
BUILDING REMOVAL FUNDING AGREEMENT

between the

FORT ORD REUSE AUTHORITY,

and the

CITY OF MARINA, CALIFORNIA

Dated as of June 1, 2020

**Relating to:
Fort Ord Reuse Authority
Tax Allocation Bonds,
Series 2020
(Federally Taxable)**

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EXHIBIT A – BUILDING REMOVAL COSTS AND RELATED PARCELS

BUILDING REMOVAL FUNDING AGREEMENT

THIS BUILDING REMOVAL FUNDING AGREEMENT (the "Agreement"), dated as of June 1, 2020, is by and between the FORT ORD REUSE AUTHORITY (the "Authority") and the CITY OF MARINA, CALIFORNIA (the "Funding Recipient"), and is related to use by the Funding Recipient of proceeds of the Fort Ord Reuse Authority Tax Allocation Bonds, Series 2020 (Federally Taxable) (the "Bonds").

RECITALS:

WHEREAS, the Authority is issuing the Bonds pursuant to an Indenture of Trust, dated as of June 1, 2020 (the "Indenture"), by and among the Authority, the City of Marina, California, as Administrator and U.S. Bank National Association, as trustee (the "Trustee") in order to fund Building Removal Costs of Building Removal to be undertaken by the Local Agencies, as such capitalized terms are defined in the Indenture; and

WHEREAS, the Funding Recipient is one of the Local Agencies, and the Indenture provides for the deposit of \$9,729,683.54 of the proceeds of the Bonds to a Marina Bond Proceeds Account of a Project Fund held by the Trustee on the date of issuance of the Bonds (the "Closing Date") as set forth in Section 3.02(a)(iii) of the Indenture, and to the Marina Bond Proceeds Account of the Project Fund held by the Trustee following the Closing Date (a) and payment of the Termination Payment (as defined in the Indenture) as set forth in Section 3.04(c) of the Indenture, or (b) otherwise released from the Escrow Fund pursuant to Section 3.06 of the Indenture; and

WHEREAS, pursuant to Section 3.04(b) of the Indenture, the Trustee will remit the amount deposited in the Marina Bond Proceeds Account to the Funding Recipient on the Closing Date; and pursuant to Sections 3.04(c) and 3.06 of the Indenture, the Trustee will remit the amount deposited to the Marina Bond Proceeds Account pursuant to Sections 3.05 and 3.06 of the Indenture to the Funding Recipient promptly following the deposit of funds thereto, in each case to be used by the Funding Recipient as provided in this Agreement; and

WHEREAS, the Authority and the Funding Recipient now desire to set forth provisions related to the disposition by the Funding Recipient of the amount transferred to it by the Trustee on the Closing Date.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, and for other consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. Recitals. Each of the above recitals as applicable to it is true and correct.

2. Issuance of the Bonds. The Authority hereby agrees to (a) issue the Bonds, (b) cause \$9,729,683.54 of the proceeds of the Bonds available to be used by the Local Agencies (as defined in the Indenture) for Building Removal Costs pursuant to Section 3.03(b) of the Indenture to be deposited to the Marina Bond Proceeds Account under the Indenture, and immediately cause the Trustee to transfer \$1,167,715.48 of the amount so deposited to the Escrow Interest Account established under the Indenture, and (c) cause the Trustee to remit the remaining amount deposited to the Marina Bond Proceeds Account pursuant to Section 3.02 of the Indenture (\$8,561,968.06) to the Funding Recipient on the Closing Date, and any amount deposited to the Marina Bond Proceeds Account (i) pursuant to Section 3.02(c) of the Indenture (constituting 50.0% of the funds released from the CalPERS Obligation Fund to the Funding Recipient and the City of Seaside (after payment of the Termination Payment) to be remitted to the Funding Recipient as provided in Section 3.04(c) of the Indenture, and (ii) pursuant to Section 3.06 of the Indenture (constituting 100% of the funds released from the Escrow Fund to the Marina Bond Proceeds Account to be remitted to the Funding Recipient as provided in Section 3.06 of the Indenture). Notwithstanding the foregoing, this Agreement shall be null and void ab initio if for any reason whatsoever the Authority does not perform its obligations under the preceding sentence prior to its dissolution, and no damages or liability whatsoever shall arise or be incurred by the Authority as a consequence of its failure to perform such obligations. In no event shall the Funding Recipient have a right to compel the issuance of the Bonds.

The Funding Recipient hereby advises that its wire transfer instructions for the transfer of funds provided for in clause (c) of the first sentence of the preceding paragraph will be provided by the Funding Recipient to the Authority, the Administrator and the Trustee prior to the Closing Date for the Bonds.

3. Use of Proceeds. The Funding Recipient hereby agrees to establish an account on its books and records (referred to in this Agreement as the "Building Removal Account") in order to account for its use of the proceeds of the Bonds remitted to it as described in clause (c) of the first sentence of Section 2. Amounts deposited to the Building Removal Account may be comingled with other monies of the Funding Recipient for investment purposes, but the Funding Recipient shall at all times maintain records as to the funds in the Building Removal Account and the investment earnings thereon as provided below.

The Funding Recipient agrees that amounts withdrawn from the Building Removal Account will be used solely to pay costs of the Building Removal Costs, as described in Exhibit A hereto then due and payable by the Funding Recipient, or that have otherwise theretofore been paid by the Funding Recipient after the date of this Agreement. In no event shall the Authority have any responsibility for the use by the Funding Recipient of amounts disbursed from the Building Removal Account, or any Building Removal activities of the Funding Recipient, or for any Building Removal Costs incurred by the Funding Recipient.

The Funding Recipient shall have the sole right to direct the investment of the amounts on deposit in the Building Removal Account. While the Funding Recipient shall have no obligation or liability with respect to any such investment, including any losses with respect thereto, any

investment earnings on funds in the Building Removal Account shall be credited to such account and used solely for the purposes thereof as provided in this Section 3.

The Funding Recipient agrees to maintain accounting records relating to the use of amounts disbursed to or upon its order from the Building Removal Account in accordance with Funding Recipient's accounting procedures for similar funds.

In the event that the Funding Recipient determines in its sole discretion that it has funds in the Building Removal Account that it will not expend on Building Removal Costs, it shall remit such amount to the Trustee for deposit in the Surplus Account under the Indenture for disposition from the Surplus Account as provided in the Indenture.

The Authority shall not have any liability or responsibility whatsoever with respect to any Building Removal activities of the Funding Recipient or any Building Removal Costs or other costs incurred for any reason by the Funding Recipient. The Funding Recipient hereby agrees to hold the Authority harmless with respect to any claim by any entity in opposition to the provisions of the preceding sentence.

4. Reimbursement of Administrative Costs. The Funding Recipient hereby agrees to pay, other than from amounts in the Building Removal Account, any and all costs with respect to its review, execution and performance of this Agreement. The Authority shall not have any obligation to pay any costs of the Funding Recipient incurred by it in connection with this Agreement or the Building Removal activities of the Funding Recipient.

Costs of the Authority and the City, in its role of Administrator under the Indenture, with respect to this Agreement and the Indenture (a) incurred on or before the Closing Date, shall be Costs of Issuance to be paid from the Costs of Issuance Fund under the Indenture; (b) incurred from and after the Closing Date shall be Administrative Expenses to be paid from the Administrative Expense Fund under the Indenture (as such capitalized terms used in the preceding clauses (a) and (b) are defined in the Indenture); and the Funding Recipient shall have no responsibility to pay any such costs. The Funding Recipient shall have no responsibility to pay any costs of the Authority or the City, in its role as Administrator under the Indenture incurred by them with respect to the Indenture for the repayment or the administration of the Bonds.

5. Building Removal. The Funding Recipient shall have sole responsibility for all of its Building Removal activities..

6. Limited Obligations. All obligations of the Authority under and pursuant to this Agreement shall be limited to those specified in the first sentence of Section 2, subject in any event to the provisions of the second sentence of Section 2. No Boardmember, officer or employee of the Authority shall in any event be personally liable hereunder. Following any deposit of Bond proceeds in the Building Removal Account as provided in Section 3 above, the Authority shall have no liability with respect to the handling or the investment of such funds by the Funding Recipient, or the disposition of such funds by the Funding Recipient.

The only obligations of the Funding Recipient hereunder shall be to expend amounts in Building Removal Account for Building Removal Costs, and to maintain records as to the use of the amounts withdrawn from the Building Removal Account. If, for any reason whatsoever, there are insufficient funds in the Building Removal Account to pay all of the Building Removal Costs of the Funding Recipient, neither the Funding Recipient nor the Authority shall have any obligation under this Agreement to fund any such shortfall. No member of the City Council, or any officer or employee thereof, shall in any event be personally liable hereunder.

7. Termination. This Agreement shall cease to be effective and shall terminate (a) upon the dissolution of the Authority, if the Authority has not issued the Bonds prior to its dissolution, or (b) if not terminated pursuant to clause (a), upon the disbursement by the Funding Recipient of all amounts in the Building Removal Account. Notwithstanding the foregoing, the provisions of the fourth paragraph of Section 3 and the provisions of Section 6 shall survive such termination.

8. Entire Agreement. This Agreement contains the entire agreement among the parties with respect to the matters provided for herein and supersedes all prior agreements and negotiations between the parties with respect to the subject matter of this Agreement.

9. Notices. Any notice required or permitted by this Agreement to be given or delivered to another party shall be deemed to have been received when personally delivered or seventy-two hours following deposit of the same in any United States Post Office in California, registered or certified, postage prepaid, addressed as follows:

The Authority:	Fort Ord Reuse Authority 920 2 nd Avenue, Suite A Marina, California 93933 Attention: Executive Officer
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Funding Recipient:	City of Marina 211 Hillcrest Avenue Marina, California 93933 Attention: City Manager
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Each party may change its address for delivery of notice by delivering written notice of such change of address to the other parties hereto.

10. Exhibit. The exhibit attached hereto is incorporated into this Agreement by this reference.

11. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

12. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

13. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by another party hereto, or the failure by a party to exercise its rights upon the default of another party, shall not constitute a waiver of such party's right to insist and demand strict compliance by such other party with the terms of this Agreement thereafter.

14. No Third Party Beneficiaries. No person or entity (including but not limited to the Trustee or the owners of the Bonds) shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity, other than Authority and Funding Recipient, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

15. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute but one instrument.

16. Prepayment of Bonds. The Funding Recipient hereby agrees to use its best efforts to prevent the Successor Agency to the Marina Redevelopment Agency (the "Successor Agency") from redeeming such entities' outstanding bonds titled Successor Agency to the Marina Redevelopment Agency Tax Allocation Bonds, Series 2018A and Successor Agency to the Marina Redevelopment Agency Housing Tax Allocation Bonds, Series 2018B (collectively, the "2018 Bonds") prior to their final stated maturity date of September 1, 2038; provided that (a) the Successor Agency may redeem 2018 Bonds maturing on September 1, 2038 on September 1, 2037 using funds in the Reserve Account established for the 2018 Bonds; (b) this covenant shall not apply to bonds issued by the Successor Agency to (i) refund the 2018 Bonds ("2018 Refunding Bonds"), or (ii) refund 2018 Refunding Bonds or refund any subsequent series of refunding bonds related thereto, in each case that have a final stated maturity not earlier than September 1, 2038 and that have a funded Reserve Account that can only be used to redeem such refunding bonds no earlier than September 1, 2037; and (c) if the Successor Agency issues additional obligations (the "Additional Bonds") with a final maturity more than a year later that is then September 1, 2038, the September 1, 2038 and September 1, 2037 dates in the preceding clauses shall instead refer to the final maturity of such Additional Bonds and the date that is one year prior to such final maturity date, respectively. To that end, the Funding Recipient agrees to exercise any influence it may have over the Successor Agency or the consultants for the Successor Agency to avoid the early redemption or retirement of the 2018 Bonds or such Additional Bonds except as allowed pursuant to the preceding sentence. The provisions of this Section 16 shall survive any termination of this Agreement.

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

FORT ORD REUSE AUTHORITY

By: _____

Joshua Metz,
Executive Director

CITY OF MARINA, CALIFORNIA

By: _____

Layne Long,
City Manager

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EXHIBIT A

BUILDING REMOVAL COSTS AND RELATED PARCELS

"Building Removal Costs" means the costs of Building Removal, including, without limitation, all costs of planning, engineering, management, risk management (including insurance premiums, legal fees and litigation costs associated with the Building Removal), and associated administrative services required to removed blighted buildings from certain parcel(s) of property within the boundaries of the former Fort Ord listed below.

"Building Removal" means any or all of the following: 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 below.

The parcels on which the Building Removal activities of the Funding Recipient may occur are as follows:

- E4.1.1 – Cypress Knolls
- E4.1.2.1 – Cypress Knolls
- E4.1.2.2 – Cypress Knolls
- L5.9.1.1 – Marina Radio Club
- L5.4.2 – Marina Park
- L5.5.1 – Marina Park
- E2b.3.1.1 – Marina Arts District
- E2c.4.2.1 – Commercial/Business Park
- L5.5.1 – PBC parcel 2nd Ave, across from CSBUB
- L23.1.5 – across from FORA on 11st street
- E2d.3.2 – Equestrian Center
- L5.9.1.2 – Equestrian Center
- E2b.2.4 – White Church across from VA/DOD clinic
- L5.4.1 – old pool, water city roller hockey
- E2b.1.5 – old fire station, 2nd ave.

Any other parcel within the boundaries of the former Fort Ord Military Base that is now located within the City of Marina.