



# Fort Ord Reuse Authority

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**BOARD OF DIRECTORS SPECIAL MEETING**  
**Wednesday, May 29, 2013 at 3:30 p.m.**  
**910 2<sup>nd</sup> Avenue, Marina, CA 93933 (Carpenter's Union Hall)**

## AGENDA

**1. CALL TO ORDER AND ROLL CALL**

**2. PLEDGE OF ALLEGIANCE**

**3. OLD BUSINESS**

a. Fort Ord Reuse Authority Election Services

i. Review Executed Agreement with Steve Churchwell, Churchwell White LLP, to Provide Legal Consulting Services for Anticipated Ballot Measures

INFORMATION

ii. Approve Agreement with the County of Monterey to Perform verification of Signatures for Anticipated Ballot Measures

ACTION

iii. Adopt Resolution XX-X, Assigning the County of Monterey as FORA's Agent for Verification of Signatures for Anticipated Ballot Measures and Authorizing the executive Officer to Execute a Future Contract with the Appropriate Entity to Conduct an Election(s), as needed.

ACTION

**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.*

**5. ITEMS FROM MEMBERS**

**6. ADJOURNMENT**

**NEXT REGULAR BOARD MEETING: JUNE 21, 2013**

*Persons seeking disability related accommodations should contact FORA 24 hours prior to the meeting.*

This meeting is recorded by Access Monterey Peninsula (AMP) to be televised Sundays at 9:00 a.m./Sundays at 1:00 p.m. on Marina/Peninsula Chanel 25. The video and full Agenda packet are available online at [www.fora.org](http://www.fora.org).

# FORT ORD REUSE AUTHORITY BOARD REPORT

## NEW BUSINESS

**Subject:** Fort Ord Reuse Authority Election Services

**Meeting Date:** May 29, 2013

**Agenda Number:** 3a

**INFORMATION/ACTION**

### RECOMMENDATION(S):

- i. Review Executed Agreement with Steve Churchwell, Churchwell White LLP, to Provide Legal Consulting Services for Anticipated Ballot Measures INFORMATION
- ii. Approve Agreement with the County of Monterey to Perform Verification of Signatures for Anticipated Ballot Measures. ACTION
- iii. Adopt Resolution XX-X, Assigning the County of Monterey as FORA Agent for Verification of Signatures for Anticipated Ballot Measures and Authorizing the Executive Officer to Execute a Future Contract with the Appropriate Entity to Conduct an Election(s), as needed. ACTION

### BACKGROUND/DISCUSSION:

On April 2, 2013, a Notice of Intention (NOI) "to circulate initiative petition entitled Protect Fort Ord Open Space Access Initiative" (Initiative #1) was filed with FORA. On May 1, 2013, a NOI "to circulate initiative petition" entitled "California Central Coast Veterans Cemetery, Open Space Preservation and Economic Revitalization Initiative" (Initiative #2) was also filed with FORA. Information regarding these initiatives is available at the following websites:

- Initiative #1: <http://fortordaccess.org>
- Initiative #2: <http://securethepromise.org>

- i. Executed Agreement with Steve Churchwell, Churchwell White LLP, to Provide Legal Consulting Services for Anticipated Ballot Measures.

At the May 10, 2013 Board meeting, the Board authorized the Executive Officer to retain an election law specialist to provide legal consulting services for the above mentioned ballot measures and requested to receive a copy of the contract. Per Board direction, FORA has retained Steve Churchwell, of Churchwell White LLP to provide elections consulting services to support Authority Counsel Jon Giffen, not to exceed \$25,000. A copy of the executed contract is attached for review (**Attachment A**).

- ii. Approve Agreement with the County of Monterey to Perform Verification of Signatures for Anticipated Ballot Measures.

The California Government Code sections that establish FORA describe FORA's electoral roles. Government Code section 67659 reads:

"67659. In accordance with Section 5151 of the Elections Code, the authority is a district for purposes of initiative and referendum under Chapter 4 (commencing with Section 5150) of Division 5 of that code and the voters of the authority are the voters of Monterey County."

On Thursday, May 23, 2013, proponents of Initiative #2 submitted 27 boxes of executed petitions to FORA for verification of signatures in order to qualify the initiative for placement on the ballot. FORA does not have the capacity to verify signatures and hold county-wide elections without obtaining additional election services. The County of Monterey is willing to provide signature verification services and other services, as needed, to conduct the

anticipated election. Attached is a proposed agreement with The County of Monterey to perform verification of petition signatures (**Attachment B**).

- iii. Adopt Resolution XX-X, Designating the County of Monterey as the Responsible Party for Verification of Signatures for Anticipated Ballot Measures and Authorizing the Executive Officer to Execute a Future Contract with the Appropriate Entity to Conduct an Election(s), as needed.

County Counsel has indicated, and Mr. Churchwell concurs, that execution of a contract with the County of Monterey to perform the above mentioned election services should be accomplished by resolution. The proposed resolution is attached for Board review (**Attachment C**). This resolution assigns to the County FORA's obligation to verify signatures for both ballot measures and also authorizes the Executive Officer to contract with the appropriate entity for additional services needed to conduct the anticipated election. Any necessary additional contract will be provided to the Board upon execution.

**FISCAL IMPACT:**

Reviewed by FORA Controller 

The activities associated with the initiatives and possible elections affect the current (FY 2012-13) as well as the upcoming (FY 2013-14) budgets. There is an adequate balance in the Legal Fees line item in both FY budgets to cover the Churchwell White LLP agreement for not to exceed \$25,000. In addition, the preliminary FY 2013-14 budget includes a new line item "Other Legal Fees" that contains \$600,000 to cover the anticipated signature validation and county-wide elections services. The FORA Board may decide to increase this amount during the FY 2013-14 budget discussion/adoption on June 21, 2013.

Should the signature validation services under the County of Monterey Agreement for initiative #2 (submitted to FORA on May 23, 2013) be performed in this FY, the cost may potentially be absorbed by the available balance in the Legal Services budget and any excess by the FORA reserve fund. However, we currently do not anticipate billing processing until FY 2014.

**COORDINATION:**

County of Monterey Elections Department, Authority Counsel, FORA Elections Consultant.

Prepared by

  
Lena Spilman

Approved by

  
Michael A. Houlemard, Jr.

Agreement No. FC-052313

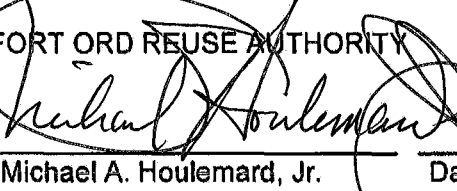

**Agreement for Professional Services**

This Agreement for Professional Services ("Agreement") is by and between the Fort Ord Reuse Authority, a political subdivision of the State of California ("FORA") and Churchwell White LLP ("CONSULTANT").

The parties agree as follows:

1. **SERVICES.** Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide legal services to FORA related to the process of holding elections for two separate ballot measures currently being circulated in Monterey County, as more particularly described in **Exhibit A**. Such services will be at the direction of FORA's Executive Officer, the Executive Officer's designee, or FORA's Authority Counsel.
2. **TERM.** This contract starts May 23, 2013 and ends December 31, 2013 or until the maximum amount of authorized compensation is reached.
3. **COMPENSATION AND OUT OF POCKET EXPENSES.** In consideration for legal services, FORA shall pay CONSULTANT for legal services rendered at the hourly rates specified in **Exhibit A**. In addition, FORA shall reimburse CONSULTANT for one half of his travel time and for reasonable business expenses in accordance with FORA expense reimbursement policy. The overall maximum compensation amount to CONSULTANT over the full term of this Agreement is \$25,000.
4. **FACILITIES AND EQUIPMENT.** CONSULTANT shall, at his cost, furnish all facilities and equipment required for the services to be provided under this Agreement.
5. **GENERAL PROVISIONS.** If any part of this Agreement is inconsistent with the general provisions of **Exhibit B**, this Agreement will prevail.
6. **EXHIBITS.** All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

IN WITNESS WHEREOF, FORA and CONSULTANT execute this Agreement as follows:

FORT ORD REUSE AUTHORITY		CONSULTANT	
By 	5/24/13	By 	5-24-13
Michael A. Houlemard, Jr.	Date	Steven G. Churchwell	Date

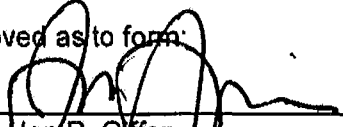
Approved as to form:  
By   
Jon R. Giffen  
FORA Authority Counsel

EXHIBIT A

**SCOPE OF WORK**

**For Legal Services Relating To Holding Elections for Two Ballot Measures**

This Exhibit outlines the services Churchwell White LLP will perform to assist the Fort Ord Reuse Authority ("FORA") with holding elections for two separate ballot measures. The primary services to be performed by CONSULTANT include, but are not limited to, the following: 1) provide FORA advice on the application of California election law to FORA in connection with the two ballot measures; 2) guide FORA in complying with election law procedures in verifying signatures submitted in support of the ballot measures; 3) provide FORA advice to comply with all necessary activities in connection with an election on the ballot measures; 4) provide advice to FORA and its Executive Officer, and to assist FORA Authority Counsel in the litigation between the proponents of the two ballot measures.

**COMPENSATION:** CONSULTANT is entitled to a maximum amount of \$25,000 including out-of-pocket expenses and will be compensated for services rendered in the following manner:

- 1) FORA agrees to pay CONSULTANT at the following hourly rates: 1) Partners: \$395; Associates: \$250; Paralegals: \$125.
- 2) CONSULTANT shall submit monthly invoices to FORA for the period ending on the last day of each month. Each invoice shall contain a summary description of services provided during the billing period.
- 3) CONSULTANT shall be reimbursed for reasonable business expenses if consistent with FORA policy and IRS guidelines and directly incurred pursuant to the terms of this agreement. Invoices for expenses must contain detailed itemizations and any expense of \$50.00 or more must be accompanied by a receipt.
- 4) FORA shall pay CONSULTANT no later than 30 days from receiving an acceptable invoice.
- 5) Final Invoice: CONSULTANT shall provide a final report for each task completed.

**CONTRACT AMENDMENTS:** Any change or amendment to this Agreement must be in writing and signed by the parties to this Agreement.

**EXHIBIT B**

**GENERAL PROVISIONS**

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1. INDEPENDENT CONSULTANT. At all times during the term of this Agreement, CONSULTANT shall be an independent CONSULTANT and shall not be an employee of FORA. FORA shall have the right to control CONSULTANT only insofar as the results of CONSULTANT'S services rendered pursuant to this Agreement.
2. TIME. CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT'S obligations pursuant to this Agreement. CONSULTANT shall adhere to the Scope of Work defined in Exhibit "A".
3. INSURANCE: MOTOR VEHICLE INSURANCE  
CONTRACTOR shall maintain insurance covering all motor vehicles (including owned and non-owned) used in providing services under this Agreement with a combined single limit of not less than \$100,000/\$300,000.
4. CONSULTANT NO AGENT. Except as FORA may specify in writing, CONSULTANT shall have no authority, express or implied to act on behalf of FORA in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement, to bind FORA to any obligation whatsoever.
5. ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.
6. PERSONNEL. CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that FORA, in its sole discretion, at anytime during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT. CONSULTANT shall remove any such person immediately upon receiving notice from FORA of the desire for FORA for the removal of such person or person.
7. PERFORMANCE STANDARD. CONSULTANT shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices his profession. All products and services of whatsoever nature, which CONSULTANT delivers to FORA pursuant to this Agreement, shall be prepared in a substantial, first-class, and workmanlike manner, and conform to the standards of quality normally practiced by a person practicing in CONSULTANT'S profession. FORA shall be the sole judge as to whether the product or services of the CONSULTANT are satisfactory.
8. AGREEMENT CANCELLATION. Either party may cancel this Agreement at any time for its convenience, upon written notification. CONSULTANT shall be entitled to receive full payment for all services performed and all costs incurred to the date of receipt entitled to no further compensation for work performed after the date of receipt of written notice to cease work shall become the property of FORA.
9. CONTRACT PRODUCTS. All completed work products of the CONSULTANT, once accepted, shall be the property of FORA. CONSULTANT shall have the right to use the data and products for research and academic purposes.

10. INDEMNIFY AND HOLD HARMLESS. CONSULTANT is to indemnify, defend, and hold harmless FORA, its officers, agents, employees and volunteers from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by the CONSULTANT or any person directly or indirectly employed by or acting as agent for CONSULTANT in the performance of this Agreement, including the concurrent or successive passive negligence of FORA, its officers, agents, employees or volunteers.

It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies have been determined to be applicable to any of such damages or claims for damages.

11. PROHIBITED INTERESTS. No employee of FORA shall have any direct financial interest in this agreement. This agreement shall be voidable at the option of FORA if this provision is violated.

12. CONSULTANT-NOT PUBLIC OFFICIAL. CONSULTANT possesses no authority with respect to any FORA decision beyond the rendition of information, advice, recommendation or counsel.

AGREEMENT FOR THE PROVISION OF SERVICES BETWEEN  
FORT ORD REUSE AUTHORITY AND COUNTY OF MONTEREY  
RELATING TO PETITION SIGNATURE VALIDATION  
AND/OR PERFORMING ELECTIONS ADMINISTRATION

This Agreement, entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the Fort Ord Reuse Authority (hereinafter referred to as “FORA”) and the County of Monterey, through the Monterey County Registrar of Voters (hereinafter referred to as “County”);

WHEREAS, it is necessary and desirable that the County be retained for the purpose of undertaking certain procedures related to elections on behalf of FORA;

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

I. AGREEMENT

A. SERVICES TO BE PERFORMED BY FORA:

To the extent there is a pre-election request for services relating to any initiatives and/or referenda, the FORA shall be responsible for and make all decisions relative to: accepting or rejecting any initiatives and/or petitions; submitting petitions to the County for the administrative duty of signature and address verification; and/or whether to place any matter on the ballot.

B. SERVICES TO BE PERFORMED BY COUNTY THROUGH THE REGISTRAR OF VOTERS:

1. The County will validate each signature and address, including that of each circulator, appended upon each section of the petition and report the findings back to the FORA.
2. The County will conduct other various and miscellaneous election activities as required including but not limited to all those required under law, other than those described under “Services to be Performed by FORA”.

C. TERMS:

1. This Agreement shall be in effect for the performance of all services incident to the review of the petitions.



2. To the extent that County is asked to perform any services related to verifying signatures relative to initiatives and/or referenda not yet placed on the ballot, the parties agree that County is acting only at the request of the FORA to verify signatures and that County shall have no responsibility for decision related to acceptance or rejection of petitions, and/or any decision and/or direction by FORA to place a matter on the ballot of the FORA.
3. If County is unable to perform services required under this Agreement, as a result of employer/employee relation conditions, vendor conditions or other conditions beyond the control of County, County will be relieved of all obligations under this Agreement. In such event, County may terminate this Agreement after giving 72 hours written notice thereafter County shall be relieved of all obligations under this Agreement.
4. This Agreement may be terminated by either party, with or without cause, upon a 30 day written notice to the other party.
5. If FORA terminates this Agreement prior to completion of services by County, FORA shall be responsible for compensating County for all services performed by County prior to the effective date of the termination.

D. CONSIDERATION:

1. In consideration of the performance of the above services and supplies provided by County, FORA shall compensate County in a sum equal to the actual cost of such services and supplies, including the time of County employees at their fully loaded rate.
2. FORA shall make payment to County within 30 days of receipt of invoice from County.

E. INDEMNIFICATION:

1. In addition to the compensation set forth above, FORA shall indemnify, defend, and hold harmless County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations for having or not having a matter, resolution, and/or initiative placed on the ballot, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage of any kind arising out of or connected with County's performance of this Agreement, unless such claims,

liabilities, or losses arise out of the sole negligence or willful misconduct of County. This provision shall survive the termination of this Agreement and the completion of services performed by County.

2. County agrees to indemnify, defend, and hold harmless FORA, its officers, agents, and employees, from and against any and all claims, liabilities, and losses (including court costs, and reasonable attorneys' fees) related to the negligence or alleged negligence of County

F. EXECUTION

FORA:

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

Print Name: \_\_\_\_\_

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

FORA Contact Name, Address and Phone number:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(\_\_\_\_\_)\_\_\_\_\_

COUNTY:

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

Print Name: \_\_\_\_\_

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

County Contact Name, Address and Phone number:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(\_\_\_\_\_)\_\_\_\_\_

**FORT ORD REUSE AUTHORITY**  
**Resolution 13-XX**

Resolution of the Fort Ord Reuse Authority     )  
Board Assigning the County of Monterey as     )  
FORA Agent for Verification of Signatures for   )  
Anticipated Ballot Measures and Authorizing   )  
the Executive Officer to Execute a Future     )  
Contract with the Appropriate Entity to       )  
Conduct an Election(s), as needed.            )

THIS RESOLUTION is adopted with reference to the following facts and circumstances:

- A. Government Code Section 67659 states that, “[i]n accordance with Section 5151 of the Elections Code, the authority is a district for purposes of initiative and referendum under Chapter 4 (commencing with Section 5150) of Division 5 of that code and the voters of the authority are the voters of Monterey County.”
- B. On April 2, 2013, registered voters Jason Campbell, Chris Mack, Luana Conley, and Michael Salerno filed a Notice of Intention (NOI) with FORA (Initiative #1). The NOI was “to circulate initiative petition entitled Protect Fort Ord Open Space Access Initiative.”
- C. On May 1, 2013, registered voters James Bogan, Alfred Diaz-Infante, Edith Johnsen, Mary Ann Leffel, and W.B. “Butch” Lindley filed an NOI with FORA (Initiative #2). The NOI was “to circulate initiative petition” entitled “California Central Coast Veterans Cemetery, Open Space Preservation and Economic Revitalization Initiative.”
- D. On May 23, 2013, proponents of Initiative #2 submitted petition signatures to the Fort Ord Reuse Authority (“FORA”) for purposes of qualifying the ballot measure for a a county-wide election. .
- E. Per Government Code Section 67659, FORA is responsible for verifying signatures and performing all others tasks necessary to conduct elections for qualified ballot measures.
- F. It is necessary and desirable that the County be retained for the purpose of undertaking certain procedures related to elections on behalf of FORA;

NOW THEREFORE the Board hereby resolves that:

1. To accomplish FORA's responsibilities under Government Code Section 67659, FORA shall assign responsibilities to the County of Monterey to assist FORA in verifying signatures for purposes of initiative and referendum.
2. FORA shall delegate authority to the Executive Officer to enter into contract with the County of Monterey or an elections consultant to conduct county-wide elections. The Executive Officer shall provide the draft contract to the FORA Board upon execution.

Upon motion by \_\_\_\_\_, seconded by \_\_\_\_\_, the foregoing Resolution was passed on this \_\_\_\_\_ day of \_\_\_\_\_, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

\_\_\_\_\_  
Jerry Edelen, Chair

ATTEST:

\_\_\_\_\_  
Michael A. Houlemard, Jr., Secretary

*CERTIFICATE OF SECRETARY*

The undersigned Secretary of the Board of the Fort Ord Reuse Authority hereby certifies that the foregoing is a full, true and correct copy of Resolution No. 13-XX adopted \_\_\_\_\_.

\_\_\_\_\_  
Michael A. Houlemard, Jr., Secretary