returned to the County of Monterey and the Cities of Marina, Seaside, Del Rey Oaks, and Monterey. LAFCO ~~may require request~~ additional litigation funding from FORA (in which event the Parties shall endeavor in good faith to negotiate the amount of such funding to be set forth in an amendment to this Agreement or in a separate agreement) and the Parties agree that this ~~Agreement does not~~ neither authorizes nor precludes LAFCO receiving additional funds from FORA for indemnification purposes.

Section 3. Miscellaneous Provisions.

3.1. Successors and Assigns. To the greatest extent permitted by law, this Agreement shall apply to, bind and inure to the benefit of successors in interest of the parties hereto, whether they succeed by operation of law or voluntary acts.

3.2. No Third-Party Beneficiaries. This Agreement is entered only for the benefit of the parties executing this Agreement and not for the benefit of any other individual, entity or person.

3.3. Amendments. This Agreement may be amended only in writing by the mutual agreement of the original parties or their successors in interest.

3.4. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

3.5. Counterparts. This Agreement may be executed and delivered in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

[Remainder of page intentionally left blank, signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first above written.

**LOCAL AGENCY FORMATION COMMISSION
OF MONTEREY COUNTY**

FORT ORD REUSE AUTHORITY

Attest:

Attest:

LAFCO Executive Officer Date

FORA Executive Officer Date

Approved as to form:

Approved as to form:

LAFCO Legal Counsel Date

FORA Legal Counsel Date

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject:	2020 Fort Ord Reuse Authority Board Meeting Calendar	
Meeting Date:	December 13, 2019	ACTION
Agenda Number:	7h	


RECOMMENDATION:

Approve the 2020 FORA Board meeting schedule.

BACKGROUND/DISCUSSION:

The FORA Board sets the meetings Calendar for the upcoming Calendar year at its December meeting. At the December 4, 2019 Executive Committee meeting Assistant Executive Officer Josh Metz proposed to change the FORA Board Meeting date to the second Thursday of the Month at 2:00 p.m. The Committee deliberated on the benefits of the change and moved to recommend the attached schedule of 2020 meeting dates to the Board of Directors.

FISCAL IMPACT:

Reviewed by FORA Controller 

Staff time for this item is included in the approved annual budget.

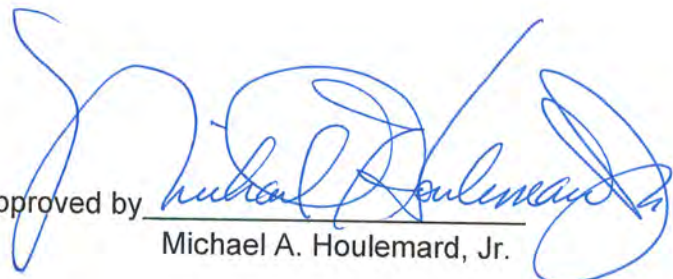
ATTACHMENTS:

Attachment A: Proposed 2020 Board Meeting Calendar

Prepared by


Heidi L. Gaddy

Approved by


Michael A. Houlemard, Jr.



FORT ORD REUSE AUTHORITY

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

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

2020 FORA BOARD OF DIRECTORS MEETING SCHEDULE

January 9

February 13

March 12

April 9

May 7

June 11

Board meetings are held on the 2nd Friday of each month at 2:00 p.m. at the Carpenter's Union Hall on the former Fort Ord (910 2nd Avenue, Marina, California), unless otherwise noticed/announced. Meeting dates and times are subject to change. Agendas and other meeting materials are posted on the FORA website www.fora.org and are available upon request

FORT ORD REUSE AUTHORITY BOARD REPORT	
CONSENT AGENDA	
Subject:	Public Correspondence to the Board
Meeting Date:	December 13, 2019
Agenda Number:	7i
	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 ITEM

Subject:	Review Building Removal Bond Status	
Meeting Date:	December 13, 2019	INFORMATION/ACTION
Agenda Number:	8a	

RECOMMENDATION:

- i. Receive an update and report on the status of issuing bonds and related documentation required to finance remaining building removal and related activities.
- ii. Adopt resolution 19-XX 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.

BACKGROUND:

At the October 2018 Fort Ord Reuse Authority ("FORA") Board meeting, the FORA Board directed staff to investigate the legality and feasibility of issuing debt against FORA's statutory share of property tax revenue provided to FORA by the State Legislature as codified in the State of California Health and Safety Code. In January 2019, FORA released a competitive Request for Qualifications and selected NHA Advisors ("NHA") to complete the bond feasibility and financial analysis. NHA completed its first milestone, a legal and financial feasibility memorandum regarding FORA's statutory property tax authority, in April 2019. NHA's preliminary finding is that FORA would be able to issue bonds in a range of \$31.6 to \$25.5 million. In July 2019, the Administrative Committee ("AC") recommended the Board do the necessary work to prepare a bond package, and in August 2019, the Board approved the Executive Officer ("EO") to conduct that work.

During the processing of SB 189, which would have selectively extended FORA's financing authority/revenue, the Governor's Office of Finance ("DOF") expressed concern about revenue impact to the State resources. Subsequent to SB 189 failure, FORA Building Removal Bond Counsel noted this concern about the tax increment cash flow with DOF counsel. DOF Counsel informally reported their concern about extension of the tax increment was a component of the opposition. Bond Counsel has indicated this concern limits their ability to issue an opinion that would validate the payment of the bonds - thereby severely restricting assurance to bond purchasers. This issue is under review by our consultants while Authority Counsel reviews options for proceeding. Please see the attached exchange of letters between Senator Monning (**Attachment A**) and DOF (**Attachment B**) on this matter.

As Authority Counsel reviews options, it has become clear that completion of the Marks-Roos requirement for a public hearing by the Monterey County Board of Supervisors ("BOS") is a triggering action allowing FORA to pursue several strategies to resolve bond counsel's concerns. Therefore, the EO submitted a letter to the BOS requesting a hearing (**Attachment C**) and stating the bond proceeds' intended uses and public benefits, following a BOS decision on November 19th, 2019 wherein the BOS noted the best public body to hold a public hearing is the County due to former Fort Ord being within its jurisdictional boundaries.

Therefore, It is staff's recommendation that, consistent with Board direction to the EO and Authority Counsel, the FORA Board adopt a substitute bond counsel and revised resolution (**Attachment D**) stating the intended uses of the future bond proceeds, identifying the public benefits to the region, and approving

the Bond Indenture (**Attachment E**). For this effort, NHA Advisors has included a "Good Faith Estimate" per state law (**Attachment F**).

Why We Need to Approve a Bond Indenture Now

The FORA Board is being asked to approve the attached bond indenture in order to enable the validation process to proceed. However, the form of the indenture attached is in no way to be considered the final form of the bond indenture. Should the validation process be successful, the FORA Board retains the right to make significant modifications to this indenture prior to the actual issuance of bonds.

The reason for this is that the right of FORA to receive tax increment, and to pledge it for debt service on bonds, is the legal issue being validated. Substantive policy issues about the Successor Entity, the allocation of bond proceeds and their use are not the subject of the validation process. Consequently, since these issues are not the subject of the validation process, the FORA Board retains the right to make changes to how these issues are presented in the attached document.

The key legal issue that the Board is committing to through approval of this bond indenture now is the receipt and pledge of tax increment to pay debt service on bonds issued by FORA. That is the core issue for the validation.

Remaining Actions:

At the October 11, 2019 FORA Board meeting, the Board's municipal bond consultant, NHA, reported a number of technicalities and concerns requiring action prior to the Board authorization to bond:

1. Marks-Roos Public Hearing at the County to fulfill the authorizing statute requirements.
2. County Commitment to continue FORA fund intercept at FORA sunset, and to make findings of Public Benefit after considering such at a public hearing.
3. Consideration of the City of Monterey, the City of Seaside, the County of Monterey or a Joint Powers Authority as a successor trustee to FORA.
4. Whether three jurisdictions are prepared to address the question of revenue demand shortfalls to the Monterey Regional Fire District.

FORA staff are working with the AC to address the four concerns listed above (and more). The AC has reaffirmed its unanimous decision to recommend that the Board sustain the momentum toward issuing FORA Building Removal Bonds.

FISCAL IMPACT

Reviewed by FORA Controller 

Staff time to support the AC is included in the 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.

Prepared by 
Peter Said

Approved by 
Michael A. Houlemard, Jr.

COMMITTEES

VICE CHAIR
JOINT COMMITTEE ON RULES
MEMBER
BUDGET & FISCAL REVIEW
BUDGET SUBCOMMITTEE 2
ON RESOURCES, ENVIRONMENTAL
PROTECTION, ENERGY &
TRANSPORTATION
HEALTH
JUDICIARY
NATURAL RESOURCES & WATER
RULES

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California State Senate



WILLIAM W. MONNING
SEVENTEENTH SENATE DISTRICT

CAPITOL OFFICE
STATE CAPITOL, ROOM 4040
SACRAMENTO, CA 95814
(916) 651-4017

MONTEREY DISTRICT OFFICE
99 PACIFIC STREET, SUITE 575-F
MONTEREY, CA 93940
(831) 657-6315

SAN LUIS OBISPO DISTRICT OFFICE
1026 PALM STREET, SUITE 201
SAN LUIS OBISPO, CA 93401
(805) 549-3784

SANTA CRUZ DISTRICT OFFICE
701 OCEAN STREET, SUITE 318-A
SANTA CRUZ, CA 95060
(831) 425-0401

SANTA CLARA COUNTY
TELEPHONE NUMBER
(408) 847-6101

November 5, 2019

Keely Martin Bosler, Director
California Department of Finance
State Capitol, First Floor
Sacramento, CA 95814

Dear Director Bosler:

This letter is to request your assistance in relation to the allocation of property tax revenues to the Fort Ord Reuse Authority (FORA). 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 a board comprised of representatives within the boundaries of Fort Ord and includes the County of Monterey, local cities, and other taxing entities.

FORA has expressed interest in using bonding funds to remove the remaining blight within the former Fort Ord and there is confusion and conflict as to whether FORA is legally considered a statutory pass-through for the purposes of bonding. Because of this, I am asking that the California Department of Finance (DOF) clarify the following issues pertaining to FORA's bonding authority.

Pursuant to the FORA Act, FORA is currently scheduled to dissolve on June 30, 2020. Prior to its dissolution, FORA's members desire to issue bonds for the purpose of financing the removal of blighted buildings. These bonds are proposed to be secured by FORA's share of property tax increment revenues generated within the redevelopment project areas established within Fort Ord. Health and Safety Code Section (HSC) 33492.71(c) provides for the allocation of a portion of these property tax revenues to FORA, and various taxing entities, and further provides that such revenues will continue to be allocated to the extent needed to pay FORA's bond debt service following FORA's dissolution. FORA's member agencies, which include the cities of Seaside and Marina and the County of Monterey and whose redevelopment project areas generate FORA's property tax revenues, have consistently treated FORA's revenues as statutory pass-through payments both before and after the dissolution of redevelopment agencies.



There is, however, a statutory ambiguity resulting in uncertainty as to whether FORA's share of property tax revenues can be treated as a statutory pass-through following the dissolution of redevelopment in California. HSC Section 34183(a)(1), which authorizes county auditor controllers to pay statutory and negotiated pass-through payments that previously were paid by redevelopment agencies, does not include a reference to the statutory provision that provides for FORA's statutory pass-through payment as outlined in HSC Section 33492.71.

FORA and its member agencies believe that, if FORA's share of property tax revenues is not a statutory pass-through payment, it should instead be treated as an "enforceable obligation" of the redevelopment successor agencies receiving tax increment from within Fort Ord. For purposes of the Redevelopment Dissolution Act, HSC Section 34171(d)(1)(C) defines "enforceable obligations" of a redevelopment successor agency to include, among other things, "obligations imposed by state law, other than pass through payments that are made by the county auditor-controller pursuant to Section 34183." If the payments authorized by HSC Section 33492.71(c) are not statutory pass-through payments, then HSC Section 34181(d)(1)(C) appears to include these payments within the definition of enforceable obligation.

Pass-through payments and enforceable obligations are administered differently under the Redevelopment Dissolution Act. Pursuant to HSC Section 34183(a)(1), county auditor controllers are responsible for calculating and paying statutory pass-through payments, whereas under HSC Section 34177, subdivisions (a) and (o), redevelopment successor agencies are responsible for paying enforceable obligations, including listing all enforceable obligations on annual Recognized Obligation Payment Schedules (ROPS) and obtaining approval of each ROPS by the successor agency's oversight board and DOF.

In order to issue bonds secured by this revenue stream, FORA needs to know whether the payments to FORA are properly treated as statutory pass-through payments or enforceable obligations and either; (a) the determination of whether the payments to FORA are statutory pass-through payments is appropriately made by the Monterey County Auditor-Controller (CAC) and DOF does not and will not dispute the CAC's determination on this matter, or (b) DOF agrees with the successor agencies and the CAC that FORA's share of tax increment is properly treated as a statutory pass-through to be administered by the CAC pursuant to HSC Section 34183(a)(1).

In previous discussions with FORA's legal counsel regarding the proper treatment of FORA's property tax revenue stream, DOF raised the possibility that FORA's property tax revenue stream may not be available to FORA at all following the dissolution of the redevelopment agencies in Marina, Seaside and the County of Monterey. HSC Section 34189 was referenced, which provides that, as of February 1, 2012, the date on which all redevelopment agencies in California were dissolved, "all provisions of the Community Redevelopment Law that depend on the allocation of tax increment to redevelopment agencies, including, but not limited to, HSC

Sections 33445, 33640, 33641, and 33645, and subdivision (b) of Section 33670, shall be inoperative.”

It is my understanding that FORA believes this interpretation of the Redevelopment Dissolution Statutes is incorrect for several reasons:

- First, the FORA Act and HSC Section 33492.78, which provides for the allocation of tax increment generated within Fort Ord to school and community college districts, have both been amended since the dissolution of redevelopment agencies in February, 2012. This indicates that the legislature knew that FORA existed and continued to receive its pass-through payments pursuant to HSC Section 33492.71 following the dissolution of redevelopment agencies.
- Second, HSC Sections 33492.71 and 33492.78, which allocated 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 Fort Ord 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 Community Redevelopment Law and that these provisions should have been listed in HSC Section 34183(a)(1) as statutory pass-through payments to be calculated and paid by the CAC. FORA believes the omission of HSC Sections 33492.71 and 33492.78 from HSC Section 34183(a)(1) was an oversight on the part of the legislature when the Redevelopment Dissolution Act was drafted.
- Third, while HSC Sections 33492.71 and 33492.78 were omitted from the list of statutory pass-through provisions set forth in HSC Section 34183(a)(1), Section 33492.72 is referenced in Section 34183(b) among the statutory provisions authorizing subordination of statutory pass-through payments. This supports the conclusion that the legislature intended to treat the payments provided for in HSC Sections 33492.71 and 33492.78 as statutory pass-through payments.
- Finally, to date, all parties, including the County of Monterey and the cities of Seaside and Marina, have treated FORA’s share of tax increment as a statutory pass-through payment and the CAC has distributed these payments to FORA as a statutory pass-through every year since redevelopment agencies were dissolved in 2012. The CAC has indicated to FORA that DOF has been aware of the payments to FORA and has never objected to these payments.

Director Bosler
November 5, 2019
Page 4

It should be noted that, if FORA's property tax revenue allocation is a pass-through, FORA and its members believe the revenue stream will continue as long as the successor agencies in Marina, Seaside and the County of Monterey, respectively, have enforceable obligations outstanding. In contrast, enforceable obligations are paid in accordance with their terms regardless of former redevelopment plan limitations. FORA and its members are comfortable with, and have no objection to, the limited time frame during which FORA will receive its share of property tax revenues to assure bond holder payments, if this allocation is treated as a statutory pass-through payment.

In order for FORA to issue bonds secured by its share of property taxes generated from the redevelopment project areas within the Fort Ord boundaries, FORA needs to know with certainty that these property tax revenues will continue to be allocated to payment of FORA's bonds pursuant to HSC Section 33492.71(d)(1)(A) (prior to FORA's dissolution) and (d)(1)(D) (following FORA's dissolution).

I am requesting that DOF confirm FORA's allocation of property taxes pursuant to these statutory provisions is properly considered a statutory pass-through payment, which the CAC is required to pay to FORA pursuant to HSC Section 34183(a)(1), in a written response by November 25, 2019.

Thank you for your attention to this matter. If you have any questions, please feel free to contact Bethany Westfall or Tobias Uptain-Villa, with my staff, at 916-651-4017.

Sincerely,



WILLIAM W. MONNING
Senator, 17th District

WWM:tuv/bw



December 2, 2019

Honorable William W. Monning
Member of the Senate
State Capitol, Room 4040
Sacramento, CA 95814

Dear Senator Monning:

This letter is in response to your inquiry dated November 5, 2019, regarding the Fort Ord Reuse Authority (FORA). It is my understanding you are requesting that the Department of Finance opine on FORA's authorization to receive former tax increment funding through certain Dissolution Law¹ provisions. While the issue of whether a payment is properly payable to FORA has not been presented to Finance in its capacity as the State's administrator of the Dissolution Law—and likely will never be—we appreciate the opportunity to assist you in Dissolution Law matters.

Passthrough Payments under Dissolution Law

Your primary question is whether Finance interprets Dissolution Law to require payment to FORA under Health and Safety Code section 34183(a)² and specifically, whether a pre-Dissolution Law requirement that redevelopment agencies within FORA's boundaries pay a statutory passthrough payment to FORA is a continuing obligation post-Dissolution Law. Although we do not anticipate this issue coming before Finance in any review process required by Dissolution Law, if the matter were to come to Finance for a formal determination, Finance's conclusion would likely be that the payment is not contemplated under Dissolution Law. This would be consistent with the wording and purpose of section 34183(a) and consistent with the Legislature's intent to direct the former tax increment funds to the affected taxing entities (ATEs) for core governmental services.

Under Dissolution Law, passthrough payments are determined by, and paid by, county auditor-controllers pursuant to section 34182 and section 34183. The only passthrough payments surviving post-Dissolution Law are those listed in section 34183(a). As your letter points out, FORA's statutory passthrough payment is provided for in section 33492.71 and is not listed in section 34183(a) and, as a result, it appears that the County Auditor-Controller may not be authorized to make a passthrough payment to FORA. Your letter suggests that the omission of FORA's statutory passthrough provision was an oversight and that one could read the law liberally to include it within section 34183(a). However, given the intent of Dissolution Law to direct as much former tax increment to the ATEs as soon as possible, we presume the omission was intentional.

¹ The dissolution of redevelopment agencies as contained in Part 1.8 and Part 1.85 of the California Health and Safety Code is known as the "Dissolution Law."


² All statutory references are to the California Health and Safety Code unless otherwise noted.

That only passthrough payments to ATEs survived the enactment of Dissolution Law is supported in both sections 34182 and 34183. Section 34182(c)(2) states that each county auditor-controller shall administer the former tax increment funds for the benefit of, "...the holders of former redevelopment agency enforceable obligations and the *taxing entities that receive passthrough payments* and distributions of property taxes pursuant to this part." (Emphasis added.) Further and consistent with section 34182(c)(2), the only statutory passthrough payments listed in section 34183(a) for payment are exclusively for ATEs and are given priority over all other payment obligations. The focus of these two sections on payments to ATEs indicates the Legislature's intent to fund ATEs. Since FORA is not an ATE, it follows that FORA's passthrough was intentionally omitted. Further, by ending FORA's passthrough, additional funds would be available for ATEs both for passthrough payments and as residual payments following the payment of other enforceable obligations.

Passthrough Payment as an Enforceable Obligation

Your letter also asks whether the payment required in section 33492.71 could be payable as an "enforceable obligation" of the relevant successor agencies. While Finance reserves the right to review this issue anew should it ever come to Finance for an official determination, even if section 33492.71 could fall under a definition of an "enforceable obligation" in section 34171(d), it would be an obligation for zero payment. Specifically, section 34189 renders inoperative all Community Redevelopment Law requirements which are dependent on tax increment. Since section 33492.71 is within the Community Redevelopment Law and completely dependent on tax increment, section 34189 has rendered the payment obligation of section 33492.71 inoperable and no funds could flow if payment is requested for it as an enforceable obligation.³

Thank you for contacting the Department of Finance on this matter. If you have any additional questions, please contact Jennifer Whitaker, Program Budget Manager, at (916) 445-3274.


KEELY MARTIN BOSLER
Director

³ Similar fact patterns involving the impact of section 34189 to invalidate what otherwise might be an enforceable obligation have been upheld by the Third District Court of Appeal. See *Cuenca v Cohen* (2017) 8 Cal.App.5th 200 and *Shayne v Bosler* (2019) WL 5701373.



December 3, 2019

Monterey County Board of Supervisors
C/O District 2 – Supervisor John M. Phillips
Castro Plaza
P.O. Box 787
Castroville, CA 95012

RE: Fort Ord Reuse Authority Request for Monterey County to hold a public hearing pursuant to Marks-Roos Act in consideration of bonds for use in removing blighted buildings on the former Fort Ord.

To: Supervisor John Phillips, Chair
Monterey County Board of Supervisors

On August 9, 2019, the Fort Ord Reuse Authority Board authorized me to perform all necessary preparatory work to issue bonds for the building removal projects listed on Exhibit A and approved moving forward with the schedule presented by NHA Advisors.

Based on FORA's organic statute, the Fort Ord Reuse Authority Act, which incorporates the bond issuance provisions of the Marks-Roos Local Bond Pooling Act of 1985, FORA has determined that a precondition to the issuance of bonds by FORA is that a local agency within whose jurisdiction the building removal projects will be carried out hold a noticed public hearing and adopt public benefit findings. This letter constitutes a request by FORA that the Monterey County Board of Supervisors hold that noticed public hearing and adopt those benefit findings. FORA is making this request because all the building removal projects are within the boundaries of the County, and therefore, FORA can satisfy the public hearing and benefit finding requirements most expediently if the County takes these actions.

FORA asserts that the building removal project satisfies one or more of the following significant public benefits listed in the Marks-Roos Act (Gov. Code 6586):

(a) Providing demonstrable effective interest rate savings given the favorable bond market in the winter of 2019 during which the PIMCO monthly municipal market update for October 2019 reflects that a 30 year, AAA rated municipal bond interest rate has a negative 0.96% Year-To-Date change and a yield of 2.06%.

(b) Local taxes, levies, or user charges required for removal of blighted buildings on public development parcels, and unfunded by development, are significantly decreased by leveraging and bonding against the FORA property tax pass through allocated to FORA in California Health and Safety Code Sections 33492.71(c)(1)(A) and (D), otherwise unavailable to local agencies following FORA sunset on June 30, 2020. At this time, there is no other viable revenue source by which jurisdictions can remove the \$50M of blight within the boundaries of the former Fort Ord, and any new revenue source would put an undue burden on the region in the form of taxes, levies, and charges.

(c) Providing employment benefits by undertaking the project in a timely fashion and removing the State-recognized blight and hindrance to economic growth surrounding California State University Monterey Bay. FORA estimates this building removal project will create 250 FTE construction jobs, and make way for increased

CSUMB attendance which will support an additional 500+ FTE at CSUMB, and lead to long-term economic growth within the Project Area.

(d) Removing buildings provides more efficient delivery of local agency services to residential and commercial development by enhancing the means for clearing urban infill areas, for which future development would otherwise be liable to fund. Bonding against the FORA property tax revenue is the only way to complete FORA's mission to remove this blight and reuse the former military base.

The FORA Board and its member jurisdictions have widely recognized the removal of buildings as contemplated by the Base Reuse Plan to be of substantial economic and environmental benefit to the region. Only within the last few years has the property tax revenue been built to a level sufficient to bond against and accomplish this building removal goal critical to the Base reuse and redevelopment. This property tax revenue has always been contemplated by FORA as a primary tool to finalize and complete building removal and any remaining work on the former base. Therefore, FORA intends the specific use of bond funds for "Building Removal" and "Building Removal Costs" (as defined below) to include the removal of hazardous materials and other safety measures in remnant structures.

Exhibit A to this letter lists each component of the building removal project, the local agency proposed to be responsible for the building removal work, the total estimated cost, and the estimated amount of bond proceeds to be allocated to each agency. FORA currently anticipates issuing the bonds in a total principal amount of between \$30M and \$50M by June 30, 2020.

Under the current draft Bond Indenture, "Building Removal" means the cost 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. "Building Removal Costs" include, without limitation, costs of all planning, engineering, management and risk management including, but not limited to, insurance premiums, legal fees and litigation costs associated with the building removal, and the associated administrative services required to remove blighted buildings from those parcels of property identified on the attached Exhibit A within the boundaries of the former Fort Ord.

FORA intends for each jurisdiction to be solely responsible for all building removal within its respective jurisdiction, to allow the jurisdictions to use only those funds in their Bond Account as allocated by FORA, and to permit the jurisdictions to prioritize their own projects and to choose in their discretion to re-allocate any excess funds while taking responsibility for any shortfall of funds within their jurisdiction.

As a consequence of the Board's action and with the additional support of the FORA Administrative Committee, I am formally requesting the Monterey County Board of Supervisors hold a public hearing to find that the use of bond funds on and within the Project Area of the former Fort Ord is of public benefit to the region.

Best Regards,

Michael A. Houlemard, Jr.
Executive Officer

CC: County Administrative Officer, Charles McKee
Assistant County Administrative Officer, Nick Chilos

EXHIBIT A

BUILDING REMOVAL PARCELS

List of Project Parcels by U.S Army Corps of Engineers (“Army”) Parcel Number.

Jurisdiction	USACE Parcel Number	Description	Bond Account Owner	Total Estimated Cost	Estimated Allocable Share of Bond Proceeds
City of Marina	E4.1.1	Cypress Knolls	City of Marina	\$17,180,000	<u>50.00%</u> \$15 - 20M
	E4.1.2.1	Cypress Knolls	City of Marina		
	E4.1.2.2	Cypress Knolls	City of Marina		
	L5.9.1.1	Marina Radio Club	City of Marina	<i>unknown</i>	
	L5.4.2	Marina Park	City of Marina	5,500,000	
	E2b.3.1.1	Marina Arts District	City of Marina	2,425,000	
	E2c.4.2.1	Commercial/Business Park	City of Marina	1,900,000	
City of Marina	L20.16.1	TAMC Transit Center	TAMC	3,550,000	<u>6.25%</u> \$1.8 – 3.13M
City of Marina	L35.1	MCWD Storage	MCWD	1,550,000	<u>5.25%</u>
State Parks	S3.1.1	Wastewater Plant	MCWD	1,770,000	\$1.5 - \$2.6M
City of Marina	L2.1	MST Transit Center	MST	130,650	<u>1.75%</u>
City of Seaside	L2.4.3.1	MST Storage	MST	300,000	\$530-875K
City of Seaside	L32.4.1.1	Surplus II	City of Seaside	17,575,000	<u>32.25%</u> \$9.6 - \$16.13M
	L19.4	Surplus II	City of Seaside		
	L15.1	Surplus II	City of Seaside		
	F2.3.2	Main Gate	City of Seaside	0	
	F2.3.3	GJMB Parcel	City of Seaside	0	
	F5.2	National Guard	City of Seaside	0	
	L23.5.1	Chartwell School	City of Seaside	2,400,000	
	E18.1.3	Nurses Barracks	City of Seaside	<i>unknown</i>	
County of Monterey	E11b.8	Ammo Supply Point	County of Monterey	750,000	<u>4.50%</u> \$1.3 – 2.25M
	L23.3.2.2	Open Space	County of Monterey	\$1,525,000	
	L23.3.3.1	Open Space	County of Monterey		
	L23.3.3.2	Open Space	County of Monterey		
	L20.2.1	Open Space	County of Monterey		
	L20.2.2	Open Space	County of Monterey		

FORT ORD REUSE AUTHORITY
Resolution No. 19-XX

A RESOLUTION OF THE GOVERNING BODY OF THE FORT ORD REUSE AUTHORITY
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

THIS RESOLUTION is adopted with reference to the following facts and circumstances:

- A. Pursuant to Government Code Section 67675 the Fort Ord Reuse Authority (the "Authority") has prepared and adopted the Fort Ord Reuse Plan.
- B. Pursuant to Government Code Section 67679, the Authority has designated certain basewide public capital improvements to be planned, designed, constructed, repaired, remodeled, or replaced, and financed, by the Authority in the Fort Ord Reuse Plan.
- C. Pursuant to Government Code Section 67679 and the Fort Ord Reuse Plan, the Authority has determined that Building Removal (as defined in the Indenture of Trust referred to below) constitutes the improvement of basewide capital facilities to be performed by the Authority as set forth in the Fort Ord Reuse Plan.
- D. The County of Monterey, and the Cities of Marina and Seaside, desire to use proceeds of bonds to be issued by the Authority to pay for costs of Building Removal and also desire that a portion of the proceeds of the Bonds be used by the Transportation Agency of Monterey County, the California Department of Parks and Recreation, the Marina Coast Water District, and the Monterey-Salinas Transit to pay for costs of Building Removal.
- E. The Authority is authorized by Government Code Section 67679(d)(9) to issue bonds pursuant to the Marks-Roos Local Bond Pooling Act of 1985 (the "Act") to finance costs of Building Removal.
- F. In order to finance all or a portion of the costs of Building Removal, the Authority desires to issue one or more series of tax allocation revenue bonds (the "Bonds").
- G. Each of Seaside, Marina, the County, Transportation Agency of Monterey County, California Department of Parks and Recreation, Marina Coast Water District, and Monterey-Salinas Transit will have control over and the ability to prioritize the use of Bond proceeds deposited into each such local agency's designated account within a Project Fund created under an Indenture of Trust (the "Indenture") pursuant to which the Bonds will be issued for costs of Building Removal.

H. The Authority is authorized pursuant to Section 6592(a) of the Act to pledge to payment of the Bonds any moneys of the Authority, including without limitation the portion of property tax revenues allocated to the Authority pursuant to California Health and Safety Code Section 33492.71(c)(1)(A) and (D), as applicable (the "Tax Revenues").

I. The Authority has determined the advisability of filing an action to determine the validity of the Indenture and the Bonds, the use and pledge of the Tax Revenues to repay the Bonds and the actions proposed to be taken in connection with the issuance of the Bonds and the Indenture.

NOW THEREFORE the Board hereby resolves that:

1. The foregoing recitals are true and correct.
2. Pursuant to Government Code Section 67679 and the Fort Ord Reuse Plan, Building Removal has been and continues as a component of the basewide capital facilities program to be performed by the Authority as set forth in the Fort Ord Reuse Plan.
3. Bond proceeds are intended for costs of Building Removal, which include the cost 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, as well as, without limitation, costs of planning, engineering, management, and risk management including insurance premiums, legal fees and litigation costs associated with the Building Removal, and the associated administrative services required to remove blighted buildings from those parcels of property identified on the attached Exhibit A within the boundaries of the former Fort Ord.
4. The issuance of the Bonds to finance costs Building Removal will result in significant public benefits by:
 - a. Providing demonstrable savings in effective interest rate given the current favorable bond market.
 - b. Local taxes, levies, or user charges required for removal of blighted buildings on public development parcels, and unfunded by development, are significantly decreased by leveraging and bonding against the Tax Revenues allocated to the Authority in California Health and Safety Code Section 33492.71(c)(1)(A) and (D) otherwise unavailable to local agencies following the sunset of the Authority on June 30, 2020.
 - c. Providing employment benefits from undertaking the Building Removal in a timely fashion by removing the State of California recognized blight and hindrance to economic growth surrounding California State University Monterey Bay. The Authority estimates that Building Removal will create 250 FTE construction jobs, and make way for increased CSUMB attendance which will support an additional 500+ FTE at CSUMB, and leading to long-term economic growth within the area covered by the Fort Ord Reuse Plan.

d. Removal of buildings will provide more efficient delivery of local agency services to residential and commercial development by providing the means of clearing urban infill areas, for which future development would otherwise be liable to fund.

5. Bonds, in the aggregate principal amount of not to exceed fifty-five million dollars (\$55,000,000) are hereby authorized to be issued by the Authority under and subject to the terms of the Act and this Resolution for the purpose of financing costs of Building Removal and paying the costs of issuance of the Bonds.

6. The Board hereby approves the Indenture, by and between the Authority and U.S. Bank National Association, as trustee, prescribing the terms and provisions of the Bonds, the application of the proceeds of the Bonds, and the pledge and use of the Tax Revenues to the repayment of the Bonds, in the form on file with the Secretary. The Chair, the Executive Officer and the Treasurer of the Authority (each, an "Authorized Officer"), each acting alone, are hereby authorized and directed to execute and deliver the Indenture for and in the name and on behalf of the Authority in such form, together with such changes therein, deletions therefrom and additions thereto as the Authorized Officer executing the same shall approve, subject to the advice of Bond Counsel and the Counsel to the Authority, such approval to be conclusively evidenced by the execution and delivery by an Authorized Officer of the Indenture. The Board hereby authorizes the delivery and performance of the Indenture.

7. In order to determine the validity of the Indenture and the Bonds, and the use and pledge of the Tax Revenues to repay the Bonds, as well as the actions authorized by this Resolution and the Indenture to be taken in connection therewith, the Board hereby authorizes the law firm of Kennedy, Archer & Giffen, Counsel to the Authority, in concert with the law firm of Quint & Thimmig LLP, Bond Counsel, to prepare and cause to be filed and prosecuted to completion all proceedings required for the judicial validation of the Indenture and the Bonds, and the use and pledge of Tax Revenues to repay the Bonds, in the Superior Court of Monterey County, under and pursuant to the provisions of sections 860 et seq. of the California Code of Civil Procedure. The Board further authorizes the Authorized Officers and any and all other officers, employees and agents of the Authority to take any and all actions, including the execution and delivery or appropriate documentation, as may be required to conclude such judicial validation proceedings.

8. The law firm of Quint & Thimmig LLP is hereby retained as Bond Counsel and Disclosure Counsel to the Authority in connection with the issuance, sale and delivery of the Bonds. The Executive Officer is hereby authorized to enter into an agreement with said firm for its services, in a form acceptable to the Executive Officer and Counsel to the Authority; provided that the compensation for such services is fully contingent upon the successful issuance of the Bonds.

9. The Authorized Officers and any and all other officers of the Authority are hereby authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions, which they, or any of them, may deem necessary or advisable in the issuance, sale and delivery of the Bonds. All actions heretofore taken by any Authorized Officer or any office, employee or agent of the Authority with respect to the Bonds, the validation proceedings or in connection with or related to the Indenture referred to herein are hereby approved, ratified and confirmed.

10. This Resolution shall take effect from and after the date of its passage and adoption.

Upon motion by _____, seconded by _____, the foregoing Resolution was passed on this 13th day of December, 2019, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Jane Parker, Chair

ATTEST:

Michael A. Houlemard, Jr., Secretary

EXHIBIT A

BUILDING REMOVAL PARCELS

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	L23.3.3.1	Open Space	County of Monterey		
	L23.3.3.2	Open Space	County of Monterey		
	L20.2.1	Open Space	County of Monterey		
	L20.2.2	Open Space	County of Monterey		

INDENTURE OF TRUST

Dated as of _____ 1, 2019

by and between

FORT ORD REUSE AUTHORITY

and

**U.S. BANK NATIONAL ASSOCIATION,
as Trustee**

Relating to

**\$ _____
Fort Ord Reuse Authority
Tax Allocation Bonds,
Series 2019A (Federally Taxable)**

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INDENTURE OF TRUST

THIS INDENTURE OF TRUST (this “Indenture”) is made and entered into and dated as of _____ 1, 2019, by and between the FORT ORD REUSE AUTHORITY, a public entity duly existing under the laws of the State of California (the “Authority”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as trustee (the “Trustee”);

WITNESSETH:

WHEREAS, the Authority is a public corporation of the State of California was duly formed and presently existing and exercising its powers pursuant to the Fort Ord Reuse Authority Act, Title 7.85 (commencing with Section 67650) of the Government Code (the “Fort Ord Reuse Authority Act”), pursuant to resolutions favoring the formation of the Authority adopted by the governing boards of the cities of [Carmel, Sand City, Pacific Grove, Salinas,] Del Rey Oaks, Marina, Monterey, and Seaside, and the County of Monterey; and **[Confirm; please provide copies of the resolutions forming FORA]**

WHEREAS, the Authority is authorized by Government Code Section 67679(d)(9) to issue bonds pursuant to the Marks-Roos Local Bond Pooling Act of 1985 (the “Act”) to finance the Project; and

WHEREAS, the Authority is authorized pursuant to Section 6592(a) of the Act to pledge to payment of the Bonds any moneys of the Authority, including without limitation the portion of property tax revenues allocated to the Authority pursuant to California Health and Safety Code Section 33492.71(c)(1)(A) and (D), as applicable; and

WHEREAS, in order to finance all or a portion of the Project, the Authority desires to issue one or more series of Tax Allocation Revenue Bonds (the “Bonds”); and

WHEREAS, the Project is located within the boundaries of the County and within the boundaries as the former Fort Ord; and

WHEREAS, the County has, prior to the consideration of this resolution, held a public hearing on the financing of the Project with the proceeds of the issuance of the Bonds in accordance with Section 6586.5 of the Act, which hearing was held at [the Monterey County Government Center, 168 West Alisal Street, Salinas, California, on October __, 2019]; and

WHEREAS, in accordance with Section 6586.5 of the Act, notice of such hearing was published once at least five days prior to the hearing in _____ [name of newspaper], a newspaper of general circulation in the County; and

WHEREAS, following such public hearing, the Board of Supervisors of the County found and determined that the issuance of the Bonds to finance the Project pursuant to the Act will result in significant public benefits of the type described in Section 6586(a) through (d), inclusive, of the Act; and

WHEREAS, pursuant to Government Code Section 67700, the Authority will be dissolved on and as of [June 30, 2020]; and

WHEREAS, the Authority and the County will execute certain [Irrevocable Instructions] (defined below) pursuant to which the County will transfer Pledged Tax Revenues directly to the Trustee, on behalf of the Authority, to ensure that scheduled principal and interest payments and other amounts on the Bonds, including administrative expenses incurred in connection with the Bonds, are paid when due both prior to and following the dissolution of the Authority; and

WHEREAS, the 2019 Bonds, and any additional Parity Debt, will be payable from Pledged Tax Revenues (as defined herein); and

WHEREAS, pursuant to Government Code Section 67675 the Authority has prepared and adopted the Fort Ord Reuse Plan; and

WHEREAS, pursuant to Government Code Section 67679, the Authority has designated certain basewide public capital improvements to be planned, designed, constructed, repaired, remodeled, or replaced, and financed, by the Authority in the Fort Ord Reuse Plan, specifically including Building Removal (as defined herein); and

WHEREAS, pursuant to Government Code Section 67679 and the Fort Ord Reuse Plan, the Authority has determined that Building Removal constitutes the improvement of basewide capital facilities to be performed by the Authority as set forth in the Reuse Plan (defined below); and

WHEREAS, the County, Marina and Seaside desire to use proceeds of the Bonds to pay for Building Removal Costs (defined herein) and also desire that a portion of the proceeds of the Bonds be used by the Transportation Agency of Monterey County, State Parks (defined herein), Marina Coast Water District, and Monterey-Salinas Transit to pay for Building Removal Costs; and

WHEREAS, pursuant to Government Code Section 67679(a)(3), the Authority has further determined, with the consent of the County, City of Marina, and City of Seaside, that it is appropriate for the Authority to pay or reimburse the Monterey County Regional Fire District (the “Fire District”) for the cost of certain basewide public facilities incurred or to be incurred by the Fire District (the “Fire District Project”); and

WHEREAS, each of Seaside, Marina, the County, Transportation Agency of Monterey County, State Parks (defined herein), Marina Coast Water District, and Monterey-Salinas Transit will have control over and the ability to prioritize the use of Bond proceeds deposited into each such Local Agency’s designated account within the Project Fund for Building Removal Costs authorized under this Indenture; and

WHEREAS, in order to provide for the authentication and delivery of the 2019 Bonds, to establish and declare the terms and conditions upon which the 2019 Bonds are to be issued and secured and to secure the payment of the principal thereof and interest and redemption premium (if any) thereon, the Authority and the Trustee have duly authorized the execution and delivery of this Indenture; and

WHEREAS, the Authority has determined that all acts and proceedings required by law necessary to make the 2019 Bonds when executed by the Authority, and authenticated and delivered by the Trustee, the valid, binding and legal special obligations of the Authority, and to constitute this Indenture a legal, valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done or taken; and

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that in order to secure the payment of the principal of and the interest and redemption premium (if any) on all the Bonds, including the 2019 Bonds, issued and Outstanding under this Indenture, according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds, including the 2019 Bonds, are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds, including the 2019 Bonds, by the Owners thereof, and for other valuable considerations, the receipt of which is hereby acknowledged, the Authority and the Trustee do hereby covenant and agree with one another, for the benefit of the respective Owners from time to time of the Bonds, including the 2019 Bonds, as follows:

ARTICLE I

DETERMINATIONS; DEFINITIONS

Section 1.01 Findings and Determinations. The Authority has reviewed all proceedings heretofore taken and, as a result of such review, hereby finds and determines that all things, conditions and acts required by law to exist, happen or be performed precedent to and in connection with the issuance of the 2019 Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the Authority is now duly empowered, pursuant to each and every requirement of law, to issue the 2019 Bonds in the manner and form provided in this Indenture.

Section 1.02 Definitions. Unless the context otherwise requires, the terms defined in this Section 1.02 shall, for all purposes of this Indenture, of any Supplemental Indenture, and of any certificate, opinion or other document herein mentioned, have the meanings herein specified.

“**Act**” means the Marks-Roos Local Bond Pooling Act of 1985, codified at Article 4 of Chapter 6 of Division 7 of Title 1 of the California Government Code, commencing with Section 6584, and the acts amendatory thereof and supplementary thereto.

“**Additional Allowance**” means, as the date of calculation, the amount of Pledged Tax Revenues which, as shown in the Report of an Independent Fiscal Consultant, are estimated to be receivable by the Authority as a result of increases in the assessed valuation of taxable property in the Project Areas due to construction which has been completed but not yet reflected on the tax rolls. For purposes of this definition, the term “increases in the assessed valuation” means the amount by which the assessed valuation of taxable property in the Project Areas in any Fiscal Year is estimated to exceed the assessed valuation of taxable property in the Project Areas (as reported by the County Auditor-Controller) in the Fiscal Year in which such calculation is made.

“**Administrative Expense Account**” means the account by that name established in the Debt Service Fund in accordance with Section 4.02(d) hereof.

“**Administrative Expenses**” means the following actual or reasonably estimated costs directly related to the administration of the Bonds: fees and costs of the Trustee (including its legal counsel) in the discharge of the duties required of it under this Indenture; any fees or expenses of the County under or in connection with the Irrevocable Instructions; any [Policy Costs] (other than in respect of the reimbursement of draws under the 2019 Reserve Policy); the costs incurred by the Authority or any Successor Entity to comply with or implement any provision of this Indenture, the Continuing Disclosure Certificate (including disclosures to Bondowners and the Original Purchaser), or any

provision of the Act or the Fort Ord Reuse Authority Act relating to the Bonds or the payment thereof; an allocable share of the salaries of Authority staff or staff of any Successor Entity directly related to the foregoing and a proportionate amount of Authority or Successor Entity general administrative overhead related thereto.

“**Authority**” means the Fort Ord Reuse Authority, a public corporation formed pursuant to the Fort Ord Reuse Authority Act, Title 7.85 of the California Government Code, commencing with Section 67650.

“**Authorized Denomination**” means \$5,000 or any integral multiple thereof.

“**Bonds**” means the 2019 Bonds and any Parity Debt issued as bonds pursuant to a Supplemental Indenture.

“**Bond Counsel**” means (a) Stradling Yocca Carlson & Rauth, a Professional Corporation, or (b) any other attorney or firm of attorneys appointed by or acceptable to the Authority, of nationally-recognized experience in the issuance of obligations the interest on which is excludable from gross income for federal income tax purposes.

“**Bond Year**” means each twelve (12) month period extending from _____ 2 in one calendar year to _____ 1 of the succeeding calendar year, both dates inclusive; provided that the first Bond Year with respect to the Bonds shall commence on the Closing Date and end on _____ 1, 2019.

“**Building Removal**” and “**Building Removal Costs**” means the cost 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 listed on Exhibit C hereto. Building Removal Costs include, without limitation, all costs of planning, engineering, management, risk management (including insurance premiums), and associated administrative services required to remove blighted buildings from certain parcels of property within the boundaries of the former Fort Ord listed on Exhibit C.

“**Business Day**” means any day, other than a Saturday or Sunday or a day on which commercial banks in New York, New York, or any other city or cities where the Principal Corporate Trust Office of the Trustee is located are required or authorized by law to close or a day on which the Federal Reserve System is closed.

“**Closing Date**” means the date on which a series of Bonds is delivered by the Authority to the original purchaser thereof. The Closing Date with respect to the 2019 Bonds is _____, 2019.

“**Continuing Disclosure Certificate**” means that certain Continuing Disclosure Certificate, with respect to the 2019 Bonds, executed by the Authority, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

“**Costs of Issuance**” means all items of expense directly or indirectly payable by or reimbursable to the Authority relating to the authorization, issuance, sale and delivery of the Bonds, including but not limited to printing expenses, bond insurance and surety bond premiums, if any, rating Authority fees, filing and recording fees, initial fees and charges and first annual administrative fee of the Trustee and fees and expenses of its counsel, fees, charges and disbursements of attorneys, financial

advisors, accounting firms, consultants and other professionals, fees and charges for preparation, execution and safekeeping of the Bonds, administrative costs of the Authority and the City incurred in connection with the issuance of the Bonds, expenses of the underwriters of the Bonds, the fees and expenses of counsel to the underwriters of the Bonds, and any other cost, charge or fee in connection with the original issuance of the Bonds.

“**Costs of Issuance Fund**” means the fund by that name established and held by the Trustee pursuant to Section 3.03.

“**County**” means the County of Monterey.

“**County Auditor-Controller**” means the Auditor-Controller of the County.

“**County Authorized Representative**” means _____.

“**County Bond Proceeds Account**” means the account of that name established within the Project Fund.

“**Debt Service Fund**” means the fund by that name established and held by the Trustee pursuant to Section 4.02.

“**Defeasance Obligations**” means any of the following which, at the time of investment, are legal investments under the laws of the State for the moneys proposed to be invested therein and are in compliance with the Authority’s investment policies then in effect (provided that the Trustee shall be entitled to rely upon any investment direction from the Authority as conclusive certification to the Trustee that investments described therein are legal and are in compliance with the Authority’s investment policies then in effect):

- (a) Cash;
- (b) non-callable, direct obligations of the United States of America;
- (c) securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America; and
- (d) other investments approved by the 2019 Insurer.

“**Depository**” means (a) initially, DTC, and (b) any other Securities Depository acting as Depository pursuant to Section 2.11.

“**Depository System Participant**” means any participant in the Depository’s book-entry system.

“**DTC**” means The Depository Trust Company, New York, New York, and its successors and assigns.

“**Escrow Fund**” means the fund by that name established and held by the Trustee pursuant to Section 4.03.

“**Escrow Reserve Sub-Account**” means that subaccount established within the Reserve Account and held by the Trustee pursuant to Section 4.04.

“**Event of Default**” means any of the events described in Section 8.01.

“**Federal Securities**” means any direct, noncallable general obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America and CATS and TGRS), or obligations the payment of principal of and interest on which are directly or indirectly guaranteed by the United States of America.

“**Fire District**” is defined in the recitals hereto.

[“**Fire District Authorized Representative**” means _____.]

“**Fiscal Year**” means any twelve-month period beginning on July 1 in any year and extending to the next succeeding June 30, both dates inclusive, or any other twelve month period selected and designated by the Authority to the Trustee in writing as its official fiscal year period.

“**Fort Ord Reuse Authority Act**” means the Fort Ord Reuse Authority Act, codified at Title 7.85 of the California Government Code, commencing with Section 67650, and the acts amendatory thereof and supplementary thereto.

“**Implementation Agreements**” means, collectively, that certain Implementation Agreement dated as of May 1, 2001, by and between the Authority and the City of Marina, as amended by that certain Amendment #1 to the Implementation Agreement between the Fort Ord Reuse Authority and the City of Marina dated as of September 13, 2012, and that certain Implementation Agreement dated as of May 31, 2001, by and between the Authority and the City of Seaside, as such agreements have heretofore been amended or may be hereafter amended. [**Authority and Member Agencies to confirm this list includes all agreements or other provisions requiring FORA to share tax increment allocated to FORA.**]

“**Indenture**” means this Indenture of Trust by and between the Authority and the Trustee, as originally entered into or as it may be amended or supplemented by any Supplemental Indenture entered into pursuant to the provisions hereof.

“**Independent Accountant**” means any accountant or firm of such accountants duly licensed or registered or entitled to practice as such under the laws of the State, appointed by the Authority, and who, or each of whom:

- (a) is in fact independent and not under domination of the Authority or the City;
- (b) does not have any substantial interest, direct or indirect, with the Authority or the City; and
- (c) is not connected with the Authority or the City as an officer or employee of the Authority or the City, but who may be regularly retained to make reports to the Authority or the City.

“Independent Fiscal Consultant” means any consultant or firm of such consultants appointed by the Authority, and who, or each of whom:

(a) is judged by the Authority to have experience in matters relating to the collection of Pledged Tax Revenues or otherwise with respect to the financing of redevelopment projects;

(b) is in fact independent and not under domination of the Authority or the City;

(c) does not have any substantial interest, direct or indirect, with the Authority or the City; and

(d) is not connected with the Authority or the City as an officer or employee of the Authority or the City, but who may be regularly retained to make reports to the Authority or the City.

“Information Services” means, in accordance with then current guidelines of the Securities and Exchange Commission, such services providing information with respect to the redemption of bonds as the Authority may designate in a Written Request of the Authority filed with the Trustee.

“Insurer” means the 2019 Insurer and, as applicable, the provider of a municipal bond or financial guaranty insurance policy with respect to Parity Debt.

“Interest Account” means the account by that name established and held by the Trustee pursuant to Section 4.02(a).

“Interest Payment Date” means each _____ 1 and _____ 1, commencing _____ 1, 2020, for so long as any of the Bonds remain Outstanding hereunder.

[**“Irrevocable Instructions”** means that certain irrevocable instruction made by the Authority to the County Auditor-Controller and the County Treasurer and Tax Collector dated as of the Closing Date for the 2019 Bonds.]

“Local Agency” and **“Local Agencies”** means, individually and collectively, the County, the City of Marina, the City of Seaside, TAMC, State Parks, MCWD, MST and the Fire District.

“Marina Authorized Representative” means _____.

“Marina Bond Proceeds Account” means the account of that name established within the Project Fund.

“MCWD Authorized Representative” means _____.

“MCWD Bond Proceeds Account” means the account of that name established within the Project Fund[, to be used within the Project Area of the County and City of Marina.]

“Maximum Annual Debt Service” means, as of the date of calculation, the largest amount for the current or any future Bond Year payable on the 2019 Bonds or any Parity Debt in such Bond Year. For purposes of such calculation, (i) the amount of interest on any Bonds or other Parity Debt that is payable from the proceeds of such Bonds or Parity Debt that is set aside solely for such purpose shall not be included in the calculation of Maximum Annual Debt Service; (ii) principal and interest due on

the portions of the 2019 Escrow Term Bonds shall be excluded from such calculations unless and until the requirements of Section 4.03(a) have been satisfied with respect to any portion of such 2019 Escrow Term Bonds; and (iii) there also shall be excluded payments with respect to the 2019 Bonds or any Parity Debt to the extent that amounts due with respect to the 2019 Bonds or such Parity Debt are prepaid or otherwise discharged in accordance with this Indenture or the relevant Parity Debt Instrument.

“**MCWD**” means the Marina Coast Water District.

“**MST Authorized Representative**” means _____.

“**MST Bond Proceeds Account**” means the account of that name established within the Project Fund[, to be used within the Project Area of the County, City of Seaside, and City of Marina.]

“**Moody’s**” means Moody’s Investors Service and its successors.

“**MST**” means Monterey-Salinas Transit.

“**Nominee**” means (a) initially, Cede & Co., as nominee of DTC, and (b) any other nominee of the Depository designated pursuant to Section 2.11(a).

“**Original Purchaser**” means _____.

“**Outstanding**” when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 9.05) all Bonds except:

(a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation;

(b) Bonds paid or deemed to have been paid within the meaning of Section 9.03; and

(c) Bonds in lieu of or in substitution for which other Bonds shall have been authorized, executed, issued and delivered by the Authority pursuant hereto.

“**Owner**” or “**Bondowner**” means, with respect to any Bond, the person in whose name the ownership of such Bond shall be registered on the Registration Books.

“**Parity Debt**” means any additional bonds, loans, advances or indebtedness issued or incurred by the Authority on a parity with the 2019 Bonds pursuant to Section 3.05.

“**Parity Debt Instrument**” means resolution, indenture of trust, supplemental indenture of trust, loan agreement, trust agreement or other instrument authorizing the issuance of any Parity Debt.

“**Participating Underwriter**” has the meaning ascribed thereto in the Continuing Disclosure Certificate.

“**Permitted Investments**” means any of the following which, at the time of investment, are legal investments under the laws of the State for the moneys proposed to be invested therein and are in compliance with the Authority’s investment policies then in effect (provided that the Trustee shall be

entitled to rely upon any investment direction from the Authority as conclusive certification to the Trustee that investments described therein are legal and are in compliance with the Authority's investment policies then in effect):

(a) Federal Securities;

(b) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the Authority itself): (i) direct obligations or fully guaranteed certificates of beneficial ownership of the U.S. Export-Import Bank; (ii) certificates of beneficial ownership of the Farmers Home Administration; (iii) Federal Housing Administration debentures; (iv) participation certificates of the General Services Administration; (v) Federal Financing Bank bonds and debentures; (vi) guaranteed mortgage-backed bonds or guaranteed pass-through obligations of Ginnie Mae (formerly known as the Government National Mortgage Association); (vii) guaranteed Title XI financings of the U.S. Maritime Administration; and (viii) project notes, local authority bonds, new communities debentures and U.S. public housing notes and bonds of the U.S. Department of Housing and Urban Development;

(c) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities only as stripped by the Authority itself): (i) senior debt obligations of the Federal Home Loan Bank System; (ii) participation certificates and senior debt obligations of the Federal Home Loan Mortgage Corporation; (iii) mortgaged-backed securities and senior debt obligations of Fannie Mae; (iv) senior debt obligations of Sallie Mae (formerly known as the Student Loan Marketing Association); (v) obligations of the Resolution Funding Corporation; and (vi) consolidated system-wide bonds and notes of the Farm Credit System;

(d) Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of at least AAAM-G, AAAM or AAM, and a rating by Moody's of Aaa, Aa1 or Aa2, including such funds for which the Trustee, its affiliates or subsidiaries provide investment advisory or other management services or for which the Trustee or an affiliate of the Trustee serves as investment administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (i) the Trustee or an affiliate of the Trustee receives fees from funds for services rendered, (ii) the Trustee collects fees for services rendered pursuant to this Indenture, which fees are separate from the fees received from such funds, and (iii) services performed for such funds and pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or an affiliate of the Trustee;

(e) Certificates of deposit (including those of the Trustee, its parent and its affiliates) secured at all times by collateral described in (a) or (b) above or by collateral that may be used by a national bank for purposes of satisfying its obligations to collateralize pursuant to federal law, which have a maturity not greater than one year from the date of investment and which are issued by commercial banks, savings and loan associations or mutual savings banks;

(f) Certificates of deposit, savings accounts, deposit accounts or money market deposits (including those of the Trustee and its affiliates), but only to the extent that the amount being invested in such certificates of deposit, savings accounts, deposit accounts or money market deposits are fully insured by FDIC, including BIF and SAIF, secured at all times by collateral described in (a)

or (b) above or by collateral that may be used by a national bank for purposes of satisfying its obligations to collateralize pursuant to federal law;

(g) [Investment agreements, including guaranteed investment contracts, forward purchase agreements, reserve fund put agreements and collateralized investment agreements with an entity rated “A” or better by Moody’s and “A” or better by S&P, or unconditionally guaranteed by an entity rated “A” or better by Moody’s and “A” or better by S&P;] **[would this work for escrow fund?]**

(h) Commercial paper rated, at the time of purchase, “Prime-1” by Moody’s and “A-1+” or better by S&P;

(i) Bonds or notes issued by any state or municipality which are rated by Moody’s and S&P in one of the two highest rating categories assigned by such agencies;

(j) Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of “Prime-1” or “A3” or better by Moody’s, and “A-1+” by S&P; and

(k) The Local Authority Investment Fund that is administered by the California Treasurer for the investment of funds belonging to local agencies within the State of California, provided that for investment of funds held by the Trustee, the Trustee is entitled to make investments and withdrawals in its own name as Trustee.

“Pledged Tax Revenues” means all taxes that are allocated, or available to be allocated, to the Authority or any successor in interest to the Authority upon its dissolution or otherwise, pursuant to California Health and Safety Code Section 33492.71, subsection (c)(1)(A) or subsection (c)(1)(D), as applicable.

“Principal Account” means the account by that name established and held by the Trustee pursuant to Section 4.02(b).

“Principal Corporate Trust Office” means the corporate trust office of the Trustee in _____, California, or such other or additional offices as the Trustee may designate in writing to the Authority from time to time as the corporate trust office for purposes of the Indenture; except that with respect to presentation of Bonds for payment or for registration of transfer and exchange, such term means the office or Authority of the Trustee at which, at any particular time, its corporate trust Authority business is conducted.

“Project” means Building Removal and the Fire District Project.

“Project Area” means the area within the geographic boundaries of the Authority on the former Fort Ord, pursuant to Health and Safety Code Section 33492.70, et seq. and as defined in Exhibit C.

“Project Fund” means the fund by that name established and held by the Trustee pursuant to Section 3.04.

“Qualified Reserve Account Credit Instrument” means (i) the 2019 Reserve Policy, and (ii) an irrevocable standby or direct-pay letter of credit, insurance policy, or surety bond issued by a

commercial bank or insurance company and deposited with the Trustee, provided that all of the following requirements are met at the time of acceptance thereof by the Trustee: (a) S&P or Moody's have assigned a long-term credit rating at the time of issuance of such Qualified Reserve Account Credit Instrument to such bank or insurance company of "A" (without regard to modifier) or higher; (b) such letter of credit, insurance policy or surety bond has a term of at least 12 months; (c) such letter of credit, insurance policy or surety bond has a stated amount at least equal to the portion of the Reserve Requirement with respect to which funds are proposed to be released; and (d) the Trustee is authorized pursuant to the terms of such letter of credit, insurance policy or surety bond to draw thereunder an amount equal to any deficiencies which may exist from time to time in the Interest Account or the Principal Account for the purpose of making payments required pursuant to Sections 4.02(a), 4.02(b) or 4.02(c) of this Indenture.

"Record Date" means, with respect to any Interest Payment Date, the close of business on the fifteenth (15th) calendar day of the month preceding such Interest Payment Date, whether or not such fifteenth (15th) calendar day is a Business Day.

"Redemption Account" means the account by that name established and held by the Trustee pursuant to Section 4.02(d).

"Registration Books" means the records maintained by the Trustee pursuant to Section 2.08 for the registration and transfer of ownership of the Bonds.

"Report" means a document in writing signed by an Independent Fiscal Consultant and including:

(a) a statement that the person or firm making or giving such Report has read the pertinent provisions of this Indenture to which such Report relates;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the Report is based; and

(c) a statement that, in the opinion of such person or firm, sufficient examination or investigation was made as is necessary to enable said consultant to express an informed opinion with respect to the subject matter referred to in the Report.

"Reserve Account" means the account by that name established and held by the Trustee pursuant to Section 4.02(c).

"Reserve Requirement" means, subject to Section 4.02(c) of this Indenture, with respect to the 2019 Bonds, and each series (or multiple series) of Parity Debt issued in the form of Bonds, the lesser of

(i) 125% of the average Annual Debt Service with respect to that series (or multiple series) of the Bonds,

(ii) Maximum Annual Debt Service with respect to that series (or multiple series) of the Bonds, or

(iii) with respect to an individual series (or multiple series) of Bonds, 10% of the original principal amount of such series (or multiple series) of Bonds (or, if such series (or multiple series) of Bonds has more than a de minimis amount of original issue discount or premium, 10% of the issue price of such series (or multiple series) of Bonds);

provided, that the Authority may meet all or a portion of the Reserve Requirement by depositing a Qualified Reserve Account Credit Instrument meeting the requirements of Section 4.02(c) hereof. If the Reserve Requirement with respect to a particular series of Bonds is secured by a Qualified Reserve Account Credit Instrument that relates only to such series of Bonds, the calculation of Reserve Requirement for such series of Bonds shall be calculated on a stand-alone basis.

“Reuse Plan” means the Fort Ord Reuse Plan prepared by the Authority, dated May 1996, as amended and supplemented from time to time.

“S&P” means S&P Global Ratings, LLC, a Standard & Poor’s Financial Services LLC business, and its successors.

“Seaside Authorized Representative” means _____.

“Seaside Bond Proceeds Account” means the account of that name established within the Project Fund.

“Securities Depositories” means The Depository Trust Company, New York, New York 10041-0099, Fax-(212) 855-7232; or, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the Authority may designate in a Written Request of the Authority delivered to the Trustee.

“Serial Bonds” means all Bonds other than Term Bonds.

“State” means the State of California.

“State Parks” means the California Department of Park and Recreation.

“State Parks Authorized Representative” means _____.

“State Parks Bond Proceeds Account” means the account of that name established within the Project Fund.

“Subordinate Debt” means any loans, advances or indebtedness issued or incurred by the Authority pursuant to Section 3.06, which are either: (a) payable from, but not secured by a pledge of or lien upon, the Pledged Tax Revenues; or (b) secured by a pledge of or lien upon the Pledged Tax Revenues which is expressly subordinate to the pledge of and lien upon the Pledged Tax Revenues hereunder for the security of the 2019 Bonds, the Existing Bonds and any Parity Debt.

“Subordinate Debt Instrument” means any instrument providing for the issuance of Subordinate Debt.

“Successor Entity” means, individually and collectively, the City of Marina and any other entity which succeeds thereto to undertake all or any portion of the administration of the Authority, the Authority’s obligations under this Indenture, or payment of the Bonds following the dissolution of the

Authority pursuant to Government Code Section 67700, as it may be amended from time to time, or any successor statute.

“Supplemental Indenture” means any resolution, agreement or other instrument which has been duly adopted or entered into by the Authority, but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

“TAMC” means the Transportation Agency of Monterey County.

“TAMC Authorized Representative” means _____.

“TAMC Bond Proceeds Account” means the account of that name established within the Project Fund, [to be used within the Project Area of the City of Marina.]

“Term Bonds” means (i) the 2019 Bonds maturing on _____ 1, 20__ and _____ 1, 20__, and (ii) that portion of any other Bonds payable from mandatory sinking account payments.

“Trustee” means U.S. Bank National Association, as trustee hereunder, or any successor thereto appointed as trustee hereunder in accordance with the provisions of Article VI.

“Written Request of the Authority” or **“Written Certificate of the Authority”** means a request or certificate, in writing signed by the Administrator or Treasurer of the Authority, or the designee of either, or by any other officer of the Authority or the City duly authorized by the Authority for that purpose.

“2019 Bonds” means the \$ _____ Fort Ord Reuse Authority Tax Allocation Bonds, Series 2019A (Federally Taxable).

“2019 Escrow Term Bonds” means the \$ _____ and \$ _____ aggregate principal amount of the 2019 Bonds maturing on September 1, 20__ and September 1, 20__, respectively.

“2019 Insurance Policy” means the insurance policy issued by the 2019 Insurer guaranteeing the scheduled payment of principal of and interest on the 2019 Bonds when due.

“2019 Insurer” means _____, or any successor thereto or assignee thereof.

“2019 Reserve Policy” means the Municipal Bond Debt Service Reserve Insurance Policy issued by the 2019 Insurer for the 2019 Bonds.

Section 1.03 Rules of Construction. All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture, and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

AUTHORIZATION AND TERMS

Section 2.01 Authorization of 2019 Bonds. One initial issue of Bonds is hereby authorized to be issued by the Authority under and subject to the terms of this Indenture, the Act and the Fort Ord Reuse Authority Act. This Indenture constitutes a continuing agreement with the Owners of all of the Bonds issued or to be issued hereunder and then Outstanding to secure the full and final payment of principal and redemption premiums (if any) and the interest on all Bonds which may from time to time be executed and delivered hereunder, subject to the covenants, agreements, provisions and conditions herein contained. Such initial issue of Bonds shall be designated the “Fort Ord Reuse Authority Tax Allocation Bonds, Series 2019A (Federally Taxable)” (the “2019 Bonds”). The 2019 Bonds shall be issued in the initial aggregate principal amount of \$_____.

Section 2.02 Terms of 2019 Bonds. The 2019 Bonds shall be issued in fully registered form without coupons. The 2019 Bonds shall be issued in denominations of \$5,000 or any integral multiple thereof, so long as no 2019 Bond shall have more than one maturity date. The 2019 Bonds shall be dated as of their Closing Date. The 2019 Bonds shall be lettered and numbered as the Trustee shall prescribe.

The 2019 Bonds shall mature and shall bear interest (calculated on the basis of a 360-day year comprised of twelve 30-day months) at the rate per annum as follows:

<i>Maturity Date</i> (_____ I)	<i>Principal Amount</i>	<i>Interest Rate</i>
	\$	%

*

* Term Bond.

† 2019 Escrow Term Bonds

Each 2019 Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless (a) it is authenticated after a Record Date and on or before the following Interest Payment Date, in which event it shall bear interest from such Interest Payment Date; or (b) it is authenticated on or before _____, 20__, in which event it shall bear interest from its Closing Date; provided, however, that if, as of the date of authentication of any 2019 Bond, interest thereon is in default, such 2019 Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

Interest on the 2019 Bonds (including the final interest payment upon maturity or redemption) is payable when due by check or draft of the Trustee mailed on the Interest Payment Date to the Owner thereof at such Owner's address as it appears on the Registration Books at the close of business on the preceding Record Date; provided that at the written request of the Owner of at least \$1,000,000 aggregate principal amount of the 2019 Bonds, which written request is on file with the Trustee as of any Record Date, interest on such 2019 Bonds shall be paid on the succeeding Interest Payment Date to such account in the United States as shall be specified in such written request. The principal of the 2019 Bonds and any premium upon redemption, are payable in lawful money of the United States of America upon presentation and surrender thereof at the Principal Corporate Trust Office of the Trustee.

Section 2.03 Redemption of 2019 Bonds.

(a) Optional Redemption. The 2019 Bonds maturing on or prior to _____ 1, 20__ are not subject to optional redemption. The 2019 Bonds maturing on or after _____ 1, 20__, are subject to optional redemption prior to their respective maturity dates as a whole, or in part by lot, on any date on or after _____ 1, 20__, by such maturity or maturities as shall be directed by the Authority (or in absence of such direction, pro rata by maturity and by lot within a maturity), from any source of available funds. Such optional redemption shall be at a redemption price equal to 100% of the principal amount to be redeemed, plus accrued but unpaid interest to the date fixed for redemption, without premium.

The Authority shall be required to give the Trustee written notice of its intention to redeem 2019 Bonds under this subsection (a) with a designation of the principal amount and maturities to be redeemed at least forty five (45) days prior to the date fixed for such redemption (or such later date as shall be acceptable to the Trustee in the sole determination of the Trustee), and shall transfer to the Trustee for deposit in the Debt Service Fund all amounts required for such redemption not later than the date fixed for such redemption.

(b) Mandatory Sinking Fund Redemption. The 2019 Bonds that are Term Bonds maturing _____ 1, 20__ and _____ 1, 20__ and the 2019 Bonds that are 2019 Escrow Term Bonds maturing _____ 1, 20__, _____ 1, 20__ and _____ 1, 20__ shall also be subject to mandatory redemption in whole, or in part by lot, on _____ 1 in each year, commencing _____ 1, 20__, _____ 1, 20__, _____ 1, 20__, _____ 1, 20__ and _____ 1, 20__, respectively, as set forth below, from sinking fund payments made by the Authority to the Principal Account pursuant to Section 4.02(b), at a redemption price equal to the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts and on _____ 1 in the respective years as set forth in the following tables; provided however, that (y) in lieu of redemption thereof such Series 2019 Term Bonds may be purchased by the Authority pursuant to Section 2.03(h) hereof, and (z) if some but not all of such Series 2019 Term Bonds have been redeemed pursuant to subsection (a) above, or if some but not all of the 2019 Escrow Term Bonds have been redeemed pursuant to subsection (c) below, the total amount of all future sinking fund

payments shall be reduced by the aggregate principal amount of such Series 2019 Term Bonds or 2019 Escrow Term Bonds so redeemed, to be allocated among such sinking fund payments in integral multiples of \$5,000 as determined by the Authority (notice of which determination shall be given by the Authority to the Trustee).

Series 2019 Term Bonds of 20__

_____ *I* *Principal Amount*
\$

†

† Final Maturity.

Series 2019 Term Bonds of 20__

_____ *I* *Principal Amount*
\$

†

† Final Maturity.

Series 2019 Escrow Term Bonds of 20__

_____ *I* *Principal Amount*
\$

†

† Final Maturity.

Series 2019 Escrow Term Bonds of 20__

_____ *I* *Principal Amount*
\$

†

† Final Maturity.

identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

(e) Partial Redemption of Bonds. In the event only a portion of any Bond is called for redemption, then upon surrender of such Bond the Authority shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Authority, a new Bond or Bonds of the same interest rate and maturity, of Authorized Denominations, in aggregate principal amount equal to the unredeemed portion of the Bond to be redeemed.

(f) Effect of Redemption. From and after the date fixed for redemption, if funds available for the payment of the redemption price of and interest on the Bonds so called for redemption shall have been duly deposited with the Trustee, such Bonds so called shall cease to be entitled to any benefit under this Indenture other than the right to receive payment of the redemption price and accrued interest to the redemption date, and no interest shall accrue thereon from and after the redemption date specified in such notice.

(g) Manner of Redemption. Whenever any Bonds or portions thereof are to be selected for redemption by lot, the Trustee shall make such selection, in such manner as the Trustee shall deem appropriate (subject to the approval of the 2019 Insurer as to the 2019 Bonds, so long as the 2019 Insurance Policy is in full force and effect and the 2019 Insurer has not defaulted on its obligations thereunder), and shall notify the Authority thereof to the extent Bonds are no longer held in book-entry form. In the event of redemption by lot of Bonds, the Trustee shall assign to each Bond then Outstanding a distinctive number for each \$5,000 of the principal amount of each such Bond. The Bonds to be redeemed shall be the Bonds to which were assigned numbers so selected, but only so much of the principal amount of each such Bond of a denomination of more than \$5,000 shall be redeemed as shall equal \$5,000 for each number assigned to it and so selected. All Bonds redeemed or purchased pursuant to this Section 2.03 shall be cancelled and destroyed.

(h) Purchase in Lieu of Redemption. In lieu of redemption of the Term Bonds pursuant to the subsection (b) above or pursuant to a Supplemental Indenture, amounts on deposit in the Principal Account may also be used and withdrawn by the Authority and the Trustee, respectively (with the prior written approval of the 2019 Insurer as to the 2019 Bonds so long as the 2019 Insurance Policy is in full force and effect and the 2019 Insurer has not defaulted on its obligations thereunder), at any time, upon the Written Request of the Authority, for the purchase of the Term Bonds at public or private sale as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as the Authority may in its discretion determine. The par amount of any Term Bonds so purchased by the Authority in any twelve-month period ending on January 1 in any year shall be credited towards and shall reduce the par amount of the Term Bonds required to be redeemed pursuant to subsection (e) on _____ 1 in each year; provided that evidence satisfactory to the Trustee of such purchase has been delivered to the Trustee by said January 1.

Section 2.04 Form of 2019 Bonds. The 2019 Bonds, the form of Trustee's Certificate of Authentication, and the form of Assignment to appear thereon, shall be substantially in the form set forth in Exhibit A, which is attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture.

Section 2.05 Execution of Bonds. The Bonds shall be executed on behalf of the Authority by the signature of the Chair, Executive Officer or Treasurer or the written designee of any of them

and the signature of the Secretary of the Authority who are in office on the date of execution and delivery of this Indenture or at any time thereafter. Either or both of such signatures may be made manually or may be affixed by facsimile thereof. If any officer whose signature appears on any Bond ceases to be such officer before delivery of the Bonds to the purchaser, such signature shall nevertheless be as effective as if the officer had remained in office until the delivery of the Bonds to the purchaser. Any Bond may be signed and attested on behalf of the Authority by such persons as at the actual date of the execution of such Bond shall be the proper officers of the Authority although on the date of such Bond any such person shall not have been such officer of the Authority.

Only such of the Bonds as shall bear thereon a Certificate of Authentication in the form hereinbefore set forth, manually executed and dated by the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such Certificate shall be conclusive evidence that such Bonds have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture. In the event temporary Bonds are issued pursuant to Section 2.09 hereof, the temporary Bonds may bear thereon a Certificate of Authentication executed and dated by the Trustee, may be initially registered by the Trustee, and, until so exchanged as provided under Section 2.09 hereof, the temporary Bonds shall be entitled to the same benefits pursuant to this Indenture as definitive Bonds authenticated and delivered hereunder.

Section 2.06 Transfer of Bonds. Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by a duly authorized attorney of such person, upon surrender of such Bond to the Trustee at its Principal Corporate Trust Office for cancellation, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. Whenever any Bond shall be surrendered for transfer, the Authority shall execute and the Trustee shall thereupon authenticate and deliver to the transferee a new Bond or Bonds of like tenor, maturity and aggregate principal amount of Authorized Denominations. The Trustee shall require the payment by the Owner of any tax or other governmental charge on the transfer of any Bonds pursuant to this Section 2.06. The cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer shall be paid by the Authority.

The Trustee may refuse to transfer, under the provisions of this Section 2.06, either (a) any Bonds during the period fifteen (15) days prior to the date established by the Trustee for the selection of Bonds for redemption, or (b) any Bonds selected by the Trustee for redemption.

Section 2.07 Exchange of Bonds. Bonds may be exchanged at the Principal Corporate Trust Office of the Trustee for Bonds of the same tenor and maturity and of other Authorized Denominations. The Trustee shall require the payment by the Owner of any tax or other governmental charge on the exchange of any Bonds pursuant to this Section 2.07. The cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any exchange shall be paid by the Authority.

The Trustee may refuse to exchange, under the provisions of this Section 2.07, either (a) any Bonds during the fifteen (15) days prior to the date established by the Trustee for the selection of Bonds for redemption or (b) any Bonds selected by the Trustee for redemption.

Section 2.08 Registration of Bonds. The Trustee will keep or cause to be kept, at its Principal Corporate Trust Office, sufficient records for the registration and registration of transfer of the Bonds, which shall at all times during normal business hours be open to inspection and copying by

the Authority, upon reasonable prior notice to the Trustee; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on the Registration Books Bonds as hereinbefore provided.

Section 2.09 Temporary Bonds. The Bonds may be initially issued in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the Authority, and may contain such reference to any of the provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the Authority upon the same conditions and in substantially the same manner as the definitive Bonds. If the Authority issues temporary Bonds, it will execute and furnish definitive Bonds without delay, and thereupon the temporary Bonds shall be surrendered, for cancellation, in exchange therefor at the Principal Corporate Trust Office of the Trustee, and the Trustee shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of Authorized Denominations, interest rates and like maturities. Until so exchanged, the temporary Bonds shall be entitled to the same benefits pursuant to this Indenture as definitive Bonds authenticated and delivered hereunder.

Section 2.10 Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the Authority, at the expense of the Owner of such Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor and amount in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be canceled by it. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence be satisfactory to it and indemnity satisfactory to it shall be given, the Authority, at the expense of the Owner, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor and amount in lieu of and in substitution for the Bond so lost, destroyed or stolen (or if any such Bond has matured or has been called for redemption, instead of issuing a substitute Bond, the Trustee may pay the same without surrender thereof upon receipt of indemnity satisfactory to the Trustee and the Authority). The Authority may require payment by the Owner of a sum not exceeding the actual cost of preparing each new Bond issued under this Section 2.10 and of the expenses which may be incurred by the Authority and the Trustee in the premises. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the Authority whether or not the Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds issued pursuant to this Indenture.

Section 2.11 Book-Entry System.

(a) Original Delivery. The Bonds shall be initially delivered in the form of a separate single fully registered Bond without coupons (which may be typewritten) for each maturity of the Bonds. Upon initial delivery, the ownership of each such Bond shall be registered on the Registration Books in the name of the Nominee. Except as provided in subsection (c), the ownership of all of the Outstanding Bonds shall be registered in the name of the Nominee on the Registration Books.

With respect to Bonds the ownership of which shall be registered in the name of the Nominee, neither the Authority nor the Trustee shall have any responsibility or obligation to any Depository System Participant or to any person on behalf of which the Depository System Participant

holds an interest in the Bonds. Without limiting the generality of the immediately preceding sentence, neither the Authority nor the Trustee shall have any responsibility or obligation with respect to (i) the accuracy of the records of the Depository, the Nominee or any Depository System Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Depository System Participant or any other person, other than a Bondowner as shown in the Registration Books, of any notice with respect to the Bonds, including any notice of redemption, (iii) the selection by the Depository of the beneficial interests in the Bonds to be redeemed in the event the Authority elects to redeem the Bonds in part, (iv) the payment to any Depository System Participant or any other person, other than a Bondowner as shown in the Registration Books, of any amount with respect to principal, premium, if any, or interest on the Bonds or (v) any consent given or other action taken by the Depository as Owner of the Bonds. The Authority and the Trustee may treat and consider the person in whose name each Bond is registered as the absolute owner of such Bond for the purpose of payment of principal, premium and interest on such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers of ownership of such Bond, and for all other purposes whatsoever. The Trustee shall pay the principal of and interest and premium, if any, on the Bonds only to the respective Owners or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge all obligations with respect to payment of principal of and interest and premium, if any, on the Bonds to the extent of the sum or sums so paid. No person other than a Bondowner shall receive a Bond evidencing the obligation of the Authority to make payments of principal, interest and premium, if any, pursuant to this Indenture. Upon delivery by the Depository to the Nominee of written notice to the effect that the Depository has determined to substitute a new nominee in its place, and subject to the provisions herein with respect to Record Dates, such new nominee shall become the Nominee hereunder for all purposes; and upon receipt of such a notice the Authority shall promptly deliver a copy of the same to the Trustee.

(b) Representation Letter. In order to qualify the Bonds for the Depository's book-entry system, the Authority and the Trustee shall execute and deliver to such Depository a letter representing such matters as shall be necessary to so qualify the Bonds. The execution and delivery of such letter shall not in any way limit the provisions of subsection (a) above or in any other way impose upon the Authority or the Trustee any obligation whatsoever with respect to persons having interests in the Bonds other than the Bondowners. The Trustee agrees to comply with all provisions in such letter with respect to the giving of notices thereunder by the Trustee. In addition to the execution and delivery of such letter, upon written request of the Depository or the Trustee, the Authority may take any other actions, not inconsistent with this Indenture, to qualify the Bonds for the Depository's book-entry program.

(c) Transfers Outside Book-Entry System. In the event that either (i) the Depository determines not to continue to act as Depository for the Bonds, or (ii) the Authority determines to terminate the Depository as such, then the Authority shall thereupon discontinue the book-entry system with such Depository. In such event, the Depository shall cooperate with the Authority and the Trustee in the issuance of replacement Bonds by providing the Trustee with a list showing the interests of the Depository System Participants in the Bonds, and by surrendering the Bonds, registered in the name of the Nominee, to the Trustee on or before the date such replacement Bonds are to be issued. The Depository, by accepting delivery of the Bonds, agrees to be bound by the provisions of this subsection (c). If, prior to the termination of the Depository acting as such, the Authority fails to identify another Securities Depository to replace the Depository, then the Bonds shall no longer be required to be registered in the Registration Books in the name of the Nominee, but shall be registered in whatever name or names the Owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Article II. Prior to its termination, the Depository shall furnish

the Trustee with the names and addresses of the Depository System Participants and respective ownership interests thereof.

(d) Payments to the Nominee. Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of the Nominee, all payments with respect to principal of and interest and premium, if any, on such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the letter described in subsection (b) of this Section or as otherwise instructed by the Depository.

Section 2.12 Applicability of Provisions to Additional Bonds. Unless otherwise provided in a Supplemental Indenture, the provisions of Sections 2.03(d) through (h) and 2.05 through 2.11 shall apply to additional Bonds.

ARTICLE III

DEPOSIT AND APPLICATION; ADDITIONAL DEBT

Section 3.01 Issuance of Bonds. Upon the execution and delivery of this Indenture, the Authority shall execute and deliver to the Trustee the 2019 Bonds in the aggregate principal amount of \$ _____, and the Trustee shall authenticate and deliver the 2019 Bonds upon the Written Request of the Authority.

Section 3.02 Application of Proceeds of Sale and Certain Other Amounts.

(a) On the Closing Date with respect to the 2019 Bonds, the net proceeds of sale of the 2019 Bonds, being \$ _____ (calculated as the par amount thereof, less net original issue discount in the amount of \$ _____, less the discount of the original purchaser thereof in the amount of \$ _____, and less the portion of the premiums for the 2019 Insurance Policy and the 2019 Reserve Policy allocable to the 2019 Bonds in the amount of \$ _____ paid directly to the 2019 Insurer), shall be paid to the Trustee and applied as follows:

(i) The Trustee shall deposit the amount of \$ _____ in the Costs of Issuance Fund.

(ii) The Trustee shall deposit \$ _____ in the County Bond Proceeds Account of the Project Fund.

(iii) The Trustee shall deposit \$ _____ in the Marina Bond Proceeds Account of the Project Fund.

(iv) The Trustee shall deposit \$ _____ in the MCWD Bond Proceeds Account of the Project Fund.

(v) The Trustee shall deposit \$ _____ in the MST Bond Proceeds Account of the Project Fund.

(vi) The Trustee shall deposit \$ _____ in the State Parks Bond Proceeds Account of the Project Fund.

(vii) The Trustee shall deposit \$ _____ being the remaining amount of proceeds of the 2019 Bonds, in the Seaside Bond Proceeds Account of the Project Fund

(viii) The Trustee shall deposit \$ _____ in the TAMC Bond Proceeds Account of the Project Fund.

(ix) [The Trustee shall transfer \$ _____ to the Fire District.][**Or create Fire District Bond Proceeds Account if costs have not been incurred by the Fire District**]

(x) The Trustee shall deposit \$ _____ in the Escrow Fund.

(xi) The Trustee shall deposit \$ _____ in the Escrow Reserve Sub-Account.

Section 3.03 Costs of Issuance Fund. There is hereby established a separate fund to be known as the “Costs of Issuance Fund,” which shall be held by the Trustee in trust. The moneys in the Costs of Issuance Fund shall be used and withdrawn by the Trustee from time to time to pay the Costs of Issuance with respect to the 2019 Bonds, upon submission of a Written Request of the Authority stating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. On the date which is six (6) months following the Closing Date with respect to the 2019 Bonds, or upon the earlier Written Request of the Authority, all amounts (if any) remaining in the Costs of Issuance Fund shall be withdrawn therefrom by the Trustee and transferred to the Interest Account within the Debt Service Fund, and the Costs of Issuance Fund shall be closed.

Section 3.04 Project Fund.

(a) There shall be established a separate and segregated fund to be known as the “2019 Project Fund” (the “Project Fund”), together with a “County Bond Proceeds Account,” a “Marina Bond Proceeds Account,” a “Seaside Bond Proceeds Account,” a “MCWD Bond Proceeds Account,” a “MST Bond Proceeds Account,” a “State Parks Bond Proceeds Account,” and “TAMC Bond Proceeds Account,” therein.

(b) The moneys in the Project Fund shall be held by the Trustee in trust and applied by the Local Agencies to the payment of the costs of the Project and of expenses incidental thereto.

(i) Before any payment is made from the County Bond Proceeds Account of the Project Fund by the Trustee, the County Authorized Representative, acting as agent of the County, shall cause to be filed with the Trustee a certificate of the County in the form set forth in Exhibit B. The County Authorized Representative may in its sole discretion direct the Trustee to transfer moneys from the County Bond Proceeds Account to any of the Marina Bond Proceeds Account, the Seaside Bond Proceeds Account, the MCWD Bond Proceeds Account, the MST Bond Proceeds Account, the State Parks Bond Proceeds Account, or the TAMC Bond Proceeds Account.

(ii) Before any payment is made from the Marina Bond Proceeds Account of the Project Fund by the Trustee, the Marina Authorized Representative, acting as agent of the City of Marina, shall cause to be filed with the Trustee a certificate of the City of Marina in the form set forth in Exhibit B. The Marina Authorized Representative may in its sole discretion direct the Trustee to transfer moneys from the Marina Bond Proceeds Account to any of the County Bond Proceeds

Account, the Seaside Bond Proceeds Account, the MCWD Bond Proceeds Account, the MST Bond Proceeds Account, the State Parks Bond Proceeds Account, or the TAMC Bond Proceeds Account.

(iii) Before any payment is made from the Seaside Bond Proceeds Account of the Project Fund by the Trustee, the Seaside Authorized Representative, acting as agent of the City of Seaside, shall cause to be filed with the Trustee a certificate of the City of Seaside in the form set forth in Exhibit B. The Seaside Authorized Representative may in its sole discretion direct the Trustee to transfer moneys from the Seaside Bond Proceeds Account to any of the County Bond Proceeds Account, the Marina Bond Proceeds Account, the MCWD Bond Proceeds Account, the MST Bond Proceeds Account, the State Parks Bond Proceeds Account, or the TAMC Bond Proceeds Account.

(iv) Before any payment is made from the MCWD Bond Proceeds Account of the Project Fund by the Trustee, the MCWD Authorized Representative, acting as agent of MCWD, shall cause to be filed with the Trustee a certificate of MCWD in the form set forth in Exhibit B. The MCWD Authorized Representative may in its sole discretion direct the Trustee to transfer moneys from the MCWD Bond Proceeds Account to any of the Marina Bond Proceeds Account, the Seaside Bond Proceeds Account, the County Bond Proceeds Account, the MST Bond Proceeds Account, the State Parks Bond Proceeds Account, or the TAMC Bond Proceeds Account.

(v) Before any payment is made from the MST Transit Bond Proceeds Account of the Project Fund by the Trustee, the MST Authorized Representative, acting as agent of MST, shall cause to be filed with the Trustee a certificate of MST in the form set forth in Exhibit B. The MST Authorized Representative may in its sole discretion direct the Trustee to transfer moneys from the MST Bond Proceeds Account to any of the Marina Bond Proceeds Account, the Seaside Bond Proceeds Account, the County Bond Proceeds Account, the MCWD Bond Proceeds Account, the State Parks Bond Proceeds Account, or the TAMC Bond Proceeds Account.

(vi) Before any payment is made from the State Parks Bond Proceeds Account of the Project Fund by the Trustee, the State Parks Authorized Representative, acting as agent of the State Parks, shall cause to be filed with the Trustee a certificate of the State Parks in the form set forth in Exhibit B. The State Parks Authorized Representative may in its sole discretion direct the Trustee to transfer moneys from the State Parks Bond Proceeds Account to any of the Marina Bond Proceeds Account, the Seaside Bond Proceeds Account, the County Bond Proceeds Account, the MCWD Bond Proceeds Account, the MST Bond Proceeds Account, or the TAMC Bond Proceeds Account.

(vii) Before any payment is made from the TAMC Bond Proceeds Account of the Project Fund by the Trustee, the TAMC Authorized Representative, acting as agent of the TAMC, shall cause to be filed with the Trustee a certificate of the TAMC in the form set forth in Exhibit B. The TAMC Authorized Representative may in its sole discretion direct the Trustee to transfer moneys from the TAMC Bond Proceeds Account to any of the Marina Bond Proceeds Account, the Seaside Bond Proceeds Account, the County Bond Proceeds Account, the MCWD Bond Proceeds Account, the MST Bond Proceeds Account, or the State Parks Bond Proceeds Account.

(c) Upon receipt of an executed certificate pursuant to Section 3.04(b), the Trustee will pay the amount that is set forth in such certificate as directed by the terms thereof or disburse funds to the applicable Local Agency for such payment as directed by such Local Agency's authorized representative in such certificate. The Trustee need not make any such payment if it has received notice of any lien, right to lien, attachment upon or claim affecting the right to receive payment of any

of the moneys to be so paid, which has not been released or will not be released simultaneously with such payment.

(d) It is hereby expressly understood and agreed that the Trustee shall be under no liability of any kind or character whatsoever for the payment of any cost of the Project and that all such costs and expenses shall be paid by the Authority or the applicable Local Agency.

Section 3.05 Issuance of Parity Debt. In addition to the 2019 Bonds, the Authority may issue additional bonds (including pursuant to a Supplemental Indenture) or incur other loans, advances or indebtedness payable from Pledged Tax Revenues on a parity with the 2019 Bonds as provided in this Section 3.05. **[Discuss]**

(a) The Authority may issue and deliver any such Parity Debt to refund outstanding Bonds or Parity Debt in such principal amount as shall be determined by the Authority subject to the following specific conditions all of which are hereby made conditions precedent to the issuance and delivery of such Parity Debt:

(i) No default, Event of Default (or, unless otherwise permitted by the 2019 Insurer so long as the 2019 Insurance Policy is in full force and effect and the 2019 Insurer is not in default on its obligations thereunder, event which, once all notice or grace periods have passed, would constitute an Event of Default) under the Indenture or under any Parity Debt Instrument shall have occurred and be continuing unless such event of default shall be cured by the issuance of such Parity Debt;

(ii) Scheduled debt service with respect to such Parity Debt shall not exceed scheduled debt service on the 2019 Bonds being refunded in any year;

(iii) In the event the Authority issues additional Bonds pursuant to a Supplemental Indenture:

(A) interest on such Parity Debt shall be payable on _____ 1 and _____ 1 in each year of the term of such Parity Debt except the first twelve-month period, during which interest may be payable on any _____ 1 or _____ 1,

(B) principal of such Parity Debt shall be payable on _____ 1 in any year in which principal is payable, and

(C) the Authority shall cause the amount on deposit in the Reserve Account to equal the Reserve Requirement; and

(iv) The Authority shall deliver to the Trustee a Written Certificate of the Authority certifying that the conditions precedent to the issuance of such Parity Debt set forth above in this subsection (a) have been satisfied.

(b) The Authority may also issue and deliver Parity Debt for the purpose of financing additional public capital facilities under the Reuse Plan or as otherwise provided by the Fort Ord Reuse Authority Act, subject to the following specific conditions all of which are hereby made conditions precedent to the issuance and delivery of such Parity Debt:

(i) No event of default under the Indenture or under any Parity Debt Instrument shall have occurred and be continuing unless such event of default shall be cured by the issuance of such Parity Debt;

(ii) In the event the Authority issues additional Bonds pursuant to a Supplemental Indenture:

(A) interest on such Parity Debt shall be payable on _____ 1 and _____ 1 in each year of the term of such Parity Debt except the first twelve-month period, during which interest may be payable on any _____ 1 or _____ 1,

(B) principal of such Parity Debt shall be payable on _____ 1 in any year in which principal is payable, and

(C) the Authority shall cause the amount on deposit in the Reserve Account to equal the Reserve Requirement; and

(iii) The Pledged Tax Revenues for the then current Fiscal Year plus, at the option of the Authority, the Additional Allowance as set forth in a Written Certificate of the Authority filed with the Trustee, shall be equal to one hundred ten percent (110%) of Maximum Annual Debt Service (exclusive of debt service due on the proceeds of any Parity Debt deposited in an escrow fund pursuant to the terms of a Supplemental Indenture which are not secured by Pledged Tax Revenues) on all Bonds and all Parity Debt which will be Outstanding following the issuance of such Parity Debt.

(iv) The Authority will deliver to the Trustee a Written Certificate of the Authority certifying that the conditions precedent to the issuance of such Parity Debt set forth above in this subsection (b) have been satisfied.

Section 3.06 Issuance of Subordinate Debt. The Authority may issue or incur Subordinate Debt in such principal amount as shall be determined by the Authority. Such Subordinate Debt may be payable from any assets or property of the Authority, including Pledged Tax Revenues, on a subordinate basis to the payment of debt service on the Bonds. Any principal and interest payments on such Subordinate Debt shall be payable on the same dates as the 2019 Bonds and shall be subordinate and junior to the replenishment of the Reserve Account and reimbursement of all amounts due to the 2019 Insurer relating to the 2019 Insurance Policy or the 2019 Reserve Policy.

ARTICLE IV

SECURITY OF BONDS; FLOW OF FUNDS

Section 4.01 Security of Bonds; Equal Security. Except as may otherwise be provided below and in Section 6.06, the 2019 Bonds and any Parity Debt shall be equally secured by a pledge of, security interest in and lien on all of the Pledged Tax Revenues, and the 2019 Bonds and any additional Bonds shall also be secured by a first and exclusive pledge of, security interest in and lien upon all of the moneys in the Debt Service Fund, the Interest Account, the Principal Account, the Redemption Account and the Reserve Account (including any subaccounts therein) without preference or priority for series, issue, number, dated date, sale date, date of execution or date of delivery. Except for the Pledged Tax Revenues and such moneys, no funds or properties of the Authority shall be pledged to, or otherwise liable for, the payment of principal of or interest or redemption premium (if

any) on the Bonds. After the County has (a) delivered all amounts to the Trustee required to make the deposits to the Debt Service Fund described in Section 4.02, subsections (a), (b), (c) (if applicable), and (d), for the applicable Bond Year, and (b) paid all amounts due to the 2019 Insurer hereunder and to any Insurer of Parity Debt pursuant to a Parity Debt Instrument, then all additional Pledged Tax Revenues collected by the County for allocation to the Authority shall be released from the pledge and lien hereunder and shall be disbursed in accordance with Health and Safety Code Section 33492.71, subdivision (c)(1)(A) or subdivision (c)(1)(D), as applicable. [Notwithstanding the foregoing, any payments due to the City of Marina, the City of Seaside or the County which are payable from Pledged Tax Revenues pursuant to the Implementation Agreements may be paid prior to the deposits into the Debt Service Fund required by Section 4.02 unless such payments have been subordinated to payment of the Bonds.] **[Delete upon certification from Marina, Seaside and the County that such payments are not required or are subordinate in priority to the Bonds.]**

In the event the Authority or any Successor Entity receives any moneys that constitute Pledged Tax Revenues, and until and unless (i) all deposits to the Debt Service Fund described in Section 4.02, subsections (a), (b), (c) (if applicable), and (d), and (ii) all amounts due to the 2019 Insurer hereunder and to any Insurer of Parity Debt pursuant to a Parity Debt Instrument, have been made in full for the applicable Bond Year, then the Authority shall promptly (A) transfer to the Trustee for deposit in the Debt Service Fund any remaining amounts required to be deposited into the Debt Service Fund for such Bond Year pursuant to Section 4.02, subsections (a), (b), (c) (if applicable), and (d), and (B) pay all remaining amounts due to the 2019 Insurer hereunder and to any Insurer of Parity Debt pursuant to a Parity Debt Instrument, in that order of priority, until all such amounts are paid in full for such Bond Year. Prior to the payment in full of the principal of and interest and redemption premium (if any) on the Bonds and the payment in full of all other amounts payable hereunder and under any Supplemental Indentures or other Parity Debt Instrument, neither the Authority nor any Successor Entity shall have any beneficial right to or interest in the Pledged Tax Revenues, except as may be provided in this Indenture and in any Supplemental Indenture or other Parity Debt Instrument.

Amounts in the Project Fund and the Administrative Expense Account are not pledged to the repayment of the Bonds. Any facilities financed by the Authority are not in any way pledged to the repayment of the Bonds. Any proceeds of condemnation or destruction of any facilities financed by the Authority are not pledged to repayment of the Bonds and are free and clear of any lien or obligation imposed hereunder.

The Authority shall not be obligated to make any payments required hereunder or under any Bond, or be deemed to incur any liability hereunder or by reason hereof or arising out of any of the transactions contemplated hereby, payable from any funds or assets other than the Pledged Tax Revenues as provided herein. The Bonds and the obligation to pay principal of and interest thereon and any redemption premium with respect thereto will not constitute an indebtedness or an obligation of the Authority, the members and officers of the Authority, any agency, any district, any city, the County, the State or any other political subdivision thereof, within the meaning of any constitutional or statutory debt limitation, or a charge against the general credit or taxing powers of any of them. The Bonds shall be a special obligation of the Authority, payable solely from the Pledged Tax Revenues duly pledged therefor. Neither the faith and credit nor the taxing power of the Authority, any member of the Authority, any agency, any district, any city, the County, the State or any political subdivision thereof is pledged to the payment of the Bonds.

In consideration of the acceptance of the Bonds by those who shall hold the same from time to time, this Indenture shall be deemed to be and shall constitute a contract between the Authority and

the Owners from time to time of the Bonds, and the covenants and agreements herein set forth to be performed on behalf of the Authority shall be for the equal and proportionate benefit, security and protection of all Owners of the Bonds without preference, priority or distinction as to security or otherwise of any of the Bonds over any of the others by reason of the number or date thereof or the time of sale, execution and delivery thereof, or otherwise for any cause whatsoever, except as expressly provided therein or herein.

Section 4.02 Deposit of Amounts by Trustee. There is hereby established a trust fund to be known as the Debt Service Fund, which shall be held by the Trustee hereunder in trust. Pledged Tax Revenues available for distribution to, or received by, the Authority in any Bond Year shall be transferred by the County or the Authority, as applicable, to the Trustee in the following amounts, at the following times, and deposited by the Trustee in the following respective special accounts, which are hereby established in the Debt Service Fund, and in the following order of priority:

(a) Interest Account. Not later than the fifth (5th) Business Day preceding each Interest Payment Date, commencing with the Interest Payment Date of _____ 1, 2020 (with respect to the 2019 Bonds), the Authority or the County, as applicable, shall transfer to the Trustee, for deposit in the Interest Account an amount which when added to the amount contained in the Interest Account on that date, will be equal to the aggregate amount of the interest becoming due and payable on the Outstanding Bonds on such Interest Payment Date. No such transfer and deposit need be made to the Interest Account if the amount contained therein is at least equal to the interest to become due on the next succeeding Interest Payment Date upon all of the Outstanding Bonds. All moneys in the Interest Account shall be used and withdrawn by the Trustee solely for the purpose of paying the interest on the Bonds as it shall become due and payable (including accrued interest on any Bonds redeemed prior to maturity pursuant to this Indenture).

(b) Principal Account. Not later than the fifth (5th) Business Day preceding _____ 1 in each year beginning _____ 1, 2019 (with respect to the 2019 Bonds), the Authority or the County, as applicable, shall transfer to the Trustee for deposit in the Principal Account an amount which, when added to the amount then contained in the Principal Account, will be equal to the principal becoming due and payable on the Outstanding Serial Bonds and Outstanding Term Bonds, including pursuant to mandatory sinking account redemption, on the next _____ 1. No such transfer and deposit need be made to the Principal Account if the amount contained therein is at least equal to the principal to become due on the next _____ 1 on all of the Outstanding Serial Bonds and Term Bonds. All moneys in the Principal Account shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of the Serial Bonds and the Term Bonds, including by mandatory sinking account redemption, as the same shall become due and payable.

(c) Reserve Account. There is hereby established in the Debt Service Fund a separate account known as the "Reserve Account" solely as security for payments payable by the Authority pursuant to this Section 4.02 and pursuant to any Supplemental Indenture or other Parity Debt Instrument, which shall be held by the Trustee in trust for the benefit of the Owners of the Bonds and any Parity Debt. The Reserve Requirement for the 2019 Bonds will be satisfied by the delivery of the 2019 Reserve Policy by the 2019 Insurer on the Closing Date with respect to the 2019 Bonds. The Authority will have no obligation to replace the 2019 Reserve Policy or to fund the Reserve Account with cash if, at any time that the 2019 Bonds are Outstanding, any rating assigned to the 2019 Insurer is downgraded, suspended or withdrawn or amounts are not available under the 2019 Reserve Policy other than in connection with a draw on the 2019 Reserve Policy.

Except as provided in the preceding paragraph and as may be provided in a Supplemental Indenture or Parity Debt Instrument, in the event that the amount on deposit in the Reserve Account at any time becomes less than the Reserve Requirement, the Trustee shall promptly notify the Authority of such fact. Upon receipt of any such notice and as promptly as is permitted by the Law, the Authority shall transfer to the Trustee an amount sufficient to maintain the Reserve Requirement on deposit in the Reserve Account.

Notwithstanding anything to the contrary set forth herein: (i) the amounts on deposit in the Reserve Account shall be applied solely to the payment of debt service on the Bonds; and (ii) the amounts available under the 2019 Reserve Policy shall be used and withdrawn by the Trustee solely for the purpose of making transfers to the Interest Account and the Principal Account in such order of priority, in the event of any deficiency at any time in any of such accounts with respect to the payment of debt service on the 2019 Bonds.

The Trustee shall ascertain the necessity for a claim upon the 2019 Reserve Policy in accordance with the provisions of this Section 4.02(c) and provide notice to the 2019 Insurer in accordance with the terms of the 2019 Reserve Policy at least five Business Days prior to each date upon which interest or principal is due on the 2019 Bonds.

Except as provided above, the amount on deposit in the Reserve Account shall be maintained at the Reserve Requirement at all times prior to the payment of the Bonds and any Parity Debt in full. If there shall then not be sufficient Pledged Tax Revenues to transfer an amount sufficient to maintain the Reserve Requirement on deposit in the Reserve Account, the Authority shall be obligated to continue making transfers as Pledged Tax Revenues become available until there is an amount sufficient to maintain the Reserve Requirement on deposit in the Reserve Account. No such transfer and deposit need be made to the Reserve Account so long as there shall be on deposit therein a sum at least equal to the Reserve Requirement. All money in the Reserve Account shall be used and withdrawn by the Trustee solely for the purpose of making transfers hereunder to the Interest Account and the Principal Account, in the event of any deficiency at any time in any of such accounts or for the retirement of all the Bonds then Outstanding, except that so long as the Authority is not in default hereunder, any amount in the Reserve Account in excess of the Reserve Requirement shall be withdrawn from the Reserve Account semiannually on or before two (2) Business Days preceding each Interest Payment Date by the Trustee and deposited in the Interest Account. All amounts in the Reserve Account on the Business Day preceding the final Interest Payment Date shall be withdrawn from the Reserve Account and shall be transferred to the Interest Account and the Principal Account, in such order, to the extent required to make the deposits then required to be made pursuant to this Section 4.02.

With the prior written consent of the 2019 Insurer, the Authority shall have the right at any time to direct the Trustee to release funds from the Reserve Account, in whole or in part, by tendering to the Trustee: (i) a Qualified Reserve Account Credit Instrument; and (ii) an opinion of Bond Counsel stating that neither the release of such funds nor the acceptance of such Qualified Reserve Account Credit Instrument will cause interest on any Parity Debt the interest on which is excluded from gross income of the owners thereof for federal income tax purposes to become includable in gross income for purposes of federal income taxation. Upon tender of such items to the Trustee, and upon delivery by the Authority to the Trustee of written calculation of the amount permitted to be released from the Reserve Account (upon which calculation the Trustee may conclusively rely), the Trustee shall transfer such funds from the Reserve Account to the Authority to be applied in accordance with the Law. The Trustee shall comply with all documentation relating to a Qualified Reserve Account Credit Instrument as shall be required to maintain such Qualified Reserve

Account Credit Instrument in full force and effect and as shall be required to receive payments thereunder in the event and to the extent required to make any payment when and as required under this paragraph (d). Upon the expiration of any Qualified Reserve Account Credit Instrument, the Authority shall either (i) replace such Qualified Reserve Account Credit Instrument with a new Qualified Reserve Account Credit Instrument, or (ii) deposit or cause to be deposited with the Trustee an amount of funds equal to the Reserve Requirement, to be derived from the first legally available Pledged Tax Revenues. If the Reserve Requirement is being maintained partially in cash and partially with a Qualified Reserve Account Credit Instrument, including the 2019 Reserve Policy, the cash shall be first used to meet any deficiency which may exist from time to time in the Interest Account or the Principal Account for the purpose of making payments required pursuant to Sections 4.02(a) or 4.02(b) of this Indenture. If the Reserve Requirement is being maintained with two or more Qualified Reserve Account Credit Instruments, including the 2019 Reserve Policy, on which there is available coverage, any draw to meet a deficiency which may exist from time to time in the Interest Account or the Principal Account for the purpose of making payments required pursuant to Sections 4.02(a), 4.02(b) or 4.02(c) of this Indenture shall be pro-rata with respect to each such instrument after applying all cash and investments in the Reserve Account. For the avoidance of doubt, “available coverage” means the coverage then available for disbursement pursuant to the terms of the applicable alternative credit instrument without regarding to the legal or financial ability or willingness of the provider of such instrument to honor a claim or draw thereon or the failure of such provider to honor any such claim or draw.

The Reserve Account may be maintained in the form of one or more separate sub-accounts which are established for the purpose of holding the proceeds of separate issues of the Bonds and any Parity Debt to the extent directed by the Authority in writing to the Trustee. Unless otherwise provided pursuant to a Supplemental Indenture or Parity Debt Instrument, a subaccount established in the Reserve Account shall secure only the series of Bonds to which it relates.

(d) Administrative Expense Account. Immediately following the deposits required by subsections (a), (b), and (if applicable) (c) of this Section 4.02, the Authority or the County, as applicable, shall transfer to the Trustee an amount which, when added to the amount contained in the Administrative Expense Account on that date, will be equal to the Administrative Expenses for the applicable Bond Year. Amounts in the Administrative Expense Account shall be withdrawn by the Trustee and paid to or as directed by the Authority or the County, as applicable, upon receipt by the Trustee of a certificate signed by the Executive Officer of the Authority Authorized Representative, an authorized representative of a Successor Entity, or the [County Authorized Representative], as applicable, stating the amount to be withdraw, that such amount is to be used to pay an Administrative Expense and the nature of such Administrative Expense.

(e) Redemption Account. On or before the Business Day preceding any date on which Bonds are to be redeemed pursuant to Section 2.03(a), the Trustee shall withdraw from the Debt Service Fund any amount transferred by the Authority pursuant to Section 2.03(a) for deposit in the Redemption Account, such amount being the amount required to pay the principal of and premium, if any, on the 2019 Bonds and on other Bonds to be redeemed on such date pursuant to Section 2.03(a) or a similar provision of a Supplemental Indenture. All moneys in the Redemption Account shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of and premium, if any, on the 2019 Bonds and on such other Bonds to be redeemed pursuant to Section 2.03(a) or a similar provision of a Supplemental Indenture on the date set for such redemption. Interest due on the 2019 Bonds or such other Bonds to be redeemed on the date set for redemption shall, if applicable, be paid from funds available therefor in the Interest Account. Notwithstanding the foregoing, at any time

prior to giving notice of redemption of any such 2019 Bonds or such other Bonds, the Trustee may, at the direction of the Authority, apply amounts deposited or otherwise to be deposited in the Redemption Account to the purchase of the 2019 Bonds or such other Bonds at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest on such 2019 Bonds or such other Bonds, which is payable from the Interest Account) as shall be directed by the Authority.

Section 4.03 Escrow Fund. There is hereby established a separate fund to be known as the “Escrow Fund” which shall be held in trust by the Trustee. The Trustee shall deposit in the Escrow Fund from the proceeds of the 2019 Bonds the amount specified in Section 3.02. Such amounts shall be retained in the Escrow Fund and applied as follows:

(a) On any date at least forty-five (45) days prior to December 1, 20__ (or such later date as may be permitted under subsection (d) below), the Authority may deliver to the Trustee a Written Certificate of the Authority accompanied by a Report which identifies (A) the amount of Pledged Tax Revenues received or estimated to be received by the Authority in the then current Fiscal Year, (B) the amount proposed to be released from the Escrow Fund, (C) the Maximum Annual Debt Service resulting from such release, and (D) the amount to be transferred to the Reserve Account from the Escrow Reserve Sub-Account. Such Written Certificate of the Authority and Report shall certify that (1) the amount of Pledged Tax Revenues identified in such Written Certificate of the Authority and Report at least equals one hundred ten percent (110%) of the Maximum Annual Debt Service identified in such Written Certificate of the Authority and Report, and (2) the amount to remain on deposit in the Escrow Fund, following the proposed transfer, together with the amount remaining on deposit in the Escrow Reserve Sub-Account, will be sufficient to pay principal and interest due on the 2019 Escrow Term Bonds other than the portion thereof in a principal amount equal to the amounts then to be transferred and theretofore transferred from the Escrow Fund pursuant to the following sentence. Following receipt of such Written Certificate of the Authority and Report, on which the Trustee may conclusively rely, the Trustee shall withdraw from the Escrow Fund the amount identified in such Written Certificate of the Authority and Report and transfer such amount to the Project Fund. Amounts transferred to the Project Fund shall be transferred by the Trustee to the following sub-accounts in the Project Fund in the following percentages of the total amount transferred to the Project Fund: ___% to the County Bond Proceeds Account, ___% to the Marina Bond Proceeds Account and ___% to the Seaside Bond Proceeds Account.

(b) On each Interest Payment Date on and prior to December 1, 20__ (or such later date as may be permitted under subsection (d) below), the Trustee shall transfer from the Escrow Fund to the Debt Service Fund an amount equal to the interest due on the 2019 Escrow Term Bonds in a principal amount equal to \$_____ (less any principal amount theretofore transferred to the Authority pursuant to Section 4.03(a) above).

(c) Any moneys remaining in the Escrow Fund, together with the amounts on deposit in the Escrow Reserve Sub-Account pursuant to Section 4.04(b) below, on the date which is forty-five (45) days prior to December 1, 20__ (or such later date as may be permitted under subsection (d) below) shall be transferred by the Trustee to the Redemption Account to be applied on December 1, 20__ (or such later date as may be permitted under subsection (d) below) to the redemption of 2019 Escrow Term Bonds pursuant to Section 2.03(b); provided, however, if all \$_____ aggregate principal amount of the 2019 Escrow Term Bonds are released from the Escrow Fund and Escrow Reserve Sub-Account pursuant to subsection (a) above, all remaining funds on deposit in the Escrow Fund shall be transferred by the Trustee to the Debt Service Fund.

(d) Notwithstanding the provisions of Section 4.03(c) above, the Authority may extend the date upon which moneys on deposit in the Escrow Fund shall be transferred to the Redemption Account to such later date as directed to the Trustee in a Written Certificate of the Authority, provided that the Trustee shall, 45 days prior to December 1, 20__ (or, if the Escrow Fund has been previously extended pursuant to this Section 4.03(d), 45 days prior to such new date as previously directed to the Trustee in such Written Certificate of the Authority), have received the following:

(i) A Written Certificate of the Authority requesting such extension and specifying the new date for the transfer of moneys on deposit in the Escrow Fund to the Redemption Account and the date for the redemption of the 2019 Escrow Term Bonds.

(ii) Deposit of moneys from any legally available source into the Escrow Fund in an amount sufficient so that the amounts then on deposit in the Escrow Fund, together with the amounts on deposit in the Escrow Reserve Sub-Account, will be sufficient to redeem the 2019 Escrow Term Bonds (other than the portion thereof in a principal amount previously transferred to the Project Fund, if any, pursuant to Section 4.03(a)) on the date specified by the Authority pursuant to Section 4.03(d)(i) above and pay any accrued interest thereon to the date of redemption.

(iii) A Report of an Independent Fiscal Consultant or an Independent Accountant certifying that the amounts on deposit in the Escrow Fund and the Escrow Reserve Sub-Account are sufficient to redeem the 2019 Escrow Term Bonds (other than the portion thereof in a principal amount previously transferred to the Project Fund, if any, pursuant to Section 4.03(a)) on the date specified in the Written Certificate of the Authority pursuant to Section 4.03(d)(i) above and pay any accrued interest thereon to the date of redemption.

Upon receipt of the items required by Section 4.03(d)(i), (ii) and (iii), the Trustee shall promptly mail to the Owners of the 2019 Escrow Term Bonds and the Original Purchaser written notice of the date specified in the Written Certificate of the Authority pursuant to 4.03(d)(i) above.

(e) Investment earnings on amounts in the Escrow Fund shall be transferred on each Interest Payment Date to the Debt Service Fund to pay interest or principal on the 2019 Bonds.

(f) When all amounts on deposit in the Escrow Fund have been disbursed, the Escrow Fund shall be closed.

(g) Amounts on deposit in the Escrow Fund shall be invested in Permitted Investments as specified in the Written Request of the Authority filed with the Trustee; provided that such Permitted Investments shall mature no later than December 1, 20__ or if the Escrow Fund is extended pursuant to Section 4.03(d) above, not later than the date specified in the Written Certificate of the Authority pursuant to Section 4.03(d)(i).

Section 4.04 Escrow Reserve Sub-Account. There is hereby established a subaccount within the Reserve Account known as the “Escrow Reserve Sub-Account,” which shall be held in trust by the Trustee. So long as moneys are held by the Trustee in the Escrow Fund, the moneys on deposit in the Escrow Reserve Sub-Account shall be held by the Trustee in trust for the exclusive benefit of the 2019 Escrow Term Bond Owners. Amounts on deposit in the Escrow Reserve Sub-Account shall not be included in calculating the Reserve Requirement.

(a) Upon the release of moneys from the Escrow Fund pursuant to Section 4.03(a), the Trustee shall transfer from the Escrow Reserve Sub-Account to the Reserve Account the amount set forth in the Written Certificate of the Authority required pursuant to Section 4.03(a).

(b) In the event of a transfer of the amounts on deposit in the Escrow Fund to the Redemption Account pursuant to Section 4.03(c), the Trustee shall transfer all amounts remaining on deposit in the Escrow Reserve Sub-Account to the Redemption Account to be applied to the redemption of 2019 Escrow Term Bonds pursuant to Section 2.03(c).

Amounts on deposit in the Escrow Reserve Sub-Account may be commingled with other amounts on deposit in the Reserve Account for investment purposes.

ARTICLE V

OTHER COVENANTS OF THE AUTHORITY AND THE COUNTY

Section 5.01 Punctual Payment. The Authority shall punctually pay or cause to be paid the principal and interest to become due in respect of all the Bonds together with the premium thereon, if any, in strict conformity with the terms of the Bonds and of this Indenture. The Authority shall faithfully observe and perform all of the conditions, covenants and requirements of this Indenture, all Supplemental Indentures and the Bonds. Nothing herein contained shall prevent the Authority from making advances of its own moneys howsoever derived to any of the uses or purposes referred to herein.

Section 5.02 Limitation on Additional Indebtedness; Against Encumbrances. The Authority hereby covenants that, so long as the Bonds are Outstanding, the Authority shall not issue any bonds, notes or other obligations, enter into any agreement or otherwise incur any indebtedness, which is in any case payable from all or any part of the Pledged Tax Revenues except for obligations issued in accordance with Sections 3.05 or 3.06 hereof. The Authority will not otherwise encumber, pledge or place any charge or lien upon any of the Pledged Tax Revenues or other amounts pledged to the Bonds superior or equal to the pledge and lien herein created for the benefit of the Bonds.

Section 5.03 Extension of Payment. The Authority will not, directly or indirectly, extend or consent to the extension of the time for the payment of any Bond or claim for interest on any of the Bonds and will not, directly or indirectly, be a party to or approve any such arrangement by purchasing or funding the Bonds or claims for interest in any other manner. In case the maturity of any such Bond or claim for interest shall be extended or funded, whether or not with the consent of the Authority, such Bond or claim for interest so extended or funded shall not be entitled, in case of default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest which shall not have been so extended or funded.

Section 5.04 Enforcement of Irrevocable Instructions. The Authority hereby covenants to take such actions within its power as may be reasonable and necessary to compel the County Auditor-Controller to comply with the direction set forth in the Irrevocable Instructions to transfer to the Trustee for deposit in the Debt Service Fund, all amounts required to comply with Section 4.02 (a) through (d) and any amounts required to pay principal and interest payments due on any Parity Debt, and any deficiency in the related reserve accounts for such related Parity Debt.

Section 5.05 Payment of Claims. The Authority shall promptly pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the properties owned by the Authority or upon the Pledged Tax Revenues or other amounts pledged to the payment of the Bonds, or any part thereof, or upon any funds in the hands of the Trustee, or which might impair the security of the Bonds. Nothing herein contained shall require the Authority to make any such payment so long as the Authority in good faith shall contest the validity of said claims.

Section 5.06 Books and Accounts; Financial Statements. The Authority shall keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the Authority, in which complete and correct entries shall be made of all transactions relating to the Pledged Tax Revenues. Such books of record and accounts shall at all times during business hours be subject to the inspection of the 2019 Insurer, any other Insurer and the Owners of not less than ten percent (10%) in aggregate principal amount of the Bonds then Outstanding, or their representatives authorized in writing.

The Authority agrees, consents and will cooperate in good faith to provide information reasonably requested by the 2019 Insurer and will further provide appropriately designated individuals and officers to discuss the affairs, finances and accounts of the Authority or any other matter as the 2019 Insurer may reasonably request.

Section 5.07 Protection of Security and Rights of Owners. The Authority will preserve and protect the security of the Bonds and the rights of the Owners. From and after the Closing Date with respect to the 2019 Bonds, the 2019 Bonds shall be incontestable by the Authority. Each of the Authority and the Trustee covenant and agree to take such action (including, as applicable, filing of UCC financing statements and continuations thereof) as is necessary from time to time to preserve the priority of the pledge of Pledged Tax Revenues under applicable law.

Section 5.08 Payments of Taxes and Other Charges. Except as otherwise provided herein, the Authority will pay and discharge, or cause to be paid and discharged, all taxes, service charges, assessments and other governmental charges which may hereafter be lawfully imposed upon the Authority or the properties then owned by the Authority in the Project Areas, or upon the revenues therefrom when the same shall become due. Nothing herein contained shall require the Authority to make any such payment so long as the Authority in good faith shall contest the validity of said taxes, assessments or charges. The Authority will duly observe and conform with all valid requirements of any governmental authority relative to the Project Areas or any part thereof.

Section 5.09 Maintenance of Pledged Tax Revenues. The Authority shall comply with all requirements of the Law and the Dissolution Act to ensure the allocation and payment to it of the Pledged Tax Revenues. The Authority shall not undertake proceedings for amendment of the Reuse Plan or the Authority's transition plan if such amendment shall result in a reduction in the amount of Pledged Tax Revenues available to pay the Bonds unless the Authority shall first obtain a written opinion of an Independent Fiscal Consultant that such payments will not impair the Authority's ability to pay debt service on the Bonds.

Section 5.10 Continuing Disclosure. The Authority hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Indenture, failure of the Authority to comply with the Continuing Disclosure Certificate shall not be considered an Event of Default; however, any Owner or

beneficial owner of the Bonds may take such actions as may be necessary and appropriate to compel performance, including seeking mandate or specific performance by court order.

Section 5.11 Provisions Regarding Dissolution of Authority and Successor Entities. Upon dissolution of the Authority pursuant to Government Code Section 67700, as it may be amended from time to time, or any successor statute, the Successor Entity shall be entitled to receive payment of reasonable fees and expenses in connection with their activities under this Indenture, and such fees and expenses shall constitute Administrative Expenses. From and after the dissolution of the Authority pursuant to Government Code Section 67700 (or any successor statute), all references to the Authority set forth in this Indenture shall refer to such Successor Entity, as the context may dictate.

Section 5.12 Further Assurances. The Authority will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture, and for the better assuring and confirming unto the Owners of the Bonds the rights and benefits provided in this Indenture.

ARTICLE VI

THE TRUSTEE

Section 6.01 Duties, Immunities and Liabilities of Trustee.

(a) The Trustee shall, prior to the occurrence of an Event of Default, and after the curing or waiver of all Events of Default which may have occurred, perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants, duties or obligations shall be read into this Indenture against the Trustee. The Trustee shall, during the existence of any Event of Default (which has not been cured or waived), exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) The Authority may remove the Trustee at any time, unless an Event of Default shall have occurred and then be continuing, and shall remove the Trustee (i) if at any time requested to do so by an instrument or concurrent instruments in writing signed by the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding (or their attorneys duly authorized in writing) or (ii) if at any time the Authority has knowledge that the Trustee shall cease to be eligible in accordance with subsection (f) of this Section, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property shall be appointed, or any public officer shall take control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation. In each case such removal shall be accomplished by the giving of written notice of such removal by the Authority to the Trustee, with a copy to any Insurer, whereupon the Authority shall appoint a successor Trustee by an instrument in writing.

(c) The Trustee may at any time resign by giving written notice of such resignation to the Authority and by giving the Owners and any Insurer notice of such resignation by first class mail, postage prepaid, at their respective addresses shown on the Registration Books. Upon receiving such notice of resignation, the Authority shall promptly appoint a successor Trustee by an instrument in writing, with notice of such appointment to be furnished to any Insurer.

(d) Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective only upon acceptance of appointment by the successor Trustee (and, while any 2019 Bonds are Outstanding, the approval of the 2019 Insurer). If no successor Trustee shall have been appointed and have accepted appointment within forty-five (45) days of giving notice of removal or notice of resignation as aforesaid, the resigning Trustee or any Owner (on behalf of such Owner and all other Owners) may petition any court of competent jurisdiction at the expense of the Authority for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture shall signify its acceptance of such appointment by executing, acknowledging and delivering to the Authority and to its predecessor Trustee a written acceptance thereof, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless at the Written Request of the Authority or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to any property held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the Authority shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the Authority shall cause either the predecessor Trustee or the successor Trustee to mail a notice of the succession of such Trustee to the trusts hereunder to each rating Authority which then has a current rating on the Bonds and to the Owners at their respective addresses shown on the Registration Books.

(e) If an Event of Default hereunder occurs with respect to any Bonds of which the Trustee has been given or is deemed to have notice, as provided in Section 6.03(d) hereof, then the Trustee shall immediately give written notice thereof, by first-class mail to any Insurer and the Owner of each such Bond, unless such Event of Default shall have been cured before the giving of such notice; provided, however, that unless such Event of Default consists of the failure by the Authority to make any payment when due, the Trustee shall, within thirty (30) days of the Trustee's knowledge thereof, give such notice to any Insurer, and the Trustee, with the consent of any Insurer may elect not to give such notice if and so long as the Trustee in good faith determines that it is in the best interests of the Bondowners not to give such notice.

(f) The Authority agrees that, so long as any Bonds or any Parity Debt are Outstanding, the Trustee shall be a financial institution having a trust office in the State, having (or in the case of a corporation or trust company included in a bank holding company system, the related bank holding company shall have) a combined capital and surplus of at least \$75,000,000, and subject to supervision or examination by federal or state authority. If such financial institution publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this subsection the combined capital and surplus of such financial institution shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this subsection (f), the Trustee shall resign immediately in the manner and with the effect specified in this Section.

Section 6.02 Merger or Consolidation. Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible under subsection (f) of Section 6.01, shall be the successor to such Trustee without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

Section 6.03 Liability of Trustee.

(a) The recitals of facts herein and in the Bonds contained shall be taken as statements of the Authority, and the Trustee shall not assume responsibility for the correctness of the same, nor make any representations as to the validity or sufficiency of this Indenture or of the security for the Bonds or the tax status of interest thereon nor shall incur any responsibility in respect thereof, other than as expressly stated herein. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Bonds. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or misconduct. The Trustee shall not be liable for the acts of any agents of the Trustee selected by it with due care. The Trustee and its officers and employees may become the Owner of any Bonds with the same rights it would have if they were not Trustee and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of the Owners, whether or not such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding.

(b) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in accordance with the direction of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.

(c) The Trustee shall not be liable for any action taken by it and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture, except for actions arising from the negligence or misconduct of the Trustee. Where the Trustee is given the permissive right to do things enumerated in this Indenture, such right shall not be construed as a mandatory duty.

(d) The Trustee shall not be deemed to have knowledge of any Event of Default hereunder unless and until a responsible officer shall have actual knowledge thereof, or shall have received written notice thereof from the Authority at its Principal Corporate Trust Office. In the absence of such actual knowledge or notice, the Trustee may conclusively assume that no Event of Default has occurred and is continuing under this Indenture. Except as otherwise expressly provided herein, the Trustee shall not be bound to ascertain or inquire as to the performance or observance by any other party of any of the terms, conditions, covenants or agreements herein or of any of the documents executed in connection with the Bonds, or as to the existence of an Event of Default thereunder. The Trustee shall not be responsible for the validity or effectiveness of any collateral given to or held by it. Without limiting the generality of the foregoing, the Trustee may rely conclusively on the Authority's certificates to establish the Authority's compliance with its financial covenants hereunder, including, without limitation, its covenants regarding the deposit of Pledged Tax Revenues into the Debt Service Fund.

(e) The Trustee shall have no liability or obligation to the Bondowners with respect to the payment of debt service on the Bonds by the Authority or with respect to the observance or performance by the Authority of the other conditions, covenants and terms contained in this Indenture, or with respect to the investment of any moneys in any fund or account established, held or maintained by the Authority pursuant to this Indenture or otherwise.

(f) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers. The Trustee shall be entitled to interest on all amounts advanced by it at the maximum rate permitted by law.

(g) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys or receivers and the Trustee shall not be responsible for any intentional misconduct or negligence on the part of any agent, attorney or receiver appointed with due care by it hereunder.

(h) The Trustee shall have no responsibility, opinion, or liability with respect to any information, statements or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Bonds.

(i) Before taking any action under Article VIII or this Article at the request of the Owners or any Insurer, the Trustee may require that a satisfactory indemnity bond be furnished by the Owners or any Insurer for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful misconduct in connection with any action so taken.

(j) The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the Authority elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Authority agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

(k) The Trustee shall not be liable to the parties hereto or deemed in breach or default hereunder if and to the extent its performance hereunder is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the Trustee and could not have been avoided by exercising due care. Force majeure shall include but not be limited to acts of God, terrorism, war, riots, strikes, fire, floods, earthquakes, epidemics or other similar occurrences.

(1) The Trustee shall not be responsible for or accountable to anyone for the subsequent use or application of any moneys which shall be released or withdrawn in accordance with the provisions hereof.

Section 6.04 Right to Rely on Documents and Opinions. The Trustee shall have no liability in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, facsimile transmission, electronic mail, or other paper or document reasonably believed by it to be genuine and to have been signed or prescribed by the proper party or parties, and shall not be required to make any investigation into the facts or matters contained thereon. The Trustee may consult with counsel, including, without limitation, counsel of or to the Authority, with regard to legal questions, and, in the absence of negligence or intentional misconduct by the Trustee, the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Trustee hereunder in accordance therewith.

The Trustee shall not be bound to recognize any person as the Owner of a Bond unless and until such Bond is submitted for inspection, if required, and his title thereto is established to the satisfaction of the Trustee.

Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Written Certificate of the Authority, which shall be full warrant to the Trustee for any action taken or suffered under the provisions of this Indenture in reliance upon such Written Certificate, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as it may deem reasonable. The Trustee may conclusively rely on any certificate or report of any Independent Accountant or Independent Fiscal Consultant appointed by the Authority.

Section 6.05 Preservation and Inspection of Documents. All documents received by the Trustee under the provisions of this Indenture shall be retained in its possession and shall be subject at all reasonable times upon reasonable notice to the inspection of and copying by the Authority and any Insurer and any Owner, and their agents and representatives duly authorized in writing, during regular business hours and under reasonable conditions.

Section 6.06 Compensation and Indemnification. The Authority shall pay to the Trustee from time to time reasonable compensation for all services rendered under this Indenture in accordance with the letter proposal from the Trustee approved by the Authority and also all reasonable expenses, charges, legal and consulting fees and other disbursements and those of its attorneys (including the allocated costs and disbursement of in-house counsel to the extent such services are not redundant with those provided by outside counsel), agents and employees, incurred in and about the performance of its powers and duties under this Indenture. The Trustee shall have a lien on the Pledged Tax Revenues and all funds and accounts held by the Trustee hereunder to secure the payment to the Trustee of all fees, costs and expenses, including reasonable compensation to its experts, attorneys and counsel (including the allocated costs and disbursement of in-house counsel to the extent such services are not redundant with those provided by outside counsel).

The Authority further covenants and agrees to indemnify, defend and save the Trustee and its officers, directors, agents and employees, harmless against any loss, expense and liabilities including legal fees and expenses which it may incur to the extent arising out of or in connection with the exercise

and performance of its powers and duties hereunder, including the costs and expenses of defending against any claim of liability, but excluding any and all losses, expenses and liabilities which are due to the negligence or misconduct of the Trustee, its officers, directors, agents or employees. The obligations of the Authority and the rights of the Trustee under this Section 6.06 shall survive resignation or removal of the Trustee under this Indenture and payment of the Bonds and discharge of this Indenture.

Trustee's compensation under this Indenture shall constitute Administrative Expenses.

Section 6.07 Deposit and Investment of Moneys in Funds. Moneys in the Debt Service Fund, the Interest Account, the Principal Account, the Reserve Account, the Redemption Account and the Costs of Issuance Fund shall be invested by the Trustee in Permitted Investments as directed by the Authority in the Written Request of the Authority filed with the Trustee, except that moneys in the Reserve Account shall not be invested in Permitted Investments having a maturity of more than five (5) years, unless any such Permitted Investment is described in clause (g) of the definition thereof. In the absence of any such Written Request of the Authority, the Trustee shall invest any such moneys in Permitted Investments described in clause (d) of the definition thereof, which by their terms mature prior to the date on which such moneys are required to be paid out hereunder; provided, however, that any such investment shall be made by the Trustee only if, prior to the date on which such investment is to be made, the Trustee shall have received a Written Request of the Authority specifying a specific money market fund and, if no such Written Request of the Authority is so received, the Trustee shall hold such moneys uninvested. The Trustee shall be entitled to rely conclusively upon the written instructions of the Authority directing investments in Permitted Investments as to the fact that each such investment is permitted by the laws of the State, and shall not be required to make further investigation with respect thereto. With respect to any restrictions set forth in the above list which embody legal conclusions (e.g., the existence, validity and perfection of security interests in collateral), the Trustee shall be entitled to rely conclusively on an opinion of counsel or upon a representation of the provider of such Permitted Investment obtained at the Authority's expense. Obligations purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account. All interest or gain derived from the investment of amounts in any of the funds or accounts held by the Trustee hereunder shall be deposited in the Interest Account; provided, however, that all interest or gain from the investment of amounts in the Reserve Account shall be deposited by the Trustee in the Interest Account only to the extent not required to cause the balance in the Reserve Account to equal the Reserve Requirement. The Trustee may act as principal or agent in the acquisition or disposition of any investment and may impose its customary charges therefor. The Trustee shall incur no liability for losses arising from any investments made at the direction of the Authority or otherwise made in accordance with this Section. For investment purposes only, the Trustee may commingle the funds and accounts established hereunder, but shall account for each separately.

The Authority acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Authority the right to receive brokerage confirmations of security transactions effected by the Trustee as they occur, the Authority specifically waives receipt of such confirmations to the extent permitted by law. The Authority further understands that trade confirmations for securities transactions effected by the Trustee will be available upon request and at no additional cost and other trade confirmations may be obtained from the applicable broker. The Trustee will furnish the Authority monthly cash transaction statements which shall include detail for all investment transactions made by the Trustee hereunder. Upon the Authority's election, such statements will be delivered via the Trustee's online service and upon electing such service, paper statements will be provided only upon request.

All moneys held by the Trustee shall be held in trust, but need not be segregated from other funds unless specifically required by this Indenture. Except as specifically provided in this Indenture, the Trustee shall not be liable to pay interest on any moneys received by it, but shall be liable only to account to the Authority for earnings derived from funds that have been invested. Investments on deposit in the Reserve Account shall be valued on June 30 of each year at their market value.

Section 6.08 Accounting Records and Financial Statements. The Authority and the Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with corporate trust industry standards, in which complete and accurate entries shall be made of all transactions relating to the proceeds of the Bonds made by it and all funds and accounts held by the Authority and the Trustee, respectively, established pursuant to this Indenture. Such books of record and account maintained by the Trustee shall be available for inspection by the Authority upon reasonable prior notice, at reasonable hours and under reasonable circumstances. Such books of record and account relating to the 2019 Bonds shall at all times during normal business hours and upon reasonable notice be subject to inspection by the 2019 Insurer or its agents or representatives who have been duly authorized in writing. The Trustee shall furnish to the Authority, on at least a monthly basis, an accounting of all transactions in the form of its customary statements relating to the proceeds of the Bonds and all funds and accounts held by the Trustee pursuant to this Indenture.

Section 6.09 Other Transactions with Authority. The Trustee, either as principal or agent, may engage in or be interested in any financial or other transaction with the Authority.

ARTICLE VII

MODIFICATION OR AMENDMENT OF THIS INDENTURE

Section 7.01 Amendment With And Without Consent of Owners. This Indenture and the rights and obligations of the Authority and of the Owners may be modified or amended at any time by a Supplemental Indenture which shall become binding upon adoption without the consent of any Owners (and without the consent of any Insurer to the extent permitted by law, but only for any one or more of the following purposes:

(a) to add to the covenants and agreements of the Authority in this Indenture contained, other covenants and agreements thereafter to be observed, including any covenant or agreement that provides for additional security for the Bonds, or to limit or surrender any rights or powers herein reserved to or conferred upon the Authority; or

(b) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Indenture, or in any other respect whatsoever as the Authority may deem necessary or desirable, provided under any circumstances that such modifications or amendments shall not, in the reasonable determination of the Authority, materially adversely affect the interests of the Owners; or

(c) to provide for the issuance of Parity Debt in accordance with Section 3.05; or

(d) to comply with additional requirements of a provider of a Qualified Reserve Account Credit Instrument; provided that such amendment does not have an adverse impact on the 2019 Insurer's rights under the Indenture or the availability of Pledged Tax Revenues for the 2019 Bonds.

Except as set forth in the preceding paragraph, this Indenture and the rights and obligations of the Authority and of the Owners may be modified or amended at any time by a Supplemental Indenture which shall become binding when the prior written consent of any Insurer (but only with respect to any Bonds insured by such Insurer) and the Owners of a majority in aggregate principal amount of the Bonds then Outstanding are filed with the Trustee. No such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the Authority to pay the principal, interest, or redemption premiums (if any) at the time and place and at the rate and in the currency provided therein of any Bond without the express written consent of any Insurer or the Owner of such Bond, or (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification. In no event shall any Supplemental Indenture modify any of the rights or obligations of the Trustee without its prior written consent. In no event shall any Supplemental Indenture modify any of the rights or obligations of any Insurer without its prior written consent.

Section 7.02 Effect of Supplemental Indenture. From and after the time any Supplemental Indenture becomes effective pursuant to this Article VII, this Indenture shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations of the parties hereto or thereto and all Owners, as the case may be, shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 7.03 Endorsement or Replacement of Bonds After Amendment. After the effective date of any amendment or modification hereof pursuant to this Article VII, the Authority may, with the prior written consent of any Insurer, determine that any or all of the Bonds shall bear a notation, by endorsement in form approved by the Authority, as to such amendment or modification and in that case upon demand of the Authority the Owners of such Bonds shall present such Bonds for that purpose at the Principal Corporate Trust Office of the Trustee, and thereupon a suitable notation as to such action shall be made on such Bonds. In lieu of such notation, the Authority may determine that new Bonds shall be prepared at the expense of the Authority and executed in exchange for any or all of the Bonds, and in that case, upon demand of the Authority, the Owners of the Bonds shall present such Bonds for exchange at the Principal Corporate Trust Office of the Trustee, without cost to such Owners.

Section 7.04 Amendment by Mutual Consent. The provisions of this Article VII shall not prevent any Owner from accepting any amendment as to the particular Bond held by such Owner, provided that due notation thereof is made on such Bond and, provided further that written consent to such amendment shall first be obtained from any Insurer.

Section 7.05 Opinion of Counsel. Prior to executing any Supplemental Indenture, the Trustee shall be furnished an opinion of counsel, upon which it may conclusively rely to the effect that all conditions precedent to the execution of such Supplemental Indenture under this Indenture have been satisfied and such Supplemental Indenture is authorized and permitted under this Indenture and does not adversely affect the exclusion of interest on the Bonds issued as tax-exempt bonds from gross income for federal income tax purposes or adversely affect the exemption of interest on the Bonds from personal income taxation by the State.

Section 7.06 Copy of Supplemental Indenture to S&P and Moody's. The Authority shall provide to S&P and Moody's, for so long as S&P and Moody's, as the case may be, maintain a rating

on any of the Bonds (without regard to any municipal bond or financial guaranty insurance), a copy of any Supplemental Indenture at least fifteen (15) days prior to its proposed effective date.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES OF OWNERS

Section 8.01 Events of Default and Acceleration of Maturities. The following events shall constitute Events of Default hereunder:

(a) if default shall be made by the Authority in the due and punctual payment of the principal of or interest or redemption premium (if any) on any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by declaration or otherwise;

(b) if default shall be made by the Authority in the observance of any of the covenants, agreements or conditions on its part in this Indenture or in the Bonds contained, other than a default described in the preceding clause (a), and such default shall have continued for a period of thirty (30) days following receipt by the Authority of written notice from the Trustee or any Insurer or written notice from any Owner (with a copy of said notice delivered to the Trustee and any Insurer) of the occurrence of such default, provided that if in the reasonable opinion of the Authority the failure stated in the notice can be corrected, but not within such thirty (30) day period, such failure will not constitute an event of default if corrective action is instituted by the Authority (with the prior written consent of any Insurer) within such thirty (30) day period and the Authority thereafter diligently and in good faith cures such failure in a reasonable period of time (not to exceed 60 days without the prior written consent of the 2019 Insurer so long as the 2019 Insurance Policy is in full force and effect and the 2019 Insurer has not defaulted on its obligations thereunder); or

(c) If the Authority files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction will approve a petition by the Authority seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or, if under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction will approve a petition by the Authority, seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or, if under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction will assume custody or control of the Authority or of the whole or any substantial part of its property.

In determining whether an Event of Default has occurred under (a) above, no effect shall be given to payments made under any municipal bond insurance policy, financial guaranty insurance policy or Qualified Reserve Account Credit Instrument.

If an Event of Default has occurred under this Section and is continuing, the Trustee, may, and, if requested in writing by the Owners of a majority in aggregate principal amount of the Bonds then Outstanding, the Trustee shall: (a) declare the principal of the Bonds, together with the accrued interest thereon, to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, anything in this Indenture or in the Bonds to the contrary notwithstanding; and (b) subject to the provisions of Section 8.06, exercise any other remedies available to the Trustee and the Bondowners in law or at equity, including mandamus. The 2019 Insurer's prior written consent is required as a condition precedent to and in all instances of acceleration

with respect to the 2019 Bonds so long as the 2019 Insurance Policy is in full force and effect and the 2019 Insurer has not defaulted on its obligations thereunder.

Immediately upon receiving notice or actual knowledge of the occurrence of an Event of Default, the Trustee shall give notice of such Event of Default to any Insurer and to the Authority confirmed in writing. Such notice shall also state whether the principal of the Bonds shall have been declared to be or have immediately become due and payable. With respect to any Event of Default described in subsections (a) or (c) above the Trustee shall, and with respect to any Event of Default described in subsection (b) above the Trustee in its sole discretion may, also give such notice to the Owners by mail, which shall include the statement that interest on the Bonds shall cease to accrue from and after the date, if any, on which the Trustee shall have declared the Bonds to become due and payable pursuant to the preceding paragraph (but only to the extent that principal and any accrued, but unpaid, interest on the Bonds is actually paid on such date). The 2019 Insurer may elect, in its sole discretion, to pay accelerated principal and interest accrued on such principal to the date of acceleration (to the extent unpaid by the Authority) and the Trustee shall be required to accept such amounts. Upon payment of such accelerated principal and interest accrued to the acceleration date as provided in the foregoing sentence, the 2019 Insurer's obligations under the 2019 Insurance Policy with respect to such 2019 Bonds shall be fully discharged.

This provision, however, is subject to the condition that if, at any time after the principal of the Bonds shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the Authority shall, with the written consent of a majority in aggregate principal amount of the Owners of the Bonds then Outstanding, deposit with the Trustee a sum sufficient to pay all principal on the Bonds matured prior to such declaration and all matured installments of interest (if any) upon all the Bonds, with interest on such overdue installments of principal and interest (to the extent permitted by law), and the reasonable fees and expenses of the Trustee, (including the allocated costs and disbursements of its in-house counsel to the extent such services are not redundant with those provided by outside counsel) and any and all other defaults known to the Trustee (other than in the payment of principal of and interest on the Bonds due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall have been made therefor, then, and in every such case, the Trustee shall promptly give written notice of the foregoing to any Insurer and the Owners of all Bonds then Outstanding, and with the prior written approval of the Owners of at least a majority in aggregate principal amount of the Bonds then Outstanding, by written notice to the Authority and to the Trustee, may, on behalf of the Owners of all of the Bonds then Outstanding, rescind and annul such declaration and its consequences. However, no such rescission and annulment shall extend to or shall affect any subsequent default or shall impair or exhaust any right or power consequent thereon.

Section 8.02 Application of Funds Upon Acceleration. All amounts received by the Trustee pursuant to any right given or action taken by the Trustee under the provisions of this Indenture (including the Trustee's share of any Pledged Tax Revenues) and all sums in the funds and accounts established and held by the Trustee hereunder upon the date of the declaration of acceleration as provided in Section 8.01, and all sums thereafter received by the Trustee hereunder, shall be applied by the Trustee in the following order upon presentation of the Bonds, and the stamping thereon of the payment if only partially paid, or upon the surrender thereof if fully paid:

First, to the payment of the fees, costs and expenses of the Trustee in declaring such Event of Default and in exercising the rights and remedies set forth in this Article VIII, including reasonable

compensation to its agents, attorneys (including the allocated costs and disbursements of its in-house counsel to the extent such services are not redundant with those provided by outside counsel) and counsel and any outstanding fees and expenses of the Trustee; and

Second, to the payment of the whole amount then owing and unpaid upon the Bonds for principal and interest, as applicable, with interest on the overdue principal, and installments of interest at the net effective rate then borne by the Outstanding Bonds (to the extent that such interest on overdue installments of principal and interest shall have been collected), and in case such moneys shall be insufficient to pay in full the whole amount so owing and unpaid upon the Bonds, then to the payment of such principal and interest without preference or priority, ratably to the aggregate of such principal and interest.

Section 8.03 Power of Trustee to Control Proceedings. In the event that the Trustee, upon the happening of an Event of Default, shall have taken any action, by judicial proceedings or otherwise, pursuant to its duties hereunder, whether upon its own discretion or upon the request of the Owners of a majority in principal amount of the Bonds then Outstanding, it shall have full power, in the exercise of its discretion for the best interests of the Owners of the Bonds, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; provided, however, that the Trustee shall not, unless there no longer continues an Event of Default, discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, if at the time there has been filed with it a written request signed by the Owners of a majority in principal amount of the Outstanding Bonds hereunder opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation.

Section 8.04 Limitation on Owner's Right to Sue. No Owner of any Bond issued hereunder shall have the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Indenture, unless (a) such Owner shall have previously given to the Authority, the Trustee and any Insurer written notice of the occurrence of an Event of Default; (b) the Owners of a majority in aggregate principal amount of all the Bonds then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) said Owners shall have tendered to the Trustee indemnity reasonably acceptable to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request; and (d) the Trustee shall have refused or omitted to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of any remedy hereunder; it being understood and intended that no one or more Owners shall have any right in any manner whatever by his or their action to enforce any right under this Indenture, except in the manner herein provided, and that all proceedings at law or in equity to enforce any provision of this Indenture shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners of the Outstanding Bonds.

The right of any Owner of any Bond to receive payment of the principal of (and premium, if any) and interest on such Bond as herein provided, shall not be impaired or affected without the written consent of such Owner, notwithstanding the foregoing provisions of this Section or any other provision of this Indenture.

Section 8.05 Non-Waiver. Nothing in this Article VIII or in any other provision of this Indenture or in the Bonds, shall affect or impair the obligation of the Authority, which is absolute and unconditional, to pay from the Pledged Tax Revenues and other amounts pledged hereunder, the principal of and interest and redemption premium (if any) on the Bonds to the respective Owners on the respective Interest Payment Dates, as herein provided, or affect or impair the right of action, which is also absolute and unconditional, of the Owners or the Trustee to institute suit to enforce such payment by virtue of the contract embodied in the Bonds.

A waiver of any default by any Owner or the Trustee shall not affect any subsequent default or impair any rights or remedies on the subsequent default. No delay or omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy conferred upon the Owners and the Trustee by the Law or by this Article VIII may be enforced and exercised from time to time and as often as shall be deemed expedient by the Owners and the Trustee.

If a suit, action or proceeding to enforce any right or exercise any remedy shall be abandoned or determined adversely to the Owners or the Trustee, the Authority, the Trustee and the Owners shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

Section 8.06 Actions by Trustee as Attorney-in-Fact. Any suit, action or proceeding which any Owner shall have the right to bring to enforce any right or remedy hereunder may be brought by the Trustee for the equal benefit and protection of all Owners similarly situated and the Trustee is hereby appointed (and the successive respective Owners by taking and holding the Bonds or Parity Debt shall be conclusively deemed so to have appointed it) the true and lawful attorney-in-fact of the respective Owners for the purpose of bringing any such suit, action or proceeding and to do and perform any and all acts and things for and on behalf of the respective Owners as a class or classes, as may be necessary or advisable in the opinion of the Trustee as such attorney-in-fact, provided, however, the Trustee shall have no duty or obligation to exercise any such right or remedy unless it has been indemnified to its satisfaction from any loss, liability or expense (including fees and expenses of its outside counsel and the allocated costs and disbursements of its in-house counsel to the extent such services are not redundant with those provided by outside counsel).

Section 8.07 Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Owners is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise, and may be exercised without exhausting and without regard to any other remedy conferred by the Law or any other law.

Section 8.08 Determination of Percentage of Bondowners. Whenever in this Indenture the consent, direction or other action is required or permitted to be given or taken by a percentage of the Owners of an aggregate principal amount of Outstanding Bonds (including by the Owners of a majority in aggregate principal amount of the Outstanding Bonds), such percentage shall be calculated on the basis of the principal amount of the Outstanding Bonds determined as of the next succeeding Interest Payment Date.

ARTICLE IX

MISCELLANEOUS

Section 9.01 Benefits Limited to Parties. Nothing in this Indenture, expressed or implied, is intended to give to any person other than the Authority, any Insurer, the Trustee and the Owners, any right, remedy or claim under or by reason of this Indenture. Any covenants, stipulations, promises or agreements in this Indenture contained by and on behalf of the Authority shall be for the sole and exclusive benefit of the Trustee, any Insurer and the Owners. To the extent that this Indenture confers upon or gives any Insurer any right, remedy or claim under or by reason of this Indenture, such Insurer is hereby explicitly recognized as being third-party beneficiaries hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder. So long as the 2019 Insurance Policy is in full force and effect and the 2019 Insurer has not defaulted on its obligations thereunder, or so long as the 2019 Insurer is owed any amounts in connection with the 2019 Insurance Policy or the 2019 Reserve Policy, the 2019 Insurer shall be a third party beneficiary of this Indenture.

Section 9.02 Successor is Deemed Included in All References to Predecessor. Whenever in this Indenture or any Supplemental Indenture either the Authority or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the Authority or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 9.03 Discharge of Indenture.

(a) If the Authority shall pay and discharge the entire indebtedness on all Bonds or any portion thereof in any one or more of the following ways:

(i) by well and truly paying or causing to be paid the principal of and interest and premium (if any) on all or the applicable portion of Outstanding Bonds, as and when the same become due and payable;

(ii) by irrevocably depositing with the Trustee or an escrow agent, in trust, at or before maturity, money which, together with the available amounts then on deposit in the funds and accounts established pursuant to this Indenture, is fully sufficient to pay all or the applicable portion of Outstanding Bonds, including all principal, interest and redemption premiums, or;

(iii) by irrevocably depositing with the Trustee or an escrow agent, in trust, Defeasance Obligations in such amount as an Independent Accountant shall determine will, together with such other money as may be deposited with the Trustee plus the interest to accrue thereon and available moneys then on deposit in the funds and accounts established pursuant to this Indenture, be fully sufficient to pay and discharge the indebtedness on all Bonds or the applicable portion thereof (including all principal, interest and redemption premiums) at or before maturity;

and, if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given pursuant to Section 2.03(d) or provision satisfactory to the Trustee shall have been made for the giving of such notice, then, at the election of the Authority, and notwithstanding that any Bonds shall not have been surrendered for payment, the pledge of the Pledged Tax Revenues and other funds provided for in this Indenture and all other obligations of the Trustee and the Authority under this Indenture shall cease and terminate with respect to all Outstanding Bonds or, if applicable, with

respect to that portion of the Bonds which has been paid and discharged, except only (A) the obligation of the Trustee to transfer and exchange Bonds hereunder, (B) the obligations of the Authority under Section 6.06 hereof, and (C) the obligation of the Authority to pay or cause to be paid to the Owners (or any Insurer), from the amounts so deposited with the Trustee, all sums due thereon and to pay the Trustee and any Insurer all fees, expenses and costs of the Trustee and any Insurer. In the event the Authority shall, pursuant to the foregoing provision, pay and discharge any portion or all of the Bonds then Outstanding, the Trustee shall be authorized to take such actions and execute and deliver to the Authority all such instruments as may be necessary or desirable to evidence such discharge, including, without limitation, selection by lot of Bonds of any maturity of the Bonds that the Authority has determined to pay and discharge in part.

In the case of a defeasance or payment of all of the Bonds Outstanding, any funds thereafter held by the Trustee which are not required for said purpose or for payment of amounts due the Trustee pursuant to Section 6.06 shall be paid over to the Authority and applied by the Authority in accordance with the Law.

Section 9.04 Execution of Documents and Proof of Ownership by Owners. Any request, consent, declaration or other instrument which this Indenture may require or permit to be executed by any Owner may be in one or more instruments of similar tenor, and shall be executed by such Owner in person or by such Owner's attorneys appointed in writing.

Except as otherwise herein expressly provided, the fact and date of the execution by any Owner or his attorney of such request, declaration or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the person signing such request, declaration or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

The ownership of Bonds and the amount, maturity, number and date of ownership thereof shall be proved by the Registration Books.

Any demand, request, direction, consent, declaration or other instrument or writing of the Owner of any Bond shall bind all future Owners of such Bond in respect of anything done or suffered to be done by the Authority or the Trustee and in accordance therewith, provided, however, that the Trustee shall not be deemed to have knowledge that any Bond is owned by or for the account of the Authority unless the Authority is the registered Owner or the Trustee has received written notice that any other registered Owner is such an affiliate.

Section 9.05 Disqualified Bonds. In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned or held by or for the account of the Authority or the City (but excluding Bonds held in any employees' retirement fund) shall be disregarded and deemed not to be Outstanding for the purpose of any such determination. Upon request of the Trustee, the Authority and the City shall specify in a Written Certificate to the Trustee those Bonds disqualified pursuant to this Section and the Trustee may conclusively rely on such Certificate.

Section 9.06 Waiver of Personal Liability. No member, officer, agent or employee of the Authority shall be individually or personally liable for the payment of the principal or interest or any

premium on the Bonds; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

Section 9.07 Destruction of Cancelled Bonds. Whenever in this Indenture provision is made for the surrender to the Trustee of any Bonds which have been paid or cancelled pursuant to the provisions of this Indenture, the Trustee shall destroy such bonds and provide the Authority a certificate of destruction. The Authority shall be entitled to rely upon any statement of fact contained in any certificate with respect to the destruction of any such Bonds therein referred to.

Section 9.08 Notices. Any notice, request, demand, communication or other paper shall be sufficiently given and shall be deemed given when delivered or upon receipt when mailed by first class, registered or certified mail, postage prepaid, or sent by facsimile, addressed as follows:

If to the Authority: Fort Ord Reuse Authority
920 2nd Avenue, Suite A
Marina, California 93933
Attention: Executive Officer

If to the Successor Entity: City of Marina
211 Hillcrest Avenue
Marina, California 93933
Attention: City Manager

If to the Trustee: [To come]

If to the 2019 Insurer: [To come]

The Authority, the Trustee and the 2019 Insurer may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 9.09 Partial Invalidity. If any Section, paragraph, sentence, clause or phrase of this Indenture shall for any reason be held illegal, invalid or unenforceable, such holding shall not affect the validity of the remaining portions of this Indenture. The Authority hereby declares that it would have adopted this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issue of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Indenture may be held illegal, invalid or unenforceable. If, by reason of the judgment of any court, the Trustee is rendered unable to perform its duties hereunder, all such duties and all of the rights and powers of the Trustee hereunder shall, pending appointment of a successor Trustee in accordance with the provisions of Section 6.01 hereof, be assumed by and vest in the Treasurer of the Authority in trust for the benefit of the Owners. The Authority covenants for the direct benefit of the Owners that its Treasurer in such case shall be vested with all of the rights and powers of the Trustee hereunder, and shall assume all of the responsibilities and perform all of the duties of the Trustee hereunder, in trust for the benefit of the Bonds, pending appointment of a successor Trustee in accordance with the provisions of Section 6.01 hereof.

Section 9.10 Unclaimed Moneys. Anything contained herein to the contrary notwithstanding, any money held by the Trustee in trust for the payment and discharge of the interest or premium (if any) on or principal of the Bonds which remains unclaimed for two (2) years after the date when the payments of such interest, premium and principal have become payable, if such money

was held by the Trustee at such date, or for two (2) years after the date of deposit of such money if deposited with the Trustee after the date when the interest and premium (if any) on and principal of such Bonds have become payable, shall be repaid by the Trustee to the Authority as its absolute property free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Bondowners shall look only to the Authority for the payment of the principal of and interest and redemption premium (if any) on of such Bonds.

Section 9.11 Execution in Counterparts. This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.12 Governing Law. This Indenture shall be construed and governed in accordance with the laws of the State.

Section 9.13 Provisions Relating to the 2019 Insurance Policy. [To come]

Section 9.14 Reserve Policy. [To come]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the FORT ORD REUSE AUTHORITY has caused this Indenture to be signed in its name by its Executive Officer, and U.S. BANK NATIONAL ASSOCIATION, in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name by its officer thereunto duly authorized, all as of the day and year first above written.

FORT ORD REUSE AUTHORITY

By: _____
Executive Officer

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Officer

surrender of this Bond at the corporate trust office of U.S. Bank National Association, as trustee (the “Trustee”), in Costa Mesa, California or at such other place designated by the Trustee (the “Principal Corporate Trust Office”). Interest hereon (including the final interest payment upon maturity or earlier redemption) is payable by check of the Trustee mailed by first class mail, postage prepaid, on the Interest Payment Date to the Registered Owner hereof at the Registered Owner’s address as it appears on the registration books maintained by the Trustee as of the Record Date for such Interest Payment Date; provided however, that payment of interest may be by wire transfer to an account in the United States of America to any registered owner of Bonds in the aggregate principal amount of \$1,000,000 or more upon written instructions of any such registered owner filed with the Trustee for that purpose prior to the Record Date preceding the applicable Interest Payment Date.

This Bond is one of a duly authorized issue of bonds of the Authority designated as “Fort Ord Reuse Authority Tax Allocation Bonds, Series 2019A (Federally Taxable)” (the “Bonds”), of an aggregate principal amount of \$_____ all of like tenor and date (except for such variation, if any, as may be required to designate varying series, numbers, maturities, interest rates, or redemption and other provisions) and all issued pursuant to the provisions of the Marks-Roos Local Bond Pooling Act of 1985, codified at Article 4 of Chapter 6 of Division 7 of Title 1 of the California Government Code (the “Act”) and the Fort Ord Reuse Authority Act, codified at Title 7.85 of the California Government Code (the “Fort Ord Reuse Authority Act”), and pursuant to an Indenture of Trust, dated as of _____ 1, 2019, entered into by and between the Authority and the Trustee (the “Indenture”), providing for the issuance of the Bonds. The Bonds are being issued in the form of registered Bonds without coupons. Additional bonds or other obligations may be issued on a parity with the Bonds, but only subject to the terms of the Indenture. Reference is hereby made to the Indenture (copies of which are on file at the office of the Authority) and all indentures supplemental thereto, to the Act and to the Fort Ord Reuse Authority Act, for a description of the terms on which the Bonds are issued, the provisions with regard to the nature and extent of the Pledged Tax Revenues (as that term is defined in the Indenture), and the rights thereunder of the registered owners of the Bonds and the rights, duties and immunities of the Trustee and the rights and obligations of the Authority thereunder, to all of the provisions of which Indenture the Registered Owner of this Bond, by acceptance hereof, assents and agrees. Capitalized terms not otherwise defined herein shall have the meanings given them in the Indenture.

The Bonds are limited obligations of the Authority and this Bond and the interest hereon and on all other Bonds and the interest thereon (to the extent set forth in the Indenture), are payable from, and are secured by a pledge of, security interest in and lien on the Pledged Tax Revenues derived by the Authority from the Project Areas.

There has been created the Debt Service Fund (as defined in the Indenture), which will be maintained by the Trustee, into which Pledged Tax Revenues shall be deposited for payment, when due, of the principal of and the interest and redemption premium, if any, on the Bonds and any additional Parity Debt as defined in the Indenture. As and to the extent set forth in the Indenture, all such Pledged Tax Revenues and the moneys in the Debt Service Fund, except the Administrative Expense Account (as such terms are defined in the Indenture) are exclusively and irrevocably pledged to and constitute a trust fund, in accordance with the terms hereof and the provisions of the Indenture, the Act and the Fort Ord Reuse Authority Act, for the security and payment or redemption of, including any premium upon early redemption, and for the security and payment of interest on, the Bonds and any additional Parity Debt (as defined in the Indenture). Except for the Pledged Tax Revenues and such moneys, no funds or properties of the Authority shall be pledged to, or otherwise liable for, the payment of principal of or interest or redemption premium, if any, on the Bonds and the 2019 Bonds.

The Bonds are subject to optional and mandatory redemption prior to maturity as described in the Indenture. The 2019 Escrow Term Bonds are subject to special mandatory redemption from the Escrow Fund prior to maturity as described in the Indenture.

As provided in the Indenture, notice of redemption shall be given by first class mail no less than twenty (20) (or such longer period, up to thirty (30) days, as may be required by the Depository) nor more than sixty (60) days prior to the redemption date to the respective registered owners of any Bonds designated for redemption at their addresses appearing on the Bond registration books maintained by the Trustee, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for redemption.

The Authority shall have the right to rescind any notice of optional redemption by written notice to the Trustee on or prior to the date fixed for redemption. Any notice of redemption shall be canceled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default under the Indenture. The Authority and the Trustee shall have no liability to the Owners or any other party related to or arising from such rescission of redemption. The Trustee shall mail notice of such rescission of redemption in the same manner and to the same recipients as the original notice of redemption was sent.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

If an Event of Default, as defined in the Indenture, shall occur, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture, but such declaration and its consequences may be rescinded and annulled as further provided in the Indenture.

The Bonds are issuable as fully registered Bonds without coupons in denominations of \$5,000 and any integral multiple thereof. Subject to the limitations and conditions and upon payment of the charges, if any, as provided in the Indenture, Bonds may be exchanged for a like aggregate principal amount of Bonds of other Authorized Denominations and of the same maturity.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the Principal Corporate Trust Office of the Trustee, but only in the manner and subject to the limitations provided in the Indenture, and upon surrender and cancellation of this Bond. Upon registration of such transfer a new fully registered Bond or Bonds, of any Authorized Denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor. The Trustee may refuse to transfer or exchange (a) any Bond during the fifteen (15) days prior to the date established for the selection of Bonds for redemption, or (b) any Bond selected for redemption.

The Authority and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Authority and the Trustee shall not be affected by any notice to the contrary.

The rights and obligations of the Authority and the registered owners of the Bonds may be modified or amended at any time in the manner, to the extent and upon the terms provided in the Indenture, but no such modification or amendment shall (a) extend the maturity of or reduce the interest

rate on any Bond or otherwise alter or impair the obligation of the Authority to pay the principal, interest, or redemption premiums (if any) at the time and place and at the rate and in the currency provided therein of any Bond without the express written consent of any Insurer or the Owner of such Bond, (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification or (c) without its written consent thereto, modify any of the rights or obligations of the Trustee.

This Bond is not a debt, liability or obligation of any of the members or officers of the Authority, any agency, any district, any city, the County of Monterey, the State of California, or any of its political subdivisions except the Authority, and no agency, district, or city, and none of said County, said State, nor any of its political subdivisions except the Authority is liable hereon, nor in any event shall this Bond be payable out of any funds or properties other than those pledged by the Authority under the Indenture. The Bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

It is hereby certified that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist, have happened or have been performed in due and regular time and manner as required by the Law and the laws of the State of California, and that the amount of this Bond, together with all other indebtedness of the Authority, does not exceed any limit prescribed by the Act, the Fort Ord Reuse Authority Act, or any other laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until the Trustee's Certificate of Authentication hereon shall have been manually signed by the Trustee.

IN WITNESS WHEREOF, the Fort Ord Reuse Authority has caused this Bond to be executed in its name and on its behalf with the facsimile signature of its Executive Officer and attested by the facsimile signature of its Secretary, all as of the Dated Date set forth above.

FORT ORD REUSE AUTHORITY

By: _____
Executive Officer

ATTEST:

Secretary

[FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION]

This is one of the Bonds described in the within-mentioned Indenture.

Authentication Date: _____ U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: _____
Authorized Signatory

[FORM OF STATEMENT OF INSURANCE]

[FORM OF ASSIGNMENT]

For value received the undersigned hereby sells, assigns and transfers unto

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within-registered Bond and hereby irrevocably constitute(s) and appoints(s) _____ attorney,

to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: _____

Signatures Guaranteed:

Note: Signature(s) must be guaranteed by an eligible guarantor.

Note: The signatures(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

EXHIBIT B

FORM OF REQUISITION FOR DISBURSEMENT FROM PROJECT FUND

\$ _____
**Fort Ord Reuse Authority
Tax Allocation Bonds,
Series 2019A (Federally Taxable)**

**REQUISITION NO. ___ FOR
DISBURSEMENT FROM PROJECT FUND
_____ BOND PROCEEDS ACCOUNT**

The undersigned hereby states and certifies:

(i) that the undersigned is a duly authorized representative of the _____ [Local Agency] _____ (the "Local Agency"), and as such, is familiar with the facts herein certified and is authorized to certify the same;

(ii) that, pursuant to Section 3.04 of that certain Indenture of Trust, dated as of _____ 1, 2019 (the "Indenture"), by and between the Fort Ord Reuse Authority (the "Authority") and U.S. Bank National Association, as trustee (the "Trustee"), the undersigned hereby requests the Trustee to disburse this date the following amounts from the _____ Bond Proceeds Account of the Project Fund established under the Indenture relating to the above-captioned obligations, to the payees designated on the attached Exhibit A;

(iii) that each obligation mentioned herein is an obligation to the payee stated in Schedule A that has been incurred by the Local Agency or the Authority for public capital improvements of base wide importance or as otherwise permitted by the Fort Ord Reuse Plan, and as such is a proper charge against the Project Fund; and

(iv) that any approval required under the California Environmental Quality Act, as amended (Division 13 of the California Public Resources Code), prior to the expenditure of such amount for the purpose set forth on the attached Exhibit A has been received and is final.

Dated: _____, 20__

_____ [LOCAL AGENCY] _____

By: _____
Authorized Officer

SCHEDULE A

PROJECT FUND DISBURSEMENTS
_____ Bond Proceeds Account

<i>Item Number</i>	<i>Payee Name and Address</i>	<i>Purpose of Obligation</i>	<i>Amount</i>
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EXHIBIT C

BUILDING REMOVAL PARCELS

List of Project Parcels by U.S Army Corps of Engineers (“Army”) Parcel Number.

Jurisdiction	USACE Parcel Number	Description	Bond Account Owner
City of Marina	E4.1.1	Cypress Knolls	City of Marina
City of Marina	E4.1.2.1	Cypress Knolls	City of Marina
City of Marina	E4.1.2.2	Cypress Knolls	City of Marina
City of Marina	L5.9.1.1	Marina Radio Club	City of Marina
City of Marina	L5.4.2	Marina Park	City of Marina
City of Marina	E2b.3.1.1	Marina Arts District	City of Marina
City of Marina	E2c.4.2.1	Commercial/Business Park	City of Marina
City of Marina	L20.16.1	TAMC Transit Center	TAMC
City of Marina	L2.1	MST Transit Center	MST
City of Marina	L35.1	MCWD Storage	MCWD
City of Seaside	L2.4.3.1	MST Storage	MST
City of Seaside	L32.4.1.1	Surplus II	City of Seaside
City of Seaside	L19.4	Surplus II	City of Seaside
City of Seaside	F2.3.2	Main Gate	City of Seaside
City of Seaside	F2.3.3	GJMB Parcel	City of Seaside
City of Seaside	L15.1	Surplus II	City of Seaside
City of Seaside	F5.2	National Guard	City of Seaside
City of Seaside	L23.5.1	Chartwell School	City of Seaside
City of Seaside	E18.1.3	Nurses Barracks	City of Seaside
County of Monterey	E11b.8	Ammo Supply Point	County of Monterey
County of Monterey	L23.3.2.2	Open Space	County of Monterey
County of Monterey	L23.3.3.1	Open Space	County of Monterey
County of Monterey	L23.3.3.2	Open Space	County of Monterey
County of Monterey	L20.2.1	Open Space	County of Monterey
County of Monterey	L20.2.2	Open Space	County of Monterey
County of Monterey	S3.1.1	Wastewater Plant	State Parks

Attachment F

Good Faith Estimates

State law now requires that electeds be given “good faith” estimates regarding the proceeds and costs of a bond issue before formally approving it. Accordingly, FORA’s finance team has prepared conservative estimates of both for inclusion in the proposed authorizing resolution before the Board. Since the intent is to provide the FORA board with conservative good faith estimates, these numbers are all larger than anything we have previously shown FORA staff or the Board. While the “good faith” estimates are statutorily required, they are not binding upon future actions of the FORA Board. These estimates are discussed below.

The following information consists of estimates that have been provided by the Authority’s Financial Advisor and has been represented by such party to have been provided in good faith:

- A. True Interest Cost of the Bonds: 3.64%
- B. Finance Charge of the Bonds (Sum of all fees/charges paid to third parties): \$1,358,024
- C. Net Proceeds of the Bonds to be Received (net of finance charges, reserves and capitalized interest, if any): \$53,372,246
- D. Total Payment Amount through Maturity of the Bonds: \$72,457,777

The foregoing constitute good faith estimates only. The principal amount of the Bonds, the true interest cost of the Bonds, the finance charges thereof, the amount of proceeds received therefrom and total payment amount with respect thereto may differ from such good faith estimates due to: (a) the actual date of the sale of the Bonds being different than the date assumed for purposes of such estimates; (b) the actual principal amount of Bonds sold being different from the estimated amount used for purposes of such estimates; (c) the actual amortization of the Bonds being different than the amortization assumed for purposes of such estimates; (d) the actual market interest rates at the time of sale of the Bonds being different than those estimated for purposes of such estimates; (e) other market conditions; or (f) alterations in the Authority’s financing plan, or a combination of such factors.

The actual date of sale of the Bonds and the actual principal amount of Bonds sold will be determined by the Authority based on a variety of factors. The actual interest rates borne by the Bonds will depend on market interest rates at the time of sale thereof. The actual amortization of the Bonds will also depend, in part, on market interest rates at the time of sale thereof. Market interest rates are affected by economic and other factors beyond the control of the Authority.

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEM

Subject:	2018 Transition Plan and Draft Implementing Agreements Status Report	
Meeting Date:	December 13, 2019	INFORMATION/ACTION
Agenda Number:	8b	

RECOMMENDATION:

- i. Receive a Fort Ord Reuse Authority (“FORA”) Transition Plan Implementing Agreements (“TPIA”) Progress Report;
- ii. Receive a Habitat Conservation Plan (“HCP”) - Joint Powers Authority (“JPA”) Formation Progress Report

BACKGROUND:

At its March 22, 2019 meeting and (prior meetings) the FORA Board requested that staff and consultants provide periodic updates regarding the 2018 Transition Plan Implementation.

i. TPIA PROGRESS REPORT

FORA transition plan implementation consultants Regional Government Services (“RGS”) continue meeting with various stakeholders and drafting Transition Plan Implementation Agreements (“TPIA”). The RGS workplan involves drafting the following set of TPIA for consideration by the Board:

1. **Multi-agency TPIA:** addressing issues relevant to each FORA land use jurisdiction (Del Rey Oaks, Marina, Monterey, Monterey County, Seaside) as well as:
 - a. Transferring FORA’s regional transportation obligations and offsite transportation reimbursement agreements to the Transportation Agency for Monterey County (“TAMC”) and the holdover jurisdictions;
 - b. Economic Development Conveyance (“EDC”) Successor (property transfers);
 - c. Local Reuse Authority (“LRA”) Successor; and
2. **Water TPIA(s):** addressing transfer of certain FORA water supply/allocation rights (as may be noted in EDC agreement above) and obligations to Marina Coast Water District (“MCWD”).
3. **Environmental Services Cooperative Agreement (“ESCA”) TPIA:** regarding post-FORA successor and obligations under this contract with the US Army.

RGS consultants met with the Administrative Committee on March 20, April 3, June 5, June 19, July 3, July 31, August 14, September 4, October 2, October 16, October 30, and November 13, 2019 to provide updates on TPIA progress.

An updated draft Multi-Agency Implementing Agreement based on comments received by signatory agencies was reviewed by the Administrative Committee on November 13 and will be shared for review by the Board and public prior to the December 13 Board meeting (**Attachment A**). MCWD released individual final draft agreements to relevant agencies the week of October 28.

Working closely with FORA ESCA staff, RGS also facilitated the development of a document describing the status and expected transfers of remaining FORA parcels (**Attachment B**).

ii. **HCP – JPA FORMATION PROGRESS REPORT**

In addition to facilitating the completion of the TPIA listed above, RGS has been contracted to mediate the HCP-JPA formation process. A JPA is proposed to implement the HCP and receive/oversee incidental take permits. The HCP identifies certain duties and obligations that must be fulfilled to support the issuance of permits under the Federal Endangered Species Act (“ESA”) and California Endangered Species Act (“CESA”) to enable urban development, operations and management in habitat management areas, and other activities and projects on property owned or controlled by the land use jurisdictions at the former Fort Ord. These land use jurisdictions or “permittees” include the following entities:

County of Monterey	Regents of the University of California
City of Marina	Board of Trustees of the California State University
City of Seaside	Monterey Peninsula Community College District
City of Del Rey Oaks	Monterey Peninsula Regional Parks District
City of Monterey	Marina Coast Water District
California Department of Parks and Recreation	Bureau of Land Management (Cooperating Entity)

FORA Staff and Consultant team held All-Permittees Meeting from 9am-12pm, November 20, 2019 at the Soper Field Community Center in Seaside. Staff and consultants presented HCP background and JPA formation information. Stakeholders raised concerns about JPA legal and financial issues, and requested additional information prior to advancing the formation process. Staff and consultants documented questions, identified key new content needs, and have scheduled JPA finance meetings with stakeholders in mid-December.

Several entities have suggested a more robust and focused engagement process in order to resolve the outstanding funding and governance concerns. At its 12/4/2019 meeting, the FORA Executive Committee suggested Board deliberation on the potential of creating a Habitat Working Group or other semi-formal mechanism (with a weekly or bi-weekly meeting schedule). This group would convene interests, with support from FORA, RGS, and/or jurisdiction staff to assist in resolving this 2018 Transition Plan Implementation objective.

FORA Staff is also advancing the following transition items:

- a) Local Agency Formation Commission of Monterey County-FORA Liability Agreement;
- b) Final FY 19/20 Capital Improvement Program;
- c) Environmental Protection Agency (“EPA”)/Department of Toxic Substances Control (“DTSC”) /Army – FORA ESCA successor acceptance process; and
- d) Public Employee Retirement System obligations and FORA projected staffing.

FISCAL IMPACT:

Reviewed by FORA Controller 

Funding for staff time and RGS Consultants included in the approved FORA budget.

COORDINATION:

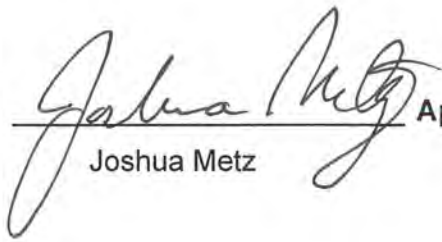
Executive Officer.

ATTACHMENTS:

Attachment A: DRAFT Multi-Agency TPIA Status

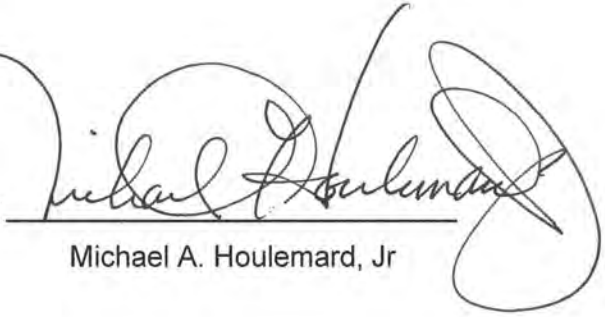
Attachment B: ESCA Parcels Transfer Status Chart

Prepared by



Joshua Metz

Approved by



Michael A. Houlemard, Jr

IMPLEMENTING AGREEMENT

This Implementing Agreement (this “Agreement”) is dated for reference purposes _____, 2019 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” and collectively with County, Marina, Seaside, and Del Rey Oaks, the “Jurisdictions”).

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 (including the Jurisdictions) 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 DEFINITIONS

The following terms as used in this Agreement will have the meanings set forth below:

- 1.1** “**Agreement**” means this Implementing Agreement.
- 1.2** “**Army**” means the United States Army.
- 1.3** “**County**” means the County of Monterey, a California general law county.

1.4 **“Del Rey Oaks”** means the City of Del Rey Oaks, a California general law city.

1.5 **“EDC Agreement”** means the Economic Development Conveyance Memorandum of Agreement between FORA and the Army dated June 20, 2000.

1.6 **“FORA”** means the Fort Ord Reuse Authority, a public corporation of the State of California.

1.7 **“FORA Act”** means the Fort Ord Reuse Authority Act (California Government Code Section 67650 *et seq.*).

1.8 **“FORA’s Dissolution”** means the cessation of FORA’s existence when the FORA Act becomes inoperative, which is anticipated to occur on June 30, 2020.

1.9 **“HCP”** means the Fort Ord Multispecies Habitat Conservation Plan for the former Fort Ord military installation.

1.10 **“HCP Cooperative”** means the Fort Ord Regional Habitat Cooperative formed pursuant to a Joint Exercise of Powers Agreement entered into by and between the Jurisdictions, among others.

1.11 **“HMAs”** has the meaning given in Section 4.0.

1.12 **“Jurisdiction”** means individually County, Marina, Seaside, Del Rey Oaks, or Monterey. County, Marina, Seaside, Del Rey Oaks, and Monterey may collectively be referred to as the **“Jurisdictions.”**

1.13 **“Jurisdiction Property”** has the meaning given in Section 3.1.

1.14 **“Marina”** means the City of Marina, a California charter city.

1.15 **“Monterey”** means the City of Monterey, a California charter city.

1.16 **“Party”** means individually one of the Jurisdictions. The Jurisdictions may collectively be referred to as the **“Parties.”**

1.17 **“Sale or Lease Proceeds”** means the consideration received by the Jurisdiction when leasing or selling a portion of the Jurisdiction Property owned by the Jurisdiction, less any direct leasing expenses or direct sale expenses.

1.18 **“Seaside”** means the City of Seaside, a California general law city.

2.0 WATER ALLOCATIONS

Until such time as such allocations may be amended as provided herein, the Jurisdictions agree 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.*). The Parties shall meet and confer in good faith to cooperatively develop one or more agreements between each Jurisdiction 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 Jurisdictions (each a "Jurisdiction Property"). Accordingly, if any development project on one but not more than one Jurisdiction Property requires mitigation in the form of a roadway project or otherwise, the Jurisdiction undertaking or approving the development project shall have sole responsibility to arrange for the funding of all required mitigation measures from such Jurisdiction's own resources, from the project developer(s), or from grants or other resources available to such Jurisdiction.

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 Jurisdiction with permitting authority over such development will either assess the Regional Development Impact Fee or collect a comparable development impact fee equal to the 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 CONSERVATION PLAN

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 by April 1, 2020 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 (collectively, the “HMAs”).

5.0 ORDNANCE

The Jurisdictions shall cooperate fully with the Army’s investigation, characterization, and remediation of potential ordnance and explosives impediments to allow the reuse of the Jurisdiction Property. The Jurisdictions’ cooperation will specifically include recognizing, effective immediately after FORA’s Dissolution, the Army’s new designated agency and entering into any new agreement(s) with the Army as may be necessary to appropriately implement the change of designated agency.

6.0 RECORDS RETENTION AND MANAGEMENT

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

7.0 LAND TRANSFER REPORTING

At least annually, commencing with the year in which FORA transfers or transferred a respective parcel of Jurisdiction Property to the ownership of the respective Jurisdiction and ending seven (7) years thereafter, the recipient Jurisdiction shall submit to County, serving as the Economic Development Corporation Successor and Local Reuse Authority Successor, a written report of the Jurisdiction’s uses of all Sale or Lease Proceeds received by the Jurisdiction in connection with its ownership of such parcel of Jurisdiction Property, to the extent that such information has not previously been provided to FORA. The Jurisdiction shall have forty-five (45) days from the anniversary of each transfer of ownership to prepare and submit its report to County, which will promptly thereafter, as the designated reporting agency, submit the same to the Army.

8.0 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. The County of Monterey shall promptly thereafter disburse those community facilities district revenues and other fund balances to the Jurisdictions in such amounts and in such reasonable manner as the Jurisdictions may collectively agree.

9.0 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.

10.0 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.

11.0 DISPUTE RESOLUTION

If any dispute arises between the Parties under this Agreement, the Parties shall resolve the dispute in accordance with this Section 11.

11.1 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 Party all the information in its possession that is relevant to the dispute, so that both Parties have the information needed to reach agreement. If these negotiations fail to produce agreement after fifteen (15) days from the initial demand, either Party may demand mediation.

11.2 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. Either Party may terminate the mediation if it fails to produce agreement within forty-five (45) days from selection of the mediator. The expenses of such mediation shall be shared equally between the Parties.

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

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

(ii) Before commencement of the arbitration, the Parties may elect to have the arbitration proceed on an informal basis; however, if the Parties are unable so to agree, then the arbitration shall be conducted in accordance with Code of Civil Procedure 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.

11.4 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 either Party to enforce any of the terms and conditions of this Agreement by means of arbitration, court action or administrative enforcement, the prevailing Party, in addition to any other remedy at law or in equity available to such Party, shall be awarded all reasonable cost and reasonable attorneys' fees in connection therewith, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing Party.

11.5 Judicial Resolution. If the dispute is not or cannot be resolved by mediation, and if there is not agreement between the Parties to pursue arbitration, then either Party may commence an action in the Superior Court of Monterey County. The prevailing Party, in addition to any other remedy at law or in equity available to such Party, shall be awarded all reasonable costs and reasonable attorney's fees, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing Party. For purposes this Section 11.5, "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.

12.0 MISCELLANEOUS

12.1 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.

12.2 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.

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

12.4 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.

12.5 Relationship of the Parties. Nothing in this Agreement shall create a joint venture, partnership or principal-agent relationship between the Parties.

12.6 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.

12.7 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.

12.8 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: _____, 2019

COUNTY OF MONTEREY

By: _____
County Administrative Officer

Approved as to form:

By: _____
County/Deputy County Counsel

Dated: _____, 2019

CITY OF MARINA

By: _____
City Manager

Approved as to form:

By: _____
City Attorney

Dated: _____, 2019

CITY OF SEASIDE

By: _____
City Manager

Approved as to form:

By: _____
City Attorney

Dated: _____, 2019

CITY OF DEL REY OAKS

By: _____
City Manager

Approved as to form:

By: _____
City Attorney

Dated: _____, 2019

CITY OF MONTEREY

By: _____
City Manager

Approved as to form:

By: _____
City Attorney

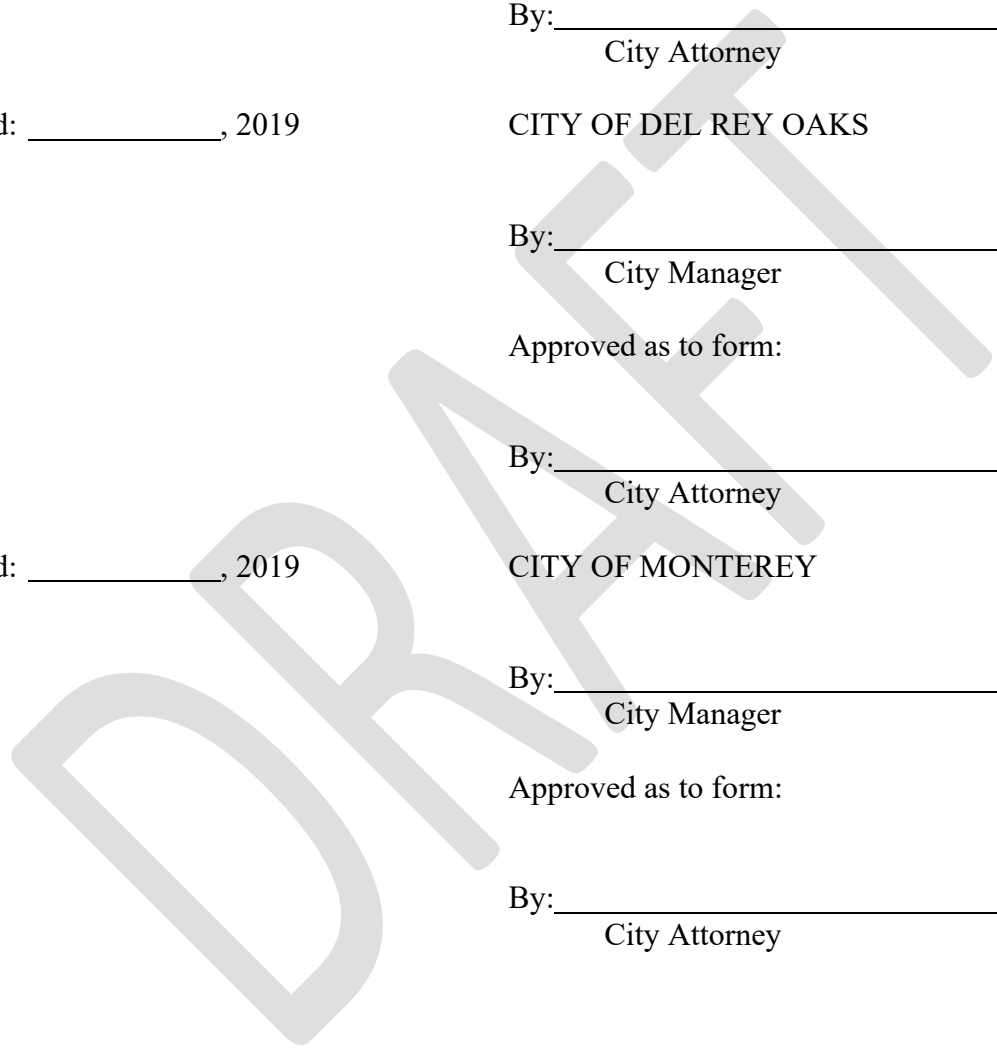


EXHIBIT A

Water Allocations

Allocations			
Land Use Jurisdiction or Use Type	Potable Water AFY	Recycled Water AFY	Total Water AFY
City of Marina (Ord Community)	1,340.0	345.0	1,685.0
City of Monterey	65.0	0.0	65.0
City of Seaside	1,012.5	453.0	1,465.5
County of Monterey	720.0	134.0	854.0
CSUMB	1,035.0	87.0	1,122.0
Del Rey Oaks	242.5	280.0	522.5
State Parks and Rec.	44.5	0.0	44.5
U.S. Army	1,562.0	0.0	1,562.0
UCMBEST	230.0	60.0	290.0
Assumed Line Loss	348.5	68.0	416.5
TOTAL ALL (ORD)	6,600.0	1,427.0	8,027.0

Footnote to table: The water supply sources for the 973 AFY of additional potable and/or recycled water are not included in the above table and they have not yet been identified and developed under Phase 3 described below.

Footnote to Army's Potable Groundwater Allocation: The amount shown for the Army is the Army's reserved right.

Footnote to City of Seaside's Potable Groundwater Allocation: Under Article 2.a of Amendment No. 1 dated October 23, 2001, the Army agreed to reserve only 1,691 AFY, or 38 AFY less than the amount actually reserved by the Army in the October 23, 2001 deed. The 38 AFY was to be transferred to FORA and then to MCWD. FORA was to allocate the 38 AFY to the City of Seaside for the benefit of now Bay View Mobile Home Park subject to use limitations prescribed in Amendment No. 1 to be administered by the City of Seaside pursuant to its land use jurisdiction. MCWD has requested FORA to correct this oversight with the Army. Until the deeds are corrected, the City of Seaside's groundwater allocation should be reduced by 38 AFY and the Army's reserved amount should be increased by 38 AFY.



Out- Deed Name	Jurisdiction	Parcel Number	Army Parcel Name	Army/FORA In-Deed	Finish Survey Mods - ARCADIS	DTSC Completes CRUP Amendment	CRUP Recorded	State Remedial Completion Concurrence - DTSC	BRAC CERCLA Warrantee & Deed Amendment	FORA Property Transfer Notification Letters	FORA Out-Deeds Ready to Sign
ESCA FOSET-5 CERCLA Warrantee & Deed Notices						7 weeks to complete after survey's done.	1 week after CRUP Amendment complete	1 week after CRUPs completed.	8 weeks from FORA CERCLA Warrantee/Deed Amendment Request	1 week after Surveys modifications completed	4 weeks after Warrantee & Deed Amendment Complete
ESCA CSUMB Out-Deed	CSUMB	51.3.2	Expansion Area 3B (CSUMB Off-Campus)	DACA05-9-07-507	Complete	Complete	Complete	Complete	Request made September 2019	Notification made October 2019	Dec-19
ESCA Seaside Out-Deed	Seaside	E18.1.3	Housing future	DACA05-9-07-506	Oct-19	Dec-19	Dec-19	Dec-19	Request made October 2019 - Scheduled to be issued 11/14/19	Notification made October 2019	Jan-20
		E18.4	Water Tank								
		E20c.2	Housing Future								
		E23.1	ROW / retail								
		E23.2	ROW / Housing future								
		E24	ROW / Housing future								
ESCA MPC Out-Deed	MPC	E21b.3	Housing Single Family	DACA05-9-07-508	Oct-19	Dec-19	Dec-19	Dec-19	Request made October 2019	Notification made October 2019	Jan-20
		E38	MPC Reserve								
		E39	MPC Reserve								
		E41	MPC Habitat Reserve								
		E42	MPC Habitat Reserve								
		F1.7.2	BLM Parcel H / MOUT								
		L23.2	Habitat / field study area								
		E40	Range Extension								
ESCA County Out-Deed	County	E11b.6.1	Habitat Reserve	DACA05-9-07-505	Nov-19	Jan-20	Jan-20	Jan-20	Jan-20	Dec-19	Feb-20
		E11b.7.1.1	Habitat Reserve								
		E11b.8	Development / mixed use								
		E19a.1	County Development								
		E19a.2	Habitat Reserve								
		E19a.4	Habitat Reserve / County								
		L20.18	ROW / Eucalyptus Road								
		L20.19.1.1	ROW / Barloy Canyon								
		L20.3.1	Wolf Hill								
		L20.3.2	ROW / Wolf Hill								
		L20.5.1	Lookout Ridge								
		L20.5.2	ROW / Lookout Ridge								
		L20.5.3	Lookout Ridge								
		L20.5.4	South Boundary Park - Barloy Canyon Road -								
		L20.8	Barloy Canyon Road -								
ESCA Del Rey Oaks Out-Deed	Del Rey Oaks	L20.13.1.2	ROW / Gen. Jim Moore	DACA05-9-07-502	Nov-19	Jan-20	Jan-20	Feb-20	Jan-20	Dec-20	Feb-20
		L20.13.3.1	ROW / South Boundary								
ESCA Monterey Out-Deed	Monterey	E29.1	Business Park / Light	DACA05-9-07-501	Nov-19	Jan-20	Jan-20	Feb-20	Jan-20	Dec-20	Feb-20
ESCA MRPMD Out-Deed	MRPMD - Parks	L6.2	Frog Pond	DACA05-9-07-504	Nov-19	Jan-20	Jan-20	Jan-20	Jan-20	Dec-19	Feb-20
Other Fort Ord Property Transfers											
County Landfill In & Out-Deeds	County	E8a.1.1	Landfill	Deed Needed	N/A	N/A	Unknown	N/A	N/A	N/A	After 2020
		E8a.2	Landfill carrot								
County FOSET 5 Out-Deed	County	E4.7.2	Imjin Parkway Gas Extraction	DACA05-9-09-505	N/A	Needs Kutack Rock Out-Deed Created	N/A	N/A	Complete	N/A	Jan-20
County FOST 11 In & Out-Deeds	County	L2.3	MST - North Gigling	FORA reviewing Deed	N/A	Kutak Rock modifying CRUP		N/A	N/A	N/A	Feb-20
		L2.4.1	MST - North Gigling								
Seaside E20c.1 In & Out-Deeds	Seaside	E20c.1	Housing Future	Deed Needed	N/A	Army and Kutak Rock developing deeds		N/A	N/A	2020	Unknown
Seaside L36 In & Out-Deeds	Seaside	L36	Rescinded Diocese	FOST 13 & Deed Needed	Army finishing Environmental - FOST 13	Army and Kutak Rock developing deeds		N/A	N/A	N/A	Feb-20

FORT ORD REUSE AUTHORITY BOARD REPORT		
BUSINESS ITEMS		
Subject:	Eucalyptus Road Storm Water Infiltrator Repair	
Meeting Date:	December 13, 2019	ACTION
Agenda Number:	8c	

RECOMMENDATION(S):

Authorize the Executive Officer (EO) to execute all bidding requirements and associated contracts for the completion of Eucalyptus Road infiltrator repairs not to exceed a project budget of \$1,082,500.

BACKGROUND:

The Fort Ord Reuse Authority (FORA) built Eucalyptus Road (ER) and General Jim Moore Boulevard (GJMB) to use onsite storm water retention systems (“infiltrators”) to prevent water pollution and recharging the local aquifer. A number of the infiltrators have failed and require an engineered solution.

In 2017, Parikh Geotechnical Engineers, under the BKF Contract GE-SWO-1, performed a root cause analysis to determine which entity, participating in the completed roadways construction, was responsible for the repair. The background review drew no conclusive evidence citing multiple reasons for failure as follows:

- 1) FORA and the City of Seaside approved the engineering plans and designs;
- 2) The Manufacturer did not identify slope as a key infiltrator design parameter;
- 3) The Engineer did not accurately account for the soil’s ability to dynamically change when saturated;
- 4) The Construction Contractor’s Engineer, with FORA and Seaside approval, specified installation of infiltrators in roadway fill instead of native soil due to known munitions issues;
- 5) FORA did not build the hardscape until approximately two years following the grading and installation of the infiltrators;
- 6) The contractor may have over compacted the soil;
- 7) FORA approved contractor Change Orders to fix the initial failure during construction by installing road base over the failure;
- 8) Neither FORA nor the City of Seaside maintained the infiltrators; and
- 9) Animals burrowed into the infiltrators creating tunnels or “pipes” which may have caused the failure.

The construction contract required the contractor to repair any such issue up to one year after the Notice of Completion. However, the warranty time has lapsed and the contractor, Top Grade, closed and sold its assets to another company. The original Geotech engineer

responsible for the soil compaction and design, and the former FORA Senior Project Manager are no longer available.

As a result of this study, the Board approved a contract with Harris and Associates in January 2018 for the development of a repair plan under Service Work Order SWO-H3. While researching solutions, it became clear that a Construction Support Plan (CSP) and Soils Management Plan (SMP) were required due to the Jurisdictional digging ordinances and Land Use Controls. Therefore, the Board approved a contract with Arcadis in May 2018 for the development of a CSP for Seaside Munitions Response Areas (MRA) 1-4.

FORA has since worked with Arcadis, the Department of Toxic Substance Control (DTSC), the Environmental Protection Agency (EPA) and the Army Base Re-Alignment and Closure (BRAC) Office to develop a Programmatic On-Call CSP, Roadways and Utilities Plan for Seaside MRA. DTSC provided final review of the CSP on November 18, 2019 (**Attachment A**) allowing construction to begin.

Harris and Associates provided 90% Plans for the maintenance and repair work necessary to fix the stormwater issues and close the Regional Water Board's open General Construction Permit. Staff anticipates final constructability review and plan check to be completed by the end of the calendar year. Estimated construction duration is 90 days and would put the completion of the road within 30 days of FORA closure, assuming 30 days to bid with an ER construction start in February 2020.

Staff prepared the following ER Project Budget using engineers estimates:

Contract	Budget
Construction	\$560,000
Surveying & Construction Limit Staking	25,000
Geotechnical Engineering & Testing	60,000
Construction Management / Prevailing Wage Monitoring	84,000
On-Call Construction Support & Munitions Coordination	90,000
Biological Controls/ Avoidance Measures	70,000
Contingency (25%)	193,500
Total	\$1,082,500


DISCUSSION:

FORA currently owns Eucalyptus Road and the surrounding parcels as it waits for the transfer paperwork to be completed. The work on-site is considered maintenance/repair on the roadway and the project specifications maintain the same biological controls used during roadway construction. FORA does not have an operations and maintenance budget, therefore this work is covered under the Transportation Contingency, especially as it involves work in an area formerly used for munitions training.

Recommendation:

Therefore, FORA staff is requesting authorization for the EO to execute all necessary bidding and associated resulting contracts for the completion of ER infiltrator repairs.


FISCAL IMPACT:

Reviewed by FORA Controller 

Staff time for this item is included in the approved annual budget. The FY 2019-2020 Capital Improvement Program ("CIP"): Transportation Contingency budget is 1,000,000, which includes \$415,787 for munitions coordination and staff augmentation contracts. The mid-year budget will adjust the CIP: Transportation Contingency to \$ 1,498,257 to reflect an approved ER project budget.

COORDINATION:

Finance Committee, Authority Counsel, City of Seaside, Administrative Committee

Prepared by  Peter Said Approved by  Michael A. Houlemard, Jr.



Jared Blumenfeld
Secretary for
Environmental Protection



Department of Toxic Substances Control

Meredith Williams, Ph.D.
Acting Director
8800 Cal Center Drive
Sacramento, California 95826-3200



Gavin Newsom
Governor

November 18, 2019

Mr. Stan Cook
Fort Ord Reuse Authority
920 2nd Avenue, Suite A
Marina, California 93933

FINAL PROGRAMMATIC ON-CALL CONSTRUCTION SUPPORT PLAN, ROADWAYS
AND UTILITIES, SEASIDE MUNITIONS RESPONSE AREA,
NOVEMBER 5, 2019

Dear Mr. Cook:

The Department of Toxic Substances Control (DTSC) has reviewed the *Final Programmatic On-Call Construction Support Plan, Roadways and Utilities, Seaside Munitions Response Area (MRA), November 5, 2019 (CSP)*.

DTSC has no further comments on this final document.

DTSC appreciates the opportunity to review the CSP. If you have any questions, please contact me at (916) 255-4988 or via email at brett.leary@dtsc.ca.gov.

Sincerely,

Brett Leary
Project Manager
Military and Corrective Action Unit
Site Mitigation and Restoration Program

cc: See next page.

Mr. Stan Cook
November 18, 2019
Page 2

cc: Mr. William Collins
BRAC Environmental Coordinator
Fort Ord Base Realignment and Closure Office
William.K.Collins.civ@mail.mil

Ms. Clancy Maeve
U.S. Environmental Protection Agency, Region 9
Clancy.Maeve@epa.gov

Mr. Noel Shrum, Unit Chief - DTSC
Noel.Shrum@dtsc.ca.gov

Mr. Roman A. Racca, P.G., Sr. E.G. - DTSC
Roman.Racca@dtsc.ca.gov