ORIGINAL
Fort Ord
Reuse Authority

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MEMORANDUM OF AGREEMENT BETWEEN THE FORT ORD REUSE AUTHORITY THE MARINA REDEVELOPMENT AGENCY AND MARINA COMMUNITY PARTNERS, LLC CONCERNING THE TRANSFER AND DEVELOPMENT OF THE UNIVERSITY VILLAGES PROJECT

THIS MEMORANDUM OF AGREEMENT (hereinafter "MOA") is made and entered into on August 25, 2005, by and among the MARINA REDEVELOPMENT AGENCY, a public body, corporate and politic (hereinafter referred to as "Agency"), the FORT ORD REUSE AUTHORITY (hereinafter referred to as "FORA"), a reuse authority created, operated and existing under and by virtue of the laws of the State of California, and Marina Community Partners, LLC, a Delaware limited liability company (hereinafter referred to as "MCP"). These entities will be referred to collectively as "Parties".

Recitals

A. FORA functions under California Government Code Section 67650 *et seq.* (hereinafter referred to as "Authority Act"). FORA's purpose is to plan, and manage the transfer of former Fort Ord property from the United States Army (hereinafter referred to as "Army") to the governing local jurisdictions or their designee(s).

B. In June 1997 FORA adopted the Base Reuse Plan. That Plan establishes FORA's responsibility to accommodate or constrain development and redevelopment of the former Fort Ord.

C. The Authority Act and the Base Reuse Plan allow FORA to use land sales and lease revenues, grants, tax increment revenue paid to FORA under the Authority Act, and other mechanisms to finance its obligations.

D. On June 20, 2000, the Army and FORA entered into a Memorandum of Agreement for the sale of portions of the former Fort Ord. As amended on October 23, 2001, that Agreement establishes the terms of the sale of portions of the former Fort Ord.

E. On May 1, 2001, FORA and the City of Marina (hereinafter referred to as "City") entered into an Implementation Agreement to manage the transfer and orderly development of the former Fort Ord property located within the City.

F. On January 21, 2004, the Army conveyed to FORA the property known as the University Villages Parcels (with the exception of a parcel identified as E2d.3.1, to be conveyed to FORA subsequently). These parcels are approximately 421.02 acres in area. FORA will

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convey all or portions of that property to the Agency.

G. In 2001 the FORA Board of Directors adopted financing policies that require removal of buildings, including the World War II wood buildings in the University Villages Specific Plan area. The cost of this building removal will be paid from FORA's basewide revenues.

H. The Marina City Council has adopted a Redevelopment Plan for its Redevelopment Project No. 3. Project No. 3 includes the University Villages Parcels. Under the Community Redevelopment Law the Agency must implement the Redevelopment Plan. Health & Safety Code Section 33220 allows FORA, the City and any other public body to enter into agreements with the Agency to carry out the Redevelopment Plan.

I. The Agency and the City desire to have a portion of the University Villages Specific Plan Area developed consistent with the City's General Plan. The City selected MCP, to purchase approximately 290 acres within the University Villages Specific Plan Area ("Project Site"). MCP will develop the Project consistent with the Reuse Plan and the City's General Plan.

J. On January 29, 2004, the Agency, the City and MCP entered into an Agreement to Negotiate Exclusively ("ANE") for the University Villages Project ("Project").

K. On May 31, 2005, the Agency's Board of Directors approved a Disposition and Development Agreement ("DDA") with MCP for the sale and development of the Project Site.

On July 8, the FORA Board approved the Project as being consistent with the Base Reuse Plan.

L. The Agency, MCP and FORA desire to collaborate in the predevelopment and development of the Project Site. The purpose of this MOA is to state the parties' respective commitments concerning transfer and development of the Project and to ensure that the redevelopment of the Project Site occurs promptly.

NOW, THEREFORE, to carry out the Recitals above and in consideration for the promises in this Agreement, the Parties agree as follows:

Agreement

1. <u>Term of the MOA.</u> This MOA begins upon its execution, and continues until the Parties have fulfilled their obligations under this MOA or this MOA is earlier terminated by agreement of all the Parties in writing.

2. <u>Land Use Program.</u> The Project will implement the University Villages Specific Plan. The land use program and land sale transaction referenced in this MOA is within the tentative map area (or Project Site area) to be developed by MCP.

3. Land Payments and Determination of Reuse Value. FORA and the Agency will equally split the land sale proceeds received from MCP for the Project Site as provided in the Implementation Agreement. Land sale proceeds due to FORA will be net of direct sale expenses and escrow closing costs. The parties agree that the following events have or will take place:

(a) The Agency will transfer the Project Site to MCP in three phases.

(b) The purchase price for the Project Site has been determined by Keyser Marston Associates in consultation with the Agency. That price is the fair reuse value.

(c) The Agency has prepared a "Section 33433 Report." The Agency has provided that report to FORA.

4. Land Valuation and Payments. The Agency will convey the Project to MCP under the schedule in the DDA. The purchase price for each Phase is set forth below:

•	Phase I:	$ 6,000,000
•	Phase II:	$15,300,000
•	Phase III:	$26,700,000
	Total:	$48,000,000

Of the $48M total, FORA will receive $24,000,000 as provided in the Implementation Agreements subject to Paragraph 3 above.

5. Deconstruction. FORA is responsible for paying deconstruction costs. MCP is responsible for the building deconstruction. MCP will deconstruct the buildings according to the schedule in **Exhibit A.** The deconstruction work will be performed under the following terms and conditions:

(a) The Agency will provide MCP with a right-of-entry to deconstruct the buildings. The right-of-entry will require MCP to obtain necessary permits prior to commencing any deconstruction. The right of entry will require MCP to provide FORA and the Agency with evidence of adequate general liability insurance naming them as additional insureds.

(b) FORA will determine and confirm that MCP is a Named Insured and covered party under the Basewide Pollution Legal Liability Insurance underwritten by XL/Zurich in an amount of coverage sub-limit agreed by the Parties and that this MOA is an Insured Contract under said insurance before MCP commences deconstruction of the buildings.

(c) FORA will pay the sum of Forty-Six Million Dollars ($46,000,000.00), and no more, toward deconstruction to include all the expenses associated with removal and disposing of improvements in the UV project area. FORA will fund the deconstruction from the following revenues:

(i) Land Sale proceeds from the sale of the Project Site. If MCP conducts the deconstruction under a right of entry prior to obtaining title to any part of the Project Site, MCP may offset the fifty percent (50%) of the land sales proceeds to be paid to the Agency for the Project Site, being that part of the purchase price which the Agency would otherwise pay to FORA under the Implementation Agreement ($24,000,000) against deconstruction costs. Any such sale proceeds due to FORA for its 50% share thereof that have not been offset by MCP as provided herein shall be placed in an escrow account under the joint control of the Parties and released to MCP for deconstruction costs until FORA has performed its $46 million funding obligation together with any interest due thereon as provided herein; at which point MCP will release any balance to FORA to be allocated according to the Implementation Agreement.

(ii) Land Sale Proceeds from the sale of the Marina Heights Site. FORA hereby pledges its share of the land sale proceeds from the Marina Heights project site toward the costs of deconstruction. FORA's pledge of land sale proceeds is a binding first pledge of such land sale proceeds. FORA agrees not to use such land sales proceeds for any other purpose until it has performed its payment obligations hereunder.

(iii) Abrams B Sale and Lease Proceeds. FORA pledges to use its share of the proceeds from sale and lease of Abrams B real property to fund the costs of deconstruction. FORA's pledge of land sale and lease proceeds is a binding first pledge of such land sale proceeds. FORA agrees not to use such land sale proceeds for any other purposes until its payment obligation hereunder has been performed.

(iv) Lumberman's Land Sale Proceeds. FORA hereby pledges its share of the land sale proceeds from the Lumberman's site toward the costs of deconstruction. FORA's pledge of land sales proceeds is a binding first pledge of such land sale proceeds. FORA agrees not to use such land sale proceeds for any other purposes until its payment obligation hereunder has been fulfilled.

(v) Preston Park Loan Repayments. FORA pledges to use the Agency's note payments from the Preston Park loan from FORA to the Agency for the rehabilitation of Abrams B to fund deconstruction. Such loan obligation is estimated at $1.425 million.

(vi) Other Revenue Sources. FORA pledges other sources of revenue to fulfill its deconstruction payment obligation including Land Sales or Lease Proceeds from other projects and developments, including any land sales or lease proceeds from projects outside the City, proceeds from land sales or leases from projects within the City not enumerated previously, any funding or appropriations from the U.S. Department of Defense paid for deconstruction, and any loans or grants it may obtain to fund deconstruction from other private or public sources. If all of the revenue sources identified in this and previous paragraphs do not become available in a timely manner for funding deconstruction, FORA pledges tax increment from the Marina Redevelopment Project Areas toward the costs of deconstruction. The other funding sources enumerated herein exclude revenue from the FORA Community Facility District Fees, Preston Park lease revenue currently received by FORA or tax increment received by FORA from outside the City. FORA may control the use of funds derived from grants and loans.

(d) FORA will pay the deconstruction costs pledged herein to MCP in accordance with requests for payment presented by MCP to FORA. Those requests for payment will indicate the percentage of work completed and the total amount owed by FORA. Compensable deconstruction work includes site inspection, analysis, mobilization and related work. The expected cash flow for payments is expected to be in accordance with the schedule attached as Exhibit A hereto.

(e) If FORA does not have sufficient revenue to make payments in response to MCP's requests for payment, or if FORA chooses not to use revenue sources to perform its deconstruction obligations, this MOA will be considered a loan agreement between FORA and MCP. In that event, FORA agrees to pay such amounts owed to MCP from the revenue sources identified above upon receipt of the revenue. FORA also agrees to pay interest on any portion of the deconstruction costs that becomes a loan at the rate equal to the Developer's Internal Rate of Return (IRR) defined in Section 5.3 of the DDA. Any interest owed by FORA under this Section shall be paid only from the tax increment received by FORA from the Marina Redevelopment Project Areas. If FORA continues to owe interest to MCP under this Section after FORA sunsets in 2014 and is dissolved as provided in the Authority Act, the Agency agrees to assume FORA's interest payment obligation to MCP. The Agency shall only be obligated to pay the interest owed from tax increment generated from the Agency's Project Areas and transferred to the Agency as a result of FORA's dissolution.

(f) MCP will manage and control deconstruction work, including contracting with remediation contractors and disposing of materials under plans to be approved by the Agency.

(g) FORA agrees to sign all waste disposal manifests for waste materials generated at the Project Site. If a Waste Disposal Variance is granted to the Monterey Regional Waste Management District (MRWMD) by the Department of Toxic Substance & Control (DTSC) for lead base paint contaminated hazardous materials, and MCP chooses not to utilize the MRWMD for disposal of such materials, MCP agrees to reimburse FORA and MRWMD a sum not to exceed $200,000 for expenses incurred processing the DTSC variance.

(h) The parties agree that the demolition provided for in this Agreement complies with the "Hierarchy of Building Reuse" policies found in FORA's Capital Improvement Plan at page 11. That policy is incorporated into this agreement by this reference.

6. Right-of-Entry. The Agency and MCP and their contractors, have the right to enter the Project Site to perform their respective obligations under this Agreement. Before MCP commences deconstruction activities that involve the removal of structures or infrastructure, MCP shall enter into a Right of Entry Agreement satisfactory to the Agency setting forth the terms and conditions of such entry. MCP agrees to coordinate removal of structures, lines or other improvements owned or operated by utility providers. Agency and MCP, as appropriate, agree to provide advance notice to FORA, of their activities. In using this right of entry, Agency and MCP agree not to interfere unreasonably with FORA's work. FORA agrees to cooperate with the Agency and MCP, and their employees, agents, representatives and invitees in connection with deconstruction activities on the Project Site.

7. Indemnification. Concerning the Right of Entry provided above, Agency and MCP hereby agree to indemnify, protect, defend and hold harmless FORA, its agents, contractors, employees, licensees and invitees ("Indemnitees") from and against any and all injuries, losses, claims, judgments, liabilities, costs, expenses and/or damages ("Claims") to the Indemnitees arising out of or in connection with the activities of Agency or MCP, or their employees and invitees, on the Project Site. Each of the Parties' indemnification shall only apply to injuries, losses, claims, judgments, liabilities, costs, expenses and or Claims arising out of the actions and/or inactions or alleged actions and/or inactions of the indemnifying party. Such indemnity shall not apply to (i) any Claims to the Indemnitees arising from MCP or its contractors' deconstruction activities determined by a court of competent jurisdiction to have been properly conducted according to approved work plans, or (ii) any Claims covered by the FORA PLL Policy, or (iii) any Claims resulting directly or indirectly from Munitions and Explosives of Concern (MEC) located during deconstruction.

8. Time. Time is and shall be of the essence of each term of this MOA.

9. Provisions Not Exclusive. The provisions of this MOA are not intended as an exclusive list and the Parties acknowledge that subsequent agreements including, but not necessarily limited to, the DDA will encompass numerous other issues affecting the Project.

10. Severability. If any of the provisions of this MOA are determined to be invalid or unenforceable, those provisions shall be deemed severable from the remainder of this MOA and will not cause its invalidity unless this MOA without the severed provisions would frustrate a material purpose of either party in entering into the MOA.

AGREED AND ACCEPTED:

CITY OF MARINA REDEVELOPMENT AGENCY

Anthony Altfeld — Date: AUGUST 25, 2005

By: ANTHONY J. ALTFELD

Its: CITY MANAGER

FORT ORD REUSE AUTHORITY

Michael A. Houlemard — Date: August 25, 2005

By: Michael A. Houlemard, Jr.

Its: Executive Officer

MARINA COMMUNITY PARTNERS, LLC

Thom Gamble — Date: AUGUST 29, 2005

By THOM GAMBLE

Its: MANAGING MEMBER

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EXHIBIT A

Exhibit A
Deconstruction Cash Flow
University Villages
City of Marina

WORKING DRAFT

	Total	2005				2006				2007				2008			
		1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4
I. Uses of Funds																	
Deconstruction Costs	$46,000,000	$0	$443,000	$355,058	$2,524,773	$9,335,705	$5,169,039	$3,296,722	$2,882,722	$2,754,222	$3,322,972	$2,107,972	$2,773,622	$3,198,322	$3,141,172	$3,517,678	$1,177,021
II. Sources of Funds (Estimated)																	
FORA Land Proceeds from U.V.																	
Phase 1	$3,000,000				$3,000,000												
Phase 2	$7,650,000								$7,650,000								
Phase 3	$13,350,000												$13,350,000				
Subtotal	$24,000,000	$0	$0	$0	$3,000,000	$0	$0	$0	$7,650,000	$0	$0	$0	$13,350,000	$0	$0	$0	$0
FORA - Other Sources	$22,000,000				$1,150,000	$13,300,000						$3,464,000				$4,086,000	
Total FORA Sources	$46,000,000	$0	$0	$0	$4,150,000	$13,300,000	$0	$0	$7,650,000	$0	$0	$3,464,000	$13,350,000	$0	$0	$4,086,000	$0
III. Funding Surplus/(Deficit)	$0	$0	($443,000)	($355,058)	$1,625,227	$3,964,295	($5,169,039)	($3,296,722)	$4,767,278	($2,754,222)	($3,322,972)	$1,356,028	$10,576,378	($3,198,322)	($3,141,172)	$568,322	($1,177,021)