



# Fort Ord Reuse Authority

920 2<sup>nd</sup> Avenue, Ste. A, Marina, CA 93933

Phone: (831) 883-3672 • Fax: (831) 883-3675 • [www.fora.org](http://www.fora.org)

## BOARD OF DIRECTORS MEETING

Friday, January 13, 2012 - 3:30 p.m.

910 2<sup>nd</sup> Ave, Marina (on the former Fort Ord)

### AGENDA

1. **CALL TO ORDER AND ROLL CALL**
2. **PLEDGE OF ALLEGIANCE**
3. **ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE**
4. **PUBLIC COMMENT PERIOD:** Members of the audience wishing to address the Fort Ord Reuse Authority ("FORA") Board on matters within the jurisdiction of FORA, but not on this agenda, may do so during the Public Comment Period. Public comments are limited to a maximum of three minutes. Public comments on specific agenda items will be heard at the time the matter is under Board consideration.
5. **CONSENT AGENDA** ACTION
  - a. December 16, 2011 FORA Board meeting minutes
6. **OLD BUSINESS**
  - a. Preston ParkACTION
    - i. 2<sup>nd</sup> VoteACTION
      1. Authorize staff to secure an updated appraisal for Preston Park
      2. Approve an up-to 90 days extension of the last Preston Park Management Agreement
      3. Authorize staff to sell Preston Park
    - ii. 1<sup>st</sup> Vote on New Alliance/FORA Preston Park Management Agreement ACTION
    - iii. Disposition update INFORMATION
  - b. California Central Coast Veterans Cemetery – update INFORMATION
7. **NEW BUSINESS**
  - a. Denise Duffy and Associates – Contract Amendment #5 ACTION
  - b. Base Reuse Plan Reassessment – update INFORMATION
8. **EXECUTIVE OFFICER'S REPORT**
  - a. Outstanding Receivables INFORMATION
  - b. Administrative Committee – report INFORMATION
  - c. Finance Committee – report INFORMATION
  - d. Habitat Conservation Plan – status report INFORMATION
  - e. Travel Report INFORMATION
  - f. Bureau of Land Management National Designation – update INFORMATION
9. **ELECTION OF OFFICERS, 2012**
  - a. Report from Nominating Committee ACTION
10. **ITEMS FROM MEMBERS** INFORMATION
11. **ADJOURNMENT**



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## BOARD OF DIRECTORS MEETING

Friday, December 16, 2011

3:30 p.m. Carpenters Union Hall

910 2<sup>nd</sup> Ave, Marina (on the former Fort Ord)

### MINUTES

1. **CALL TO ORDER AND ROLL CALL** Chair Potter called the December 16, 2011, Board of Directors meeting to order at 3:37 p.m.

#### Fort Ord Reuse Authority Board of Directors:

#### Voting members present (quorum present at call to order)

Chair/Supervisor Potter (County of Monterey)  
1<sup>st</sup> Vice Chair/Mayor Edelen (City of Del Rey Oaks)  
Mayor Pendergrass (City of Sand City)  
Mayor Pro-Tem Kampe (City of Pacific Grove)  
Supervisor Parker (County of Monterey)  
Councilmember Selfridge (City of Monterey)

2<sup>nd</sup> Vice Chair/Mayor Pro-Tem O'Connell  
(City of Marina)  
Councilmember Oglesby (City of Seaside)  
Jim Cook (County of Monterey)  
Councilmember Brown (City of Marina)

Arriving after the roll: Mayor Bachofner (City of Seaside) and Mayor Donohue (City of Salinas)

Absent: Mayor McCloud (City of Carmel-by-the-Sea)

#### Ex-Officio members present:

Nicole Charles (27<sup>th</sup> State Assembly District)  
Justin Wellner (California State University Monterey Bay ("CSUMB"))  
Dr. Doug Garrison (Monterey Peninsula College ("MPC"))  
Debbie Hale (Transportation Agency for Monterey County ("TAMC"))  
Bill Collins (Base Realignment and Closure ("BRAC"))  
COL Joel Clark (United States Army)  
Graham Rice (University of California Santa Cruz ("UCSC"))  
Kenneth Nishi (Marina Coast Water District ("MCWD"))

Arriving after the roll: Hunter Harvath (Monterey Salinas Transit),

Absent: Dr. Shepherd (Monterey Peninsula Unified School District), Hans Poschner (15<sup>th</sup> State Senate District), and Alec Arago (17<sup>th</sup> Congressional District).

2. **PLEDGE OF ALLEGIANCE** – Chair Potter led the Pledge of Allegiance.
3. **ANNOUNCEMENTS, ACKNOWLEDGEMENTS, CORRESPONDENCE**
4. **PUBLIC COMMENT PERIOD** - LeVonne Stone, Director of the Fort Ord Environmental Justice Center reported that the one year anniversary of the Super JTI program initiative graduation, and that jobs are still needed for the community and these graduates.
5. **CONSENT AGENDA** – Approval of the November 18, 2011 meeting minutes. **MOTION to approve the Consent Agenda was made by Mayor Edelen, seconded by Councilmember Oglesby and carried.**

## 6. OLD BUSINESS

a. **Preston Park – disposition** Steve Endsley gave an overview of item 5a ii. Regarding the short-term agreement with Alliance and read the questions submitted to the FORA Board and summarized answers. He stated Alliance has submitted red line comments to the agreements (Annette Thurman). The President of the tenants association stated concerns regarding the quality of the management at the property and having FORA meetings at 3:00 in the afternoon is inconvenient for most tenants. She recommended a study session, a Saturday, or evening meeting in presenting this new management agreement. She also suggested an item by item comparison in a table format that identifies existing and previous agreements. (See letter attached.) Ralph Rubio, with the Carpenters Union stated that the FORA Board has been looking at this issue for several years and exhausted all efforts and supports a sale at market rate. He further stated that FORA is the owner and should exercise its rights as owner and dispose of the property in the most expedient manner. LeVonne Stobe stated she would like to see public involved in the meetings as to what happens in Preston Park and she would like to see a better process to include low income families. Mr. Houlemard said comments of timing of meetings for FORA were established in 1994 and set so that all participants can participate. He said that has been the practice of the Board to have special sessions at different times, however, FORA meeting times are set in the master resolution. With regard to affordable housing and with respect to management of Preston Park, Mr. Houlemard said the intent is to continue the current agreement and to operate slightly below the median prices for rent. He confirmed FORA and Marina will continue to meet for mediation, however the Board has indicated its intention to sell.

i. **Authorize staff to secure updated appraisal** - Supervisor Parker stated that the appraisal and the authorization to sell Preston Park go together and these actions are premature. She said that FORA hasn't seen mediation and doesn't support this action at this time. Mayor ProTem O'Connell said he doesn't see the reason for the appraisal. Mayor Edelen said it's going to end up in the courts but are we getting anywhere in mediation? He said the current value is necessary and that the appraisal was done a few years ago and the market has changed. Mayor ProTem Kampe said he agreed with Mayor Edelen regarding the appraisal and it is the financially responsible thing to do. He said that one of the interests FORA has in selling Preston Park is to develop projects that will provide more for jobs in the community. Councilmember Brown said he agreed with Supervisor Parker and Mayor ProTem O'Connell, and said he feels mediation should continue. Councilmember Oglesby reminded the Board that FORA is mediating in good faith. The question was asked if authority counsel could confirm who owns the property. FORA Counsel Jerry Bowden confirmed that FORA holds clear title and has insured title to Preston Park. Councilmember Oglesby said that it is appropriate to move forward with appraisal. **Mayor Pro Tem Kampe made a motion to move forward with the appraisal Mayor Edelen seconded. 3 nay votes – Supervisor Parker, Councilmember Brown, Mayor ProTem O'Connell.**

**Execute agreement with Alliance for management services** – Supervisor Parker said that it is hard to know what is being changed and needs to see a red lined version before she approves the agreement, and that FORA needs to meet with the tenants. Mr. Houlemard stated that staff could provide the Board with a red lined version at the next Board meeting and staff is willing to meet with the tenants individually and the association. Mayor ProTem O'Connell said the document does not outline the operating income split or indemnify the rights of the City of Marina further noting the City voted to extend the existing agreement for 90 months. Mayor Kampe questioned the need for an interim agreement. Mr. Endsley replied that, at its last meeting, the Board gave the Executive Officer authority to enter into an interim agreement stating there is no time limit yet ninety (90) days might be reasonable to extend with Marina. **Supervisor Parker moved to authorize an extension of the existing contract for 90 days and new redline draft of the agreement in January – seconded by Mayor ProTem O'Connell. VOTE: Ayes: Councilmember Oglesby, Councilmember Selfridge, Jim Cook, Mayor Edelen, Councilmember Brown, Mayor Pendergrass, Supervisor Parker, Mayor ProTem O'Connell, Supervisor Potter. Nays: Mayor ProTem Kampe, Mayor Bachofner, Mayor Donohue.**

iii. **Authorize staff to sell Preston Park** – Mayor ProTem Kampe moved to authorize staff to sell Preston Park, seconded by Mayor Bachofner. Mr. Houlemard reminded the Board that FORA will sunset in 2.5 years and the money needs to be reinvested in order to create jobs in the area. Mr. Cook said FORA is

limited on how they can act on it in the future. **VOTE: Ayes – Mayor Donohue, Jim Cook, Mayor ProTem Kampe, Mayor Bachofner, Councilmember Oglesby, Mayor Pendergrass, Mayor Edelen, Councilmember Selfridge. Nays - Councilmember Brown, Supervisor Parker, Mayor ProTem O'Connell**

- b. **California Central Coast Veterans Cemetery** – Senior Planner, Jonathan Garcia gave a report regarding the California Central Coast Veterans Cemetery stating that in January, 2012, FORA will submit its estimate to the California Department of Veterans Affairs (CDVA) and they will meet with the California Department of Finance to reconcile the State's estimate with FORA's estimate. This will determine the amount of funds needed in the State's Veterans Cemetery Endowment to begin the design work. At a previous FORA Board meeting, Supervisor Parker asked if FORA could provide funding for the Veterans Cemetery. To address this question, staff found a 2006 memo from Authority Counsel addressed to then FORA Chair/Mayor Ila Mettee-McCutcheon. To paraphrase the memo, FORA can only fund those items allowed in the Authority Act and funding a veterans cemetery doesn't appear to be one of those items. LeVonne Stone – the VA cemetery was part of the original reuse plan. Tom Mancini, FORA Representative to the Cemetery Committee stated that the Director of the State Cemetery service said that an amount to be determined for the \$1.5 million project needs to be deposited with the State of California. The Secretary of Finance notifies Mr. Salva (Federal Veterans Administration), who will move on the cemetery grant project. He said that it must be received August 2012 and then could be built by 2013, however the endowment funds are needed. Mr. Mancini suggested the Board consider naming it after Jerry Smith. Supervisor Parker would like to refer the item to the Finance Committee for further discussion. Councilmember Oglesby said he is concerned why the endowment parcel hasn't been sold. Mr. Houlemard said that the Board has supported the location of the Veterans Cemetery. The report was received without exception.
- c. **Receive a report regarding FORA addressing the underserved community accessing job training funds** – Mr. Houlemard gave a PowerPoint presentation which was requested by Councilmember Oglesby and copies were passed out to the board for review. Mr. Houlemard provided a summary (*see attached*) and noted what has been accomplished to date. Member of the public, Adrian Flores, a student of the Superfund program stated that none of the 20 people that participated in the program have been hired as a result of the training. He said that while he applauds FORA for what they have done so far, more needs to be done to provide the community with more jobs.

## 7. NEW BUSINESS

- a. Fiscal Year 10-11 Annual Financial Report (Audit Report) - Executive Officer Houlemard stated that the draft Audit Report had been reviewed by the Finance Committee on December 14, 2011 and recommended the Board accept the auditor's findings. The Board accepted Marcello & Company's audit without exception.

## 8. EXECUTIVE OFFICER'S REPORT

Mr. Houlemard reported that items 8a, b, d and e stood as informational items only.

**Item 8c – i. Adopt recommended salary range adjustments and ii. Approve longevity policy adjustment.** Mr. Houlemard presented the budget to the Board stating that the Board initially established salaries be consistent and slightly above the median with other agencies. He said the Board, Finance Committee and Executive Committee, directed a salary survey be conducted by a professional consultant. He noted that fourteen (14) agencies were surveyed and that FORA salaries are below the median. Mr. Houlemard recommended the Board adopt the new salary ranges in order to maintain compliance with the ongoing FORA policy. He requested approval of the longevity policy which was drafted and approved by the consultant, in order to simplify the language and that former terms used could be inconsistent with labor law. Mr. Cook asked about status of the effect of the redevelopment issue. Mayor O'Connell asked if this action could be considered premature, there may not be the funds to carry this out. Controller Bednarik confirmed there are enough funds to move forward with this issue. Mayor Bachofner stated that he generally supported public agencies and did not take issue with the results of the survey. However, he noted that the area median incomes in the City of Seaside and surrounding communities are significantly less than the salary ranges that the Board is being asked to adopt. Mr. Houlemard reported that FORA has established a policy over 16 years now and staff members are doing two and three jobs and specifically noted staff such as the Executive

Assistant/Deputy Clerk, who has also been performing human resources functions. He said that staff has been paired back in order to have a net budget savings, noting two inspectors were laid-off. Mr. Houlemard said that retention is an issue and believes in the salary range adjustment. Councilmember Oglesby stated that as part of the Finance Committee "we did not rush through it", he said FORA is unique. **Motion to approve made by Mayor Edelen, Seconded by Councilmember Oglesby and carried.**

**9. ITEMS FROM MEMBERS - none**

**10. ADJOURNMENT** – The December 16, 2011 meeting of the FORA Board was adjourned by Chair Potter at 5:12 adjourned.

Minutes prepared by Daylene Alliman, Deputy Clerk

Approved by \_\_\_\_\_

Michael A. Houlemard, Jr., Executive Officer/Clerk

**DRAFT**

## FORT ORD REUSE AUTHORITY BOARD REPORT

### OLD BUSINESS

<b>Subject:</b>	Preston Park	
<b>Meeting Date:</b>	January 13, 2012	<b>ACTION/INFORMATION</b>
<b>Agenda Number:</b>	6a	

**RECOMMENDATION(S):**

- i. Second vote on motions from the December 16, 2011 Board meeting
  - 1. Authorize staff to secure an updated appraisal for Preston Park
  - 2. Take second vote on motion for an up-to 90-day extension of the previous three-Party Preston Park Management Agreement
  - 3. Authorize staff to sell Preston Park
- ii. First vote on New Alliance/FORA Preston Park Management Agreement (**Attachment A**)
- iii. Disposition update

**BACKGROUND/DISCUSSION:**

Recommendations 1, 2, and 3 were motions from the December 16, 2011, Board meeting that did not receive unanimous votes of all Fort Ord Reuse Authority ("FORA") Board members and are now scheduled for a second vote. These items will each require a majority vote of the Board to be approved.

Since FORA is currently set to sunset on June 30, 2014, FORA has a fiduciary responsibility to its members and to the public to obtain fair market value for Preston Park and use its portion of the proceeds to meet remaining Capital Improvement Program obligations. FORA's primary options are either to obtain fair market value from the City of Marina ("Marina") or from a third party. Since the most recent appraisal was completed in August 2010, securing an updated appraisal with current market assumptions would be the next step in moving forward with the sale of Preston Park. Board approval of recommendations #1 and #3 are consistent with Board instructions given to staff at the November 18, 2011 closed session and provide staff direction to begin marketing Preston Park for sale. This action would not prevent continued negotiations with Marina. However, it would give the Board a more defined timeline for obtaining fair market value for Preston Park.

The previous three-Party (Marina, FORA, and Alliance) Preston Park Management Agreement expired on December 31, 2011. During closed session at its November 18, 2011 meeting, the Board authorized the Executive Officer to enter into an interim two-Party (FORA and Alliance) management agreement for up to 90 days should the proposed new two-Party management agreement not be in place by December 31, 2011. Recommendation #2 stems from a motion from the floor at the December 16 meeting that favored extending the existing three-Party management agreement. This item was not unanimous. So, it would have to receive a majority vote to pass. Also, because motion #2 did not pass, the Executive Officer proceeded with the Board's authority granted on November 18, 2011 and entered into an interim 90-day agreement with Alliance, effective January 1, 2012. Otherwise, there would have been a gap in the term of the management agreement for the facility. Board approval of recommendation

#2 would direct FORA staff to execute up to a 90-day extension to the expired three-Party agreement. If passed, the earliest that FORA could terminate the interim two-Party 90-day agreement would be 60 days from the time FORA gives notice to Alliance. Therefore, the earliest that any three-Party interim agreement could be implemented would be mid-March 2012.

Approval of recommendation ii. would allow FORA to proceed with a two-Party Preston Park Management Agreement through December 31, 2012. This allows continued professional management of the facility until the property is sold. Staff recommends holding the rents constant at the prior July 2011 levels and using the Board approved FY 10-11 budget for the balance of FY 11-12. All capital improvements would continue to be evaluated by FORA on a case-by-case basis with priority given to tenant health and safety. FORA would also ensure that Marina would continue to receive its 50% of revenues from the property and all existing low-moderate rental requirements be honored. FORA staff has attached a tracked changes version of the proposed two-Party Preston Park Management Agreement to show changes from the three-Party agreement. FORA staff is working to schedule a meeting with the Preston Park Tenants Association this month as requested by Board members.

Under iii., FORA and Marina initiated Preston Park sale negotiations over two years ago. An appraisal jointly commissioned by FORA and Marina and conducted by CB Richard Ellis, Inc. was carried out in August 2010 and established a value for Preston Park. Earlier this year, FORA and Marina agreed to conduct mediation meetings in an attempt to conclude negotiations. Marina and FORA representatives attended a mediation meeting with retired judge Richard Silver on August 2, 2011. A second mediation session was held on October 6, 2011. Judge Silver spoke to the Board in closed session on October 14, 2011. As of this writing, Marina and FORA have continued to participate in the mediation process and are working to schedule a mediation session in January or February 2012.

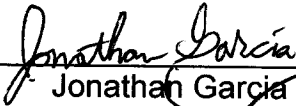
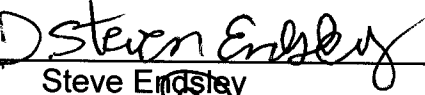

**FISCAL IMPACT:**

Reviewed by FORA Controller 

Costs associated with Preston Park disposition including legal and mediation costs are included in the approved FY 11-12 operating budget. An updated appraisal of Preston Park is expected to cost approximately \$5,000. Costs associated with staff oversight of Alliance can be absorbed in the FY 11-12 operating budget.

**COORDINATION:**

Marina, Executive Committee, Authority Counsel, special legal counsel, Judicial Arbitration and Mediation Services, Inc. ("JAMS"), Preston Park ad hoc Negotiating Committee, and Alliance.

Prepared by  Jonathan Garcia      Reviewed by  Steve Erdstey  
Approved by  Michael A. Houlemard, Jr.

**PRESTON PARK  
MANAGEMENT AGREEMENT  
FOR  
PRESTON PARK**

THIS MANAGEMENT AGREEMENT ("Agreement") is dated for reference on \_\_\_\_\_, 2012. It is made and entered into on December 7, 2007, by and between the Fort Ord Reuse Authority, a California public entity, hereinafter referred to as "Owner," and Alliance Residential, LLC, an Arizona Limited Liability Company, hereinafter referred to as "Communities, Inc., a Delaware corporation, ("Operator" and the City of Marina, a California charter city, hereinafter referred to as "Agent," as follows:").

**RECITALS**

1. ~~Owner is the owner of~~ holds exclusive title to certain improved real property and the improvements thereon commonly known as Preston Park consisting of 354 of 354 units ("Units") ~~[2 are used for management purposes]~~ located at 682 Wahl Court, Marina, CA 93933 (the "Property").
2. ~~FORA has designated City as its Agent for the purposes of this Agreement;~~
3. ~~Owner requires the services of a professional management company to perform administrative and financial services. Owner has determined that Operator has the requisite skill, training and experience to properly perform the services specified herein.~~
2. 4. Operator holds through an authorized officer and legal authority, including a California real estate brokerage license as required by the laws of the State of California, needed to manage the Property.
3. The purpose of this Agreement is to articulate the terms under which Owner and Operator will share responsibilities for the Property.

**AGREEMENT**

NOW, THEREFORE, ~~in~~ in consideration of the promises in this Agreement and ~~covenants herein contained and~~ for other good and valuable consideration, the receipt of which is hereby acknowledged, ~~Owner, Operator and Agent~~ Owner agree as follows:

**ARTICLE I**

**1. APPOINTMENT OF OPERATOR AND AGENT**

~~Owner hereby appoints Operator and Operator hereby accepts appointment on the terms and conditions set forth below as Owner's exclusive agent to manage, operate, supervise, and lease the Property and to perform those actions necessary to fulfill Owner's Operator's obligations to these government agencies with authority over the Property Owner except as provided herein. Owner confirms its previous appointment of City as its Agent for the purposes of this Agreement. All subsequent uses of the term~~



"Owner" in this Agreement shall mean "Agent" except as otherwise indicated.

## ARTICLE II

### 2. TERM

2.1 TERM. ~~The term of this~~ This Agreement shall commence on January 1, 2008, ~~unless an earlier date is agreed to by the City, current operator and Operator~~ 2012, and shall continue ~~and include to~~ midnight, December 31, 2011 ~~unless terminated~~ 2012 or until the Fort Ord Reuse Authority ("FORA") transfers title to the Property except as provided herein or extended in writing by mutual agreement thereto. ~~section 2.2., whichever occurs first.~~

2.2 EARLY TERMINATION. ~~Notwithstanding the provisions of Section 2.1 above to the contrary, this Agreement and the obligations of the parties hereunder shall cease, upon~~ This Agreement is terminable on the occurrence of any of the following:

(a) If Owner fails to comply, after notice and an opportunity to cure, with any rule, order, determination, ordinance or law of any federal, state, county, or municipal authority. In that event, Operator may terminate this Agreement upon thirty (30) days written notice to Owner unless Owner is in good faith contesting same, ~~pursuant to~~ under Section 4.2(g) ~~herein.~~

(b) If either party defaults in the performance of ~~any of its obligations hereunder~~ a material obligation and such default continues for thirty (30) days after written notice from the non-defaulting party to the defaulting party specifying such default, ~~the party not in default may terminate this Agreement upon ten (10) days written notice to the defaulting party.~~ Notwithstanding the above, if a cure has commenced and the defaulting party is diligently pursuing said cure within said 30-day period then the party not in default shall not ~~effect~~ affect the termination.

(c) Owner or Operator may terminate this Agreement with cause upon sixty (60) days written notice to the other party. It is understood that the respective rights and obligations of the parties shall continue to be governed by this Agreement until the effective date of such termination.

2.3 DUTIES UPON TERMINATION. Upon the effective date of termination of this Agreement for any reason:

(a) Operator shall have no further right to act on behalf of Owner or to disburse any of Owner's funds;

(b) Operator will immediately deliver to Owner all Books, Records, and Documents (as herein defined) maintained ~~by it pursuant to~~ under this Agreement and do all that is reasonably necessary to facilitate the orderly transition of Property management ~~of the Property~~;

(c) Operator shall render to Owner an accounting of all funds (i. e. bank accounts) of Owner held by Operator relating to property and shall immediately cause such funds to be paid to Owner; and

(d) Operator shall perform all reporting and accounting functions hereunder for the period from the date of the last report or accounting to the date of termination.

### ARTICLE III

#### 3. COMPENSATION-

3.1 Management Fee. In addition to other reimbursements to Operator provided for elsewhere in this Agreement, Owner shall pay Operator ~~on a monthly basis for its services hereunder a management fee of 2.5% of the total gross revenue~~ Gross Revenue, as defined in Section 3.2 below, ~~received.~~ Owner shall pay Management Fees shall be paid in monthly installments at the beginning of each month, or as incurred, and. These fees shall be deductible paid from the Trust Account as part of the operating expenses of the Property ~~on or before.~~

3.2 Gross Revenue. For purposes of computing the ~~10th of each month from collection of said gross revenue. In~~ Management Fee, the event of commencement or termination of this Agreement ~~other than on the first or last day of a month, respectively, the compensation of Operator shall be prorated to the effective date of such commencement or termination.~~

~~3.2~~ term "Gross Revenue. The entire amount of" means all revenue derived from the Property, determined on a cash basis, from (a) tenant rentals collected pursuant to tenant leases of apartment units, for each month during the Term hereof; ~~provided that there shall be excluded from tenant rentals any of this Agreement; excluding tenant security deposits (except as provided below); (b) forfeited cleaning, tenant security and damage deposits forfeited by tenants in such period; (c) laundry and vending machines income receipts; (d) any and all other revenue from the operation of the Property received and relating to during the period in question~~ Term of this Agreement; (e) proceeds from rental interruption insurance, but not any other insurance proceeds or proceeds from third-party damage claims, and (f) ~~any other sums and charges collected in connection with termination of the tenant leases.~~ tenant's right of occupancy. Gross Revenue does not include the proceeds of (i) any sale, exchange, refinancing, condemnation, or other disposition of all or any part of the Property, (ii) any loans to Owner whether or not secured by all or any part of the Property, (iii) any capital expenditures or funds deposited to cover costs of operations made by Owner, and (iv) any insurance policy (other than rental interruption insurance or proceeds from third-party damage claims).

3.3 Unused Distribution of net profits to City of Marina and FORA. As provided in Government Code section 67678(b)(2), Operator shall distribute net profit from operation of the Property as follows

Fifty percent (50%) to the City of Marina, and

Fifty percent (50%) to FORA.

3.4 Capital Improvement Management Fee. Each year in the annual budget process, the On or before March 31, 2012 Operator shall submit to Owner an annual Capital Improvements Improvement Program describing ("CIP"). The CIP shall describe recommended capital improvements. The Owner and Agent shall approve in writing the Capital improvement projects to be implemented/undertaken each Fiscal Year/year. Owner will pay to Operator a construction management fee for Capital Improvements managed by Operator. That fee shall be equal to six percent (6%) of the total project cost as set forth in an executed written proposal or agreement, as. Each project must be approved in writing by Owner, as. Operator's fee will be increased or decreased by all change orders relating thereto. An initial payment of ten percent (10%) of construction costs shall be made upon execution of a written proposal or agreement, and services approved by Owner. Operator's CIP management fee shall be computed and paid based on monthly construction invoices describing the work performed by the project manager. Such fees and capital projects will be paid from Capital Reserve funds. Approval of the construction manager by Owner or Owner's designee shall be obtained by Operator prior to commencement Account. 3.5. Definitions For Section 3:

3.5.1. Capital Improvements and Maintenance. For purposes of any capital improvements as defined in this Section 3.4-

A, a capital item is distinguished from maintenance in that it has the effect of extending a capital improvement is intended to extend the useful life of a fixed asset, whereas repairs and maintenance have the effect merely of keeping/keep the asset in its customary state of operating efficiency. Minor improvements to structures or site involving a total expenditure of less than Five Thousand Dollars (\$5,000) are not considered a capital improvement. The replacement/improvements. Replacement of structural elements, even if they cost/costing more than Five Thousand Dollars (\$5,000), i.e., slurry seals, due to caused by normal wear and tear, are considered non-routine maintenance and not a capital improvement because they do not extend the useful life the property. "Extraordinary maintenance," referring to those emergency items that need immediate replacement prior to the capital planned schedule for replacement, are provided for in the annual budget so that urgent replacements or repairs may be addressed immediately rather than delaying until the scheduled larger capital project.

3.5.2. Routine maintenance: Simple, small/small-scale activities (usually requiring only minimal skills or training) associated with regular (daily, weekly, monthly, etc.) and general upkeep of a building, equipment, machine, plant, or system against normal wear and tear. Examples: Those items listed in the budget classified as general Repairs and Maintenance.

*Examples:* Those items listed in the budget of which are classified as general Repairs and Maintenance-

Non3.5.3. Non-routine maintenance: Activities that require specialized skills or training that are associated with irregular or out of the ordinary upkeep of a building, equipment, machine, plant, or system.- Examples: Slurry seal, carpet and flooring replacements, appliance replacements, minor roof and gutter repairs, dryer vent cleaning.

*Examples:* Slurry Seal, Carpet and Flooring Replacements, Modest roof repairs, Gutter repairs, dryer vent

cleaning.

3.5.4. Capital work items/construction: Complex or larger scale activity associated with buildings, structures, or other types of real property or improvements including alterations, painting, remodeling, transportation of construction and furnishing goods and material etc. — Examples: Replacement of windows, exterior building repaint, interior unit remodeling or remediation, re-plumbing projects, signage development, roof replacement.

*Examples:* Replacement of windows, Exterior building repaint, Interior Unit remodeling or remediation, re-plumbing projects, Signage development, Roof replacement.

~~3.5 — Transactions With Affiliates. With the prior approval and direction of Owner, (which approval is implicitly granted to the extent obtained in the Budget), Operator may obtain services and materials, including, but not limited to, advertising, consulting, computer hardware and software, forms for use at the Property, contract services, accounting and bookkeeping services and building materials, through the organization subsidiaries or affiliates of Operator for the benefit of the Property, provided the quality of service and the price thereof is competitive with comparable prices and services offered by third parties, and the costs therefore shall be reimbursed by Owner. All discounts, rebates and other savings realized as a result of such services being supplied by an affiliate of Operator shall inure solely to the benefit of Owner.~~

~~3.6 — Owner hereby authorizes Operator to pay from the Trust Account all fees, reimbursements and other amounts payable to Operator or any third party hereunder.~~

#### ~~ARTICLE IV~~

#### 4. DUTIES AND RESPONSIBILITIES

~~4.1 GENERAL OPERATOR'S RESPONSIBILITIES OF OPERATOR. Subject to the provisions of this Agreement, Operator is hereby authorized to manage, operate and lease~~responsible for management of the Property in accordance with the standards of practice of professional managers of similar properties in the location of the Property and to Monterey Peninsula area. Operator will provide other customary management services at the Property for related to the ordinary and usual business and affairs of the Property as are consistent with the standards of management, operation, leasing, and maintenance of a building or buildings of the type located on the Property. Said similar property in the area. Those services shall include but not be limited to the Scope of Services described in Exhibit "A" hereto. ~~Operator shall provide~~also establish and implement a mutually agreeable overall business plan and shall operate within the annual budget as approved by Owner. If Owner requests Operator to perform services beyond the ordinary and usual business and affairs of the Property, Operator shall be entitled to additional compensation for same, which shall be negotiated by the parties.

~~4.2 SPECIFIC DUTIES AND RESPONSIBILITIES OF OPERATOR. Operator agrees and is hereby granted authority to do the following:~~ undertake the functions described in this section.

~~(a) — Collection of Monies.~~

4.2.1 Collections Practice. Operator shall use commercially reasonable efforts and means to collect the rents and other charges due from tenants, parking charges, and all other charges, and revenues, and, when ~~When~~ deemed economically appropriate by a sound business practice, Operator, ~~to will~~ institute legal proceedings on behalf of Owner for collection in connection with the operation of the Property ~~to collect unpaid debts.~~ Owner hereby authorizes Operator to request, demand, collect, and receive funds for collection thereof in accordance with all applicable laws, regulations, ordinances or administrative grievance procedures and for the lawful dispossession of tenants, guests, and other persons from Property. ~~Counsel shall not be used for actions taken in small claims court. Amounts expended by Operator for use of non-employee consultants or experts, including attorneys, in the performance of these duties shall be reimbursed by Owner.~~ Owner agrees to reimburse Operator's expenses of collection, provided such expenditures have been approved in writing by Owner.

~~(b)~~4.2.2 Books, Records, and Documentation.

~~(i)~~4.2.2.1. Operator shall maintain at its principal office or on the Property, complete and separate books, records and documents relating to the management and operation of the Property, including without limitation ~~all contracts, original leases, amendments, extensions and agreements relating to contracts and leases, annual contributions contracts, files, correspondence with tenants and prospective tenants, documentation of tenant eligibility, computations of rental adjustments, maintenance and preventive maintenance programs, schedules and logs, tenant finish and construction records, inventories of personal property and equipment, correspondence with vendors, job descriptions, business correspondence with federal, state, county, and municipal authorities, brochures, and accounts held or maintained by Operator (all such books, records, and documents being referred to herein as "Books, Records, and Documents").~~ Books Documentation"). Operator shall maintain all financial books and records of account shall be maintained in conformance with generally accepted accounting principles consistently applied at Operator's sole expense. Except as approved in writing by Owner, all accounting functions shall be performed by those personnel of Operator whose compensation is payable solely by Operator without reimbursement by Owner. Owner shall have the right to examine, audit and take originals and copies of said Books, Records and Documents at Operator's principal office with two day's written advance notice of two business days to Operator.

~~(ii)~~4.2.2.2. Upon request, Operator shall make ~~all Books, Records~~ financial books and Documents records available for examination, audit, inspection and copying by ~~duly authorized representatives of any public housing agency or authority officials with regulatory power and/or jurisdiction authority over the Operator or Property to the extent required by federal or state law.~~

~~(iii)~~4.2.2.3. On or before fifteen (15) days following the end of each calendar month, Operator shall ~~provide~~ deliver or cause to be delivered to Owner a standard Financial Reporting Package ~~to Owner by the 15th day of each month during the Term for the preceding month.~~ The Financial Reporting Package shall include: Operations an unaudited financial statements and various reports as follows: Summary, Variance Analysis, Market Survey, Income Statement, Balance Sheet,

~~Projected Cash Flow, Trial Balance, Bank Reconciliation, Trust Account Bank Statement, Aged Receivables, Capital Expenditures Statement, Request for Reserves Withdrawal, report of all disbursements, General Ledger detail report of all transactions in all accounts, of Management Activities including summary of tenant comments and complaints, and a summary of any Tenant's Association meeting that occurs during the period in question. All reporting will utilize, Variance Analysis, Market Survey, Income statement showing the results of operation of the Property for the preceding calendar month and the Fiscal Year to date, and comparison of actual income and expenses with the income and expenses projected in the Budget, Balance Sheet, Trial Balance, General Ledger detail report of all transactions in all accounts, summary of Account Receivable and Account Payable, Bank Reconciliation and Bank Statements for all three bank accounts, Capital Expenditures Statement, and Request for Reserves Withdrawal. All reporting will use Operator's standard chart of accounts and the Yardi software unless otherwise stipulated and as agreed to by Owner and Operator in writing.~~

~~(iv) — On or before fifteen (15) days following 4.2.3 Annual Audit. At the end of each calendar month, Owner shall deliver or cause to be delivered to Owner (i) an unaudited income the term as described in Section 2.1 herein and expense statement showing the results of operations as of the Property for the preceding calendar month and the Fiscal Year to date; (ii) a comparison of actual income and expenses with the income and expenses projected in the Budget; and (iii) cash balances for reserves and the Trust Account as of the last day of such month. Operator shall at its option (a) preserve all invoices for a period of four (4) years, or (b) at the expiration of each Fiscal Year deliver all invoices to Owner. Such statements and computations shall be prepared from the books of account of the Property.~~

~~(c) — Audit. date of termination, Operator shall arrange and coordinate audits an audit of the books and records of the Property made by a firm of Certified Public Accountants certified public accountants as approved by Owner. The first audit shall cover eighteen (18) months from January 1, 2008 through June 30, 2009. Subsequent audits shall cover two year periods beginning July 1, 2009; except that if the Agreement is terminated before the end of any two year audit period, said audit shall be conducted through the date of termination. Operator shall also have said accountants prepare, or have a firm of Certified Public Accountants prepare, for execution by Owner all forms, reports, and returns required by any federal, state, county, or municipal authority relating to the Property. The cost of said audits audit is a cost of the Property that shall be reflected in the annual budget approved by Owner.~~

~~(d) 4.2.4 Repairs and Maintenance. Operator will use commercially reasonable efforts to maintain the condition of the Property in the condition prescribed by Owner, will regularly inspect the readily accessible areas of Property, will take commercially reasonable efforts against fire, vandalism, burglary and trespass on the Property, and will arrange to make all necessary repairs. Operator's maintenance duties shall include making all necessary repairs for the Property and trash removal. Consistent with provisions of FORA and City of Marina FORA ordinances and policies on local hire and prevailing wages, Operator may employ independent contractors and other employees necessary to properly maintain, manage and operate the Property. Any contracts contract over \$20,000 per year for an item which is not covered within the approved annual budget shall be presented to Owner for approval in advance of the execution of such a contract by Operator, unless the expenditure is for emergency repairs that are immediately necessary for the preservation or safety of the Property, repairs for the health, safety or welfare of people or property, repairs to avoid~~

suspension of necessary services to the Property, or to avoid criminal or civil liability to Owner or Operator. Furthermore, approval shall be required to incur any Property expense pertaining to operations that exceeds the budgeted annual amount for that line item, unless the expenditure is for emergency repairs that are immediately necessary for the preservation or safety of the Property, repairs for the health, safety or welfare of people or property, repairs to avoid suspension of necessary services to the Property, or to avoid criminal or civil liability to Owner or Operator. Notwithstanding the foregoing, any increase in a Property expense which does not increase the budgeted amounts for such expense by more than 5% and which, when combined with any decreases in budgeted amounts made by Operator, does not cause an increase in the overall budget, shall not require approval. Any expense which does require approval shall be either put out to bid by Operator or Operator shall have obtained at least three quotes for the cost of such item, unless the expenditure is for emergency repairs that are immediately necessary for the preservation or safety of the Property, repairs for the health, safety or welfare of people or property, repairs to avoid suspension of necessary services to the Property, or to avoid criminal or civil liability to Owner or Operator.

~~(e)~~ 4.2.5 Rental of Housing Units. Operator's renting of the Units shall be done in conformance with the terms and conditions of conform to this Agreement and the Regulatory Agreement between the Redevelopment Agency of the City of Marina and FORA ("Regulatory Agreement"), including the following policies:

~~(i)~~ 4.2.5.1. The Units shall be rented on a six-month lease term or month-to-month basis except as may otherwise be required by the Regulatory Agreement.

~~(ii)~~ 4.2.5.2 Rents established rental rates for the Units for fiscal year 2007-08 (July 1, 2007 - June 30, 2008) as set forth in Exhibit "B" hereto will be applied until changed by Owner. Any amendment to the rental rate schedule shall be approved in advance in writing by Owner.

~~(iii)~~ 4.2.5.3. Applicants for the Units must qualify based upon the applicant's ability to pay and maximum occupancy guidelines published by the State of California at the time of renting and applicable occupancy standards for the Units. Fifty one (51) of the Units are to be rented at below market rate affordable rents ("Affordable Rents") of which thirty two (32) of the Units shall be considered low and nineteen (19) of the units shall be considered very low, as required by defined in the Regulatory Agreement. The Affordable Rents are set forth in Exhibit B and may be amended annually. Any increase in the Affordable Rents shall be subject to the approval of Owner, and in accordance with the terms of the Regulatory Agreement. Applicants of units to be rented at the Affordable Rents must meet the same requirements as above, as well as qualify based upon maximum income limits and minimum occupancy guidelines according to rules and regulations promulgated by the State of California.

~~(iv)~~ 4.2.5.4. Operator shall select tenants for available units as follows:

~~(A)~~ Notwithstanding the provisions of the Section 6.2 of the Regulatory

~~Agreement.~~ Operator shall first offer and rent available units to applicants on the basis of the following preferences, which have been determined by Owner and for which an applicant must qualify at the time of initial occupancy of a unit. No more than a total of 35% of the housing units shall be offered for lease at any one time on the basis of the preferences listed in (B) – (E) below. Owner shall indemnify, defend and hold Operator, its officers, agents and employees, harmless from any cost, damage, claim, liability, suit, cause of action or other legal proceedings which may be brought or claimed against Operator as a result of implementing Owner's tenant selection criteria set forth below and as may be amended by Owner. Owner agrees to promptly notify Operator of any changes to the tenant selection criteria. For all preferences, a letter from the applicant's employer verifying the applicant's eligibility will be required when submitting the application. Incomplete applications will not be accepted.

(B) **FIRST PREFERENCE:** People who work at least twenty five (25) hours per week in a business or agency with a physical location within the City of Marina—limits. Sales people or consultants who do business in Marina, but who do not have a physical location in Marina will not be considered as working in Marina.

(C) **SECOND PREFERENCE:** Employees of public safety departments, including police, fire, and public works employees of government jurisdictions in Monterey County.

(D) **THIRD PREFERENCE:** Employees of public or private education facilities, including colleges and universities located in Marina, on the former Fort Ord, and employees of the Monterey Peninsula Unified School District.

(E) **FOURTH PREFERENCE:** Employees of entities located on property known as "the former Fort Ord." A letter from the employer stating that the physical location where the applicant works is in this area must be provided."

(F) **Affordable Units.** Notwithstanding the foregoing, preferences (B), (C), (D) and (E) will be subordinate to the affordability requirements contained in paragraph (iii) above. In addition, said preferences will be subordinate to the requirement that, on average, twenty percent (20%) of the housing units at the Property will be affordable units."

(G) **Rental Agreements.** The prior Operator prepared and submitted to Owner for its approval and Owner has approved said rental agreements which shall be used by Operator for the property. If Operator desires to change the approved rental agreements, Operator shall seek Owner's comments and approval of the terms and conditions thereof. Owner's approval of the proposed rental agreements shall not be unreasonably withheld.

~~(f)~~ 4.2.6. Insurance.

(i) 4.2.6.1 Fire Coverage. Operator shall obtain and keep in force fire and extended coverage insurance and other customary property insurance for the Property, the cost of insurance to be paid out of the Trust Account as approved by the Budget.



(ii) 4.2.6.2. Comprehensive General Liability Coverage. Operator shall obtain and keep in force a Comprehensive General Liability (CGL) insurance policy ~~and to cover Owner and Operator,~~ in amounts no less than \$1,000,000 per occurrence of bodily injury and property damage, and not less than \$2,000,000 policy general aggregate and an excess or umbrella liability policy in an amount not less than \$10,000,000 per occurrence basis, the cost of insurance to be paid out of the Trust Account as approved by the Budget. Such insurance shall name Owner as a named insured and shall provide Owner and Lender with ~~3-~~30-day prior written notice of cancellations or material change in coverage. Operator shall be named as an additional insured on such CGL policy.

(iii) 4.2.6.3. E and O Coverage. Operator shall obtain and keep in force Error and Omission insurance in amount of at least \$1,000,000 per wrongful act and \$1,000,000 in the aggregate. Operator shall obtain such insurance within 30 days of the date of this Agreement, and notwithstanding any other provision herein, all costs of insurance under this Section 4.2(f)(iii) shall be at the expense of Operator.

(iv) 4.2.6.4 Automobile Coverage. Operator shall obtain and keep in force commercial automobile liability insurance (where applicable) in an amount not less than \$1,000,000 (combined single limit), coverage shall include leased, hired and non-owned vehicles, the cost of insurance to be paid out of the Trust Account as approved by the Budget.

(v) 4.2.6.5 Minimizing Insurance Cost. Operator shall not knowingly permit the use of the Property for any purpose which might void any policy of insurance relating to the Property, increase the premium otherwise payable or render any loss there under uncollectible.

(vi) 4.2.6.6 Workers' Comp. Operator shall cause to be placed and kept in force workers' compensation insurance up to the statutory limit, including broad form, all-states coverage and employer's liability of at least \$500,000. Such insurance shall provide Owner with 30-day prior written notice of cancellations or material change in coverage. Workers' compensation insurance expenses associated with employees employed for the direct benefit of Owner or the Property shall be included in the approved budget for the Property.

(vii) 4.2.6.7 Selection of Carrier. All of the insurance policies required by this Agreement shall (a) be written by insurance companies which are licensed to do business in California, or obtained through a duly authorized surplus line insurance agent or otherwise in conformity with the laws of California, with a rating of not less than the third (3rd) highest rating category by anyone of the Rating Agencies or with an A.M. Best Company, Inc. rating of "A-" or higher and a financial size category of not less than VI; (b) specifically identify the Owner, ~~Agent~~ and Operator as insureds and Lender as an additional insured; mortgagee; loss payee and additional insured with the Owner ~~and Agent~~ as the named insured; and (c) include a provision requiring the insurance company to notify the Lender and the Owner in writing no less than thirty (30) days prior to any cancellation, non-renewal or material change in the terms and conditions of coverage. In addition, the Operator shall provide the Owner and Lender with certificates of insurance and certified copies of all insurance contracts required by this Agreement within thirty (30) days of their inception

and subsequent renewals.

~~(g)~~ 4.2.7 Taxes and Assessments.

~~(i)~~ On Owner's behalf, Operator shall process payments of Owner's debt service on the Property as directed in writing by Owner.

~~(ii)~~ On Owner's behalf, Operator shall also 4.2.7.1 Operator shall process payments of all taxes, impositions, or assessments relating to the ownership or operation of the Property, including, without limitation, improvement assessments, possessory interest and real estate taxes, personal property taxes, taxes on income or rents, or any charges similar to or in lieu of any of the foregoing. Prior to payment, Operator shall verify bills for possessory interest and real estate, personal property or other taxes, improvement assessments, and other similar charges which are due or may become due against the Property on the basis of ownership or operation of the Property. If requested by Owner, Operator shall render advice and assistance to Owner in the negotiation and prosecution of all claims for the reduction or equalization of property tax assessments and other tax assessments affecting the Property. The parties agree, however, that such advice and assistance goes beyond the ordinary management responsibilities contemplated by this Agreement and, as such, if Operator provides such services, they shall be at an additional cost to Owner.

~~(iii)~~ 4.2.7.2 Operator shall annually make a review of, and submit to Owner a report on, all real estate, personal property and other taxes and all assessments affecting the Property.

~~(h)~~ 4.2.8 Compliance with Legal Requirements. Operator shall use reasonable means to become aware of, and shall take such actions as Operator deems prudent and necessary to comply with any laws, orders, public housing agency plans or requirements affecting the use or operation of the Property by any federal, state, county, or municipal agency of authority, including but not limited to compliance with and participation in administrative grievance procedures, provided that if the cost of compliance in any instance exceeds \$10,000.00, Operator shall not expend funds for compliance without Owner's prior written consent. Operator shall promptly notify Owner in writing of all such orders, notices, plans or requirements requiring expenditure of non-budgeted amounts. Operator, however, shall not take any action as long as Owner is contesting, or has affirmed its intention to contest and promptly institutes proceedings contesting any law, order, plan or requirement. Operator shall prepare, execute, and, after obtaining the written approval of Owner, thereby file any customary and standard reports and documents required by an applicable governmental authority. The filing of any special report or document shall not be included as part of this Agreement and shall be an additional cost to Owner. Operator covenants and agrees to obtain and maintain all licenses and permits necessary for the conduct of its business as Operator of the Property. Amounts expended by Operator for use of non-employee consultants or experts, including attorneys, in the performance of these duties shall be reimbursed by Owner provided that such amounts are approved in writing by Owner prior to Operator incurring such expenses. Operator shall comply with the terms of the Regulatory Agreement, a copy of which has been provided previously to

Operator. Owner shall indemnify, defend and hold Operator, its officers, agents and employees, harmless from any cost, damage, claim, liability, suit, cause of action or other legal proceedings which may be brought or claimed against Operator based on said compliance provided that Operator is in compliance with the Regulatory Agreement.

(i) 4.2.9 Energy and Water Conservation. Operator shall use prudent and customary means to use and control utilities and water use at the Property in a manner to minimize total costs and satisfy Owner's obligations to tenants.

(j) 4.2.10 Advertising. Operator shall advertise the Property for rent at such times and by use of such media as it deems necessary subject to the annual budget approved or Owner's prior written approval.

(k) 4.2.11 Employment of Personnel.

(i) 4.2.11.1. Operator will hire, train, supervise, direct the work of, pay, and discharge all personnel necessary for operation of the Property. Such personnel shall in every instance be employees of Operator and not of Owner. Owner shall have no right to supervise or direct such employees. All costs associated with the employment of personnel necessary for the on-site operation of the Property, including, but not limited to, salaries, wages, the costs of hiring, termination, training, uniforms, educational and motivational programs, other compensation and fringe benefits will be included in the approved budget for the Property. The term "fringe benefits" as used herein shall mean and include the employer's contribution of F.I.C.A., unemployment compensation and other employment taxes, worker's compensation, group life and accident and health insurance premiums, 401K contributions, performance bonuses, and disability and other similar benefits paid or payable by Operator to its employees in other apartment properties operated by Operator. subject to the annual budget approved by the Owner. The expenses of the Executive personnel of Operator who are assigned to on-site Property management for twenty percent (20%) of their time or more may also be included in the approved budget. Any litigation costs or expenses, including reasonable attorneys' fees and costs and wage penalties relating to the employment of on-site personnel are reimbursable to Operator by Owner, unless Operator has been negligent in its employment practices. Operator will not discriminate against any employee or applicant for employment in violation of any applicable law. The terms "employees" or "personnel" shall be deemed to mean and include employment of a casual, temporary, or part-time nature.

(ii) ~~The salaries, wages, other compensation, benefits (including without limitation social security, taxes, worker's compensation insurance, and the like), travel, training and other~~ 4.2.11.2. Operator may treat Property-related expenses of all on-site, field, or maintenance employees of Operator working on or with respect to the Property shall be compensable business expenses of the Property and. These expenses include worker's compensation insurance, travel and training. Such management expenses must be included in the approved budget for the Property. The property related expenses of Executive personnel of Operator who are assigned to on-site Property management for twenty percent (20%) of their time or more may also be included in the

approved budget. Operator shall provide to Owner, at Owner's request, payroll and time sheets for all such employees. Notwithstanding the foregoing, ~~wages and other~~ employee compensation of ~~employees~~ workers performing services for Operator at properties other than the Property, shall be reimbursed to Operator *pro rata* based on the portion of working hours involved in services to the Property and such other properties; provided that Operator shall be reimbursed for any roving maintenance supervisor providing services to the Property at the rate of \$50 per hour for such services (or such amount as may reflected in the approved Budget). Operator shall solicit and receive approval from Owner to ~~utilize~~ use the services of a roving maintenance supervisor prior to services being rendered.

~~(iii)~~ 4.2.11.3. Non-compensable Salaries. The salaries, wages, other compensation, benefits, travel, entertainment, and other expenses ~~shall be non-reimbursable expenses of Operator with respect to the following persons working on or in respect to the Property:~~

~~(A)~~ of Operator's executive personnel of Operator charged with general administration of Operator's performance of this Agreement; and

~~(B)~~ off-site record-keeping personnel (off-site) are non-reimbursable expenses of Operator.

~~(i)~~ 4.2.11.4. Leasing. Operator shall make diligent efforts to secure and/or retain tenants for the Property consistent with the character and status of the Property as outlined in the established Resident Selection Criteria. Operator shall make diligent efforts to assure that all leases and leasing practices conform to all laws, ordinances, regulations, public housing agency plans or annual contributions contracts applicable to the Property. Prior to the execution of a new lease by a tenant, Operator shall in good faith conduct such investigations of the financial responsibility and general reputation of the prospective tenant as are ordinarily and customarily performed by the managers of similar properties in the location of the Property.

~~(m)~~ 4.2.11.5 Management Structure. Operator has previously provided an oral description of its management structure, roles and assurances as to the frequency of management visits to the Property and said description is attached as Exhibit "C" hereto.

~~(n)~~ 4.2.11.6. Tenant Grievance Procedure. Operator has previously provided an oral description of its tenant grievance procedure and said procedure is attached as Exhibit "D" hereto."

~~(o)~~ Prior to executing this Agreement, Operator shall obtain and thereafter maintain, at its expense, a business license from the City of Marina.

## ARTICLE V

### 5 OWNER'S EXPENSES OF OWNER

5.1 Except as otherwise provided in this Agreement, all ~~contractual obligations incurred by~~

~~Operator to third parties in the course of managing the Property pursuant to this Agreement shall be obligations of Operator. All reasonable expenses incurred by Operator shall be commercially reasonable in the rental housing industry for similar properties and shall be reimbursable or otherwise payable by Owner as described in section 4.2(d). All reasonable expenses, including fees for necessary legal advice, incurred by Operator in performance of its obligations under this Agreement described as reimbursable shall be reimbursed by Owner, subject to pre-approval as described in this Agreement. Such such expenses and reimbursables shall be paid with funds drawn from the Trust Account in accordance with Article VII hereof. Owner's responsibility for such expenses and reimbursables, including future attorneys' fees and costs relating to issues which arose during the term of this Agreement remain in full force and effect until resolved even if this Agreement is terminated before such resolution. survive termination of this Agreement. Owner's expenses shall be limited to the amount included in the annual budget as approved by the Owner.~~

5.2 Operator may pay the following expenses directly from the Trust Account subject to ~~the other~~ conditions and limitations set forth elsewhere in this Agreement:

- ~~a) Cost of on-site computer hardware and telecommunications equipment;~~
- ~~b) Cost of forms, papers, ledgers, and other supplies and equipment used by Operator at the Property, and postage, messenger and overnight delivery services;~~
- ~~c) Cost to correct any violation of law relative to the leasing, management, use, operation, repair, maintenance or occupancy of the Property, or relative to the rules, regulations or orders of any national or local Board of Fire Underwriters or other similar body;~~
- ~~d) Actual cost of making all repairs, decorations and alterations of the Property;~~
- ~~e) Employment fees, including costs of advertising, relating to the Property Personnel;~~
- ~~f) Third party costs of collection of delinquent rentals, including a collection agency;~~
- ~~g) Legal fees of attorneys in accordance with this Agreement;~~
- ~~h) Cost of capital expenditures, to the extent approved in the current year Approved Budget or otherwise allowed by this Agreement;~~
- ~~i) Cost of printed checks for each bank account maintained by Operator relating to the Property;~~
- ~~j) Leasing bonuses and other incentive compensation payments;~~
- ~~k) Cost of service contracts and agreements;~~
- ~~l) Cost of utilities;~~
- ~~m) Cost of advertising as to the extent set forth in the Approved Budget;~~
- ~~n) Cost of real estate and personal property taxes, improvement assessments and other like charges;~~
- ~~o) Fee(s) as provided in Section 3.1 through 3.5 hereof;~~
- ~~p) Periodic payments on account of any debts and liability of Owner pursuant to Section 4.2(g) hereof;~~
- ~~q) Costs of Owner's Liability Insurance and workers' compensation insurance;~~
- ~~r) Costs of the property management software package that is utilized for management of the Property and Operator training class and related travel~~

~~expenses for the use of such and software; and  
s) Employee related costs as set forth in Section 4.2(k) hereof.~~

~~t) Reasonable administrative expenses including of the Agent's staff Owner devoted to oversight of the Management Agreement and Capital Project Manager Agreement(s) and liaison with residents. These expenses are Agreement limited to the amount included in the Preston Park approved annual budget as approved by the Owner and Agent.~~

~~The foregoing enumeration of reimbursable expenses is not intended to be exclusive, and subject to the conditions and limitations set forth elsewhere in this Agreement, Operator shall be entitled to make disbursements from the Trust Account for other expenses incurred or paid by Operator to the extent those expenses are related to operation of the Property, except to the extent Section 6.1 prohibits reimbursement.~~

## ~~ARTICLE VI~~

### EXPENSES OF OPERATOR

#### 6. OPERATOR'S EXPENSES

6.1 Operator agrees to pay all salaries, wages and other compensation and ~~fringe~~ benefits of all personnel described in Section 4.2(k)(ii).11 of this Agreement as an Operator's expense of Operator without reimbursement by Owner, except as otherwise provided therein. Operator shall pay other expenses which are expressly (a) payable by Operator or (b) not reimbursable hereunder. Operator shall also pay (without reimbursement) any costs of providing corporate office facilities and supplies for such off-site corporate personnel and other expenses incurred by Operator which are not incurred in the performance of duties and obligations required by this Agreement.

## ~~ARTICLE VII~~

#### 7. BANK ACCOUNTS

##### 7.1 ESTABLISHMENT OF ACCOUNTS.

~~(a) 7.1.1 Trust Account. Operator shall establish a separate bank account for the Property in such Name as Owner shall designate and at a bank selected by Operator (the "Trust Account"). Operator shall promptly deposit all rents and other funds collected by Operator at least monthly in respect of the Property, including, without limitation, any and all advance rents, into the Trust Account and shall not deposit funds attributable to any other property into the Trust Account. Operator shall inform such bank in writing that the funds deposited in the Trust Account are held in trust for Owner. Operator shall use funds in the account to pay the operating expenses of the Property and any other payments relative to the Property as allowed by the terms of this Agreement. Operator shall establish a working capital reserve equal to \$20,000 to be retained within the Trust Account to make up for operating shortfalls.~~

~~Operator shall establish a working capital reserve of \$20,000 to be retained within the Trust~~

~~Account to make up for operating shortfalls. Any such reserve shall be replenished to its starting level on a monthly basis, unless Owner determines otherwise. Operator will be reimbursed by Owner within one (1) month of the effective date of this Agreement for Owner approved and reasonable pre-transition expenses incurred by Operator.~~

~~(b) — Where law requires that tenant security deposits in respect of the Property be separately maintained, a separate bank account for the Property will be opened by Operator~~

7.1.2 Security Deposit Trust Account. Operator shall establish a separate bank account for tenant security deposits at a bank designated by Operator (the "Security Deposit Trust Account") into which such security deposits shall be deposited. The Security Deposit Trust Account will be (a) maintained in accordance with applicable law and (b) used only for maintaining tenant security deposits for the Property. Operator shall inform the bank in writing that the funds are held in trust for Owner. Operator shall maintain detailed records of all security deposits deposited in the Security Deposit Trust Account, and such records will be open for inspection by Owner's employees or appointees.

~~(c) —~~7.1.3. Reserve Account. Operator shall establish a separate bank account ('Reserve Account') at a depository selected by Operator as agent for Owner, for the purpose of depositing funds for the Property in amounts Owner shall instruct and in such name as Owner shall designate. Deposits shall conform in all respects to depository and security requirements pertaining to Local Agency cash contained in California Government Code Title 5., Division 2., Part 1., Chapter 4., Article 2., Sections 53630 to 53686. To the extent sufficient funds are available, Operator shall promptly deposit funds in amounts instructed by Owner into the Reserve Account, and shall not deposit funds belonging or attributable to any other party or property into the Reserve Account. Operator shall execute and submit to Owner copies of bank documents demonstrating that funds deposited in the Reserve Account are held in trust for Owner. Operator shall not withdraw funds from the Reserve Account without express written consent of Owner.

7.1.4. Cash. Operator may also maintain a petty cash fund from money in the Trust Account and make payments therefrom in a manner consistent with the usual course of dealing with such funds in the property management business.

7.1.5. Distributions from Trust Account. Provided sufficient funds are available in the Trust Account, Operator will, on or about the fifteenth (15th ) of each month, disburse funds via wire transfer to Owner to an account as stipulated by Owner to Operator in writing.

7.1.6. Broker / Insurance. The designated broker for Operator shall be an authorized signer on the Trust Account, the Security Deposit Trust Account, and the Reserve Account. In addition, the designated broker may authorize any person who qualifies as an authorized signatory on such accounts. ~~For purposes of Section 7.1 I, the~~ The name of the designated broker shall be communicated by Operator to Owner in writing. Authorized signatories on such accounts shall have authority to make disbursements from such accounts for the purpose of fulfilling Operator's obligations hereunder. Funds over Five Thousand Dollars (\$5,000.00) may be withdrawn from such accounts in accordance with this Article VII, only upon the signature of at least two (2) individuals who

have been granted that authority by Operator. All persons who are authorized Authorized signatories or persons who in any way handle funds for the Property (~~onsite, whether on or offsite~~) off site, shall be insured for dishonesty in the minimum amount of Three Million Dollars (\$3,000,000.00) per occurrence or loss with not more than a Twenty Five Thousand Dollars (\$25,000.00) deductible. A certificate confirming such insurance naming Operator and Owner as named insureds and confirming that it will not be modified or cancelled without at least thirty (30) days prior written notice to Owner shall be delivered to Owner prior to the Fee Commencement Date."

~~(d) Operator may also maintain a petty cash fund from money in the Trust Account and make payments therefrom in a manner consistent with the usual course of dealing with such funds in the property management business. Such petty cash fund shall be maintained subject to the Operator's policies and procedures.~~

~~(e) Pursuant to other provisions contained in this Agreement and provided sufficient funds are available in the Trust Account, Operator will, on or about the fifteenth (15th) of each month, disburse funds via wire transfer to Owner to an account as stipulated by Owner to Operator in writing.~~

~~(f) Operator shall establish a separate bank account ('Reserve Account') at a depository selected by Operator as agent for Owner, for the purpose of depositing funds for the Property in amounts Owner shall instruct and in such name as Owner shall designate. Deposits shall conform in all respects to depository and security requirements pertaining to Local Agency cash contained in California Government Code Title 5., Division 2., Part 1., Chapter 4., Article 2., Sections 53630 to 53686. To the extent sufficient funds are available, Operator shall promptly deposit funds in amounts instructed by Owner into the Reserve Account, and shall not deposit funds belonging or attributable to any other party or property into the Reserve Account. Operator shall execute and submit to Owner copies of bank documents demonstrating that funds deposited in the Reserve Account are held in trust for Owner. Operator shall not withdraw funds from the Reserve Account without express written consent of Owner.~~

7.2 FUNDS PROVIDED BY OWNER. If the funds collected by Operator from operation of the Property are not sufficient to pay authorized expenses incurred in operation of the Property and to make all reimbursements to Operator pursuant hereto, Operator shall submit to Owner a statement showing such shortfall and identifying the bills and charges requiring payment, and Owner shall release reserve funds sufficient to pay same to the Operator.

## ARTICLE VIII

### 8. ANNUAL BUDGETS

8.1 SUBMISSION OF BUDGETS. Operator shall prepare and submit to Owner by ~~December~~March 31 of each year, with the exception of the first fiscal year when the proposed budget will be due to Owner from Operator by January 31, for Owner's approval proposed budgets of (a) the estimated income and expenses of the Property and (b) the estimated capital expenditures for the Property for the next fiscal year or other operating period as may be agreed by the parties. The



proposed budgets will be ~~made assuming~~ maintained under accrual basis accounting procedures or such basis as prescribed, in writing, by Owner. Operator will provide an explanation for the numbers used in such budgets. Operator shall make available executive personnel to discuss the proposed budget at a minimum of one meeting of the ~~Marina City Council~~ FORA Board of Directors and other meetings as requested.

8.2 SUBMISSION OF OTHER REPORTS. When submitting such proposed budgets, Operator shall also include: rental rate recommendations with analysis if appropriate; a listing of all capital improvement and all repair, maintenance, renovation and replacement expenditures (together with estimated costs for each item) anticipated to be made in the upcoming operating period; a payroll analysis including a salary or wage description for every on-site employee, including any fringe benefits reimbursable hereunder, of Operator whose compensation is reimbursable hereunder;

8.3 APPROVAL OF BUDGETS. ~~Subject to notation in Article 8.5 below, if~~ If Operator submits a timely budget recommendation, and Owner does not disapprove it in writing to Operator's proposed budgets before July 1 of each year, the budgets shall be 1, Operator's proposed budget is deemed approved. If an annual budget has not been approved by ~~said~~ that date, Operator shall continue to operate the Property under the approved budget for the previous ~~fiscal~~ year until Operator and Owner can agree on the new budget or the termination of this Agreement.

8.4 COMPLIANCE WITH BUDGETS. ~~Said~~ Approved budgets, ~~after approval by Owner,~~ shall be used by Operator as a guide for the actual operation of the Property. Approval shall be required to exceed any expense which exceeds the budgeted annual amount for that line item. Notwithstanding the foregoing, any increase in a Property expense which does not increase the budgeted amounts for such expense by more than 5% and which, when combined with any decreases in budgeted amounts made by Operator, does not cause an increase in the overall budget, shall not require approval.

8.5 SUBJECT TO IMPLEMENTATION AGREEMENT. Owner and Operator acknowledge that ~~the approved budgets and the operation of~~ lease revenues from the Property is ~~are~~ subject to the ~~terms and conditions of that certain~~ Implementation Agreement dated May 1, 2001, 2001 ("Implementation Agreement") by and between the ~~Fort Ord Reuse Authority~~ ("FORA") and the City of Marina. Operator ~~hereby~~ acknowledges the previous receipt of a copy of the Implementation Agreement. Operator shall ~~advise the City and notify FORA~~ advise Owner of any ~~operational or budget~~ changed financial conditions in order for FORA to assure itself that the ~~provisions of~~ provisions of allow Owner to determine compliance with the Implementation Agreement ~~are being met.~~ Owner shall indemnify, defend and hold Operator, its officers, agents and employees, harmless from any cost, damage, claim, liability, suit, cause of action or other legal proceedings which may be brought or claimed against Operator as a result of the Implementation Agreement as set forth in this Section 8.5.

## ARTICLE IX

### 9. GENERAL PROVISIONS

9.1 RELATIONSHIP. ~~It is understood and agreed that all contracts and obligations~~ Contracts entered into by Operator with respect to the Property as provided for, and consistent with, this Agreement shall be the obligations of Owner ~~and~~ Owner agrees to indemnify, defend and hold harmless Operator from any liability or claims ~~thereof: with counsel of Owner's choice, and~~ arising from such contracts. Operator agrees that to the extent Operator deems it necessary or prudent to have separate counsel from that of Owner, Operator shall bear all fees, costs, and expenses associated therewith.

Operator and Owner shall not be construed as joint venturers or partners, and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Operator understands and agrees that the relationship with Owner is that of independent contractor working on behalf of Owner and that it will not represent to anyone that its relationship to Owner is other than that of independent contractor. Notwithstanding the foregoing, Operator acknowledges and understands that it is acting as ~~Agent~~ agent of Owner and as such owes Owner the duties a reasonable investor would expect if managing his own property.

9.2 ASSIGNMENT. This agreement shall not be assigned by Operator without the prior written approval of Owner which approval may be withheld in Owner's sole and absolute discretion.

9.3 BENEFITS AND OBLIGATIONS. Subject to the provisions of Section 9.2 above, the covenants and agreements herein contained shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, successors, and assigns.

9.4 INDEMNIFICATION.

~~(a)~~ 9.4.1 Operator shall indemnify, hold harmless and defend ~~FORA and City,~~ Owner, its officers, and employees and agents, with counsel reasonably satisfactory to Owner, for, from and against any and all liabilities, claims, causes of action, losses, demands and expenses whatsoever including, but not limited to attorneys' fees, court costs and other litigation expenses and costs arising out of or in connection with the maintenance or operation of the Property or this Agreement (collectively the "Claims"), except to the extent arising directly from the gross negligence or willful misconduct of ~~FORA and or City~~ Owner and the loss of use of property following and resulting from damage or destruction. The indemnification by Operator contained in this Section 9.4 is in addition to any other indemnification obligations of Operator contained in this Agreement. ~~FORA and City~~ Owner shall approve the liability insurance coverage procured by Operator ~~pursuant to Section 4.2(f)(ii),~~ and, once approved, ~~FORA and City~~ Owner shall not be entitled to assert the inadequacy, in any respect, of the coverage. Operator's defense and indemnity obligation set forth in this Section ~~9.4(a).1~~ shall not apply to Claims that are not covered under the commercial general liability insurance policy procured by Operator pursuant to ~~Section 4.2(f)(ii),~~ 6.2 of this Agreement unless Operator has engaged in gross negligence or willful misconduct.

~~(b)~~ ~~FORA and City~~ 9.4.2 Owner shall indemnify Operator (and Operator's affiliates, partners, directors, shareholders, officers, employees and agents) with counsel for, from and against any and all Claims which arise out of the gross negligence or willful misconduct of ~~Owner, FORA or~~

City.

~~(c)~~9.4.3 The indemnification and hold harmless obligations of the parties in this Section 9.4 shall survive the expiration or earlier termination of this Agreement.

9.5 NOTICES. All notices provided for in this Agreement shall be in writing and served by registered or certified mail, postage prepaid, at the following addresses until such time as written notice of a change of address is given to the other party:

TO OWNER: FORT ORD REUSE AUTHORITY  
Attention: Executive Officer  
920 2<sup>nd</sup> Ave., Suite A  
Marina, California 93933

~~TO AGENT: CITY OF MARINA  
Attention: City Manager  
City Hall  
211 Hillcrest Avenue  
Marina, California 93933~~

TO OPERATOR: ALLIANCE RESIDENTIAL, LLC  
Attn: James M. Krohn  
2415 East Camelback Road, Suite 600  
Phoenix, Arizona 85016

9.6 ENTIRE AGREEMENT. This Agreement represents the entire agreement between the parties with respect to the subject matter hereof. No alteration, modification, or interpretation of this Agreement shall be binding unless in writing and signed by both parties. Titles of articles, sections and paragraphs are for convenience only and neither limit nor amplify the provisions of this Agreement itself.

9.7 SEVERABILITY. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to any person or circumstance, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

~~9.8 DISPUTE RESOLUTION. If any dispute arises between the parties as to proper interpretation or application of this Agreement, the parties shall first meet and confer in a good faith attempt to resolve the matter between themselves. If the dispute is not resolved by meeting and conferring, the matter shall be submitted for formal mediation to a mediator selected mutually by the parties. The expenses of such mediation shall be shared equally between the parties. If the dispute is not or cannot be resolved by mediation, the parties may mutually agree (but only as to those issues of the matter not resolved by mediation) to submit their dispute to arbitration. Before commencement of the arbitration, the parties may elect to have the arbitration proceed on an informal basis; however, if the parties are unable so to agree,~~

~~then the arbitration shall be conducted in accordance with the rules of the American Arbitration Association, provided, however, that nothing contained in this Agreement shall require the parties to use the American Arbitration Association. The decision of the arbitrator shall be binding, unless within thirty (30) days after issuance of the arbitrator's written decision, either party files an action in court. Venue and jurisdiction for any such action between the parties shall lie in the Superior Court for the County of Monterey.~~

9.8 DISPUTE RESOLUTION. Disputes arising under this agreement shall be resolved as follows:

9.8.1. *Prevention of Claims: Meet and confer (10 days)*

The parties agree that they share an interest in preventing misunderstandings that could become claims against one another under this agreement. The parties agree to attempt to identify and discuss in advance any areas of potential misunderstanding that could lead to a dispute. If either party identifies an issue of disagreement, the parties agree to engage in a face-to-face discussion of the matter within ten calendar days of the initial written request. If the parties are unable to amicably resolve such disagreements or misunderstandings, they agree to enlist the informal assistance of a third party (who is mutually acceptable to both parties) to help them reach an accord. The cost of engaging any third party for the informal assistance described in the preceding sentence shall be shared equally by the parties. If any disagreement remains unresolved for ten days after delivery of the written request to engage in face-to-face discussions, the parties agree to submit it to mediation in accordance with the provisions set forth in Section 9.8.2.

9.8.2. *Mediation (60 days)*

Either party may demand, and shall be entitled to, mediation of any dispute arising under this agreement at any time after completing the meet and confer process described in subsection (a). Mediation shall commence not more than thirty (30) days after the initial mediation demand and must be concluded not more than sixty (60) days after the date of the first mediation demand. If mediation is not concluded within that time, then either party may demand arbitration.

Mediation shall be submitted first to a mediator with at least ten years experience in real estate management or related field. The mediator shall be selected by mutual agreement of the parties. Failing such mutual agreement, a mediator shall be selected by the presiding judge of the Monterey County Superior Court. The cost of the mediator shall be shared equally by the parties. In the interest of promoting resolution of the dispute, nothing said, done or produced by either party at the mediation may be discussed or repeated outside of the mediation or offered as evidence in any subsequent proceeding. The parties acknowledge the confidentiality of mediation as required by Evidence Code 1152.5.

No mediator shall submit, and no arbitrator or court shall consider, any mediator recommendations, declarations, or findings unless the parties give their written consent to the proposed mediator statement.

9.8.3. Arbitration (90 days)

If mediation fails to resolve the dispute, the mediator shall become the arbitrator, and shall proceed to dispose of the case under such rules or procedures as he or she shall select. If the mediator is unable or unwilling to serve as arbitrator, the parties shall select an arbitrator by mutual agreement. Failing such agreement, the arbitrator shall be selected by the Presiding Judge of the Superior Court. The decision of the arbitrator shall be final and not subject to judicial litigation. The cost of the arbitrator shall be shared equally by the parties.

Arbitration shall be commenced within sixty (60) days of the arbitration demand and concluded within ninety (90) days of arbitration demand.

With respect to monetary disputes only, arbitration shall follow the so-called "baseball arbitration" rule in which the arbitrator is required to select an award from among the final offers presented by the contending parties. The arbitrator may not render an award that compromises between the final offers.

Unless the arbitrator selects another set of rules, the arbitration shall be conducted under the J.A.M.S. Endispute Streamlined Arbitration Rules and Procedures, but not necessarily under the auspices of J.A.M.S. Upon mutual agreement, the parties may agree to arbitrate under an alternative scheme or statute. The Arbitrator may award damages according to proof. Judgment may be entered on the arbitrator's award in any court of competent jurisdiction.

**NOTICE: IN AGREEING TO THE FOREGOING PROVISION, YOU ARE WAIVING YOUR RIGHT TO HAVE YOUR RIGHTS UNDER THIS AGREEMENT TRIED IN A COURT OF LAW OR EQUITY. THAT MEANS YOU ARE GIVING UP YOUR RIGHT TO TRIAL BY JUDGE OR JURY. YOU ARE ALSO GIVING UP YOUR RIGHT TO DISCOVERY AND APPEAL EXCEPT AS PROVIDED IN THE ARBITRATION RULES. IF YOU REFUSE TO ARBITRATE YOUR DISPUTE AFTER A PROPER DEMAND FOR ARBITRATION HAS BEEN MADE, YOU CAN BE FORCED TO ARBITRATE OR HAVE AN AWARD ENTERED AGAINST YOU BY DEFAULT. YOUR AGREEMENT TO ARBITRATE IS VOLUNTARY.**

**BY INITIALING THIS PROVISION BELOW, THE PARTIES AFFIRM THAT THEY HAVE READ AND UNDERSTOOD THE FOREGOING ARBITRATION PROVISIONS AND AGREE TO SUBMIT ANY DISPUTES UNDER THIS AGREEMENT TO NEUTRAL BINDING ARBITRATION AS PROVIDED IN THIS AGREEMENT.**

ALLIANCE'S' INITIALS \_\_\_\_\_

FORA'S: INITIALS \_\_\_\_\_

9.8.4. Attorney's Fees.

If arbitration or suit is brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover as an element of costs of suit, and not as damages, a reasonable attorneys' fee to be fixed by the arbitrator or Court. The "prevailing party" shall be the party entitled to recover costs of suit, whether or not the suit proceeds to arbitrator's award or judgment. A party not entitled to recover costs shall not recover attorneys' fees. No sum for attorneys' fees shall be counted in calculating the amount of an award or judgment for purposes of determining whether a party is entitled to recover costs or attorneys' fees.

If either party initiates litigation without first participating in good faith in the alternative forms of dispute resolution specified in this agreement, that party shall not be entitled to recover any amount as attorneys' fees or costs of suit even if such entitlement is established by statute.

9.9 APPLICABLE LAW. This agreement shall be construed and enforced in accordance with the laws of the State of California. Venue shall take place in the County of Monterey, State of California.

9.10 OPERATOR. The term "Operator" as used in this Agreement shall include any corporate subsidiaries or affiliates of Operator who perform service, in, on or about the Property in connection with this Agreement.

~~9.11 ATTORNEY'S FEES. If any controversy, claim, dispute or litigation between the parties arises out of this Agreement, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees, costs and expenses.~~

~~9.129.11~~ NON-WAIVER. No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided in this Agreement.

~~9.1312~~ HEADINGS. All headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

9.1413 INTERPRETATION. This Agreement has been negotiated by and between representatives of the parties hereto and their staffs, all persons knowledgeable in the subject matter of this Agreement, which was then reviewed by the respective legal counsel of each party. Accordingly, any rule of law (including Civil Code §1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable

manner to effect the purpose of the parties and this Agreement.

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

FORT ORD REUSE AUTHORITY

---

Michael A. Houlemard Jr.  
Executive Officer

Alliance Residential, LLC, an Arizona Limited Liability Company

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By

**EXHIBIT A**  
**Preston Park Management Agreement**

**SCOPE OF SERVICES**

Manage, direct and supervise using commercially reasonable efforts, all aspects of property management for Preston Park which includes, but is not limited to:

- 1 Placement of residents in residential apartment homes with appropriate leases and addendums as prudent or required by law.
- 2 Collect all monthly rents and fees. Institute legal action for the collection of monies owed. Administer rent increases in close cooperation with ~~the City~~FORA.
- 3 Maintain community standards of physical and social environment, while keeping within budget guidelines. Respond to requests for maintenance by tenants and ~~City~~FORA promptly. Schedule and conduct annual unit inspections and follow-up annual inspections with corrective work where required.
- 4 Hire, train and supervise all staff needed to effectively manage the community and provide a description of the staffing plan to Owner. Maintain access to multilingual resources to assist with applicants and tenants of Limited English Proficiency, said access may be accomplished through a "language hotline" or similar service so long as it's responsive to the needs of Owner, applicants and tenants.
- 5 Develop and maintain a list of qualified prospective renters. Develop and maintain a list of backup renters. Accept applications for apartment homes and maintain eligibility standards. Maintain preference lists as specified. Seek to maintain full occupancy with a minimum of vacancies.
- 6 Prepare an affirmative fair housing marketing plan. Prepare and circulate marketing materials; e.g. advertisements, brochures, displays, disclosure documents, contracts and program web site. Participate in community meetings as requested.
- 7 Analyze and review financial requirements for operations with ~~the City of Marina~~Owner; prepare annual budget recommendations for Owner. Work within the approved budget; obtain ~~owner~~Owner authorization for variances from the budget. Analyze and prepare multi-year capital improvements plan and make recommendations to ~~City~~Owner about financing and implementation of the plan.
- 8 Develop and implement written office procedures; train and supervise office and leasing personnel.
- 9 Maintain financial records including, but not limited to, the tracking of receipts and deposits, journal entries, bank deposits, accounts payable and accounts receivable.



Generate monthly financial reports. Prepare required periodic reports to Owner.

- 10 Report periodically to ~~Agent~~Owner to ensure that ~~Agent~~Owner is properly informed (through regular contact and periodic formal meetings) as to the current status of all operations so that the ~~Agent~~CityOwner may make proper and timely decisions on all strategic matters.
- 11 Manage the selection process for outside contractors including landscaping, trash removal, pest control, custodial, etc; prepare recommendations for Board approval. Continually inspect property, recording deficiencies and taking necessary action within budgetary allocations.
- 12 Prepare tenant handbook and circulate written communications to tenants periodically, such as quarterly newsletter, in format and content approved by the CityOwner. Participate in meetings and events with tenants as requested.
- 13 Explore opportunities for coordination/joint programs with housing developments at California State University-Monterey Bay.
- 14 Other duties as needed.

**EXHIBIT B**

**Preston Park Management Agreement**  
July 1, 2007

**AFFORDABLE RENTAL RATES**

Rates may be established each year.

EXHIBIT "C"

Preston Park Management Agreement

MANAGEMENT STRUCTURE

Every year on June 1, Alliance will provide the names of the people associated with the management positions as described on the organization chart.-

**The Senior Management Team for Preston Park and Abrams Park:**

~~Regina Leachman~~**Corinne Carmody**, Regional Manager

~~Greg Beeler~~**Steve Keller**, Regional Maintenance Supervisor

~~Kelly Ogan~~**Amy Corcoran**, Regional Training Manager

~~Amy Guerrero~~**Jennifer Barrett**, Regional Marketing Manager

~~Kellie Hughes~~**Annette Thurman**, Vice President of Operations

~~Regina Leachman~~**Corinne Carmody**, Regional Manager, has an office at ~~Schoonover Park~~ in Walnut Creek, California. She will be at the communities at least two days a week and ~~will have or to the capacity to spend additional time as needed.~~ Regina extent mutually agreed upon by Owner and Operator. Corinne will be responsible for all compliance training related to the approved below market rate rental program.

~~Greg Beeler~~**Steve Keller**, Regional Maintenance Supervisor, will perform monthly site inspections in addition to overseeing any capital projects that require completion. ~~Greg~~Steve will spend no less than ~~two days~~ one day per month at the community and possibly more depending on the capital project requirements.

~~Kelly Ogan~~**Amy Corcoran** and ~~Amy Guerrero~~**Jennifer Barrett**, Regional Training Manager and Regional Marketing Manager, ~~will spend no less than one day each month at the site providing~~ shall provide leasing and customer service training and marketing resources. ~~Kelly~~Amy and ~~Amy~~Jennifer are also available on an as needed basis for one-on-one training.

~~Kellie Hughes~~**Annette Thurman**, Vice President of Operations, will be at the site no less than once per month.

The team above is available to meet with ~~the City of Marina~~ FORA as needed. Owner is to provide operator with an annual calendar of expected meetings during transition period.

## **EXHIBIT D**

### **Preston Park Management Agreement**

#### **TENANT GRIEVANCE PROCEDURE**

Note: All resident issues will be resolved within the guidelines set by the ~~City of Marina~~ FORA, Alliance Communities Inc., and State and Federal Fair Housing Laws.

**12-15-10**

#### **~~PRESTON AND ABRAMS PARKS~~ PARK GRIEVANCE PROCEDURE**

##### ***I. Definitions applicable to the grievance procedure***

- A. **Grievance:** Any dispute pertaining to a lease violation, maintenance charge or other disagreements with respect to Management's action or failure to act in accordance with the individual Tenant's lease or Management's Policies or regulations that adversely affects the individual Tenant's rights, duties, welfare or status.
- B. **Elements of due process:** An eviction action or a termination of tenancy in a State court in which the following procedural safeguards are required:
  1. Adequate notice to the Tenant of the grounds for terminating the tenancy and for eviction;
  2. Right of the Tenant to be represented by counsel;
  3. Opportunity for the Tenant to refute the evidence presented by Management, including the right to confront and cross examine witnesses and to present any affirmative legal or equitable defense which the Tenant may have;
  4. A decision on the merits of the case.
- C. **Hearing Officer:** A neutral party selected by the ~~City of Marina~~ FORA to hear grievances and render a decision. ~~The City of Marina~~ FORA has selected the Conflict Resolution and Mediation Center of Monterey County to be the Hearing Officer for grievances at ~~Preston and Abrams Parks~~ Park. If the Mediation Center of Monterey County is not available for the Grievance Hearing, the ~~City of Marina~~ FORA shall choose another Hearing Officer who is a neutral third party not involved in the management decisions at ~~Preston and Abrams Parks~~ Park and has experience and knowledge of management practices and procedures for comparable properties and has experience in mediation.
- D. **Tenant:** The adult person (or persons other than a live-in aide) who resides in the unit at ~~Preston or Abrams Parks~~ Park and who executed the lease with Alliance Residential or its predecessor(s).
- E. **Management:** The property management company for ~~Preston and Abrams Parks~~ is Alliance

Residential.

- F. Management Policies: Rules and/or regulations contained within the Tenant's valid and most recent lease and any subsequent amendments thereto.
- G. Working days: For the purpose of these procedures, working days means the scheduled working days of ~~the City of Marina~~ FORA.
- H. Tenant's designated representative: A person that the Tenant has designated in writing to represent him/her in this grievance procedure or a legal document naming a person that represents the Tenant in such matters. The written designation along with the address and contact information for designated representative shall be placed in the Tenant's file. All correspondence related to this grievance procedure shall be distributed to both the Tenant and the designative representative.

## ***II. Applicability of this grievance procedure***

The purpose of this Grievance Procedure is to set forth the requirements, standards and criteria to assure that Tenants of Preston ~~and Abrams~~ Parks have a procedure to dispute an act or failure to act by Management (see above for definition of grievance). The Grievance Procedure only applies to grievances lodged by Tenants who lived at Preston ~~or Abrams Parks~~ Park at the time the alleged dispute occurred.

This grievance procedure shall be applicable to all individual grievances (as defined in Section I above) between a Tenant and Management. The right to a grievance shall apply to disputes over the application of Management's policies to the detriment of a Tenant but shall not apply to the Management policies, class action lawsuits or evictions. Management policies may be discussed with the ~~City of Marina Housing Coordinator~~ designated FORA staff representative. Class action lawsuits and evictions are heard in a court of law and receive due process in that manner.

The grievance procedure may not be used as a forum for initiating or negotiating policy changes between a group or groups of tenants and ~~the City of Marina and/or the Fort Ord Reuse Authority (for Preston Park only)~~ FORA. Such requests may be made to the ~~City of Marina Housing Coordinator~~ designated FORA staff representative.

## ***III. Filing a Grievance and Informal Meeting***

Any grievance must be made in writing at the Alliance Residential Management Office, located at 682 Wahl Court, Marina, CA 93933, **within twenty (20) working calendar days after the grievable event.**

As soon as the grievance is received it will be reviewed by Management to be certain that neither of the exclusions in Paragraph II applies to the grievance. Should one of the exclusions apply, the Tenant or designated representative will be notified in writing that the matter raised is not subject to this grievance procedure, with the reason(s), that the grievance is dismissed and appropriate venue for

the Tenant or designated representative to contact.

If neither of the exclusions cited above apply, the Tenant or designated representative will be contacted **within ten (10) working days** to arrange a mutually convenient time to meet so the grievance may be discussed informally and resolved. Management will assign a Staff Representative (usually the Business Manager) to meet with Tenant or designated representative to discuss the grievance informally and attempt to resolve the matter without a further hearing. At this informal meeting the Tenant or designated representative will present the grievance and the Staff Representative will attempt to resolve the grievance to the satisfaction of both parties.

Within **five (5) working days following the informal meeting**, Management shall prepare and either hand deliver or mail to the Tenant or designated representative a summary of the discussion that must specify: the names of the Tenant(s) and all participants at the meeting, the date(s) of meetings, the nature of the grievance, the proposed disposition of the grievance and the specific reasons, and the Tenant's rights to a Grievance Hearing, and, if not satisfied with the disposition of the grievance, the procedure to either respond and have comments placed in the Tenants file or request a Grievance Hearing. A copy of this summary shall also be placed in the Tenant's file. A receipt signed by the Tenant or designated representative or return receipt for delivery of certified mail, whether signed or unsigned, will be sufficient proof of time of delivery for the summary of the informal discussion.

#### ***IV. Grievance Hearing***

If the Tenant is dissatisfied with the proposed disposition of the grievance arrived in the informal meeting, the Tenant or designated representative may submit a written request for a Grievance Hearing **no later than ten (10) working days after the summary of the informal meeting is received**.

A Tenant's request for a Grievance Hearing shall be addressed to the Regional Manager c/o Alliance Residential, 682 Wahl Court, Marina, CA 93933. The written request shall specify:

- The factual basis for the grievance, including any sections of the Tenant's lease or written Management policies allegedly violated;
- The action of relief sought from Management; and
- Several dates and times **in the following fifteen (15) working days** when the Tenant or designated representative can attend a grievance hearing.

If the Tenant or designated representative requests a Grievance Hearing in a timely manner, Management shall schedule a hearing on the grievance at the earliest time possible for the Tenant or designated representative, Management and the Hearing Officer. A written notice specifying the time, place and procedures governing the hearing will be either hand delivered or mailed to the Tenant or designated representative.

If the Tenant or designated representative fails to request a Grievance Hearing **within ten (10) working days** after receiving the proposed disposition of the grievance, Management's decision rendered at the informal meeting becomes final and Management is not obligated to offer the

Tenant or designated representative a Grievance Hearing unless the Tenant or designated representative can show good cause why s/he failed to proceed in accordance with the procedure. Failure to request a Grievance Hearing does not affect the Tenant's right to contest the Management's decision in court.

#### ***V. Scheduled hearing***

When a or designated representative submits a timely request for a grievance hearing, Management will, **within three (3) working days**, contact the Hearing Officer to schedule the hearing on one of the dates and times indicated by the Tenant or designated representative. If the Hearing Officer is not available for one or more of the times provided by the Tenant or designated representative during those ten working days, Management will schedule a convenient time for the Grievance Hearing for all parties as soon as possible.

#### ***VI. Procedures governing the Grievance Hearing***

The Tenant shall be afforded a fair hearing, which shall include:

- A. The opportunity to examine before the hearing any Management documents, including records and regulations, that are directly relevant to the hearing.
- B. The Tenant or designated representative shall be allowed to copy any such documents. If Management does not make the document available for examination, Management cannot rely on such document at the grievance hearing.
- C. The Tenant may be represented by counsel or other person chosen as the Tenant's representative, at the Tenant's expense. Management may be represented by counsel. The Tenant, or the designated representative, must be present at the scheduled hearing.
- D. The right to present evidence and arguments in support of the Tenant's complaint and to controvert evidence relied on by Management and to confront and cross examine all witnesses upon whose testimony or information Management relies; and
- E. A decision based solely and exclusively upon the facts presented at the hearing.

The hearing shall be conducted informally by the Hearing Officer. Oral or documentary evidence pertinent to the facts and issues raised by the Tenant may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings provided that such information is the kind of evidence on which reasonable persons are accustomed to rely on in the conduct of serious affairs.

The Hearing Officer shall require Management, the Tenant or designated representative, counsel and other participants to conduct themselves in an orderly fashion. Failure to comply with the directions of the Hearing Officer to maintain order may result in exclusion from the proceedings.

The Hearing Officer will hear evidence provided by both the Tenant or designated representative and Management and will review appropriate policies, regulations, lease, etc.

### ***VII. Failure to appear at the hearing***

If either the Tenant or designated representative or Management fails to appear at the scheduled hearing, the Hearing Officer may postpone the hearing **for another date not to exceed five (5) working days**. In the event that Management fails to appear at the re-scheduled hearing, the Hearing Officer shall make his/her decision based on the record including anything submitted by the Tenant or designated representative. In the event that the Tenant or designated representative fails to appear at the re-scheduled hearing, the Tenant is deemed to have waived his/her right to a hearing.

Both the Tenant or the designated representative and Management shall be notified of the determination by the Hearing Officer; provided, that a determination that the Tenant has waived his/her right to a hearing shall not constitute a waiver of any right the Tenant may have to contest Management's disposition of the grievance in court.

### ***VIII. Decision of the Hearing Officer***

The Hearing Officer shall prepare a written decision, together with the reasons for the decision **within fifteen (15) working days after the hearing**. Any delay on the part of the Hearing Officer in submitting the written decision will not invalidate this process. A copy of the decision shall be sent to the Tenant or designated representative, Management and ~~the City of Marina's Development Services Department.~~FORA. Management shall retain a copy of the decision in the Tenant's folder.

The decision of the Hearing Officer shall be binding on Management, which shall take all actions, or refrain from actions, necessary to carry out the decision unless ~~the City of Marina~~FORA determines **within ten (10) working days** after receiving the written decision, and promptly notifies the Tenant or the designated representative of its determination that:

- A. The grievance does not involve Management's action or failure to act in accordance with the Tenant's lease or the property's policies, which adversely affect the Tenant's rights, duties, welfare or status.
- B. The decision of the Hearing Officer is contrary to applicable Federal, State or local law or ~~City of Marina~~FORA policy or regulation.

A decision by the Hearing Officer or ~~the City of Marina~~FORA which denies the relief requested by the Tenant in whole or in part shall not constitute a waiver of, nor affect in any way, the rights of the Tenant to judicial review in any court proceedings which may be brought in the matter later.

This Grievance Procedure does not preclude the Tenant from exercising his/her rights, including those rights pertaining to alleged discrimination on the basis of race, color, creed, religion, sex, age, disability, sexual orientation, familial or marital status, ancestry or national origin.



I acknowledge that I have received a copy of this Grievance Procedure.

\_\_\_\_\_ Date \_\_\_\_\_ Signature

Print Name Address

~~All other provisions of the Agreement not in conflict with this Amendment shall remain in full force and effect.~~

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

~~OWNER: FORT ORD REUSE AUTHORITY~~

~~By: \_\_\_\_\_ Michael  
A. Houlemard, Jr. Executive Officer~~

~~Date: \_\_\_\_, 2011~~

~~AGENT: CITY OF MARINA~~

~~By:~~

\_\_\_\_\_

~~\_\_ Anthony J. Altfeld, City~~

~~Manager Date: \_\_\_\_, 2011 Attest:~~

~~(Pursuant to Resolution: 2011~~

~~By: City Clerk~~

~~Approved as to Form~~

~~City Attorney Risk Manager~~

~~OPERATOR: ALLIANCE COMMUNITIES INC.~~

By: Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2011

# FORT ORD REUSE AUTHORITY BOARD REPORT

## OLD BUSINESS

**Subject:** California Central Coast Veterans Cemetery – update

**Meeting Date:** January 13, 2012

**Agenda Number:** 6b

**INFORMATION**

### RECOMMENDATION(S):

Receive an update on the California Central Coast Veterans Cemetery ("CCCVC").

### BACKGROUND/DISCUSSION:

In the past, FORA has taken a number of indirect steps to aid and support this worthy project. Most recently, the State Assembly and Senate passed AB 629 earlier this summer. Governor Brown signed AB 629 into law on September 7, 2011, allowing the California Department of Veterans Affairs ("CDVA") to contract directly with FORA to conduct veterans cemetery design, potentially reducing the Endowment Fund requirement by \$500,000. AB 629 will go into effect in January 2012.

FORA, Seaside, and County staff are currently reviewing FORA's most recent estimate for conducting the cemetery design work in two phases. If there are any changes to the estimate, FORA will provide them to CDVA. CDVA will work with the California Department of Finance ("CDF") with the goal of obtaining their sign-off to use FORA's estimate instead of the California Department of General Services' ("CDGS") higher estimate as a basis for the endowment funding requirement needed to allow cemetery design to proceed. There is no specific deadline, but, depending on whether FORA's or CDGS's estimate is used by CDF, either \$560,000 or \$1,006,000 would need to be deposited into the State's Veterans Cemetery Endowment in order for phase I design (called Preliminary Plans) to begin. Another \$948,000 to \$960,000 would be needed to begin phase II design (called Working Drawings).

At the October FORA Board meeting, Supervisor Parker requested that FORA staff address the question: Is there a means for FORA to fund the Veterans Cemetery? FORA staff researched this question and found a March 13, 2006 memorandum from Authority Counsel Jerry Bowden to then Chair Ila Mettee-McCutchon addressing the question of whether or not FORA could provide financing for the Veterans Cemetery. The memo concluded that FORA cannot do so directly unless the FORA act is amended and it is agreed to by the jurisdictions in which the cemetery property is located (Seaside and County of Monterey). In addition, the down economy and recent elimination of redevelopment by the Governor and State Legislature further constricts FORA's options to indirectly support financing the project. The FORA Board directed the Veterans Cemetery funding question to the Finance Committee for further analysis.

### FISCAL IMPACT:

Reviewed by FORA Controller 

Staff time related to this item is included in FORA's annual budget.

### COORDINATION:

City of Seaside, County of Monterey, CDVA, CDF, CDGS, Executive Committee, and Administrative Committee.

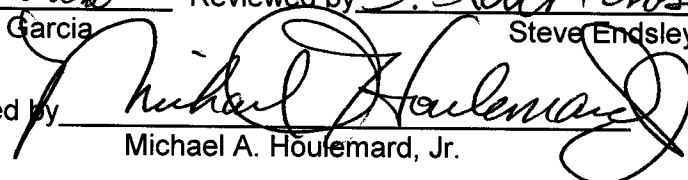
Prepared by

  
Jonathan Garcia

Reviewed by

  
Steve Endsley

Approved by

  
Michael A. Houlemard, Jr.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## NEW BUSINESS

<b>Subject:</b> Denise Duffy and Associates – Contract Amendment #5	
<b>Meeting Date:</b> January 13, 2012	<b>ACTION</b>
<b>Agenda Number:</b> 7a	

### RECOMMENDATION(S):

Authorize the Executive Officer to execute amendment number five (**Attachment A**) to the Denise Duffy and Associates (DD&A) contract, not to exceed \$158,000, to complete a second Administrative draft EIS/EIR document and screencheck version of the document.

### BACKGROUND/DISCUSSION:

The Fort Ord Reuse Authority (FORA) selected DD&A to prepare the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) compliance document for the draft Fort Ord Habitat Conservation Plan (HCP). DD&A has also taken on the task of preparing the impact analysis for the draft HCP and draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) document. Staff notes that the US Fish and Wildlife Service (USFWS) is the lead agency for the EIS, FORA is the lead agency for the EIR, and the California Department of Fish and Game (CDFG) is a responsible agency for the EIR. As DD&A prepares the EIS/EIR document, these three entities perform a coordinated review.

Contract amendment number five is necessary because of additional impact analysis and tasks associated with review and comments on the 3<sup>rd</sup> Admin. draft HCP and EIS/EIR document preparation. This amendment would bring the draft EIS/EIR document through review of USFWS and CDFG's legal departments. Anticipated future tasks, not included in amendment #5, are: preparation of the public review draft EIS/EIR, preparation of a final EIS/EIR schedule, responses to public comments, preparation of a 2 Admin. drafts and one screen check draft of the Final EIS/EIR, and preparation of the Final EIS/EIR. Staff anticipate the next contract amendment would need to incorporate these future tasks in FY 2012-13.

### FISCAL IMPACT:

Reviewed by FORA Controller 

Staff time for this item is included in the approved FY 11-12 budget. FORA's mid-year budget will accommodate this contract expense.

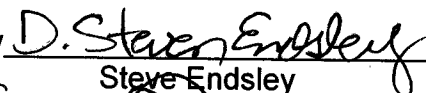
### COORDINATION:

Administrative Committee, Executive Committee, USFWS, CDFG, DD&A, and Authority Counsel.

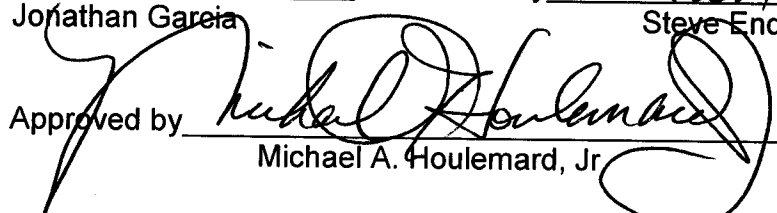
Prepared by

  
Jonathan Garcia

Reviewed by

  
Steve Endsley

Approved by

  
Michael A. Houlemard, Jr.

**SCOPE OF WORK  
for the  
FORT ORD HCP**

**Attachment A to Item 7a  
FORA Board Meeting,  
01/13/12**

**Environmental Impact Statement/Environmental Impact Report  
Amendment #5  
January 3, 2012**

Denise Duffy & Associates, Inc. (DD&A) is currently contracted to prepare the environmental documentation for the Fort Ord Habitat Conservation Plan (HCP) (February 1, 2005). Due to changes in the documentation approach and the HCP consultant, DD&A prepared a Scope of Work that assumed the preparation of a joint NEPA/CEQA environmental document, dated July 21, 2008 (Amendment #1 to the original contract). Since the approval of the July 21, 2008 Scope of Work, additional revisions to the scope of work have occurred, which were approved as Amendments #2-4.<sup>1</sup> To reconcile these revisions to the original contract and provide a budget to complete the environmental review process, DD&A has prepared this Scope of Work, dated January 3, 2012, which will be referred to as "Amendment #5." Amendment #5 includes: Tasks 1-7 of the Revised Scope of Work, which have been updated and re-numbered; and the tasks described in Amendment #4.

**TASK 1. PREPARE FIRST ADMINISTRATIVE DRAFT EIS/EIR**

DD&A will prepare an Administrative Draft EIS/EIR for the project, in accordance with NEPA/CEQA requirements. The First Administrative Draft EIS/EIR will include complete, thorough, accurate, and objective analyses of all relevant topics. The topics expected to be addressed, a description of the analyses to be conducted, and the contents of those sections are discussed below. In addition, the significance of the impacts after implementation of the mitigation measures will be included in the analysis. Impacts considered would include the following: direct, indirect, construction/short-term, operational/long-term, growth inducing, cumulative, and irreversible. The First Administrative Draft EIS/EIR will identify and summarize significant impacts and whether they can or cannot be avoided, and will also identify any beneficial environmental impacts of the project, if any. The format of the document will be consistent with the format and outline already determined earlier in the EIS/EIR process, but will include all topics discussed below.

***Introduction, Purpose and Need of the Action, Objectives and Issues:*** This section will indicate that the documentation has been prepared for the Service and DFG pursuant to NEPA and CEQA regulations and guidelines to evaluate the effects of issuing an Incidental Take Permit under Section 10(a)(1)(B) of the Endangered Species Act and an Incidental Take Permit under Section 2081 of the California Endangered Species Act. The Service's purpose for this action is to respond to the Applicants' Incidental Take Permit application and proposed HCP

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<sup>1</sup> Please note that Amendment #4 was a reallocation of contracted funds to cover the estimated cost of providing additional services, and no additional funds were requested or authorized as part of Amendment #4.

implementation. If granted, the proposed incidental take permit would allow for incidental take of the covered species, and would require implementation of an HCP to minimize and mitigate the take of the covered species to the maximum extent possible.

***Proposed Action and Alternatives:*** The Proposed Action and all other reasonable alternatives to the proposed action must be defined and discussed, including the No Project Alternative. CEQA Guidelines Section 15126.6 requires the consideration of a range of reasonable alternatives to the proposed plan that could feasibly obtain most of the basic objectives of the proposed project. Generally, the Alternatives section of a NEPA document is also governed by the rule of reason, but NEPA requires a more rigorous exploration and comparison of all reasonable alternatives, explanation of why certain alternatives were eliminated, and description of mitigation measures. DD&A will coordinate with FORA, Service, DFG, and ICF to determine a range of feasible alternatives.

***Affected Environment:*** Existing information from the HCP, Fort Ord Base Reuse Plan EIR, Army's EIS and SEIS, and other relevant environmental documents will be used to describe the baseline conditions within the boundaries of the HCP in the EIS/EIR. We will review the HCP, as well as materials and information collected by the U.S. Army, BLM, Service, DFG, other regulatory agencies, and HCP participants.

This chapter describes those aspects of the environment at the former Fort Ord that would be affected by issuance of an incidental take permit authorizing project actions that could result in take of covered species. This chapter focuses on existing conditions within and surrounding the former Fort Ord with specific reference to the following topics:

- Physical environment – visual resources; air quality; geology, soils, seismic hazards, and mineral resources; hydrology and water quality; and hazardous materials;
- Biological environment – vegetation and wildlife, including migratory birds; and
- Social environment – cultural resources; land use; noise; population and housing; public health hazards; public services and recreation; socio-economic impacts; and transportation and traffic.

***Environmental Consequences:*** Issuance of the Section 10(a)(1)(B) Incidental Take Permit constitutes a major federal action by the Services and is thus subject to NEPA, which requires that the environmental effects of all federal agency actions be evaluated. This section analyzes the environmental effects that could result from implementing the Proposed Action. It also describes the potential environmental effects of the other alternatives.

### **Specific Sections to be Addressed**

The EIS/EIR will evaluate the impacts that will likely result from take under the Proposed Action; address the requirements to monitor, minimize, and mitigate such impacts; the impacts of the alternatives and the reasons why such alternatives are not proposed to be used. The EIS/EIR will describe in detail the proposed HCP, the existing environmental conditions on the former Fort Ord, and assess potentially significant impacts associated with the issuance of the HCP. The impact analysis will apply specific criteria for determining the significance of impacts, consistent with criteria set forth in NEPA and CEQA and applicable professional and local standards. Mitigation measures will be identified for significant environmental impacts

identified in the EIS/EIR. The major issues to be addressed in the environmental document are described below.

- Land Use/Planning
- Traffic and Circulation
- Air Quality
- Greenhouse Gases & Climate Change
- Biological Resources
- Hazardous Materials
- Cultural Resources
- Geology/Soils
- Hydrology/Water Quality
- Aesthetics/Visual
- Public Services
- Utilities and Service Systems/Water Supply
- Noise
- Population and Housing

***Other Statutory Sections:*** Above and beyond the analysis of topical issues in the Environmental Setting, Impacts, and Mitigation Measures sections,<sup>2</sup> CEQA requires that an EIR contain specific discussions, which include, but are not limited to, those listed below. In addition, NEPA requires specific sections within EISs that are similar to those required by CEQA, but may require more detailed analyses. The DD&A team will assure that the EIS/EIR complies with all local, state, and federal environmental requirements.

***Indirect Impacts of Growth/Growth Inducement:*** DD&A recognizes that this is a key issue to the local community. CEQA requires an EIR to discuss the ways in which a project could promote or induce economic or population growth, either directly or indirectly, in the surrounding area. NEPA requires federal agencies to also consider the indirect effects of the proposed action, including growth inducement. This section will address the potential growth inducement effects of the project based on the assessment of the potential new growth that could be fostered by implementation of the project. This section will also review the proposed project, and the environmental and physical constraints to additional growth. The growth inducing analysis will describe components of the project and why they are or not considered to be growth inducing.

***Cumulative Impacts:*** This section will discuss potential significant cumulative impacts to which the project would contribute. A region-wide review of the impacts will be considered. The section will address the potential cumulative effects of the project in conjunction with other land uses, resource management and development actions recently enacted or proposed in the project area. DD&A will work with FORA and the Service to identify potential future regional growth to be considered in this analysis. DD&A will consult and utilize the CEQ *Considering*

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<sup>2</sup> The CEQA content requirements of the Environmental Setting, Impacts, and Mitigation Measures sections will be included in the EIS/EIR as part of the "Affected Environment" and "Environmental Consequences."

*Cumulative Effects under the NEPA Handbook and EPA memo Consideration of Cumulative Impacts in EPA Review of NEPA Documents* to aid in the evaluation of cumulative effects of the proposed action. This section will discuss cumulative impacts relating to the project if and when they are significant.

***Unavoidable Significant Adverse Impacts:*** The unavoidable significant adverse impacts identified in the above analyses, if any, will be summarized in this section. The purpose of this discussion is to call out any permanent or significant degradation in the quality of the environment, or the destruction of important natural and cultural resources, which cannot be prevented by the incorporation of mitigation measures. In addition, irretrievable commitments of resources should be evaluated to assure that such use is justified.

***Environmental Justice:*** In accordance with Presidential Executive Order 12898 dated February 11, 1994, the proposed action/project is consistent with the guidelines established for federal actions to address environmental justice in minority and/or low-income populations. Principles set forth in the report on the National Performance Review require the action/project will not result in a “*disproportionately high and adverse human health or environmental effects of its programs, policies, activities on minority populations and low-income populations...*”

***Socio-Economic Impacts:*** The economic and social effects will be discussed in the EIS/EIR. Although not required by CEQA, NEPA requires that the effects be discussed when they are interrelated with natural or physical effects. In addition, the document will evaluate the extent to which the proposed action would have an adverse impact on low-income and minority populations. The EIS/EIR will address economic issues, based on recent studies describing jobs/housing balance, regional economy, social service, and other socio-economic issues (e.g., from recent AMBAG and City of Marina reports).

***Section 4(f) Evaluation and Consultation Process:*** A Section 4(f) evaluation shall be prepared, if necessary, as a separate section of the EIS/EIR. It is assumed that this has been completed through the Army’s EIS process and the information will be incorporated into the EIS/EIR accordingly. This section will address potential impacts to public parks, recreational lands, wildlife and waterfowl refuges, and historic sites. Avoidance alternatives and measures to minimize harm will be included as part of the evaluation. Potential Section 4(f) resources will be identified as early as possible in the study process so that avoidance alternatives can be fully considered in the document.

DD&A will submit the First Administrative Draft to the internal team (i.e., FORA, Service, DFG, and BLM) for review and comment within three weeks after the 3<sup>rd</sup> Administrative Draft HCP is submitted to the Wildlife Agencies.

*Responsibility: DD&A*

*Deliverables: First Administrative Draft EIS/EIR*



## **TASK 2. COMPLETE TASKS DESCRIBED IN AMENDMENT #4**

DD&A was recently authorized to reallocate existing funds to cover the estimated cost of additional services as requested (Amendment #4, approved December 7, 2011). These tasks included:

- Reviewing 2<sup>nd</sup> Admin Draft HCP (September 2011);
- Providing comments on the 2<sup>nd</sup> Admin Draft HCP;
- Coordinating with HCP participants to update the project description, covered activities, and take assumptions;
- Revising the take analysis and associated figures;
- Revising the take tables and coordinating with ICF International, the HCP author, to insure consistency;
- Reviewing HCP participant comments on HCP; and
- Revising the Stay-Ahead Analysis tables.

DD&A has completed most of these tasks; however, based on recent meetings with FORA and ICF, revisions to the take analysis and figures remain in progress.

*Responsibility: DD&A*

*Deliverables: See bullet list above*

## **TASK 3. REVIEW AGENCY COMMENTS ON DRAFT HCP**

DD&A will review the next draft of the HCP (“Wildlife Agency Draft”), which is anticipated in early January 2012, and the subsequent comments from the Service and DFG (“Wildlife Agencies”). Based on our review of agency comments, DD&A will determine the necessity and extent of revisions required for the current HCP impact analysis and whether comments significantly affect the environmental analysis. This scope of work assumes minor revisions will be necessary, as shown in the attached budget spreadsheet. If extensive revisions are necessary beyond what is anticipated, DD&A will request an amendment to this scope of work.

After the review of agency comments, DD&A will provide a memorandum outlining the revisions to the impact analysis that are required and determination whether an amendment to this scope of work is necessary. This task includes conference calls and meetings with FORA, ICF, and the Wildlife Agencies to resolve any issues, as identified in the attached budget spreadsheet.

*Responsibility: DD&A, ICF, FORA, and Wildlife Agencies*

*Deliverable(s): Memo on Agency Comments (prepared by DD&A)*

## **TASK 4. REVIEW SCREENCHECK DRAFT HCP**

After review of agency comments, ICF will be incorporating agency comments and preparing a Screencheck Draft HCP. DD&A will review the Screencheck Draft HCP to determine whether

any significant revisions have occurred that affect the environmental analysis. It is anticipated that minor revisions to the EIS/EIR will be required for consistency purposes, but that no new significant issues will be raised during this review. It is anticipated that any significant issues raised on the HCP by the Wildlife Agencies will have been resolved during Task 2. The anticipated minor revisions are included in the attached budget spreadsheet. If significant revisions are required to the EIS/EIR as a result of revisions to the Screencheck Draft EIS/EIR, DD&A will request an amendment to this scope of work.

*Responsibility: DD&A and ICF*

*Deliverable(s): Email to FORA containing a determination whether the Screencheck Draft will result in significant revisions to the EIS/EIR*

## **TASK 5. AGENCY COORDINATION AND MEETINGS**

Early and continuing agency involvement will be important throughout the process. The goal of the agency coordination and meetings is to clearly define the scope and the appropriate environmental documentation as well as to understand the project, environmental implications of the action, review project components with the agencies to determine appropriate avoidance and minimization of environmental impacts, and determine a clear direction on alternatives analysis. DD&A has provided draft versions of Chapters 1 and 2 to the internal team for early insight and comments. Agency coordination and document review will continue to occur throughout the process.

In addition, DD&A will attend and participate in a variety of meetings as necessary throughout the project either in person or on telephone conferences, including regular communication with the Service to address key issues and confer on environmental impacts and what types of actions are suitable for avoidance, mitigation or conservation measures. For meetings where DD&A is the lead, we will prepare agendas and minutes with the action items, give presentations, and provide presentation materials, as needed. A log of all action items will be maintained to ensure that the required actions occur.

Meetings will be an ongoing effort for the FORA HCP process. DD&A anticipates that attendance will be required at the HCP Working Group meetings held by FORA and the CRMP. These meetings occur every few months and will run for the duration of the HCP process. These meetings provide an opportune time to meet with the Service, FORA, and ICF. Additionally, during preparation of each draft of the HCP and EIS/EIR, DD&A will participate in conference calls to discuss documentation status and outstanding items, which are included as part of each associated task.

In total, this scope of work assumes that DD&A will attend the following meetings: one public meeting on the EIS/EIR, four HCP Working Group Meetings, and two meetings with FORA, the Service, and DFG. Any request(s) for meeting attendance by DD&A not provided for within this scope will be billed on a time and materials basis. This task includes the preparation of agendas, meeting minutes, and action item lists, as needed.

*Responsibility: DD&A*

*Deliverables: Agendas, Meeting Minutes, Log of Action Items (task assumes 1 public meeting @ 5 hours, 4 meetings @ 6 hours each, and 2 meetings @ 4 hours each (a total of 7 meetings with average meeting time of 5 hours each)*

**TASK 6. PREPARE SECOND ADMINISTRATIVE DRAFT EIS/EIR AND SCREENCHECK DRAFT EIS/EIR**

Upon conclusion of the review of the First Administrative Draft EIS/EIR, DD&A will revise the document based on internal team comments, as appropriate, and submit the Second Administrative Draft to the HCP Working Group for final comments. DD&A will revise the Second Administrative Draft EIS/EIR based on HCP Working Group comments and prepare a Screencheck Draft for review by Service Solicitors and DFG before publishing the document for public review.

*Responsibility: DD&A*

*Deliverables: Second Administrative Draft EIS/EIR and Screencheck Draft EIS/EIR*

**DD&A Budget - January 3, 2012**  
**Fort Ord Habitat Conservation Plan**  
**Environmental Impact Statement/Environmental Impact Report**

Billing Title		Principal	Project Manager	Senior Planner	Senior Environmental Specialist	Assoc Planner or Biologist	Assist Planner	Word Processing	Graphics	Hours Per Task	Cost Per Subtask	Cost Per Task
		1	Prepare 1st Admin Draft EIS/EIR	6	40	140	100	220	80	48	40	674
2	Complete Tasks Described in Amendment #4	4	80	100	80	60	30	24	40	418	\$ 43,820	\$ 43,820
3	Review Agency Comments on Draft HCP	4	6	30		10		2	6	58	\$ 6,170	\$ 6,170
4	Review Screencheck Draft HCP	4	2	16		4				26	\$ 3,118	\$ 3,118
5	Agency Coordination/Meetings	4	35	5	5	20	10	10	10	99	\$ 10,280	\$ 10,280
6	Prepare 2nd Admin Draft EIS/EIR and Screencheck Draft EIS/EIR	4	30	48	20	60	24	20	14	220	\$ 21,778	\$ 21,778
Total Hours		26	193	339	205	374	144	104	110	1495		
Hourly Rate		\$ 205	\$ 125	\$ 105	\$ 130	\$ 92	\$ 82	\$ 55	\$ 70			
Total Labor		\$ 5,330	\$ 24,125	\$ 35,595	\$ 26,650	\$ 34,408	\$ 11,808	\$ 5,720	\$ 7,700		\$ 151,336	\$ 151,336
<b>Subconsultants:</b>												
Traffic											\$ 4,250	
<b>TOTAL SUBCONSULTANTS</b>												\$ 4,250
<b>Expenses:</b>												
Printing/Xerox											\$ 500	
Mileage/Communication											\$ 400	
Miscellaneous											\$ 150	
<b>TOTAL EXPENSES</b>												\$ 1,050
<b>SUBTOTAL</b>												\$ 5,300
<b>15% Admin Fee</b>												\$ 795
<b>TOTAL</b>												\$ 157,431

# FORT ORD REUSE AUTHORITY BOARD REPORT

## NEW BUSINESS

**Subject:** Base Reuse Plan Reassessment – update

**Meeting Date:** January 13, 2012

**Agenda Number:** 7b

**INFORMATION**

### RECOMMENDATION(S):

Receive an update on the Base Reuse Plan (BRP) Reassessment process.

### BACKGROUND/DISCUSSION:

The Ventana Chapter of the Sierra Club filed a lawsuit against the Fort Ord Reuse Authority (FORA) after it adopted the BRP in June 1997. The Sierra Club and FORA signed a settlement agreement in 1998 whereby the Sierra Club dropped its lawsuit and FORA agreed to perform a number of actions. One of the actions was the adoption of Chapter 8 to the FORA Master Resolution. Section 8.01.010 (h) of the Master Resolution says that the "Authority Board will perform a full reassessment, review, and consideration of the Reuse Plan and all mandatory elements as specified in the Authority Act... by January 13, 2013... No development will be approved by FORA or any land use agency or local agency after the time specified in this subsection unless and until the water supplies, wastewater disposal, road capacity, and the infrastructure to supply these resources to serve such development have been identified, evaluated, assessed, and a plan for mitigation has been adopted as required by California Environmental Quality Act (CEQA), the Authority Act, the Master Resolution, and all applicable environmental laws."

To meet these obligations, FORA has hired an Associate Planner to support the BRP Reassessment process, as authorized in the FY 11-12 budget, and prepared a BRP Reassessment schedule (**Attachment A**) and released a Request for Qualifications (RFQ) (**Attachment B**) to hire a consultant to perform the Reassessment and prepare the associated CEQA compliance document. FORA staff anticipates recommending approval of the BRP Reassessment consultant contract at the February 2012 Board meeting.

### FISCAL IMPACT:

Reviewed by FORA Controller 

Staff time and consultant for this item are included in the approved FY 11-12 budget.

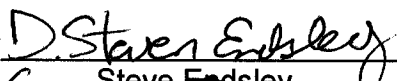
### COORDINATION:

Administrative Committee, Executive Committee, and Authority Counsel.

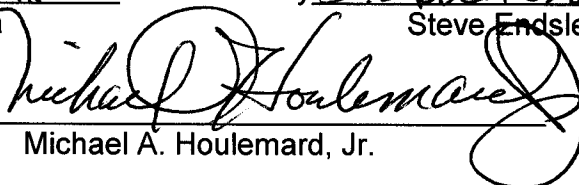
Prepared by

  
Jonathan Garcia

Reviewed by

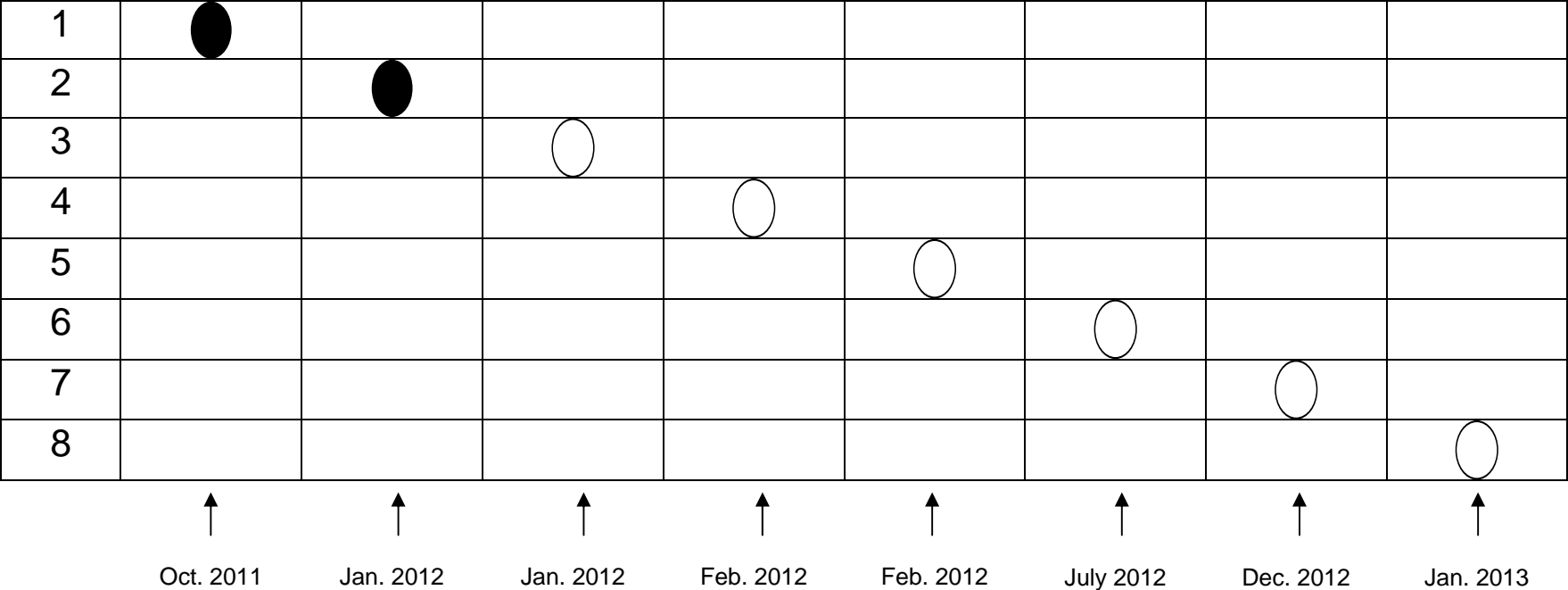
  
Steve Endsley

Approved by

  
Michael A. Houlemard, Jr.

# FORT ORD BASE REUSE PLAN REASSESSMENT SCHEDULE

Attachment A to Item 7b  
FORA Board Meeting, 01/13/12



- |  |  |
|--|--|
| <ol style="list-style-type: none"> <li>1. Legal review of process (Authority counsel/Special CEQA counsel)</li> <li>2. Hire Assistant/Associate Planner</li> <li>3. RFQ process to select BRP review consultant</li> <li>4. Initial scoping meeting</li> </ol> | <ol style="list-style-type: none"> <li>5. Board Kickoff presentation</li> <li>6. Present options to Admin. Committee and FORA Board</li> <li>7. Present to FORA Board for action</li> <li>8. Final Action completed</li> </ol> |
|--|--|



# FORT ORD REUSE AUTHORITY

920 2ND AVENUE, SUITE A, MARINA, CALIFORNIA 93933

PHONE: (831)883-3672 - FAX: (831)883-3675

WEBSITE: www.fora.org

January 5, 2012

Attachment B to Item 7b  
FORA Board Meeting, 01/13/12

Interested Consultant or Consultant team

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Re: Invitation to Submit Professional Planning Qualifications to the Fort Ord Reuse Authority. Services to be associated with the reassessment of the 1997 Fort Ord Base Reuse Plan.**

Dear Consultant:

The Fort Ord Reuse Authority's ("FORA") state law defined mission is to prepare, adopt, finance, and implement a plan for former Fort Ord reuse, including land use, transportation systems, conservation of land and water, recreation and business operations. In order to meet these mandated objectives, the Fort Ord Base Reuse Plan ("BRP") was adopted in 1997.

The BRP for Fort Ord reuse was adopted by FORA as the official local regional base reuse plan to enhance and deliver promised economic recovery of the underlying and contiguous local jurisdictions, while protecting designated natural resources.

Fifteen years after its adoption, the FORA BRP is scheduled for review and reassessment. FORA hereby solicits submittals of interest from qualified consultant teams willing to provide BRP review and reassessment services. The BRP review and reassessment must be complete by December 2012, but may be extended under certain circumstances. This Request for Qualifications ("RFQ") invites you to submit relevant firm/team qualifications. FORA will review submittals to determine the best suited firms/teams.

Submittals will be evaluated on:

- 1) Demonstrated prior contracted experience preparing/assessing regional/local general plans;**
- 2) Demonstrated professional background preparing and working with military Base Reuse General Plans;**
- 3) Demonstrated knowledge of resource plans for sensitive habitats;**
- 4) Demonstrated experience working with the California Environmental Quality Act (CEQA); and**
- 5) Defined background working with communities of color and economic recovery programs.**

The submitting firm's/team's Statement of Qualifications (SOQ) must address the skills, experience, and abilities needed to complete this BRP reassessment work (as generally described in the attached Scope of Work). In your SOQ, you must provide: 1) qualifications, 2) examples of relevant experience providing similar services, 3) three past client references, 4) a brief description

outlining tasks 1-5 completion, and 5) a brief description of the project team, their work experience, and level of time commitment to the project.

Submitting firms/teams must provide SOQs to FORA as specifically described in this letter by 12:00 noon on Monday, January 23, 2011. For background information on the Base Reuse Plan, please visit: <http://www.basereuse.org/reuseplan/HomePage/HomePage.htm>. For background information on the Fort Ord Reuse Authority, please visit: [www.fora.org](http://www.fora.org).

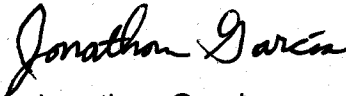
Please limit your SOQ to 50 single-sided pages or 25 double-sided pages on 8.5"x11" paper and unbound. Please address a cover letter to the SOQ to:

Mr. Jonathan Garcia, Senior Planner  
FORA  
920 2<sup>nd</sup> Ave., Ste. A,  
Marina, California 93933

FORA reserves the right to reject any and all SOQs.

FORA will appoint a selection panel to review the SOQs, select two or more of the submitting firms/teams to participate in the interview process, and make the final selection of the firm/team to recommend to the Executive Officer and the FORA Board.

Sincerely,



Jonathan Garcia  
Senior Planner



## **Scope of Work**

The following tasks (1-5) describe the work that the selected consultant will accomplish. The selected consultant will meet all applicable federal, state, and local regulatory standards in the completion of this work. Applicants are free to propose alternative approaches should they see fit.

### **Task 1 – Scoping – Determine the level of assessment needed.**

The Consultant will review Ch. 8 of the FORA Master Resolution, the Authority Act, and the 1997 BRP. After conferring with FORA staff, the consultant will identify required elements of the reassessment and prepare the following deliverables.

#### **Deliverable # 1 – Market Study**

The Consultant will review existing market analyses conducted in the Monterey Bay region, collect market data, conduct focused stakeholder interviews, and prepare a comprehensive Market Study that evaluates the development potential of former Fort Ord, taking into account: economic, political, environmental, and regulatory constraints.

#### **Deliverable # 2 – Community Outreach**

The Consultant will conduct five public workshops that seek broad community input from counties, municipalities, educational institutions, and culturally, linguistically, and economically diverse communities in the Monterey Bay Region about the elements of the BRP Reassessment. While Community Outreach is on-going, the consultant shall also attend one FORA Board meeting to provide a reassessment update, present the Market Study, and obtain feedback on the Base Reuse Plan Reassessment.

### **Task 2 – Scoping Report**

#### **Deliverable #3 – BRP Reassessment Scoping Report**

The Consultant will prepare a scoping report that summarizes the results of the Market Study and Community Outreach, and presents options for conducting the BRP Reassessment. The Consultant will present the scoping report to the FORA Board and request that the Board select one of the options.

### **Task 3 – Draft BRP Reassessment**

#### **Deliverable #4 – Administrative Draft BRP Reassessment**

The Consultant will prepare an administrative draft document consistent with the FORA Board-selected BRP Reassessment option. The Consultant will request feedback from FORA on the administrative draft document.

#### **Deliverable #5 – Public Draft BRP Reassessment**

The Consultant will prepare a public draft document that addresses comments received on the administrative draft document.

### **Task 4 - CEQA Compliance**

#### **Deliverable #6 – Administrative Draft BRP Reassessment CEQA document**

Concurrent with the preparation of the Draft BRP Reassessment document, the consultant will prepare an Initial Study based on the Draft BRP Reassessment document. FORA will direct the consultant to prepare

the appropriate CEQA document. The Consultant will request feedback from FORA on the administrative draft CEQA document.

**Deliverable #7 – Draft BRP Reassessment CEQA document**

The Consultant will prepare a public draft document that addresses comments received on the administrative draft CEQA document.

**Task 5 – Public Review/Responses to comments/Adoption of CEQA document**

**Deliverable #8 – Draft BRP Reassessment and CEQA document**

The Consultant will be available to review comments during the public comment period.

**Deliverable #9 – Responses to comments**

The Consultant will review comments after the public comment period ends and provide assistance in preparing responses to comments.

**Deliverable #10 – Adoption of BRP Reassessment and BRP Reassessment CEQA documents**

The Consultant will attend FORA Board meetings when the Board considers adoption of the BRP Reassessment and BRP Reassessment CEQA documents.

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**Overarching Goals of the Base Reuse Plan Reassessment**

Objective: establish a framework and basis to attract corporations and industries that value quality of life, environmental sustainability, and a business atmosphere that produces stellar employees, while keeping environmental protection as a key aspect of all development plans.

Eight general areas of priority are incorporated into the Base Reuse Plan. These are funding, economic development, environmental quality, human resources, urban design/planning, community services, infrastructure development, and public information and involvement.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## EXECUTIVE OFFICER'S REPORT

<b>Subject:</b>	Outstanding Receivables	
<b>Meeting Date:</b>	January 13, 2012	<b>INFORMATION</b>
<b>Agenda Number:</b>	8a	

**RECOMMENDATIONS:**

Receive a Fort Ord Reuse Authority (FORA) outstanding receivables update as of December 31, 2011.

**BACKGROUND/DISCUSSION:**

FORA has several significant outstanding receivables. The Late Fee policy adopted by the FORA Board requires receivables older than 90 days be reported to the Board.

	Item Description	Amount Owed	Amount Paid	Amount Outstanding
<b>1 City of Del Rey Oaks</b>	PLL Loan Payment 09-10	182,874	-	182,874
	PLL Loan Payment 10-11	256,023	-	256,023
	PLL Loan Payment 11-12	256,023	-	256,023
	<i>DRO Total</i>			
<b>2 City of Marina</b>	Tax Increment 08-09	108,862	108,862	-
	Tax Increment 07-08	111,246	-	111,246
	Preston Park Excess Revenue	230,000	230,000	-
	<i>Marina Total</i>			
<b>3 City of Seaside</b>	Tax Increment 03-10	358,830	180,000	<b>178,830</b>
<b>4 Monterey County</b>	Lease revenue 10-11 (Ord Market)	25,000 *	-	<b>25,000</b>
	<i>*Amount to be determined</i>			
	<b>Total Outstanding Receivables</b>			<b>\$ 1,009,996</b>

**1. City of Del Rey Oaks (DRO)**

- **PLL insurance annual payments:** In 2009, DRO cancelled agreement with its project developer who previously made the PLL loan payments. The FORA Board approved a payment plan for DRO and the interim use of FORA funds to pay the premium until DRO finds a new developer (who will be required by the City to bring the PLL Insurance coverage current). DRO agreed to make interest payments on the balance owed until this obligation is repaid, and they are current.

Payment status: First Vice Chair Mayor Edelen informed both the Board and Executive Committee that DRO will borrow or secure funds from a new developer to pay off this obligation in this FY.

**2. City of Marina (Marina)**

- **Tax increment (TI):** In the fall of 2010, as directed by the FORA Board during the Capital Improvement Program review, FORA conducted an audit of TI revenue that FORA collects from Seaside, Marina and County of Monterey. The results indicated that FORA was owed property TI payments from Seaside and Marina. Both cities acknowledged the debt.

Marina retained a portion of FORA's tax increment in FY 07-08 and FY 08-09. At the July 2011 meeting, FORA Board approved an MOA with Marina for a phased (2 payments) repayment of the FY 08-09 tax increment obligation and this underpayment has been paid off in November 2011.

Regarding the FY 07-08 underpayment, after lengthy communications between FORA and Marina, the City attorney advised FORA that Marina agrees to pay the FY 07-08 TI underpayment and proposes payment plan pursuant to an MOA similar to the one for the FY 08-09 underpayment. At its November 18, 2011 meeting, the FORA Board authorized the Executive Officer Houlemard to negotiate a FY 07-08 tax increment payment agreement with Marina. Per the Executive Committee ("EC") direction, the first payment was to be due on January 1, 2012 given that this amount has been due for over two years. The draft MOA for a phased (2 payments) was forwarded to Marina on November 21; they requested the first payment be due on February 1, 2012 to allow sufficient time for payment processing following the Christmas/Holiday break. The City Council approved the MOA on December 6 and the EC authorized the Executive Officer to execute this agreement with this minor change requested by Marina.

Payment status: The first installment is due February 1, 2012, the second (last) installment is due June 30, 2012.

- Preston Park Excess Revenue: At the August 12, 2011 meeting, the FORA Board assigned staff to direct Alliance (the Preston Park management company) to distribute accumulated FY 08-11 excess revenue. FORA staff formally transmitted this direction to Alliance, but were informed by Alliance that Marina instructed them to withhold the distribution. At the November 18, 2011 meeting, the FORA Board, at the closed section, directed the FORA Counsel to execute an indemnity agreement with Alliance and request an immediate disbursement of the undistributed revenue (50% to FORA and 50% to Marina).

Payment status: FORA received full payment on November 22, 2011.

### 3. City of Seaside (Seaside)

- Tax increment: Please see paragraph 2 above regarding Seaside tax increment underpayment. At the February 2011 meeting, the FORA Board approved an MOA with Seaside for a phased (4 payments) repayment of this obligation.

Payment status: Seaside paid the first and second installment on time. The next (third) installment payment is due January 31, 2012.

### 4. County of Monterey (County)

- Lease revenue: FORA was notified by County staff that the Ord Market Lessee may owe County/FORA in lease revenue. Under the Lease terms, the Lessee pays the larger of basic rent or 3% of gross monthly sales; the Lessee has been paying the basic rent, submitted financial documents set forth underpaid rent for 2010 of about \$50K.

Payment status: County is working with the Lessee to determine the amount owed.

### FISCAL IMPACT:

Negative. FORA must expend resources or borrow funds until these receivables are collected. The majority of FORA revenues come from member/jurisdiction/agencies and developers. FORA's ability to conduct business and finance its capital obligations depends on a timely collection of these revenues.

### COORDINATION:

Finance Committee, Executive Committee

Prepared by

Ivana Bednarik

Approved by

Michael A. Houlemard, Jr.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## EXECUTIVE OFFICER'S REPORT

<b>Subject:</b> Administrative Committee Report	
<b>Meeting Date:</b> January 13, 2012 <b>Agenda Number:</b> 8b	<b>INFORMATION</b>

### RECOMMENDATION:

Receive a report from the Administrative Committee.

### BACKGROUND/DISCUSSION:

The FORA Administrative Committee met November 30, 2011. Approved minutes are attached.

### FISCAL IMPACT:

Reviewed by FORA Controller 

Staff time for this item is included in the approved FY 11-12 budget.

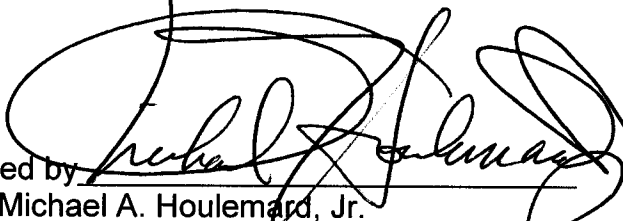
### COORDINATION:

Administrative Committee

Prepared by

  
Crissy Maras

Approved by

  
Michael A. Houlemard, Jr.

# FORT ORD REUSE AUTHORITY

920 2<sup>nd</sup> Avenue, Suite A

Marina, CA 93933

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

## MINUTES OF THE FORT ORD REUSE AUTHORITY ADMINISTRATIVE COMMITTEE MEETING Wednesday, November 30, 2011

1. **Call to order at 8:15 A.M.** - Noting a quorum was present, Fort Ord Reuse Authority ("FORA") Administrative Committee co-chair Daniel Dawson called the meeting to order at 8:15 AM. The following people, as indicated by signatures on the roll sheet, attended:

Nick Nichols, Monterey County  
Diana Ingersoll, City of Seaside  
Patrick Breen, MCWD  
Anya Spear, CSUMB  
Daniel Dawson, City of DRO  
Keith McCoy, UCP  
Crissy Maras, FORA  
Beth Palmer, Monterey Downs

Steve Endsley, FORA  
Bob Schaffer, MCP  
Doug Yount, City of Marina  
John Marker, CSUMB  
Kathleen Lee, Monterey County  
Vicki Nakamura, MPC  
Chuck Lande, Marina Heights  
Carl Niizawa, MCWD

Michael Houlemard, FORA  
Jim Arnold, FORA  
Ray Corpuz, City of Seaside  
Graham Bice, UCMBEST  
Scott Hilk, MCP  
Tim O'Halloran, City of Seaside  
Jim Fletcher, East Garrison  
Janet Brennan, Land Watch

2. **Pledge of Allegiance** – Chair Dawson asked Jim Cook, who agreed, to lead the pledge of allegiance.

3. **Acknowledgements, announcements and correspondence** – 1) Chair Dawson delegated chair responsibilities to FORA Executive Officer Michael A. Houlemard, Jr., 2) Graham Bice notified members of the upcoming Monterey County Cowboy Music & Poetry Festival, where his band would be performing, 3) Chair Houlemard noted that a forum would take place on December 1<sup>st</sup> at the Oldemeyer Center in Seaside to discuss the future of Fort Ord, at which he had been asked to speak. The forum is being hosted by the League of Women Voters and will include a panel of speakers to address various issues related to the future of Fort Ord and the extension of the Fort Ord Reuse Authority.

4. **Public comment period** - none

5. **Approval of meeting minutes for November 9, 2011** – On a motion made by Mr. Bice and seconded by Nick Nichols, the minutes were approved as presented.

### 6. Old Business

#### a. Capital Improvement Program ("CIP") – upcoming schedule/FORA historical funding

A memo written by FORA Senior Planner Jonathan Garcia, including development forecasts contained within the current CIP, was given to members to provide updates. This will begin FORA's annual process of updating the CIP.

#### b. Habitat Conservation Plan ("HCP") – update

An Economic and Planning Systems draft memo in the meeting packet provides an overview of financing options for the HCP endowment. Chair Houlemard requested member feedback on the memo by December 15<sup>th</sup> in order to present the information to the FORA Board in early 2012. Once 100% support is obtained amongst FORA land use jurisdictions, funding strategies will be submitted to Fish & Game. The memo will be emailed to members.

#### c. Extension of FORA – update/schedule

At tomorrow's forum, a presentation of FORA's remaining obligations and assets will be given and will include a schedule for getting extension legislation to the State by June/July 2012. There is currently a difference of opinion on the length of extension, but general thoughts on a FORA extension of some type are analogous. Among issues to be resolved are the extent of FORA oversight and the possibility of the ex-officio University Board members receiving voting capabilities. Hearings on the bill will be held within the local community

rather than in Sacramento. Mr. Houlemard noted that Assembly Member Monning thinks the extension of FORA is essential in order to provide habitat and roadway mitigations. Senator Blakeslee's office supports the extension for similar reasons, however FORA staff has yet to hear from the Senator himself. Luis Alejo offered to co-sponsor a Monning bill to extend FORA, and language could be as simple as a date change in the existing legislation.

Doug Yount asked if the Administrative Committee would be receiving monthly updates on this item. Chair Houlemard responded that the Administrative Committee would remain apprised of FORA Legislative Committee action as necessary.

Brian Boudreaux informed the Administrative Committee of his opinion that there is a growing movement amongst CSUMB students and faculty that development of Fort Ord is not necessary. Mr. Boudreaux attended a recent presentation where what he called "inaccurate information" was being presented as fact and suggested that more outreach should be done amongst this group in order to provide factual and historical information about the "connection of the developer fee" to building removal, habitat conservation, etc. Anya Spear noted that the campus is aware of, and is attempting to respond to, the growing concern surrounding Fort Ord development. Chair Houlemard noted FORA's awareness and attempt to educate the public on the three main items of a balanced sustainable program – jobs, housing and protecting the environment.

## **7. New Business**

### **a. Approve committee meeting dates for 2012**

The FORA Board approved their calendar of 2012 meeting dates, which sets the Administrative Committee calendar of meeting dates, at their November meeting. Administrative committee meeting dates for 2012 were approved as presented.

## **8. FORA Board Meeting Agenda Review for December 9, 2011**

1) FORA continues to work on Preston Park disposition issues, an update to the Preston Park appraisal, an agreement for management services, and the authorization to put Preston Park up for public sale, 2) Board member Supervisor Parker requested a report on veteran's cemetery funding, 3) A clean audit report will be presented, 4) Outstanding receivables will be updated, 5) The FORA Finance Committee received a salary survey suggesting that FORA salaries were below the median level and therefore out of line with FORA policy. They are recommending the Board adopt new salary ranges, 6) The FORA Executive Committee meeting taking place later in the day will confirm the possibility of the December FORA Board meeting being postponed to December 16<sup>th</sup>, 7) There will probably be no need for a closed session, which is currently suggested in the draft agenda.

## **9. Items from Members – none**

## **10. Adjournment - The meeting was adjourned at 9:10 AM.**

Meeting minutes prepared by Crissy Maras, Administrative Coordinator

# FORT ORD REUSE AUTHORITY BOARD REPORT

## EXECUTIVE OFFICER'S REPORT

<b>Subject:</b> Finance Committee - report	
<b>Meeting Date:</b> January 13, 2012	<b>INFORMATION</b>
<b>Agenda Number:</b> 8c	

### RECOMMENDATION(S):

Receive the December 14, 2011 Finance Committee (FC) meeting minutes.

### BACKGROUND/DISCUSSION:

The FC met on December 14, 2011 to discuss on-line banking services, implementation of salary survey, FORA historical funding and expenses and other items. Please refer to the attached minutes from this meeting for more details and the FC recommendations.

### FISCAL IMPACT:

Reviewed by FORA Controller 

Staff time for this item is included in the approved FY 11-12 budget.

### COORDINATION:

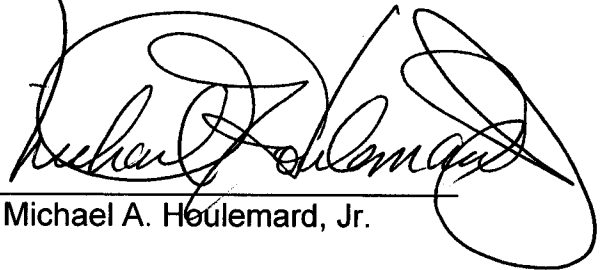
Finance Committee

Prepared by



Marcela Fridrich

Approved by



Michael A. Houlemard, Jr.





## Fort Ord Reuse Authority

920 2<sup>nd</sup> Avenue, Suite A, Marina, CA 93933  
Phone: (831) 883-3672 • Fax: (831) 883-3675 • www.fora.org

### Finance Committee Meeting

Wednesday, December 14, 2011 at 2:00 pm

### Action Minutes – DRAFT

Present: Chair Sue McCloud, Members: Graham Bice, Ian Oglesby, Hunter Harvath  
Staff: Michael A. Houlemard, Jr., Steve Endsley, Ivana Bednarik, Marcela Fridrich, Daylene Alliman  
Guest: Jolynn Silva, Santa Barbara Bank and Trust  
Absent: Bill Kampe (excused)

## AGENDA

The Finance Committee (FC) discussed the following agenda items:

1. Roll Call  
A quorum was achieved at 2:00 PM.
2. November 16, 2011 Minutes  
Approved (Motion Bice; Second Harvath, passed 4:0).
3. Pay-On Line Banking Services  
FC members received the electronic bill pay proposal prepared by staff prior to the meeting. Jolynn Silva from Santa Barbara Bank & Trust was present to answer questions. Executive Officer Houlemard introduced the item by explaining benefits of processing the routine, limited amount monthly recurring expenses (such as utilities and supplies) on-line. Ivana Bednarik added that the on-line bill pay procedure should significantly save staff time, make payment procedures more cost effective (reduces the cost of copying, envelopes, stamps and check printing fees). Member Oglesby asked about the \$5,000 single transaction limit when the checking account maximum balance is limited to \$10,000, Marcela Fridrich explained that the single transaction correlates with the maximum line of credit on the FORA Visa card. FC members asked that the monthly electronic payment printout be included with the regular check register. FC voted to approve the new on-line bill pay procedure as outlined. Approved (Motion Harvath, Second Oglesby, passed 4:0).
4. Salary Survey Implementation  
This item was continued from the October 28 and November 16 meetings. Before implementing the proposed salary ranges and revised Longevity Policy FC asked staff to prepare a budget analysis showing how these changes will impact the FORA budget. FC members received the requested information prior to the meeting. They reviewed the analysis and concluded that the net fiscal impact (including savings due to staff reorganization) is in the range of \$20K -30K and funds are available in the FY 11-12 budget to cover/implement 1) the proposed salary ranges 2) the longevity adjustments with the effective date of January 1, 2012. Approved (Motion Harvath, Second Oglesby, passed 4:0).  
FC members reviewed the updated/revised longevity policy as recommended by the salary survey consultant to simplify and remove ambiguity by stating that longevity pay should be awarded for length of services with the organization rather than length of time in a classification. Approved (Motion Bice, Second Harvath passed 4:0).
5. FORA historical funding and expenses  
Pursuant to recent public and jurisdictional requests, FORA staff initiated preparing a summary of funding and expenditures outlining sources of revenue/expenditures and related project benefits to the individual jurisdictions. FC members reviewed the draft document prepared by Ivana Bednarik. Chair McCloud suggested showing City of Monterey separately on the chart. FC members recommended using "funds to FORA" and "expenditures by FORA" in titles. FC decided not to include ESCA funds in the chart as it might be misleading since the benefit is regional more than jurisdictional. Member Bice suggested adding Preston Park sale revenues as an additional future revenue source to FORA. FC members asked staff to update the document for the next FC meeting.
6. Future Tax Increment Opt-in Proposal  
FC Members suggested waiting for California Supreme Court decision expected in mid January 2012 to engage further discussion on an equitable plan for assisting in RDA efforts.
7. 2012 Meeting Calendar  
FC Members reviewed the 2012 draft calendar. The next FC meeting is scheduled for January 19, 2012.
8. Meeting adjourned at 4:00 pm.

Minutes prepared by Marcela Fridrich, Accounting Officer.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## EXECUTIVE OFFICER'S REPORT

**Subject:** Habitat Conservation Plan – status report

**Meeting Date:** January 13, 2012

**Agenda Number:** 8d

**INFORMATION**

### RECOMMENDATION(S):

Receive a status report regarding the Habitat Conservation Plan ("HCP") and State of California 2081 Incidental Take Permit ("2081 permit") preparation process.

### BACKGROUND/DISCUSSION:

The Fort Ord Reuse Authority ("FORA"), with the support of its member jurisdictions and consultant team, is on a path to receive approval of a completed basewide HCP and 2081 permit in 2013, concluding with the US Fish and Wildlife Service ("USFWS") and California Department of Fish and Game ("CDFG") issuing federal and state permits.

ICF International (formerly Jones & Stokes), FORA's HCP consultant, completed an administrative draft HCP on December 4, 2009. FORA member jurisdictions completed a comment and review period, which ended February 26, 2010. In April 2011, USFWS finished their comments on all draft HCP sections, while CDFG provided limited feedback. These comments by the regulatory agencies required a substantial reorganization of the document. To address this, ICF International completed a 3<sup>rd</sup> Administrative Draft HCP for review (dated September 1, 2011). The 12 Permittees (County, Cities of Marina, Seaside, Del Rey Oaks, and Monterey, Monterey Peninsula Regional Park District, Marina Coast Water District, State Parks, Monterey Peninsula College, California State University Monterey Bay, University of California Monterey Bay Education, Science, and Technology Center, and FORA) and Cooperating Entity (Bureau of Land Management) reviewed this draft document and submitted their comments in October 2011. This review includes the draft HCP Implementing Agreement and Ordinance/Policy, which are appendices to the draft HCP and are being prepared separately by FORA. ICF International is currently addressing all received comments and compiling a draft that can be submitted to USFWS/CDFG in January 2012. It is estimated that it will take the wildlife agencies 90 days to complete their internal review followed by 60 days for ICF International to prepare a Screen Check draft that will undergo a 30-day review for legal compliance by the wildlife agencies' solicitors/legal departments. ICF International would then respond to any comments/issues raised in 30 days. FORA staff estimate a Public Draft document to be available for public review by August 2012.

At the September 7, 2011 FORA Administrative Committee meeting, Jamie Gomes, Principal, from EPS presented information related to Economic and Planning Systems' ("EPS") review of HCP costs and endowment investment strategy. EPS provided an HCP endowment investment strategy that will be incorporated into the draft HCP. Final approval of the endowment strategy rests with CDFG/USFWS.

### FISCAL IMPACT:

Reviewed by FORA Controller 

ICF International and Denise Duffy and Associates' (FORA's NEPA/CEQA consultant) contracts have been funded through FORA's annual budgets to accomplish HCP preparation.

### COORDINATION:

Executive Committee, Administrative Committee, Legislative Committee, HCP working group, FORA Jurisdictions, USFWS and CDFG personnel, ICF International, Denise Duffy and Associates, and Bureau of Land Management.

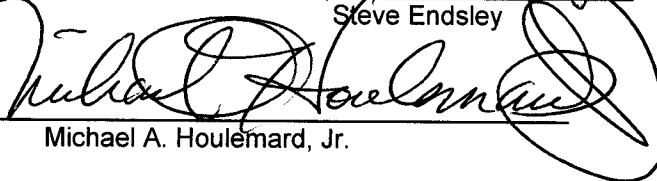
Prepared by

  
Jonathan Garcia

Reviewed by

  
Steve Endsley

Approved by

  
Michael A. Houlemard, Jr.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## EXECUTIVE OFFICER'S REPORT

<b>Subject:</b> Executive Officer's Travel Report	
<b>Meeting Date:</b> January 13, 2012	<b>INFORMATION</b>
<b>Agenda Number:</b> 8e	

### RECOMMENDATION(S):

Receive an informational travel report from Fort Ord Reuse Authority ("FORA") Executive Officer.

### BACKGROUND/DISCUSSION:

The Executive Officer regularly submits reports to the Executive Committee providing details of travel requests, including those by the FORA Board members and Executive Officer. Travel expenses may be paid or reimbursed by FORA, outside agencies/ jurisdictions/organizations, or a combination of these sources. The Executive Committee reviews and approves these requests, accordingly, and the travel information is reported to the Board as an informational item.

The FORA Chair and possibly Mayor Bachofner will accompany the Executive Officer attending the **February 27-29, 2012** – Association of Defense Communities 2012 Winter Forum, Miami, Florida. In order to save costs, the Executive Officer has decided to forgo attending the **February 2 – 4, 2012** - Local Government Commission conference "New Partners for Smart Growth" in San Diego.

It is anticipated that the FORA Legislative Mission will coincide with the Federal Economic Development Forum in Washington, DC this year in order to save additional travel cost. More information will follow at the February 2012 Board meeting.

### FISCAL IMPACT:

Reviewed by FORA Controller 

Travel costs and incidentals are covered according to FORA's travel policy and are included in the FY 11-12 budget.


### COORDINATION:

Executive Committee.

Prepared by

  
Daylene Alliman

Approved by

  
Michael A. Houlemard, Jr.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## EXECUTIVE OFFICER'S REPORT

**Subject:** Bureau of Land Management National Designation – Update

**Meeting Date:** January 13, 2012

**Agenda Number:** 8f

**INFORMATION**

### RECOMMENDATION(S):

Receive an update regarding National Landscape Conservation System ("NLCS") designation for Bureau of Land Management's ("BLM") former Fort Ord lands and how it enhances FORA's Habitat Conservation Plan ("HCP") and State of California 2081 Incidental Take Permit ("2081 permit") preparation process.

### BACKGROUND/ DISCUSSION:

Receiving a federal NLCS designation of the former Fort Ord lands in some manner would prove helpful to both BLM and FORA efforts to implement and receive budgetary support for the HCP when it is put into effect. To this end, the FORA Legislative Work Plan includes an item supporting continued and enhanced efforts to seek a federal NLCS designation for the former Fort Ord BLM Natural Resource Management Area. Such designation is thought to be helpful in targeting budgetary resources from the federal government appropriate to the property's unique ecological and recreational resources. The NLCS has four categories of federally designated areas; 1) National Monuments, National Conservation Areas, and similar designations; 2) Wilderness; 3) Wild and Scenic Rivers; and 4) National Trails. A more detailed listing of these potential designations are available to anyone interested in more information. A brief report will be made about the benefits of obtaining a designation for the former Fort Ord.

For the past several months, FORA has been working with a diverse and unprecedented coalition of interests to achieve the federal designation. Regular conference calls have been coordinated by the Conservation Lands Foundation, a non-profit organization, open to FORA members, trail and open space interests, equestrians, and others. Ultimately, this project could be brought to fruition either by congressional action or Presidential decree.

### FISCAL IMPACT:

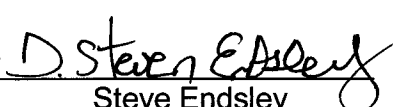
Reviewed by FORA Controller 

Savings unknown but the designation is expected to ease budgetary pressures on BLM and FORA, incident to HCP implementation.

### COORDINATION:

BLM, Executive Committee, Administrative Committee, Legislative Committee, HCP working group, USFWS and CDFG personnel, Jones & Stokes, DD&A,

Prepared by   
Jonathan Garcia

Reviewed by   
Steve Endsley

Approved by   
Michael A. Houlemard, Jr.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## ELECTION OF OFFICERS - 2012

<b>Subject:</b>	Report from Nominating Committee	
<b>Meeting Date:</b>	January 13, 2012	<b>ACTION</b>
<b>Agenda Number:</b>	9a	

### RECOMMENDATION:

1. Elect three voting members of the Fort Ord Reuse Authority ("FORA") Board of Directors to serve as officers for a term of one year (February 2012 – January 2013) and two other representatives from the Board, all to serve on the Executive Committee:

- Chair
- First Vice-Chair
- Second Vice-Chair
- A past Chair of the Board or, in the absence of one, a second representative-at-large
- One other voting member of the Board to serve as a representative-at-large

### BACKGROUND/DISCUSSION:

The FORA Master Resolution states that the Authority's three officers shall be elected by the Board at the end of its first regular meeting in January of each year. Serving on the 2012 Nominating Committee were Mayors Sue McCloud (Chair), David Pendergrass, Jerry Edelen, Mayor Pro Tem Frank O'Connell, Mayor Felix Bachofner, and Supervisor Dave Potter. The Committee met on December 5<sup>th</sup> (Nominations Committee Chair/Mayor Sue McCloud participated telephonically) and recommended the following slate:

Chair:	County of Monterey Supervisor Dave Potter
1 <sup>st</sup> Vice Chair:	Del Rey Oaks Mayor Jerry Edelen
2 <sup>nd</sup> Vice Chair:	Marina Mayor Pro Tem Frank O'Connell
Past Chair:	(Vacant for 2012 – Executive Committee opening filled by the second representative-at-large below)
Board Representative:	Sand City Mayor David Pendergrass
Board Representative:	Seaside Mayor Felix Bachofner

**VOTING PROCEDURE:** A summary nomination covering all offices may be offered by the Nominating Committee Chair or any board member before voting for the individual offices is commenced. In the absence of this, the Chair will accept nominations for each office, starting with the Chair, and conduct an election as noted in **Attachment A**. A majority of the total number of votes cast confirms election.

The Authority officers serve for a term of one year. They may be reelected for no more than one consecutive, additional term in the same office. The board policy is that the officers shall rotate on a regular basis among the voting members of the Board. Succession is from 2<sup>nd</sup> Vice Chair to 1<sup>st</sup> Vice Chair to Chair. The Board may appoint other officers as deemed necessary. The three officers and a two representatives-at-large comprise the Executive Committee at this time and for the past year. There has been no past chair since the August 14, 2009 board meeting.

### FISCAL IMPACT:

Reviewed by FORA Controller 

None

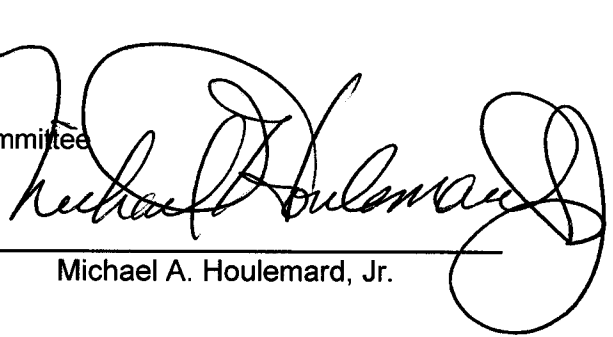
**COORDINATION:** Nominating Committee and Executive Committee

Prepared by



Laura Cohan

Approved by



Michael A. Houlemard, Jr.

## **VOTING PROCEDURES**

### **Election of Officers**

#### **January 13, 2012 FORA Board Meeting**

1. The Chair (or Acting Chair) opens the election of officers by requesting that the Chair, or other member, of the Nominating Committee present the committee's recommended slate of officers.
2. The Board may elect the three officers and the "At-Large" Executive Committee Members by a summary nomination, wherein a motion to elect all three is made, (typically by the Nominating Committee Chair) seconded and carries. In the absence of a summary nomination, the Chair will request nominations for each board position in turn. The order of the election shall be the Chair first and then the First Vice-Chair followed by the Second Vice-Chair. Each position, if voted individually, is voted on before the next position is voted on. The two appointed representatives to the Executive Committee (a representative-at-large and a past board chair or, if there is none, another voting board member) may be elected, appointed, or simply confirmed by acclamation by the Board.
3. If only one nomination is received for a position, a voice vote to elect by acclamation may be accepted by the Chair.
4. If more than one nomination for any position is received, the procedure shall be as follows:
  - Nominees for each position are given the opportunity to make a short statement.
  - Ballots are distributed, voted and then collected by the Deputy Clerk.
  - Ballots are tallied by the Executive Officer and the Authority Counsel.
  - Voting results are announced by the Executive Officer before election of the other officers takes place.