

## INDEMNIFICATION AGREEMENT

This Indemnification Agreement (this "Agreement") dated this 18<sup>th</sup> day of December, 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 Indemnitee 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 Indemnitee'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 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 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:

Kate McKenna      12/18/19  
Kate McKenna, AICP      Date  
LAFCO Executive Officer

Attest:

Michael A. Houlemard, Jr.      12-18-2019  
Michael A. Houlemard, Jr.      Date  
FORA Executive Officer

Approved as to form:

Kelly L. Donlon      12/17/19  
Kelly L. Donlon      Date  
LAFCO General Counsel

Approved as to form:

Jon R. Giffen      \_\_\_\_\_  
Jon R. Giffen      Date  
Authority Counsel