

# WATER/WASTEWATER FACILITIES AGREEMENT

The parties to this Water/Wastewater Facilities Agreement ("Agreement") are the FORT ORD REUSE AUTHORITY and the MARINA COAST WATER DISTRICT, which agree as follows:

## ARTICLE 1. AGREED FACTS

1.1. CAPACITY OF THE PARTIES. FORA is a local governmental entity and is defined as a public corporation of the State of California established by the FORA Act. MCWD is a County Water District and political subdivision of the State of California, organized under Division 12, sections 30000 and following, of the California Water Code.

1.2. AUTHORITY. FORA has authority under the FORA Act, and particularly under Government Code section 67679(a)(1), to plan for and arrange the provision of those base wide public capital facilities described in the Fort Ord Reuse Plan, including, but not limited to, sewage and water conveyance and treatment facilities to assure a reasonable transition from military ownership and operation to civilian ownership and operation, and to further the integrated future use of Fort Ord. MCWD has authority, under Water Code sections 30000 and following, and under Article 11, Section 9 of the California Constitution, to acquire, construct, operate, and furnish water and sewer facilities outside its boundaries and within the jurisdictional boundaries of a local governmental entity by agreement with the local governmental entity.

1.3. PURPOSE. The parties intend by this Agreement to establish the terms and conditions for FORA to plan and arrange for the provision of the facilities, and for MCWD to acquire, construct, operate, and furnish the facilities, to benefit mutually the service area and the area within MCWD's jurisdictional boundaries. This Agreement will govern MCWD's ownership and operation of the facilities.

1.4. EXISTING FACILITIES. The USA presently owns all existing facilities. The USA has determined to divest itself of the existing facilities. Federal law authorizes such divestiture by a "public benefit conveyance" to a local governmental entity satisfying certain criteria, which criteria are satisfied by MCWD. FORA and MCWD have formally determined that MCWD's acquisition of the existing facilities for the service area by a public benefit conveyance will benefit mutually the service area and the area within MCWD's jurisdictional boundaries.

1.5. CONTEXT. The public health, safety and welfare of the present population of the Ft. Ord reuse area and all future population require continued operation of a water distribution system and a wastewater collection system. The

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U.S. Army has agreed to convey the systems pursuant to federal law and regulations. Following organization of FORA, discussions commenced with the USA regarding transfer of ownership and operation of the facilities, and FORA evolved a process to assure continuity of management and operation. FORA has been given a limited statutory life and must find reliable utility providers to assume the responsibility for system operation. The FORA Board appointed a select committee from technical staff of its members to design a set of minimum requirements for water system operators and invited statements of qualifications from those interested. Three statements were received and referred to the same select committee for evaluation, analysis, and recommendation. After receiving the select committee's analysis and recommendation, and after providing opportunity for public input, at its meeting of October 11, 1996, the FORA Board authorized staff to commence negotiations with MCWD for the purpose of negotiating an agreement with MCWD whereby MCWD would assume the responsibility of the operation, maintenance, and ownership of the existing water (and wastewater collection) systems on the former Fort Ord. The same select committee was authorized to oversee the negotiations that were undertaken by FORA staff. Negotiations included detailed financial analyses by FORA staff/consultants and by Stone & Youngberg LLC. These analyses are very comprehensive and demonstrate MCWD's fiscal capacity. The Stone & Youngberg Financial Analysis includes provision for possible payments to FORA and various land use agencies in accordance with law. On May 9, 1997, the FORA Board authorized the staff to work with MCWD to develop an agreement regarding the systems and to prepare an application for Public Benefit Conveyance (PBC) to be filed after the FORA/MCWD agreement is authorized for execution by the FORA Board. Effective June 2, 1997, MCWD has been selected by the USA to be the interim operator of the facilities pending a full transfer. The parties anticipate that such full transfer will be by public benefit conveyance pursuant to this Agreement.

1.6. WATER SUPPLY CAPACITY RIGHTS. The FORA Board has previously adopted a comprehensive plan for the administration of groundwater extraction rights consistent with the Agreement between the USA and the Monterey County Water Resources Agency dated September 1993. It is anticipated this plan may be amended from time to time at the sole discretion of the FORA Board. The total volume of groundwater available for this plan is 6,600 acre feet per year.

1.7. LEAD AGENCY. FORA is the lead agency for the adoption of this Agreement.

## ARTICLE 2. DEFINITIONS AND ATTACHMENTS

2.1. "Committee" means the Water/Wastewater Oversight Committee appointed by the FORA Board to oversee the provision of water and wastewater collection services by MCWD under this Agreement.

- 2.2. "Facilities" means the public capital facilities used to provide water and wastewater collection services on the service area, including appurtenances and incidental rights of access, extraction, discharge, and use. Sewage (herein also called "sewer" and "wastewater") and water public capital facilities existing as of the date of this Agreement are generally shown on Exhibits A and B to this Agreement. Public capital facilities are those on MCWD's side of the service connection, including the meter for water service. For sewer facilities, the service connection is at the tap into the main collection system, wherever located, as determined by MCWD.
- 2.3. "FORA" means Fort Ord Reuse Authority.
- 2.4. "FORA Act" means the Fort Ord Reuse Authority Act codified in Title 7.85, sections 67650 and following, of the California Government Code, as may be amended from time to time.
- 2.5. "MCWD" means Marina Coast Water District.
- 2.6. "Service Area" means the former Fort Ord Army base in northwestern Monterey County, California. The service area is shown generally on the diagram attached to this Agreement as Exhibit A.
- 2.7. "USA" means the United States of America represented by the Department of the Army.
- 2.8. Attachments to this Agreement:
- EXHIBIT "A": Diagram of Fort Ord Water System/Service Area, Schaaf & Wheeler, April 1994
- EXHIBIT "B": Diagram of Fort Ord Wastewater System/Service Area, FORIS, undated
- EXHIBIT "C": Mediators
- EXHIBIT "D": Gov. Code §§ 54980-54983, 67679(a)(1)
- EXHIBIT "E": Pub. Util. Code §§ 10101, 10102, 10103, 10104 and 10105

## ARTICLE 3. FACILITIES ACQUISITION AND OWNERSHIP

### 3.1. APPLICATION FOR PUBLIC BENEFIT CONVEYANCE; PERMITS TO OPERATE.

3.1.1. MCWD Responsibilities. MCWD, as lead agency, will diligently prosecute an application to the USA for a public benefit conveyance to MCWD of all of the USA's existing sewer and water facilities and appurtenances and incidental rights of access, extraction, discharge, and use for the service area. MCWD will also act diligently to obtain and maintain in good standing all permits needed to operate all such facilities.

3.1.2. FORA Responsibilities. FORA will forego and forebear its rights to acquire the facilities through negotiated sale, economic development conveyance, or any other procedure permitted under law, and FORA hereby nominates and designates MCWD as the appropriate local governmental entity to acquire the facilities for the benefit of FORA, its member agencies, and the general public. FORA will support MCWD's application for a public benefit conveyance.

3.1.3. Joint Responsibilities. MCWD and FORA will diligently take such actions and execute such documents as either considers necessary for MCWD to obtain and confirm all rights in and to the existing wastewater and water facilities and appurtenances and incidental rights of access, extraction, discharge, and use.

### 3.2. ADDITIONAL FACILITIES.

3.2.1. MCWD Responsibilities. MCWD will cause to be planned, designed and constructed such additional water and sewer facilities as FORA, in consultation with MCWD, reasonably determines are necessary for the service area. MCWD may cause to be planned, designed and constructed any other facilities as MCWD reasonably determines will carry out the purpose of this agreement as expressed in section 1.3 of this Agreement.

3.2.2. FORA Responsibilities. FORA will determine in consultation with MCWD, based on recommendations from the Committee, what additional facilities are necessary for the service area.

3.3. TRANSFER, OBLIGATION, AND ENCUMBRANCE OF FACILITIES. Any transfer, obligation, or encumbrance of any interest in the facilities shall require the prior written approval of both parties.

### 3.4. ESTABLISHMENT OF WATER AND SEWER CAPACITY RIGHTS.

3.4.1. MCWD Responsibilities. MCWD shall have no responsibility for establishment and administration of water extraction capacity rights and

wastewater discharge and treatment capacity rights, except to compensate FORA for such administration.

3.4.2. FORA Responsibilities. The FORA Board will administer all extraction and discharge rights which may be obtained from the USA, pursuant to the comprehensive plan previously adopted by FORA and such changes as may be made to the plan from time to time by the FORA Board.

3.5. GRANT LOCAL SHARE. MCWD shall assume and pay the local share of any federal or state grant made to improve, maintain or add to the facilities. Any such obligation shall be a reimbursable cost under section 7.1.2 of this Agreement.

## ARTICLE 4. OVERSIGHT

4.1. MCWD RESPONSIBILITIES. MCWD shall own and operate the facilities under the oversight and with the approvals and authorizations of FORA and the Committee as provided in this Agreement. MCWD shall cooperate with FORA and the Committee, and shall provide such information to the Committee as reasonably requested by the Committee, including but not limited to the reports enumerated in section 4.2.3 of this Agreement.

### 4.2. FORA RESPONSIBILITIES.

4.2.1. Committee Appointment. A Water/Wastewater Oversight Committee will be appointed by the FORA Board from appropriate agency staff members who will serve at the pleasure of the Board. The Committee will include representatives from the future land use jurisdictions and the two Universities (Cities of Marina, Seaside, Monterey, Del Rey Oaks, the County of Monterey, CSUMB and UCMBEST), for a total of seven members (see attachment).

4.2.2. Committee Role. The Committee shall be advisory to the FORA Board and shall have the following functions:

- 4.2.2.1. Receive recommendations regarding operation of the facilities.
- 4.2.2.2. Advise the FORA Board and staff on appropriate action regarding such recommendations.
- 4.2.2.3. Review and recommend on operating and capital improvement budgets.
- 4.2.2.4. Periodically review and recommend a master plan of public sewer and water facilities.

- 4.2.2.5. Make recommendations pursuant to Article 7 of this Agreement, including recommendations regarding allocation of costs over benefitted properties.
- 4.2.2.6. Confirm adequacy of services provided.
- 4.2.2.7. Review the annual financial statement and MCWD audit to affirm that results achieved comport with expectations of FORA.
- 4.2.2.8. Evaluate annually the performance of MCWD in accordance with this Agreement.
- 4.2.2.9. Advise on short and long term financial planning and fiscal management.
- 4.2.2.10. Assure that the facilities are complimenting implementation of the reuse plan.

4.2.3. Evaluation Criteria. The Committee will use the following criteria in evaluating MCWD's performance under this Agreement:

- 4.2.3.1. Timely development annually of operation and capital budgets.
- 4.2.3.2. Timely and accurate quarterly and annual financial reports.
- 4.2.3.3. Timely and accurate quarterly and annual operational reports.
- 4.2.3.4. Customer service orientation and MCWD's responsiveness to customer concerns, as shown in quarterly and annual reports of customer communications and responses.

## **ARTICLE 5. FACILITIES OPERATION**

### **5.1. MCWD RESPONSIBILITIES.**

5.1.1. Operation. MCWD will operate the facilities in accordance with applicable laws, rules and regulations, and policies established by the MCWD Board and the FORA Board, and procedures adopted by MCWD staff after

consultation with the Committee. Unless this Agreement or any policy or procedure established pursuant to this Agreement provides otherwise, MCWD will operate the facilities in the same manner as MCWD operates similar facilities for other areas served by MCWD.

5.1.2. Communication and Reports. MCWD will communicate regularly with the Committee about the operation of the facilities, and will respond promptly to communications from FORA and the Committee. MCWD will deliver quarterly and annual operational reports to the Committee.

5.1.3. Complaints. Complaints about MCWD's operation of the facilities will be dealt with in the first instance by MCWD's General Manager or designee. Decisions of the General Manager or designee may be appealed to the FORA Board in the same manner that decisions within the boundaries of MCWD are appealed to MCWD's Board. The decision of the FORA Board on complaints will be final and will exhaust all administrative remedies.

5.1.4. Interconnection With MCWD Facilities. Interconnections currently exist between the facilities and MCWD's facilities. MCWD may improve interconnections between MCWD's facilities and the facilities, to provide for enhanced, conjunctive and concurrent use of all system facilities to serve the service area and other areas served by MCWD.

5.2. FORA RESPONSIBILITIES. FORA will cooperate with MCWD to establish policies for the operation and administration of the facilities and to facilitate operation and administration of the facilities to achieve the purpose of this Agreement as stated in section 2.3 of this Agreement. FORA will respond promptly to communications from MCWD about operation of the facilities. The FORA Board will deal promptly with appeals of complaints about MCWD's operation of the facilities.

### 5.3. JOINT RESPONSIBILITIES.

5.3.1. Groundwater Use. The parties will cooperate on MCWD's increased withdrawal of potable groundwater from MCWD's existing wells in the 900-foot aquifer by up to 1,400 acre-feet per year (afy), in compliance with law, to enable the increased withdrawals from 5,200 afy to 6,600 afy for use in the service area, as stipulated in paragraph 4.c. of the September 1993 Agreement between The United States of America and the Monterey County Water Resources Agency, and in paragraph 5.1.1.1 of the "Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands," recorded August 7, 1996, in Reel 3404 Page 749, in the Office of the Monterey County Recorder.

5.3.2. Groundwater Management. The parties will cooperate to further the conservation, management and protection of groundwater underlying the service area and groundwater used on the service area.

5.3.3. Recycled Water. The parties will cooperate to further the use of recycled, reused and reclaimed water and stormwater.

5.4. AGREEMENT ADMINISTRATION. The following persons or their designated representatives shall be the contact persons for the parties and shall administer this Agreement:

Executive Officer of FORA  
FORA  
100 12th Street, Bldg 2880  
Marina, CA 93933

General Manager of MCWD  
MCWD  
200 12th Street, Bldg. 2788  
Marina, CA 93933

## ARTICLE 6. EX OFFICIO MEMBERSHIP

6.1. MCWD Responsibilities. Close cooperation and communication between FORA and MCWD being vital to the successful implementation of this Agreement, upon execution of this Agreement and payment of the membership fees described in Article 7 of this Agreement, MCWD will become an ex officio member of FORA under applicable provisions of the FORA Act, with all of the rights and obligations of an ex officio member.

6.2. FORA Responsibilities. Upon execution of this Agreement and payment of the membership fees described in Article 7 of this Agreement, FORA will enroll MCWD as an ex officio member of FORA pursuant to the FORA Act, with all of the rights and obligations of an ex officio member.

## ARTICLE 7. FINANCIAL PROVISIONS

### 7.1. MCWD RESPONSIBILITIES

7.1.1. Separate Fund Accounting. MCWD will account for its operations for the service area as a separate fund within the general MCWD operation. The service area fund will have its own line items and account numbers, and will give MCWD the ability to report on revenues and expenses for the service area. Rules for allocating overhead between the service area fund and other MCWD operations will be determined based on the principles set forth in Circular A-87, Cost Principles for State and Local Governments, of the federal Office of Management and Budget.



7.1.2. MCWD Will Recover Costs. MCWD will recover all of its direct and indirect, short term and long term costs of furnishing the facilities to the service area. MCWD shall not be required to take any action in connection with furnishing the facilities to the service area unless and until a source of funds is secured from the service area to pay in full in a reasonable manner consistent with normal accounting practices all of MCWD's direct and indirect, short term and long term costs of the action to be taken by MCWD, including costs of administration, operation, maintenance and capital improvements to provide adequate system capacity to meet existing and anticipated service demands.

7.1.3. Budgets and Compensation Plans.

7.1.3.1. Proposed Budgets. MCWD's General Manager shall submit a proposed budget to the Committee within four months after conveyance of the existing facilities from the USA to MCWD, and shall submit subsequent proposed budgets by March 30 of each year. Each budget shall contain an action budget for one year, from July 1 through June 30, and an operational planning budget for an additional year, and a five-year capital improvement planning budget, updated annually. Each budget shall provide for sufficient revenues to pay MCWD's direct and indirect, short-term and long-term costs to furnish the facilities to the service area for the two years covered by the action budget and the planning budget.

7.1.3.2. Request for Change. MCWD may at any time submit a written request to FORA for recommended changes in compensation. The request shall state in detail the reasons for the request and the amount of change requested.

7.1.3.3. MCWD Board Action. Not less than two weeks nor more than four weeks after receiving FORA's response pursuant to section 7.2, MCWD's governing Board shall act on the response. MCWD's Board may adopt the proposal with FORA's recommended changes, or may refer the matter to mediation as provided in section 10.1 of this Agreement.

7.1.3.4. Term of Adopted Plan. Each adopted compensation plan shall remain in effect until a new plan is adopted.

7.1.4. Payments to FORA. Upon the effective date of a public benefit conveyance of the facilities to MCWD, when MCWD has the ability to levy and collect rates for service through the facilities within the Service Area, MCWD will commence to pay to FORA monies determined to be due as provided in this section. The amount of MCWD's payments to FORA under this section will be included in each budget and request for change presented to FORA under section 7.1.3.

7.1.4.1. MCWD will pay for FORA's administrative and liaison services incurred by FORA in the management and operation of the facilities and the administration of this Agreement.

7.1.4.2. MCWD will pay to FORA an amount equal to five percent (5%) of all revenues derived, earned, or paid to MCWD for any purpose from customers of MCWD or users of water, within the Service Area, to partially compensate FORA for its forbearance pursuant to section 3.1.2 of this Agreement.

7.1.4.3. MCWD will pay any sum due to FORA under any agreement with FORA which may be required under the provisions of sections 10101 and following of the California Public Utilities Code, and sections 54980 and following of the California Government Code.

7.1.4.4. MCWD will pay the fair market value of any interest in property purchased from FORA.

7.1.4.5. MCWD will pay an annual fee for membership on the FORA Board of Directors as an ex-officio member in an amount as the FORA Board may establish by resolution. MCWD acknowledges that MCWD's annual fee for such ex-officio membership may exceed the amount paid by other ex-officio members. The annual fee to be paid by MCWD will not exceed one percent (1%) of all revenues, derived, earned, or paid to MCWD for any purpose from customers of MCWD or users of water within the service area.

7.1.4.6. In the event FORA enters into an agreement with Monterey County or any city which has jurisdiction over a portion of the service area, for the division of revenues derived from the sales of water by MCWD within the jurisdiction of the County or city, the amounts specified in Section 7.1.4.2 of this Agreement shall be reduced by the amount FORA receives pursuant to such agreements for the division of revenues.

7.1.5. MCWD's Financial Authority. MCWD may exercise any authority available to MCWD under law and this Agreement to finance MCWD's operations for the service area.

7.1.6. Defense of Financial Plans. MCWD, at MCWD's cost, shall defend all financial plans adopted and financial actions taken by MCWD and FORA by or pursuant to this Agreement. MCWD may file and prosecute a validating action if authorized by law for any such plan.

## 7.2. FORA RESPONSIBILITIES.

7.2.1. FORA shall respond to MCWD within three months after receiving a proposed budget or a written request or a referral for further response pursuant to section 7.1.3. FORA's response shall state whether FORA agrees with the proposed budget or written request. If FORA does not agree, FORA's response shall identify each disputed element, shall state detailed reasons for the dispute, and shall specify a resolution acceptable to FORA. If FORA does not respond within three

months, the compensation plan contained in the latest submittal from MCWD shall be deemed adopted.

7.2.2. Nothing in this Agreement shall limit or impair FORA's ability to contract or arrange financing for construction of capital facilities.

### 7.3. JOINT RESPONSIBILITIES.

7.3.1. MCWD's Board shall adopt by resolution and FORA's Board shall adopt by ordinance, as a supplement to this Agreement, each compensation plan for MCWD determined pursuant to sections 7.1.3 and 7.2.1 of this Agreement.

7.3.2. MCWD and FORA will cooperate in reviewing and working with communications and proposals from other municipal corporations pursuant to sections 10100 and following of the Public Utilities Code and any other provisions of law dealing with water and sewer utility franchises, with the use of the public streets, ways, alleys, and places within the other municipal corporations for the provision of water and sewer services, or with compensation to a municipal corporation for services performed for another municipal or public corporation.

7.3.3. If MCWD makes any payments to another municipal corporation the amount of such payments shall reduce any sums which such municipal corporation would otherwise receive from sales pursuant to Title 7.85 of the Government Code.

## ARTICLE 8. RISK MANAGEMENT

8.1. RISK OF LOSS. Except as otherwise provided in this Agreement, MCWD shall bear the risk of loss from its provision of services to the service area, to the same extent and in the same manner and subject to the same limitations as with MCWD's activities within the area from which MCWD's Directors are elected. This Agreement is not intended and shall not be construed to remove any protection from liability or any procedures for claiming liability under state and federal law. Allocation of the risk from defective or inadequate facilities shall be determined in the conveyance of the facilities from the USA. To the fullest extent permitted by law, MCWD's facilities and other assets for providing water and sewer services within its jurisdictional boundaries shall not be at risk from claims based on MCWD's owning, operating, and furnishing the facilities within the service area. MCWD's risk and liability for MCWD's activities for the service area shall be limited to the value of any facilities within or for the service area, the assets in any service area accounts, and the value of insurance carried by MCWD for providing services within the service area. MCWD, with FORA's assistance, shall diligently apply for and attempt to obtain any all state and federal assistance that is available in the event of catastrophic losses to the facilities.

8.2. INSURANCE. Throughout the term of this Agreement MCWD shall maintain insurance with coverage and limits equivalent to that maintained for MCWD's operations within its jurisdictional boundaries. The insurance shall cover the members of the Committee and shall name FORA as an additional insured.

8.3. COST OF RISK. Each compensation plan adopted for MCWD pursuant to Article 7 of this Agreement shall be adequate to pay MCWD's cost of insurance for acquiring, constructing, operating and furnishing the facilities for the service area, and to establish a prudent risk reserve for uninsured risks.

## ARTICLE 9. EFFECTIVE DATE AND TERM

9.1. EFFECTIVE DATE. This Agreement shall become effective when FORA and MCWD have each executed this Agreement.

9.2. FORMAL ADOPTION. FORA will adopt this Agreement by ordinance. MCWD will adopt this Agreement by resolution.

9.3. TERM. This Agreement shall have a term coincident with the legal existence of FORA, unless the USA denies MCWD's application for a public benefit conveyance. If the USA denies MCWD's application for a public benefit conveyance, the parties shall meet and confer in good faith during the 120 days immediately following the final denial to discuss possible change in terms for MCWD to acquire, construct, operate and/or furnish the facilities. If FORA and MCWD cannot agree on new terms within the 120 days, or such other additional time as may be agreed by FORA and MCWD, this Agreement shall terminate and have no further effect, and the parties thereafter shall have no further rights or obligations under this Agreement.

9.4. EFFECT OF TERMINATION. Upon termination of this Agreement, unless otherwise provided by this Agreement or by law or by further agreement of FORA and MCWD or their successors, MCWD shall own the facilities free and clear of the terms and conditions of this Agreement.

## ARTICLE 10. GENERAL PROVISIONS

### 10.1. DISPUTE RESOLUTION PROCEDURE.

10.1.1. Meet and Confer; Mediation. This section shall apply to all disputes arising under this Agreement. The Agreement Administrators designated under section 5.4 of this Agreement shall first meet and confer to resolve any dispute. Each party shall make all reasonable efforts to provide to the other party all information relevant to the dispute. If the Agreement Administrators cannot resolve the dispute within ten working days from the date of the dispute, they shall meet and

confer together with the Committee. If the dispute is not resolved within another ten working days from the date of the dispute, the Agreement Administrators shall meet and confer together with a voting member of the FORA Board and a member of the MCWD Board. If the dispute is not resolved within another ten days from the date of the dispute, the parties shall mediate the dispute at the earliest possible date, with one of the persons named on Exhibit "C" to this Agreement serving as mediator. If the dispute is still not resolved, the parties may pursue any and all remedies available to them at law and equity, including declaratory relief which shall be binding on the parties.

10.1.2. Provisional Relief Available. The requirement to use the procedure specified in section 10.1.1 of this Agreement shall not prevent a party from seeking provisional relief from a court if necessary to protect the public health or safety.

10.1.3. Mediator List. Exhibit "C" to this Agreement is a list of persons both parties will accept as mediators for any dispute arising under this Agreement. If a dispute requires mediation, the parties will choose a mediator from the list by some random method, and will continue to do so until a mediator is selected who can mediate the particular dispute without delay. As a last resort, if no person named on Exhibit "C" can mediate a particular dispute without delay, the parties will ask the Presiding Judge of the Monterey County Superior Court to appoint a mediator.

10.2. WAIVER OF RIGHTS. None of the covenants or agreements herein contained can be waived except by the written consent of the waiving party.

10.3. SEVERABILITY. If any one or more of the covenants or agreements set forth in this Agreement on the part of the parties, or either of them, to be performed should be contrary to any provision of law or contrary to the policy of law to such extent as to be unenforceable in any court of competent jurisdiction, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements and shall in no way affect the validity of this Agreement.

10.4. EXHIBITS. All exhibits referred to in this Agreement and attached to this agreement are incorporated in this Agreement by reference.

10.5. COUNTERPARTS. This Agreement may be executed in counterparts, and each fully executed counterpart shall be deemed an original document.

10.6. NOTICES. All notices, requests, consents, approvals, authorizations, agreements, or appointments hereunder shall be given in writing and addressed to the principal office of each party.

10.7. AMENDMENTS. This Agreement integrates and supersedes all prior and contemporaneous agreements and understandings about MCWD's provision of the services to the Service Areas. This Agreement may not be amended without consent of the governing Boards of both parties.


10.8. SUCCESSORS. This Agreement shall bind and benefit the successors of the parties hereto.

10.9. ADDITIONAL DOCUMENTS. The parties hereto agree, upon request, to execute, acknowledge, and deliver all additional documents necessary to carry out the intent of this Agreement.

10.10. CAPTIONS. Captions of the Articles, Sections, and Paragraphs of this Agreement are for convenience and reference only and are not intended to define or limit the scope of any provision contained herein.

IN WITNESS WHEREOF, the parties hereto, by and through their respective, duly authorized representatives, have executed this Agreement on the dates indicated.

FORT ORD REUSE AUTHORITY

By   
Chairperson, Board of Directors

Dated: 3/13/98

ATTEST:..

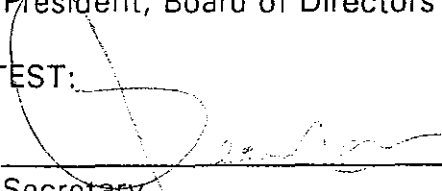
By   
Secretary

MARINA COAST WATER DISTRICT

By   
President, Board of Directors

Dated: 3/13/98

ATTEST:

By   
Secretary

ORDINANCE NO. 98-01

**AN ORDINANCE OF BOARD OF DIRECTORS OF THE FORT ORD REUSE AUTHORITY APPROVING AN AGREEMENT BETWEEN MARINA COAST WATER DISTRICT AND THE FORT ORD REUSE AUTHORITY**

The Board of Directors of the Fort Ord Reuse Authority ordains as follows:

SECTION 1. The Board of Directors of the Fort Ord Reuse Authority approves an Agreement between Marina Coast Water District and the Fort Ord Reuse Authority for the operation of water and wastewater collection systems on the former Fort Ord military reservation.

SECTION 2. This ordinance shall become effective on its adoption.

**PASSED AND ADOPTED** this 13th day of February, 1998 by the following vote:

AYES: Barlich, Albert, Vocelka, Potter, Perkins, Johnsen  
Jordan, Mancini, Pendergrass, Styles, Koffman, White

NOES: Perrine

ABSENT: None



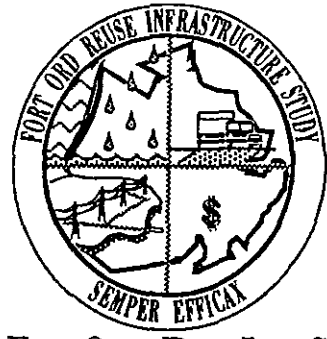
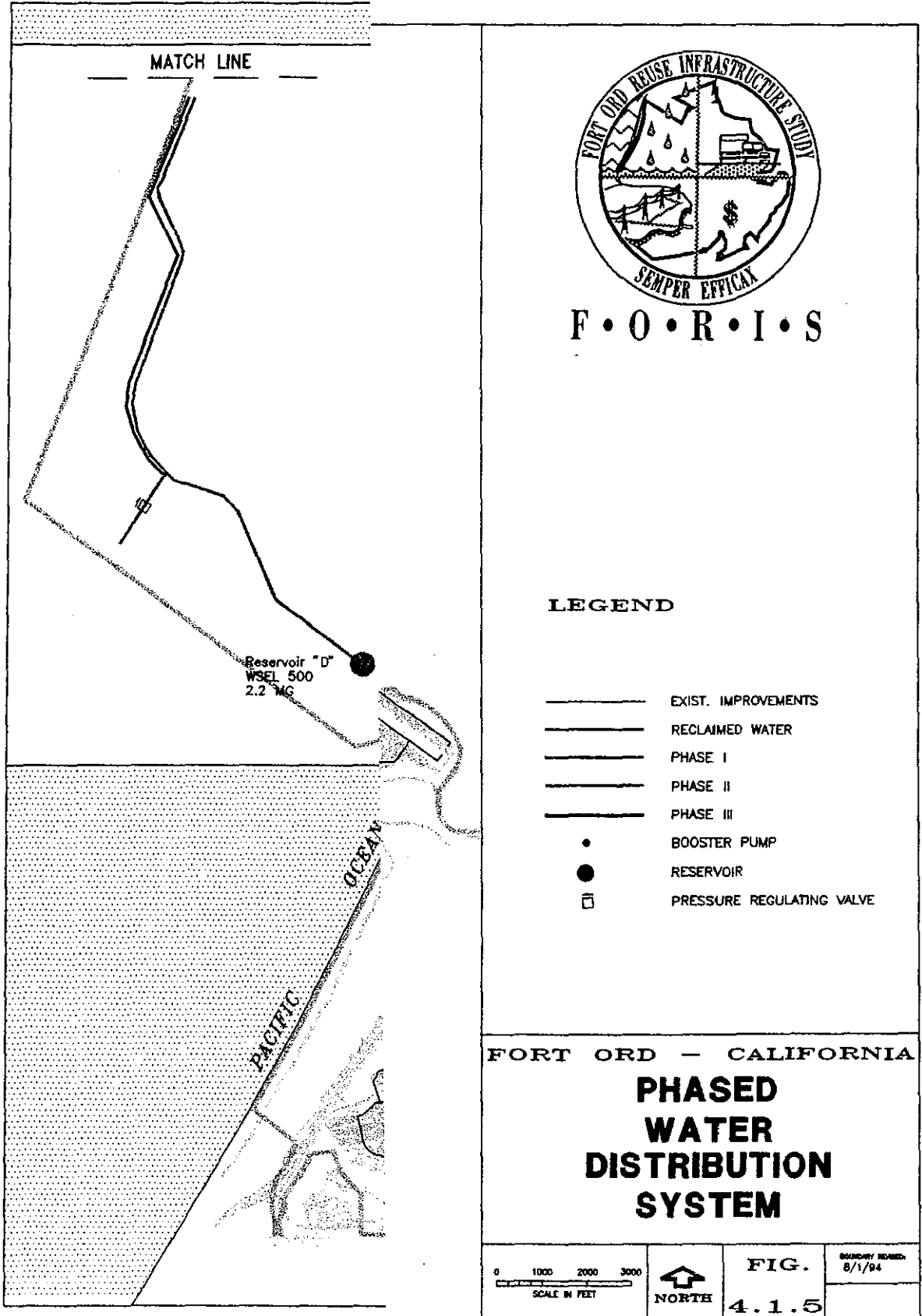
Chair of the Board of Directors

ATTEST:

Michael Houlemard  
Clerk of the Board

By   
Deputy

# EXHIBIT A



F • O • R • I • S

## LEGEND

- EXIST. IMPROVEMENTS
- RECLAIMED WATER
- PHASE I
- PHASE II
- PHASE III
- BOOSTER PUMP
- RESERVOIR
- PRESSURE REGULATING VALVE

FORT ORD - CALIFORNIA

## PHASED WATER DISTRIBUTION SYSTEM



FIG. 4.1.5

REVISION DATED: 8/1/94



# EXHIBIT B

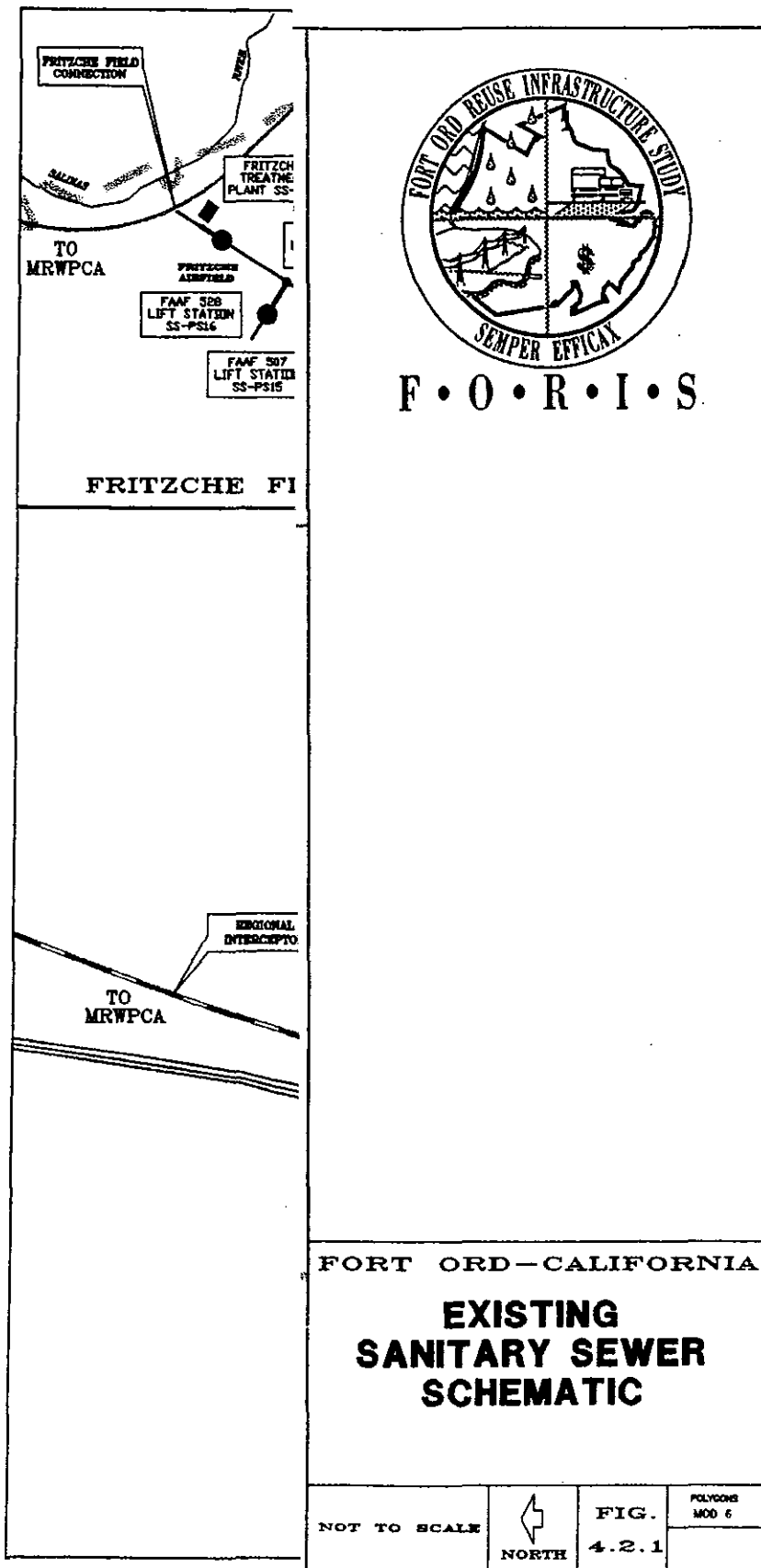


EXHIBIT C  
MEDIATORS

Dick Milbrodt  
Leon Panetta  
Lt. Gen. Ret. James Moore  
Don Owen  
Frank Dimick  
John Gregg  
Anne Schneider

CITIES, COUNTIES, & OTHER AGENCIES

Title 5

Chapter 12, added as Chapter 11, Municipal Services and Functions, by Stats.1978, c. 960, p. 2961, § 1, was renumbered Chapter 12 and amended by Stats.1980, c. 676, § 131.

§ 54980. Definitions

As used in this chapter:

(a) "Legislative body" means the board of supervisors in the case of a county or a city and county, the city council or board of trustees in the case of a city, and the board of directors or other governing body in the case of a district.

(b) "Local agency" means any county, city, city and county, or public district which provides or has authority to provide or perform municipal services or functions.

(c) "Municipal services or functions" includes, but is not limited to, firefighting, police, ambulance, utility services, and the improvement, maintenance, repair, and operation of streets and highways.

(Added by Stats.1978, c. 960, p. 2121, § 1.)

Historical and Statutory Notes

Former § 54980, added by Stats.1957, c. 4736, § 34. See Government Code § 56000 et seq. 1382, p. 2716, § 1, relating to district boundaries, was repealed by Stats.1965, c. 2043, p.

Forms

See West's California Code Forms, Government.

Law Review and Journal Commentaries

Decline of emergency medical services coordination in California: Why cities are at war with counties over illusory ambulance monopolies. Byron K. Toma, 23 Sw.U.L.Rev. 285 (1994).

Library References

Municipal Corporations ¶226. WESTLAW Topic No. 268. C.J.S. Municipal Corporations § 976 et seq.

Notes of Decisions

Paramedics 1

1. Paramedics

For purposes of determining whether county's program of certifying paramedics for ambu-

lance services was immune from antitrust liability under the state action doctrine, provision of emergency service is a traditional municipal function. Mercy-Peninsula Ambulance, Inc. v. San Mateo County, N.D.Cal.1984, 592 F.Supp. 956, affirmed 791 F.2d 755.

§ 54981. Contracts for municipal services

The legislative body of any local agency may contract with any other local agency for the performance by the latter of municipal services or functions within the territory of the former.

(Added by Stats.1978, c. 960, p. 2121, § 1.)

MUNICIPAL SERVICES

Div. 2

Former § 54981, added by 1382, p. 2716, § 1, relating to aries, was repealed by Stats.19

§ 54981.7. Indian tribu  
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(Added by Stats.1996, c. 1085

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Former § 54982, added by 1382, p. 2716, § 1, relating to aries, was repealed by Stats.1'

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**ES, & OTHER AGENCIES**  
**Title 5**

*Services and Functions,*  
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**MUNICIPAL SERVICES AND FUNCTIONS**  
**Div. 2**

**§ 54983**

**Historical and Statutory Notes**

Former § 54981, added by Stats.1957, c. 4736, § 34. See Government Code § 56000 et seq. 1382, p. 2716, § 1, relating to district boundaries, was repealed by Stats.1965, c. 2043, p.

**§ 54981.7. Indian tribes; fire protection services; police or sheriff protection services**

A city or county may enter into a contract with an Indian tribe for the city or county to provide fire protection services and police or sheriff protection services for the Indian tribe either solely on Indian lands, or on the Indian lands and territory adjacent to those Indian lands. Nothing in this section shall be construed to alter or affect federal Public Law 280, relating to state jurisdiction in Indian lands.

(Added by Stats.1996, c. 1085 (A.B.1762), § 1.)

**§ 54982. Consideration**

Any agreement entered into pursuant to this chapter shall be for valuable consideration.

(Added by Stats.1978, c. 960, p. 2121, § 1.)

**Historical and Statutory Notes**

Former § 54982, added by Stats.1957, c. 4736, § 34. See Government Code § 56000 et seq. 1382, p. 2716, § 1, relating to district boundaries, was repealed by Stats.1965, c. 2043, p.

**§ 54983. Construction of authority granted**

Authority for entering into agreements pursuant to this chapter shall be construed as supplementing existing authority for legislative bodies of local agencies to enter into agreements for the providing of municipal services and functions and shall not be construed as authorizing the legislative body of any local agency to enter into an agreement for the providing of municipal services or functions which it is prohibited to provide by law or which exceeds the force account limit applicable to the local agency contracting to receive services.

The amendments to this section which become effective January 1, 1981, shall not apply to any agreement which was made prior to that date nor to the current term of any self-renewing or renewable agreement which had been entered into prior to that date.

(Added by Stats.1978, c. 960, p. 2121, § 1. Amended by Stats.1980, c. 398, p. 781, § 1.)

**Historical and Statutory Notes**

Former § 54983, added by Stats.1957, c. 4736, § 34. See Government Code § 56000 et seq. 1382, p. 2716, § 1, relating to district boundaries, was repealed by Stats.1965, c. 2043, p.

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GOVERNMENT CODE

§ 67679

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of the proceeds shall be retained by the board to help finance its responsibilities for the reuse of Fort Ord, unless otherwise agreed upon by the city or county with jurisdiction over the property and the board.

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(3) The board shall transfer or lease all real or personal property received pursuant to this section and which is intended for public utility use within a reasonable period of time, consistent with the orderly and economical provision of utility services to the area of Fort Ord, under terms and conditions the board may determine.

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(4) Notwithstanding any other paragraph of this subdivision, the board may retain real or personal property received pursuant to this section as long as both of the following occur:

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(i) The board determines that retention of the property is necessary or convenient to carrying out the authority's responsibilities pursuant to law.

(ii) The board determines that its retention of the property will not cause significant financial hardship to the city or county with jurisdiction over the property.

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(c) The board may mediate and resolve conflicts between local agencies concerning the uses of federal land to be transferred for public benefit purposes or other uses.

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(d) The provisions of this title shall not preclude negotiations between the federal government and any local telecommunication, water, gas, electric, or cable provider for the transfer to any \* \* \* utility or provider of federally owned distribution systems and related facilities serving Fort Ord.

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\* \* \*(e) This title shall not be construed to limit the rights of the California State University or the University of California to acquire, hold, and use real property at Fort Ord, including locating or developing educationally related or research oriented facilities on this property.

(f) Except for property transferred to the California State University, or to the University of California, and that is used for educational or research purposes, and except for property transferred to the California Department of Parks and Recreation, all property transferred from the federal government to any user or purchaser, whether public or private, shall be used only in a manner consistent with the plan adopted or revised pursuant to Section 67675.

(Added by Stats.1994, c. 64 (S.B.899), § 1, eff. May 9, 1994. Amended by Stats.1994, c. 1169 (S.B.1600), § 2.)

Historical and Statutory Notes

1994 Legislation

The 1994 amendment of this section by c. 1169 (S.B. 1600) explicitly amended the 1994 addition of this section by c. 64 (S.B.899).

§ 67679. Basewide public capital facilities; identification; financing and construction; identification of significant local public capital facilities; construction or improvement; exceptions; assessments; financing districts; development fees

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(a)(1) The board shall identify those basewide public capital facilities described in the Fort Ord Reuse Plan, including, but not limited to, roads, freeway ramps, air transportation facilities, and freight hauling and handling facilities; sewage and water conveyance and treatment facilities; school, library, and other educational facilities; and recreational facilities, that serve residents or will serve future residents of the base territory and could most efficiently or conveniently be planned, negotiated, financed, \* \* \* constructed, or repaired, remodeled, or replaced by the board to further the integrated future use of the base. The board shall undertake to plan for and arrange the provision of those facilities, including arranging for their financing and construction or repair, remodeling, or replacement. The board may plan, design, construct, repair, remodel, or replace and finance these public capital facilities, or delegate any of those powers to one or more member agencies. Notwithstanding any other provision of law, no permit or permission of any kind from any city or county shall be required for any project undertaken by the board pursuant to this section.

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(2) The board shall identify significant local public capital facilities, as distinguished from the basewide public capital facilities identified in the paragraph (1) which are described in the Fort Ord Reuse Plan. Local public capital facilities shall be the responsibility of the city or county with land use jurisdiction or the redevelopment agency if the facilities are located within an established project area and the board of the redevelopment agency determines that it will assume responsibility.

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(3) The board may construct or otherwise act to improve a local public capital facility only with the consent of the city or county with land use authority over the area where the facility is or will be located.

Additions or changes indicated by underline; deletions by asterisks \* \* \*

A city or county or a local redevelopment agency may construct or otherwise act to improve a basewide public capital facility only with the consent of the board.

(b) If all or any portion of the Fritzsche Army Air Field is transferred to the City of Marina, the board shall not consider those portions of the air field that continue to be used as an airport to be basewide capital facilities, except with the consent of the legislative body of the city. If all or any portion of the two Army golf courses within the territory of Seaside are transferred to the City of Seaside, the board shall not consider those portions of the golf courses that continue in use as golf courses to be basewide capital facilities, except with the consent of the legislative body of the city.

(c) The board may seek state and federal grants and loans or other assistance to help fund public facilities.

(d) The board may, in any year, levy assessments, reassessments, or special taxes and issue bonds to finance these basewide public facilities in accordance with, and pursuant to, any of the following:

(1) The Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code).

(2) The Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code).

(3) The Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code).

(4) The Benefit Assessment Act of 1982 (Chapter 6.4 (commencing with Section 54703)).

(5) The Landscape and Lighting Act of 1972 (Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code).

(6) The Integrated Financing District Act (Chapter 1.5 (commencing with Section 53175) of Division 2 of Title 5).

(7) The Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5).

(8) The Infrastructure Financing District Act (Chapter 2.8 (commencing with Section 53395) of Division 2 of Title 5).

(9) The Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1).

(10) The Revenue Bond Act of 1941 (Chapter 6 (commencing with Section 54300) of Division 2 of Title 5).

(11) Fire suppression assessments levied pursuant to Article 3.6 (commencing with Section 50078) of Chapter 1 of Part 1 of Division 1 of Title 5.

(12) The Habitat Maintenance Funding Act (Chapter 11 (commencing with Section 2900) of Division 3 of the Fish and Game Code).

Notwithstanding any other provision of law, the board may create any of these financing districts within the area of Fort Ord to finance basewide public facilities without the consent of any city or county. In addition, until January 1, 2000, the board may, but is not obligated to create, within the area of Fort Ord, any of these financing districts which authorize financing for public services and may levy authorized assessments or special taxes in order to pass through funding for these services to the local agencies.

Notwithstanding any other provision of law, no city or county with jurisdiction over any area of the base, whether now or in the future, shall create any land-based financing district or levy any assessment or tax secured by a lien on real property within the area of the base without the consent of the board, except that the city or county may create these financing districts for the purposes and subject to any financing limitations that may be specified in the capital improvement program prepared pursuant to Section 67675.

(e) The board may levy development fees on development projects within the area of the base. Any development fees shall comply with the requirements of Chapter 5 (commencing with Section 66000) of Division 1 of Title 5. No local agency shall issue any building permit for any development within the area of Fort Ord until the board has certified that all development fees that it has levied with respect to the development project have been paid or otherwise satisfied.

(Added by Stats.1994, c. 64 (S.B.899), § 1, eff. May 9, 1994. Amended by Stats.1994, c. 1169 (S.B.1600), § 3.)

EXHIBIT "E"

CALIFORNIA PUBLIC UTILITIES CODE  
SELECTED SECTIONS

§ 10101. Powers of municipality

There is granted to every municipal corporation of the State the right to construct, operate, and maintain water and gas pipes, mains and conduits, electric light and power lines, telephone and telegraph lines, sewers and sewer mains, all with the necessary appurtenances, across, along, in, under, over, or upon any road, street, alley, avenue or highway, and across, under, or over any railway, canal, ditch, or flume which the route of such works intersects, crosses, or runs along, in such manner as to afford security for life and property.

§ 10102. Restoration

A municipal corporation exercising its rights under this article shall restore the road, street, alley, avenue, highway, canal, ditch, or flume so used to its former state of usefulness as nearly as may be, and shall locate its use so as to interfere as little as possible, with other existing uses of a road, street, alley, avenue, highway, canal, ditch, or flume.

§ 10103. Agreement of other municipality

Before any municipal corporation uses any street, alley, avenue, or highway within any other municipal corporation, it shall request the municipal corporation in which the street, alley, avenue, or highway is situated to agree with it upon the location of the use and the terms and conditions to which the use shall be subject.

§ 10104. Action to establish terms and conditions of use

If the two municipal corporations are unable to agree on the terms and conditions and location of a use within three months after a proposal to do so, the municipal corporation proposing to use a street, alley, avenue, or highway may bring an action in the superior court of the county in which the street, alley, avenue, or highway is situated against the other municipal corporation to have the terms and conditions and location determined. The superior court may determine and adjudicate the terms and conditions to which the use of the street, avenue, alley, or highway shall be subject, and the location thereof, and upon the making of the final judgment the municipal corporation desiring to do so may enter and use

the street, alley, avenue, or highway upon the terms and conditions and at the location specified in the judgment.

**§ 10105. Unincorporated territory**

A grant of authority from or agreement with another municipality is not necessary in any case where the street, alley, avenue, or highway, or portion thereof, proposed to be used is a necessary or convenient part of the route of the proposed works and at the time construction was commenced or the plans adopted was located in unincorporated territory. This section is not applicable if the street, alley, avenue, or highway, or portion thereof, was located in incorporated territory prior to May 5, 1933.

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## MEMORANDUM OF UNDERSTANDING

### DEPARTMENT OF THE ARMY AND MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY

#### Background, Purpose and Scope

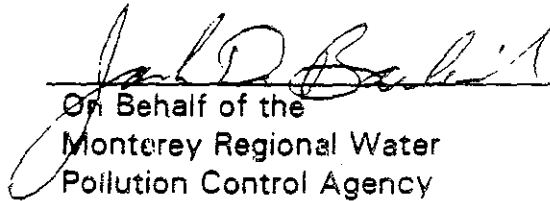
1. Contract No. DAKF03-83-C-0527 between the Department of the Army (DOA) and Monterey Regional Water Pollution Control Agency (MRWPCA) provides for wastewater treatment utility services for the Army Garrison at Fort Ord.
  - a. The contract specifications provide, among other things, for the receipt, transport and treatment of up to 3.3 million gallons per day (MGD) of wastewater from Fort Ord.
  - b. The DOA has rights to 3.3 MGD (average dry weather flow) of prepaid wastewater treatment capacity. Under these rights, the DOA is not liable for otherwise applicable connection charges as long as the 3.3 MGD flow level is not exceeded.
2. Wastewater treatment utility service rates for Presidio of Monterey Annex (POMA) are currently developed on a contract formula that utilizes measured wastewater flows and strengths from the former Fort Ord to allocate appropriate elements of MRWPCA's cost of service. The cost of service basis for the current service rates excludes the following cost elements:
  - a. MRWPCA debt service, for the MRWPCA's 1984/85 revenue bonds (referred to now as the 1996 Refunded Bonds), which were used to finance MRWPCA's regional wastewater treatment facilities. The revenue bonds are expected to be paid off during FY 1999/00.
  - b. Equalization, which reflects payments to participating jurisdictions for the cost of their abandoned wastewater facilities. Equalization payments are expected to be paid off during FY 2003/04.
  - c. Infiltration and inflow (I&I), which reflects the cost to transport, treat, and dispose of I&I. The cost is excluded because flows from the former Fort Ord are measured after I&I is incurred.
3. MRWPCA's standard wastewater treatment service rates are reflected in Ordinance 81-1 (as amended), which is titled "An Ordinance Establishing Sewer Service User Charges and Connection Fees, and Providing for the Billing, Payment and Collection of Same."

*Memorandum of Understanding  
DOA and MRWPCA  
June 1998  
Page 5*

Concurred to this 22<sup>nd</sup> day of June 1998, by:



On Behalf of the  
Department of the Army



On Behalf of the  
Monterey Regional Water  
Pollution Control Agency

for Safety  
Project Box  
PAGE 10, PAGES

1. SUBJECT OF SOLICITATION / MODIFICATION OF CONTRACT		2. PROJECT NO. (if applicable)	
3. EFFECTIVE DATE 85 Feb 15		5. PROJECT NO. (if applicable) Monterey, CA	
6. ISSUED BY Department of the Army Sacramento District, Corps of Engineers 650 Capitol Mall Sacramento, California 95814-4794		7. AMENDMENT OF SOLICITATION NO. 1720	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) Monterey Regional Water Pollution Control Agency 220 Country Club Gate Center, Suite 34 Pacific Grove, California 93950		9A. AMENDMENT OF SOLICITATION NO.	
9B. DATED (SEE ITEM 11)		10A. MODIFICATION OF CONTRACT ORDER NO. DACA05-81-C-0021	
9C. FACILITY CODE		10B. DATED (SEE ITEM 13) 81 MAY 01	

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning \_\_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)  
2152050 508-9221 P6100 S04-167 Net Increase \$7,392,929.00

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.	
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation det., etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).	
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:	Contract Document Checked
X 10 U.S.C. 2304 (a) (10)	For Legal Sufficiency
D. OTHER (Specify type of modification and authority)	Date: 8 Feb 85 by SP

IMPORTANT: Contractor  is not,  is required to sign this document and return ALL copies to the issuing office.

DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

To provide for Army participation in the construction of the Monterey Regional Wastewater Treatment Plant.

The "Modification to the Cooperative Agreement to Participate in Construction of a Regional Sewer System" dated 85 Feb 15 is attached hereto and made a part of this contract.

The period of service is extended to 1 Jul 88.

The total contract price is increased by \$7,392,929.00.

cept as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

A. NAME AND TITLE OF SIGNER (Type or print) Charles W. Benson, Chairman, MRWPCA		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) ARTHUR E. WILLIAMS Colonel, CE	
B. CONTRACTOR'S SIGNATURE <i>Charles W. Benson</i> (Signature of person authorized to sign)		16B. UNITED STATES OF AMERICA	
C. DATE SIGNED 2-15-85		BY <i>Arthur E. Williams</i> (Signature of Contracting Officer)	
		16C. DATE SIGNED 8 Feb 85	

ATTACHMENT 1

ARTICLE 2. OBLIGATIONS OF THE CONTRACTOR.

(a) The Contractor shall construct, or cause to be constructed, the Project as described in Exhibit "D" and "E", attached hereto and made a part hereof, and furnish all services, labor, materials, tools and equipment necessary for construction of the Project.

(b) The Contractor shall, without any additional expense to the Government, obtain necessary licenses and permits, and comply with any applicable Federal, State, and/or municipal laws, codes, and regulations, in connection with prosecution of the work. It shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. It shall be responsible for all materials delivered and work performed.

(c) The Contractor shall obtain all easements, rights-of-way, or other interests in real property necessary for the said construction of Project and the performance of this contract, except as may otherwise be specifically provided herein.

(d) The Contractor shall commence work under this contract on or before July 1, 1985, prosecute said work diligently, and complete the entire work ready for use not later than July 1, 1988. These dates will be adjusted to reflect the actual date of the Notice to Proceed issued to their subcontractor and the completion date shall be adjusted accordingly. The time stated for completion shall include final testing and clean-up of the premises. Time extensions will be granted in accordance with the provisions of Clause 33 of this contract, Paragraph b(1).

(e) The Contractor and Fort Ord shall enter into a subsequent service contract for the treatment of raw sewage from Fort Ord, California for a minimum term of 30 years, unless terminated by the Government at an earlier time. The wastewater treatment plant sewage capacity to be made available to the Government shall be 3.3 million gallons per day.

(f) The Contractor agrees that the Government has the right to sell or otherwise transfer their capacity allocation and other interests in the Project to another entity or user at any time in the future, subject to the review and approval by the Contractor.

(g) The Contractor shall construct, maintain and operate the Project in compliance with any and all applicable laws and regulations.

(h) Should the Contractor permanently discontinue providing treatment services for 3.3 million gallons per day of raw sewage, except when termination for the convenience of the Government of the service contract has occurred; the Contractor agrees to repay to the Government that portion of the total sum paid under this contract plus the increased land value from the date of this contract prorated by the following formula: Thirty years minus the term of the service contract performed from the date of start of performance to the date of discontinuance of sewage treatment services for 3.3 million gallons per day divided by thirty years, multiplied by the total sum paid under this contract increased by interest plus appreciated land value. The rate of interest to be paid shall be at the rate established by the Secretary

*Memorandum of Understanding  
DOA and MRWPCA  
June 1998  
Page 2*

- a. Ordinance 81-1 user rates are based on costs per Equivalent Dwelling Unit (EDU).
  - b. MRWPCA plans to update, and as necessary, modify Ordinance 81-1 rates and charges based on a cost of service study for MRWPCA Fiscal Year 1998/99.
  - c. The cost of service basis for updated Ordinance 81-1 user rates for customers other than those within the former Fort Ord will include agency debt service and equalization payments until such time as the underlying obligations are paid off.
4. As part of a Base Realignment and Closure (BRAC) initiative, the DOA intends to implement an Economic Development Conveyance (EDC) to the Fort Ord Reuse Authority (FORA) of portions of the former Fort Ord. Excluded from the EDC will be land required for the continuation of the DOA's mission at the POMA.
- a. The DOA also intends to implement a Public Benefit Conveyance (PBC) to Marina Coast Water District (MCWD) of all of the former Fort Ord potable water supply and distribution and wastewater collection utility systems.
  - b. The PBC would include water supply and wastewater treatment capacity rights, subject to reservations reflecting the POMA's service requirements.
5. The DOA and MCWD are conducting fact-finding discussion with the intent to negotiate a potable water and a wastewater utility service contract for POMA. It is the DOA's further intent to negotiate the MCWD utility service contracts before the EDC and PBC are finalized and implemented. Current project scheduling requires the completion of MCWD negotiations by the end of July 1998.
6. The DOA and MRWPCA desire a modified utility service arrangement, which would be implemented as either a modification to Contract No. DAKF03-83-C-0527 or the negotiation of a new utility services contract, to reflect the new service requirements that will become effective upon the implementation of the EDC and PBC. Included in the modified service arrangement would be an immediate transfer of prepaid wastewater treatment capacity rights that are not needed for the POMA's requirements to MCWD or another appropriate entity and a mechanism for subsequent additional incremental transfers.

7. The purpose of this Memorandum of Understanding (MOU) is to identify a framework for the modified wastewater treatment contract that can first be reflected in the DOA's utility service contracts with MCWD, and then form the basis for a new or modified wastewater utility service contract for POMA.

### Terms and Conditions

1. The scope of the modified service arrangement would be service within the POMA, with the exclusion of identified DOA reimbursable tenant facilities.
2. The rate structure for the modified service arrangement will be based on the standard service rates as reflected in MRWPCA Ordinance 81-1.
  - a. Interim Ordinance 81-1 rates would be based on modifying standard Ordinance 81-1 rates to reflect differences, if any, in flows per EDU for service premises within the former Fort Ord and the rest of the MRWPCA system.
  - b. Interim Ordinance 81-1 rates would be adjusted to reflect changes, as applicable, resulting from MRWPCA's 1998/99 cost of service study. Such rate would reflect appropriate EDU differentials.
  - c. There would be an adjustment from standard rates charged to reflect appropriate crediting of MRWPCA debt service and equalization payment costs and other appropriate adjustments that are included in revenue collected from the POMA. The true-up adjustment is expected to be quantified by 1 July 1999.
  - d. The DOA will seek funding authorization to contribute one-half of the cost for MRWPCA's consultant preparing the proposed 1998/99 "Cost of Service Study." In no case will the DOA portion of the cost exceed \$15,000.
3. The DOA's 3.3 MGD in prepaid capacity may be converted from a measured flow to an EDU basis. This change would eliminate the need for the DOA to segregate and directly measure wastewater flows from the POMA.
  - a. The prepaid capacity would be divided into separate components for the POMA and for the remainder of the former Fort Ord. The otherwise applicable Ordinance 81-1 connection charges would not apply to the POMA as long as the aggregate number of EDUs (converted from the MGDs of capacity rights retained by the DOA) did not exceed the allowable limit.

- b. MRWPCA would need to make separate arrangements with MCWD, FORA or other appropriate entities regarding the administration of prepaid capacity rights for former Fort Ord customers other than the POMA.
  - c. It is possible that MRWPCA would periodically re-evaluate the differential, if any, between wastewater flows per EDU within and outside the former Fort Ord and, as applicable, modify Ordinance 81-1 based rates. The EDU differential evaluation shall occur in intervals of not less than five (5) years.
4. The basic term of the modified service contract would be limited to ten (10) years in accordance with the provisions of Part 41 of the Federal Acquisition Regulations (FAR). The arrangement would, however, contain "evergreen" provisions to automatically extend the contract term, absent written notice to the contrary by either party.
5. The modified service contract would incorporate applicable terms from existing Contract No. DAKF03-83-C-0527, the bill credit based on the recent DOA-sponsored financial audit and MRWPCA's standard technical, billing, and other service terms and conditions. The contract also would include:
- a. Notice to the POMA of future cost of service studies, budgets, and rate adjustments; and
  - b. Development of a process to track and identify changes in wastewater flows per EDU, service premises and tenant loads.

### **Administrative Considerations**

- 1. In order to facilitate an orderly transition to the envisioned modified service arrangement, the POMA will provide information on excluded tenants, to include service location (building number) and points of contact for billing and technical matters.
- 2. A contract reflecting the modified service arrangement would be implemented concurrently with the PBC transfer of the DOA's water and wastewater utility facilities to MCWD. The PBC transfer is expected to become effective 1 October 1998.