



FORT ORD REUSE AUTHORITY

SPECIAL MEETING

FORT ORD REUSE AUTHORITY (“FORA”) BOARD OF DIRECTORS

Thursday, April 30, 2020 at 2:00 p.m.

AGENDA

ALL ARE ENCOURAGED TO SUBMIT QUESTIONS/CONCERNS BY NOON APRIL 29, 2020.

THIS MEETING MAY BE ACCESSED REMOTELY USING THE FOLLOWING ZOOM LINK:

[HTTPS://ZOOM.US/J/956115894](https://zoom.us/j/956115894)

PLEASE REVIEW FORA’S UPDATED REMOTE MEETINGS PROTOCOL AND BEST PRACTICES HERE:

[HTTPS://FORA.ORG/REMOTE_MEETINGS_PROTOCOLS](https://fora.org/remote_meetings_protocols)

1. CALL TO ORDER

2. CLOSED SESSION

- a. Conference with Legal Counsel – Gov. Code §54956.9(d)(2): Anticipated Litigation, Significant Exposure to Litigation, two potential cases

3. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

4. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

5. ROLL CALL

FORA is governed by 13 voting members: (a) 1 member appointed by the City of Carmel; (b) 1 member appointed by the City of Del Rey Oaks; (c) 2 members appointed by the City of Marina; (d) 1 member appointed by Sand City; (e) 1 member appointed by the City of Monterey; (f) 1 member appointed by the City of Pacific Grove; (g) 1 member appointed by the City of Salinas; (h) 2 members appointed by the City of Seaside; and (i) 3 members appointed by Monterey County. The Board also includes 12 ex-officio non-voting members.

6. CONSENT

- a. Amended December 13, 2019 Board Meeting Minutes (p. 3)
Recommendation: Approve amended December 13, 2019 Meeting Minutes.
- b. March 12, 2020 Board Meeting Minutes (p. 8)
Recommendation: Approve March 12, 2020 Meeting Minutes.

7. BUSINESS ITEMS

*BUSINESS ITEMS are for Board discussion, debate, direction to staff, and/or action. Comments from the public are **not to exceed 3 minutes** or as otherwise determined by the Chair.*

- a. Building Removal Bond Funding Agreements (p. 13) **INFORMATION/ACTION**
Recommendation: Approve Resolution 20-xx: Approving, and Authorizing the Execution and Delivery of, Building Removal Funding Agreements in Connection with Tax Allocation Bonds to Fund Building Removal Costs, and Approving Related Actions.
- b. CalPERS Liability Funding Strategy (p. 125) **INFORMATION**
Recommendation: Receive CalPERS Liability Funding Strategy Report.
- c. Capital Improvement Program (“CIP”) Project Transfers Status (p. 134) **INFORMATION**
Recommendation: Receive a report on the status of FORA’s efforts to:
 - a) Transition three on-going CIP projects and one General Fund project to the underlying jurisdictions;

- b) Document funds to be transferred as approved in the FY 19/20 Mid-Year General and CIP Budget update; and
- c) Status of Memoranda of Agreements (“MOAs”).

d. Consultant Services Contract Amendments (p. 138)

ACTION

Recommendation(s):

Authorize the Executive Officer to approve \$112,250 of contract amendments for:

- a) NHA Advisors;
- b) The Don Chapin Company; and
- c) Regional Government Services (“RGS”).

e. Monterey County Local Agency Formation Commission (“LAFCO”) Processing Fees **ACTION**

Recommendation: Authorize payment of LAFCO processing fees (p. 150)

8. PUBLIC COMMENT PERIOD

INFORMATION

Members of the public wishing to address the Board on matters within its jurisdiction, but not on this agenda, may do so for up to 3 minutes and will not receive Board action. Due to the [Governors Stay at Home Order](#) and recent [Executive Order related to Public Meetings Protocols](#), all FORA Meetings will now be conducted via Zoom. Public comments should be emailed to board@fora.org. Thank you for your patience and understanding during these unprecedented times.

9. ITEMS FROM MEMBERS

INFORMATION

Receive communication from Board members as it pertains to future agenda items.

10. ADJOURNMENT

NEXT MEETING: Thursday, May 14, 2020 AT 2:00 P.M.

FORT ORD REUSE AUTHORITY BOARD REPORT	
CONSENT ITEMS	
Subject:	Amended December 13, 2019 Board Meeting Minutes
Meeting Date:	April 30, 2020
Agenda Number:	6a
INFORMATION/ACTION	

RECOMMENDATION(S):

Approve amended December 13, 2019 Board Meeting Minutes.

BACKGROUND/DISCUSSION:

Amended minutes from the December 13, 2019 Board meeting are provided to include omitted details of the Item 8a motion made by the FORA Board. FORA staff had noted minor changes to the bond resolution, notably the TAMC/MST allocation adjustment. As confirmed by viewing the Board meeting video, these changes were included in the original motion, but were omitted in the approved minutes.

Prepared by Harrison Tregenza
Harrison Tregenza

Approved by Joshua Metz
Joshua Metz



AMENDED

**FORT ORD REUSE AUTHORITY
BOARD OF DIRECTORS REGULAR MEETING MINUTES
2:00 p.m., Friday, December 13, 2019 | Carpenters Union Hall
910 2nd Avenue, Marina, CA 93933**

1. CALL TO ORDER

Chair Supervisor Jane Parker called the meeting to order at 2:01 p.m.

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Councilmember Jon Wizard.

3. CLOSED SESSION

- a. Conference with Legal Counsel—Gov. Code §54956.9(a), (d)(1): Resource Environmental, Inc. v. Fort Ord Reuse Authority. Monterey County Superior Court Case No.: 19CV004499, Pending Litigation
- b. Conference with Legal Counsel—Anticipated Litigation—Initiation of litigation pursuant to ¶ (4) of subdivision (d) of CA Gov't Code §54956.9—one potential case
- c. Public Employment, Government Code section 54959.7(b) — Personnel — Executive Officer Succession Planning Report

Time Entered: 2:03 p.m.

Time Exited: 3:00 p.m.

4. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

Authority Counsel Jon Giffen reported the following actions taken in closed session:

Item 3a: The Board heard from counsel. Nothing to report.

Item 3b: Counsel was given direction. There is nothing to report.

Item 3c: Counsel announced the Board had approved Joshua Metz as to be Executive Officer effective January 1, 2020.

5. ACKNOWLEDGMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

a. Fiscal Year 2018-19 Audit

Executive Officer Michael A. Houlemard, Jr. advised the Board that the 2018-19 Fiscal Year audit will be presented to the Finance Committee for consideration at the January 2020 Board of Directors meeting.

b. Adopt Resolution 19-14 Acknowledging Executive Officer Michael A. Houlemard, Jr.

Chair Parker introduced the item noting this would be the last FORA Board of Directors meeting for Executive Officer Houlemard. Chair Parker, along with the FORA Board of Directors, read the Resolution of Acknowledgment and Appreciation.

MOTION: On motion by Board member Phillips, seconded by Board member Wizard and carried by the following vote, the Board moved to adopt Resolution 19-14, Acknowledging Executive Officer Michael A. Houlemard, Jr.

MOTION PASSED UNANIMOUSLY

- The Fort Ord Multi-Species Habitat Conservation Plan (“HCP”) was published along with the Environmental Impact Study (“EIS”)/Environmental Impact Report (“EIR”) documents on November 1, 2019. The Army, Land Watch, and Bureau of Land Management submitted comments. Comments must be submitted to the no later than 5:00 p.m. on December 16, 2019.
- 17th State Senate District Senator Bill Monning presented a certificate of recognition on behalf of the United States Senate to Michael A. Houlemard Jr. and read it into the record.
- 20th District Congressman Jimmy Panetta presented a mounted record on behalf of Michael A. Houlemard Jr. which has been read into the record before he U.S. House of Representatives.

6. ROLL CALL

Voting Members Present:

Supervisor Jane Parker (County of Monterey), Supervisor John Phillips (County of Monterey), Supervisor Mary Adams (County of Monterey), Councilmember John Gaglioti (City of Del Rey Oaks), Councilmember Lisa Berkley (City of Marina), Mayor Pro-Tem Gail Morton (City of Marina), Councilmember Alan Haffa (City of Monterey), Mayor Ian Oglesby (City of Seaside), Councilmember Jon Wizard (City of Seaside), Mayor Joe Gunter (City of Salinas), Councilmember Jan Reimers (City of Carmel-by-the-Sea), Councilmember Cynthia Garfield (City of Pacific Grove)

Ex-officio (Non-Voting) Board Members Present:

Congressman Jimmy Panetta (20th Congressional District), Senator Bill Monning (17th State Senate District), Todd Muck (TAMC), Dr. P.K. Diffenbaugh (Monterey Peninsula Unified School District), Steve Matarazzo (University of California, Santa Cruz), Dr. Eduardo Ochoa (California State University Monterey Bay), Colonel Gregory Ford (United States Army), Bill Collins (BRAC), Lisa Rheinheimer (Monterey-Salinas Transit)

7. CONSENT AGENDA

- Approve November 8, 2019 Meeting Minutes
- Administrative Committee
- Water/Wastewater Oversight Committee
- Habitat Conservation Plan Update
- Environmental Services Cooperative Agreement/Base Realignment and Closure Headquarters Meeting Report
- Economic Development Report
- Local Agency Formation Commission of Monterey County Indemnification Agreement
- 2020 Fort Ord Reuse Authority Board Meeting Calendar
- Public Correspondence to the Board

Chair Parker introduced the consent agenda items and asked if any Board member had an item to pull for discussion. Director Morton and Director Adams requested to pull item 7g for clarification.

MOTION: On motion by Board member Gunter, seconded by Board member Phillips and carried by the following vote, the Board moved to approve the consent agenda items 7a -7i.

MOTION PASSED UNANIMOUSLY

8. BUSINESS ITEMS

a. Review Building Removal Bond Legal Status

Mr. Houlemard introduced the item and noted FORA staff have moved ahead with the direction that was given by the FORA Board. Senior Project Manager Peter Said provided the background as to where FORA started in the process in October 2018, investigating the legality and feasibility of bond issuance to receiving Department of Finance (“DOF”) response from dissolution law perspective in December 2019. There have been several questions as to what the DOF response letter is saying. DOF is not clear whether the money

is secure or not, and specifically DOF provided an opinion on dissolution law, the dissolution law did not list FORA as having statutory passthrough payments, and community redevelopment law does not allow funds to flow as an enforceable obligation. However, the DOF opinion does not consider the authorizing act nor other legislative actions. Since the FORA Board authorized the Executive Officer and Authority counsel to take action as necessary to enable a bond issuance the course of action is as follows; 1) Hold a public hearing and start the Mello-Roos clock which was completed on 12/10/2019, 2) Approve legal documents and bond issuance, 3) Consider validating action, and 4) Issue bonds upon successful verification/validation. Mr. Said reviewed the remaining work to be completed as follows: December 2019 – Complete Fiscal Consultants Report (Legal Document 3), January 2020 – The County of Monterey to pass a Resolution to assign pass-through to Successor Entity, Successor Entity needs to resolve to administer the Bond and assign pass-through from the County to the trustee, and the Credit review process with Standard and Poor’s begins. In February 2020 an agreement will be sought on how to address the Monterey County Regional Fire District revenue loss, and bond sale. Mr. Said noted minor changes needed on the Resolution including: TAMC 7% / MST 1% allocation adjustment; inclusion of Public Benefit Conveyance Parcel (PBC) – L5.5.1; and grammatical refinements to the Indenture of Trust. Mr. Said responded to questions and comments from the public.

MOTION: On motion by Board member Morton and seconded by Board member Phillips and carried by the following vote, the Board moved to adopt resolution **19-13** Authorizing the Issuance and Sale of Bonds in a Principal amount not to exceed \$55,000,000 to Finance Building Removal and Related Costs, Approving the Form and Authorizing the execution of an Indenture of Trust, Authorizing Judicial Validation Proceeding Relating to the Issuance of Such Bonds and Authorizing Actions Related Thereto, including the TAMC/MST allocation adjustment and other minor changes noted by staff.

MOTION PASSED UNANIMOUSLY

b. 2018 Transition Plan and Draft Implementing Agreements Status Report

Regional Government Services (“RGS”) consultant Kendall Flint gave a brief 2018 Transition Plan and draft Implementing Agreements progress report. Ms. Flint reported a draft Multi-Agency Transition Plan Implementing Agreement (“TPIA”) has been provided to member agencies for review and comments collected will be reflected in the updated document. She noted Marina Coast Water District (“MCWD”) has sent Implementing Agreements pertaining to water supply/allocation rights to member agencies. Ms. Flint reviewed the Finalization Timeline and estimated adoption of the Implementing Agreements following execution of the Army-Seaside Environmental Services Cooperative Agreement (“ESCA”) contract in March 2020. Ms. Flint reviewed the proposed neutral approach to Joint Powers Authority (“JPA”)/Cooperative formation and HCP/Habitat Management Plan implementation, suggesting establishment of an ad-hoc Committee or “working group” where permittees may meet weekly beginning January 2020 to determine whether to move forward with JPA formation. RGS is working to create a website for public access to all habitat-related materials, reports and documents, which will be available at www.FortOrdHabitatWorkingGroup.org. Ms. Flint and staff responded to questions from Board members and public.

MOTION: On motion by Board member Morton and seconded by Board member Berkley and carried by the following vote, the Board moved to create a Habitat Management Working Group in the form of an ad-hoc Committee.

MOTION PASSED UNANIMOUSLY

c. Eucalyptus Road Storm Drain Infiltrator Repair

Mr. Said provided background regarding the Eucalyptus Road storm water infiltrator repair noting in 2014 FORA was notified of slope failures along Eucalyptus Road and General Jim Moore Boulevard. Mr. Said explained in 2015 C+D Engineers lost engineers familiar with the project, and FORA also had a turn-over

in engineering staff in 2016. New engineers were brought on to the project and a Root Cause Analysis was performed to identify why it was failing. Mr. Said reported the engineering consultants decreased the project's scope by developing a solution to replace the five failing storm water infiltrators with three storm water basins saving \$750K. FORA decreased long term maintenance costs with a sustainable bio-retention system, and created a programmatic construction support plan, facilitating future digging for maintenance on adjacent munitions response areas. In November 2019 FORA received from the Department of Toxic Substances Control, Environmental Protection Agency, and Army sign-off on Construction Support Plan. Mr. Said stated the project is ready for Public Bid and Construction. Mr. Said reviewed what would happen should the project run past the FORA dissolution date of June 30, 2020. Harris and Associates is the construction manager for FORA and the City of Seaside and will ensure continuity. The contract identifies the City of Seaside as the FORA successor, and assigned the project to Seaside. Additionally, the project has a 25% contingency to decrease the risk of overruns. Mr. Said responded to questions from the Board and the public.

MOTION: On motion by Board member Gaglioti and seconded by Board member Wizard and carried by the following vote, the Board moved to authorize the Executive Officer to execute all bidding requirements and associated contracts for the completion of Eucalyptus Road infiltrator repairs not to exceed a project budget of \$1,102,500.

MOTION PASSED UNANIMOUSLY

MOTION: On motion by Board member Morton and second by Board member Wizard and carried by the following vote, the Board moved to hear public comment and adjourn the meeting.

MOTION PASSED UNANIMOUSLY

9. PUBLIC COMMENT

Public comment was received.

10. ITEMS FROM MEMBERS

None.

11. ADJOURNMENT at 5:13 p.m.

Minutes Prepared by:
Heidi L. Gaddy
Deputy Clerk

Approved by:

Joshua Metz Executive Officer

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT ITEMS

Subject:	March 12, 2020 Meeting Minutes	
Meeting Date:	April 30, 2020	INFORMATION/ACTION
Agenda Number:	6b	

RECOMMENDATION:

Approve March 12, 2020 Meeting Minutes.

BACKGROUND/DISCUSSION:

March 12, 2020 FORA Board meeting minutes are presented. In this meeting, the FORA Board approved the Consent Agenda, had a successful second vote on the Habitat Conservation Plan / Environmental Impact Report item, and heard from FORA consultant Kendall Flint on the proposed amendments to the 2018 Transition Plan.

Prepared by Harrison Tregenza
Harrison Tregenza

Approved by Joshua Metz
Joshua Metz



FORT ORD REUSE AUTHORITY
BOARD OF DIRECTORS REGULAR MEETING MINUTES
2:00 p.m., Thursday, March 12, 2020 | Carpenters Union Hall
910 2nd Avenue, Marina, CA 93933

1. CALL TO ORDER

Chair Supervisor Jane Parker called the meeting to order at 2:01 p.m.

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Dr. Eduardo Ochoa of California State University Monterey Bay (CSUMB).

3. CLOSED SESSION

- a. Conference with Legal Counsel -- Gov. Code §54956.9(a), (d)(1): Fort Ord Reuse Authority v. All Persons Interested in the Matter of the Issuance and Sale of Bonds by the Fort Ord Reuse Authority and the Tax Increment Revenue Pledged To, and to be Used for, the Repayment of Such Bonds. Monterey County Superior Court Case No.: 20CV000381, Pending Litigation.
- b. Conference with Legal Counsel -- Gov. Code §54956.9(d)(2): Anticipated Litigation, Significant Exposure to Litigation, one potential case.
- c. Conference with Legal Counsel -- Gov. Code §54956.9(a), (d)(1): Resource Environmental, Inc. v. Fort Ord Reuse Authority. Monterey County Superior Court Case No.: 20CV000771, Pending Litigation.

Time Entered: 2:04 p.m.

Time Exited: 2:48 p.m.

4. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

Authority Counsel Jon Giffen reported the following actions taken in closed session:

Item 3a: This morning, Judge Villareal granted FORA's application for validation and entered a judgement for validation of the bond issuance and the payment of tax increment stream that will repay the bonds. FORA will be going forward with the bond issuance project.

Item 3b: The Board heard from counsel. Nothing to report.

Item 3c: The Board heard from counsel. Nothing to report.

5. ACKNOWLEDGMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

Executive Officer Joshua Metz announced the following:

- FORA is working closely with Marina Community Partners on their effort to begin building demolition of the CDEC Hill. It should begin in the next week or so.
- AB 1486 Survey- FORA staff is formulating a response and will circulate when prepared. Members may submit responses as well.
- Correspondence to the Board received since the last Board meeting:
 - Peter Le, a letter regarding Pure Water Monterey proposed expansion.
 - Land Watch, a letter regarding HCP/EIR considerations, including a letter from Professor Fred Watson of CSUMB.

- 10 items of correspondence received from the veteran’s community regarding requests for post-FORA funding.
- FORA will sunset in 110 days and so far has held 27 Board and Committee meetings this year.
- FORA has begun instituting some measures to protect the safety and well-being of its staff and visitors
- Governor Newsom’s office released Executive Order N25-20, which establishes certain new protocols related to the Brown Act and Bagley-Keene Act and significantly enhancing our ability to provide people an opportunity to self-quarantine while still conducting meetings.
- Mr. Metz reviewed the new Brown Act requirements for use in the future, should health and safety concerns prohibit participation in person. He noted that there is still a requirement that a single location be provided for members of the public to observe and offer public comment.
- Dr. Ochoa announced CSUMB will be suspending all classes starting March 13, until March 19. Classes will be resumed March 20 – April 24 using alternative delivery methods such as Zoom. CSUMB has also cancelled all campus visits and tours from March 13 – April 24.

6. ROLL CALL

Voting Members Present:

Supervisor Jane Parker (County of Monterey), Supervisor John Phillips (County of Monterey), Mayor Pro-Tem Gail Morton (City of Marina), Supervisor Mary Adams (County of Monterey), Councilmember Frank O’Connell (City of Marina), Mayor Ian Oglesby (City of Seaside), Councilmember Jon Wizard (City of Seaside), Councilmember Cynthia Garfield (City of Pacific Grove), Councilmember John Gaglioti (Del Rey Oaks)

Ex-officio (Non-Voting) Board Members Present:

Dr. Eduardo Ochoa (California State University, Monterey Bay), Steve Matarazzo (University of California, Santa Cruz), Colonel Gregory Ford (United States Army), Bill Collins (Base Realignment and Closure), Dr. P.K. Diffenbaugh (Monterey Peninsula Unified School District), Debbie Hale (Transportation Agency of Monterey County), Keith Van Der Maaten (Marina Coast Water District)

7. CONSENT AGENDA

- Approve February 13, 2020 Meeting Minutes
- Approve February 13, 2020 Special Meeting Minutes
- Administrative Committee
- Veterans Issues Advisory Committee
- Habitat Working Group Ad-Hoc Committee
- Finance Committee
- Reassignment of Escrow Holding Company – South Boundary Road Project
- Transition Process Update
- Public Correspondence to the Board

**Chair Parker requested to pull item 7g.*

**Sid Williams of the Veterans Issues Advisory Committee (“VIAC”) requested to pull item 7d.*

The Board heard from Directors and members of the public on Item 7d. Chair Parker stated the VIAC request for funds will be presented with the mid-year budget at the March 23, 2020 Finance Committee meeting. The Board heard from the Directors on Item 7g. Staff and consultants responded to questions and comments from Board members and noted the transfer of funds will occur at the time of FORA’s closure.

MOTION: On motion by Board member Phillips and seconded by Board member Adams and carried by the following vote, the Board moved to approve the March 12, 2020 consent agenda.

MOTION PASSED UNANIMOUSLY

8. BUSINESS ITEMS

a. 2nd Vote - Habitat Conservation Plan (“HCP”)/Environmental Impact Report (“EIR”)

Options

Mr. Metz and Regional Government Services consultant Kendall Flint reviewed the item and the motion being considered for a second vote. Staff and consultants responded to questions and comments from Board members and the public. A robust discussion took place between members of the Board. Public comment was heard on the item.

<i>Item 8a: Motion</i>			
<i>Director Parker</i>	<i>NO</i>	<i>Director Reimers</i>	<i>AYE</i>
<i>Director Garfield</i>	<i>AYE</i>	<i>Director Phillips</i>	<i>AYE</i>
<i>Director O’Connell</i>	<i>NO</i>	<i>Director Gaglioti</i>	<i>AYE</i>
<i>Director Morton</i>	<i>NO</i>	<i>Director Wizard</i>	<i>AYE</i>
<i>Director Adams</i>	<i>NO</i>	<i>Director Oglesby</i>	<i>AYE</i>
<i>Director Carbone</i>	<i>AYE</i>		

Motion Passed by Majority (7 AYES; 4 NOES)

b. 2018 Transition Plan Proposed Amendments

Ms. Flint started off the item and discussed proposed amendments to the following sections in the 2018 Transition Plan Implementing Agreement (TPIA):

- 2.1.3: Litigation Reserve Funds;
- 2.1.4: Habitat Funds;
- 2.1.5: Capital Improvement Funds;
- 2.1.9: Real Property;
- 4.1: Transition Plan Implementing Agreements.

Ms. Flint discussed proposed removal of the following sections:

- 1.3: Revenue Sharing and Financial Contribution;
- 1.4: Reuse Plan and Master Resolution;
- 1.5: Funding of Habitat Protection;
- 2.2.6: Transportation and Transit.

Ms. Flint and FORA staff responded to questions from members of the Board. Public comment was received on the item. Board members discussed whether they should vote on the item during the meeting or wait until other parts of the TPIA are brought forward. Director Parker noted that she felt that staff had received direction and that she would consider this item received and discussed, and that it be closed it for the day.

MOTION: On motion by Board member Morton and seconded by Board member Phillips, and carried by the following vote, the Board moved to continue to meeting past 5:00 p.m. to hear public comment.

MOTION PASSED UNANIMOUSLY

9. PUBLIC COMMENT

Public comment was received.

10. ITEMS FROM MEMBERS

There were no items from members.

11. ADJOURNMENT at 5:05 p.m.

Minutes Prepared by:
Harrison Tregenza
Deputy Clerk

Approved by:

Joshua Metz Executive Officer

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

Subject:	Building Removal Bond Funding Agreements	
Meeting Date:	April 30, 2020	INFORMATION/ACTION
Agenda Number:	7a	

RECOMMENDATION:

Approve Resolution 20-xx: Approving, and Authorizing the Execution and Delivery of, Building Removal Funding Agreements in Connection with Tax Allocation Bonds to Fund Building Removal Costs, and Approving Related Actions.

BACKGROUND/DISCUSSION:

FORA's finance team is working to issue bonds to fund building removal work for FORA jurisdictions by late May 2020. Pursuant to that work, the FORA Board needs to approve certain legal documents. Staff and the bond finance consulting team request that the Board approve certain documents called "Funding Agreements" at the April 30, 2020 meeting. Other documents related to the bond issue will be submitted for approval at the Board's May 14, 2020 meeting. The Board approved the bond indenture, which was the subject of the successful validation action, at its December 13, 2019 Board meeting.

The Funding Agreements. There are six Funding Agreements for consideration by the Board, one for each of the six public agencies ("Funding Recipients") authorized by prior Board action to receive an allocation of proceeds from the proposed bond issue:

- County of Monterey (**Attachment A**);
- City of Marina (**Attachment B**);
- City of Seaside (**Attachment C**);
- Marina Coast Water District (**Attachment D**);
- Monterey-Salinas Transit (**Attachment E**);
- Transportation Agency for Monterey County (**Attachment F**).

Both FORA and the City of Marina, in its capacity as Administrator for the bond issue, are counterparties to the Funding Agreements.

The Funding Agreements contain provisions to address the following primary issues:

- Use of bond proceeds solely for "Building Removal Costs", as defined.
- Funding Recipient controls the expenditure of the bond proceeds allocated for Building Removal Costs.
- Each Funding recipient will have sole responsibility for all of its Building Removal activities
- The only obligations of the Funding Recipients will be to expend amounts allocated for Building Removal Costs, and to maintain records as to the use of the bond proceeds for that purpose.

- The Funding Agreements terminate when all of the bond proceeds allocated have been expended by the Funding Recipients.

In addition, the Funding Agreements provide that neither the Authority nor the City of Marina (acting as Administrator) will have any liability or responsibility with respect to any Building Removal activities of the Funding Recipient or for any Building Removal Costs incurred by the Funding Recipients. The Funding Agreements also provide that none of the Funding Recipients will have any responsibility to pay costs of the Authority or the Administrator related to the cost of administering the bonds.

The Authorizing Resolution for the Board to approve the Funding Agreements (**Attachment G**) also specifies percentages for the allocation of bond proceeds for each of the six Funding Recipients, which were originally authorized by Board direction on December 13, 2019.

The Bond Indenture. The Board authorized the bond issue and approved a bond indenture at its December 13, 2019 board meeting, and is provided her for information purposes only (**Attachment H**). The Bond Indenture of Trust may be edited for non-substantial changes without further Board approval. However, FORA's finance team intends to bring the final version of the Indenture back to the Board for ratification at its May 14th meeting, following Board direction on CalPERS-related matters.

The Official Statement and the Bond Purchase Agreement. The Official Statement is the disclosure document to bond investors regarding the potential risks of the bond issue. The Board will be asked to approve this document at its May 14th meeting. The Board will also approve a bond purchase agreement, which is the proposed contract between FORA and its bond underwriting team of Stifel and Citi. The document will be executed after the actual bond sale.

Schedule. FORA's finance team anticipates selling the bonds on May 20th and closing the bond issue on June 2nd.

FISCAL IMPACT:

Reviewed by FORA Controller  _____

COORDINATION:

Authority Counsel. NHA Advisors. Bond Counsel. City of Seaside, City of Marina. County of Monterey. Transportation Agency for Monterey County. Marina Coast Water District.

ATTACHMENTS:

- A. FORA, City of Marina, and Monterey County Building Removal Funding Agreement
- B. FORA and City of Marina Building Removal Funding Agreement
- C. FORA, City of Marina, and City of Seaside Building Removal Funding Agreement
- D. FORA, City of Marina, and Marina Coast Water District Building Removal Funding Agreement
- E. FORA, City of Marina, and Monterey-Salinas Transit Building Removal Funding Agreement
- F. FORA, City of Marina, and Transportation Agency for Monterey County Building Removal Funding Agreement

- G. Resolution 20-xx: Approving, and Authorizing the Execution and Delivery of, Building Removal Funding Agreements in Connection With Tax Allocation Bonds to Fund Building Removal Costs, and Approving Related Actions
- H. Building Removal Bond Indenture of Trust

Prepared by & Approved by 
Joshua Metz

BUILDING REMOVAL FUNDING AGREEMENT

among the

FORT ORD REUSE AUTHORITY,

and the

**CITY OF MARINA, CALIFORNIA,
as Administrator,**

and the

COUNTY OF MONTEREY, CALIFORNIA

Dated as of May 1, 2020

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

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EXHIBIT A – BUILDING REMOVAL COSTS AND RELATED PARCELS

DRAFT

BUILDING REMOVAL FUNDING AGREEMENT

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

RECITALS:

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

WHEREAS, the Funding Recipient is one of the Local Agencies, and the Indenture provides for the deposit of a portion of the proceeds of the Bonds on the date of issuance of the Bonds (the "Closing Date") to a County Bond Proceeds Account of a Project Fund held by the Trustee as set forth in Section 3.02(a)(ii) of the Indenture; and

WHEREAS, pursuant to Section 3.04(b) of the Indenture, the Trustee will remit the amount in the County Bond Proceeds Account to the Funding Recipient on the Closing Date to be used by the Funding Recipient as provided in this Agreement; and

WHEREAS, the Authority will be dissolved on June 30, 2020, and the Administrator is entering into this Agreement as assignee of the Authority under the Indenture solely to perform certain limited administrative activities as expressly set forth in the Indenture;

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

AGREEMENT:

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

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

2. Issuance of the Bonds. The Authority hereby agrees to (a) issue the Bonds, (b) cause _____% of the proceeds of the Bonds to be deposited to the County Bond Proceeds Account under the Indenture, and (c) cause the Trustee to remit the amount deposited to the County Bond Proceeds Account to the Funding Recipient on the Closing Date. Notwithstanding the foregoing, this Agreement shall be null and void ab initio if for any reason whatsoever the Authority does not perform its obligations under the preceding sentence prior to its dissolution, and no damages or liability whatsoever shall arise or be incurred by the Authority as a consequence of its failure to perform such obligations. In no event shall the Funding Recipient have a right to compel the issuance of the Bonds.

The Funding Recipient hereby advises that its wire transfer instructions for the transfer of funds provided for in clause (c) of the first sentence of the preceding paragraph are: _____.

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

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

The Funding Recipient shall have the sole right to direct the investment of the amounts on deposit in the Building Removal Account. While the Funding Recipient shall have no obligation or liability with respect to any such investment, including any losses with respect thereto, any investment earnings on funds in the Building Removal Account shall be credited to such account and used solely for the purposes thereof as provided in this Section 3.

The Funding Recipient agrees to maintain accounting records relating to the use of amounts disbursed to or upon its order from the Building Removal Account in accordance with Funding Recipient's accounting procedures for similar funds. The Funding Recipient will, upon written request, provide the Authority or the Administrator, whichever requests the same, complete copies of the Funding Recipient's records related to such disbursements.

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

Neither the Authority nor the Administrator shall have any liability or responsibility whatsoever with respect to any Building Removal activities of the Funding Recipient or any Building Removal Costs or other costs incurred for any reason by the Funding Recipient. The Funding Recipient hereby agrees to hold the Authority and the Administrator harmless with respect to any claim by any entity in opposition to the provisions of the preceding sentence.

4. Reimbursement of Administrative Costs. The Funding Recipient hereby agrees to pay, other than from amounts in the Building Removal Account, any and all costs with respect to its review, execution and performance of this Agreement. Neither the Authority nor the Administrator shall have any obligation to pay any costs of the Funding Recipient incurred by it in connection with this Agreement or the Building Removal activities of the Funding Recipient.

Costs of the Authority and the Administrator with respect to this Agreement (a) incurred on or before the Closing Date, shall be Costs of Issuance to be paid from the Costs of Issuance Fund under the Indenture; (b) incurred from and after the Closing Date shall be Administrative Expenses to be paid from the Administrative Expense Fund under the Indenture (as such

capitalized terms used in the preceding clauses (a) and (b) are defined in the Indenture); and the Funding Recipient shall have no responsibility to pay any such costs. The Funding Recipient shall have no responsibility to pay any costs of the Authority or the Administrator incurred by them with respect to the Indenture for the repayment or the administration of the Bonds.

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

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

The only obligations of the Funding Recipient hereunder shall be to expend amounts in Building Removal Account for Building Removal Costs, and to maintain records as to the use of the amounts withdrawn from the Building Removal Account. If, for any reason whatsoever, there are insufficient funds in the Building Removal Account to pay all of the Building Removal Costs of the Funding Recipient, none of the Funding Recipient, the Authority or the Administrator shall have any obligation under this Agreement to fund any such shortfall. If the Funding Recipient shall fail to perform any of its obligations hereunder, the sole remedy of the Authority or the Administrator shall be the commencement of an action in the Superior Court for specific performance by the Funding Recipient of such obligations. No member of the governing board of the Funding Recipient, or any officer or employee thereof, shall in any event be personally liable hereunder.

The Administrator shall have no obligation or liability to the Funding Recipient or the Authority under this Agreement. It is hereby acknowledged that the sole reason for the Administrator to be a party to this Agreement is to recognize its rights to accounting records of, and to compel performance by, the Funding Recipient hereunder, and to consent to amendments hereto in its sole discretion. In no event shall the Administrator have any liability to the Authority or the Funding Recipient under or by reason of this Agreement, and no Councilmember, officer or employee of the Administrator shall in any event be personally liable hereunder.

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

8. Amendment. This Agreement may be amended at any time but only in writing signed by (a) prior to the dissolution of the Authority, the Authority, the Administrator and the Funding Recipient, and (b) after dissolution of the Authority, the Administrator and the Funding Recipient.

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

10. Notices. Any notice required or permitted by this Agreement to be given or delivered to another party shall be deemed to have been received when personally delivered or seventy-

two hours following deposit of the same in any United States Post Office in California, registered or certified, postage prepaid, addressed as follows:

The Authority:	Fort Ord Reuse Authority 920 2 nd Avenue, Suite A Marina, California 93933 Attention: Executive Officer
Administrator:	City of Marina 211 Hillcrest Avenue Marina, California 93933 Attention: City Manager
Funding Recipient:	County of Monterey 168 West Alisal Street, 3rd Floor Salinas, California 93901 Attention: County Administrative Officer

A copy of any notice to be given to the Authority hereunder shall be given to the Administrator. Each party may change its address for delivery of notice by delivering written notice of such change of address to the other parties hereto.

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

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

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

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

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

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

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

FORT ORD REUSE AUTHORITY

By: _____
Josh Metz,
Executive Director

CITY OF MARINA, CALIFORNIA,
as Administrator

By: _____
Layne Long,
City Manager

COUNTY OF MONTEREY, CALIFORNIA

By: _____
Its: _____

06006.05:J16871

DRAFT

EXHIBIT A

BUILDING REMOVAL COSTS AND RELATED PARCELS

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

“Building Removal” means any or all of the following: waste characterization, abatement, building demolition, building removal, building repair, waste disposal, and remediation of buildings and building sites located at certain parcels of property within the boundaries of the former Fort Ord listed below.

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

E11b.8
L23.3.2.2
L23.3.3.1
L23.3.3.2
L20.2.1
L20.2.2
L23.3.2.1

DRAFT

BUILDING REMOVAL FUNDING AGREEMENT

between the

FORT ORD REUSE AUTHORITY,

and the

CITY OF MARINA, CALIFORNIA

Dated as of May 1, 2020

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

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EXHIBIT A – BUILDING REMOVAL COSTS AND RELATED PARCELS

DRAFT

BUILDING REMOVAL FUNDING AGREEMENT

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

RECITALS:

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

WHEREAS, the Funding Recipient is one of the Local Agencies, and the Indenture provides for the deposit of a portion of the proceeds of the Bonds on the date of issuance of the Bonds (the "Closing Date") to a Marina Bond Proceeds Account of a Project Fund held by the Trustee as set forth in Section 3.02(a)(iii) of the Indenture; and

WHEREAS, pursuant to Section 3.04(b) of the Indenture, the Trustee will remit the amount in the Marina Bond Proceeds Account to the Funding Recipient on the Closing Date to be used by the Funding Recipient as provided in this Agreement; and

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

AGREEMENT:

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

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

2. Issuance of the Bonds. The Authority hereby agrees to (a) issue the Bonds, (b) cause ___% of the proceeds of the Bonds to be deposited to the Marina Bond Proceeds Account under the Indenture, and (c) cause the Trustee to remit the amount deposited to the Marina Bond Proceeds Account to the Funding Recipient on the Closing Date. Notwithstanding the foregoing, this Agreement shall be null and void ab initio if for any reason whatsoever the Authority does not perform its obligations under the preceding sentence prior to its dissolution, and no damages

or liability whatsoever shall arise or be incurred by the Authority as a consequence of its failure to perform such obligations. In no event shall the Funding Recipient have a right to compel the issuance of the Bonds.

The Funding Recipient hereby advises that its wire transfer instructions for the transfer of funds provided for in clause (c) of the first sentence of the preceding paragraph are: _____.

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

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

The Funding Recipient shall have the sole right to direct the investment of the amounts on deposit in the Building Removal Account. While the Funding Recipient shall have no obligation or liability with respect to any such investment, including any losses with respect thereto, any investment earnings on funds in the Building Removal Account shall be credited to such account and used solely for the purposes thereof as provided in this Section 3.

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

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

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

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

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

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

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

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

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

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

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

The Authority: Fort Ord Reuse Authority
920 2nd Avenue, Suite A
Marina, California 93933
Attention: Executive Officer

Funding Recipient: City of Marina
211 Hillcrest Avenue
Marina, California 93933
Attention: City Manager

Each party may change its address for delivery of notice by delivering written notice of such change of address to the other parties hereto.

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

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

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

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

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

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

16. Prepayment of Bonds. The Funding Recipient hereby agrees to use its best efforts to prevent the Successor Agency to the Marina Redevelopment Agency (the "Successor Agency") from redeeming such entities' outstanding bonds prior to their stated maturity. To that end, the Funding Recipient agrees to exercise any influence it may have over the Successor Agency or the consultants for the Successor Agency to avoid the early redemption or retirement of the Successor Agency's outstanding bonds titled Successor Agency to the Marina Redevelopment Agency Tax Allocation Bonds, Series 2018A and Successor Agency to the Marina Redevelopment Agency Housing Tax Allocation Bonds, Series 2018B.

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

FORT ORD REUSE AUTHORITY

By: _____

Josh Metz,
Executive Director

CITY OF MARINA, CALIFORNIA

By: _____

Layne Long,
City Manager

06006.05:J16867

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EXHIBIT A

BUILDING REMOVAL COSTS AND RELATED PARCELS

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

"Building Removal" means any or all of the following: waste characterization, abatement, building demolition, building removal, building repair, waste disposal, and remediation of buildings and building sites located at certain parcels of property within the boundaries of the former Fort Ord listed below.

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

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

BUILDING REMOVAL FUNDING AGREEMENT

among the

FORT ORD REUSE AUTHORITY,

and the

**CITY OF MARINA, CALIFORNIA,
as Administrator,**

and the

CITY OF SEASIDE, CALIFORNIA

Dated as of May 1, 2020

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

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EXHIBIT A – BUILDING REMOVAL COSTS AND RELATED PARCELS

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BUILDING REMOVAL FUNDING AGREEMENT

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

RECITALS:

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

WHEREAS, the Funding Recipient is one of the Local Agencies, and the Indenture provides for the deposit of a portion of the proceeds of the Bonds on the date of issuance of the Bonds (the "Closing Date") to a Seaside Bond Proceeds Account of a Project Fund held by the Trustee as set forth in Section 3.02(a)(vi) of the Indenture; and

WHEREAS, pursuant to Section 3.04(b) of the Indenture, the Trustee will remit the amount in the Seaside Bond Proceeds Account to the Funding Recipient on the Closing Date to be used by the Funding Recipient as provided in this Agreement; and

WHEREAS, the Authority will be dissolved on June 30, 2020, and the Administrator is entering into this Agreement as assignee of the Authority under the Indenture solely to perform certain limited administrative activities as expressly set forth in the Indenture;

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

AGREEMENT:

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

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

2. Issuance of the Bonds. The Authority hereby agrees to (a) issue the Bonds, (b) cause _____% of the proceeds of the Bonds to be deposited to the Seaside Bond Proceeds Account under the Indenture, and (c) cause the Trustee to remit the amount deposited to the Seaside Bond Proceeds Account to the Funding Recipient on the Closing Date. Notwithstanding the foregoing, this Agreement shall be null and void ab initio if for any reason whatsoever the Authority does not perform its obligations under the preceding sentence prior to its dissolution, and no damages or liability whatsoever shall arise or be incurred by the Authority as a consequence of its failure to perform such obligations. In no event shall the Funding Recipient have a right to compel the issuance of the Bonds.

The Funding Recipient hereby advises that its wire transfer instructions for the transfer of funds provided for in clause (c) of the first sentence of the preceding paragraph are: _____.

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

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

The Funding Recipient shall have the sole right to direct the investment of the amounts on deposit in the Building Removal Account. While the Funding Recipient shall have no obligation or liability with respect to any such investment, including any losses with respect thereto, any investment earnings on funds in the Building Removal Account shall be credited to such account and used solely for the purposes thereof as provided in this Section 3.

The Funding Recipient agrees to maintain accounting records relating to the use of amounts disbursed to or upon its order from the Building Removal Account in accordance with Funding Recipient's accounting procedures for similar funds. The Funding Recipient will, upon written request, provide the Authority or the Administrator, whichever requests the same, complete copies of the Funding Recipient's records related to such disbursements.

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

Neither the Authority nor the Administrator shall have any liability or responsibility whatsoever with respect to any Building Removal activities of the Funding Recipient or any Building Removal Costs or other costs incurred for any reason by the Funding Recipient. The Funding Recipient hereby agrees to hold the Authority and the Administrator harmless with respect to any claim by any entity in opposition to the provisions of the preceding sentence.

4. Reimbursement of Administrative Costs. The Funding Recipient hereby agrees to pay, other than from amounts in the Building Removal Account, any and all costs with respect to its review, execution and performance of this Agreement. Neither the Authority nor the Administrator shall have any obligation to pay any costs of the Funding Recipient incurred by it in connection with this Agreement or the Building Removal activities of the Funding Recipient.

Costs of the Authority and the Administrator with respect to this Agreement (a) incurred on or before the Closing Date, shall be Costs of Issuance to be paid from the Costs of Issuance Fund under the Indenture; (b) incurred from and after the Closing Date shall be Administrative Expenses to be paid from the Administrative Expense Fund under the Indenture (as such

capitalized terms used in the preceding clauses (a) and (b) are defined in the Indenture); and the Funding Recipient shall have no responsibility to pay any such costs. The Funding Recipient shall have no responsibility to pay any costs of the Authority or the Administrator incurred by them with respect to the Indenture for the repayment or the administration of the Bonds.

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

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

The only obligations of the Funding Recipient hereunder shall be to expend amounts in Building Removal Account for Building Removal Costs, and to maintain records as to the use of the amounts withdrawn from the Building Removal Account. If, for any reason whatsoever, there are insufficient funds in the Building Removal Account to pay all of the Building Removal Costs of the Funding Recipient, none of the Funding Recipient, the Authority or the Administrator shall have any obligation under this Agreement to fund any such shortfall. If the Funding Recipient shall fail to perform any of its obligations hereunder, the sole remedy of the Authority or the Administrator shall be the commencement of an action in the Superior Court for specific performance by the Funding Recipient of such obligations. No member of the governing board of the Funding Recipient, or any officer or employee thereof, shall in any event be personally liable hereunder.

The Administrator shall have no obligation or liability to the Funding Recipient or the Authority under this Agreement. It is hereby acknowledged that the sole reason for the Administrator to be a party to this Agreement is to recognize its rights to accounting records of, and to compel performance by, the Funding Recipient hereunder, and to consent to amendments hereto in its sole discretion. In no event shall the Administrator have any liability to the Authority or the Funding Recipient under or by reason of this Agreement, and no Councilmember, officer or employee of the Administrator shall in any event be personally liable hereunder.

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

8. Amendment. This Agreement may be amended at any time but only in writing signed by (a) prior to the dissolution of the Authority, the Authority, the Administrator and the Funding Recipient, and (b) after dissolution of the Authority, the Administrator and the Funding Recipient.

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

10. Notices. Any notice required or permitted by this Agreement to be given or delivered to another party shall be deemed to have been received when personally delivered or seventy-

two hours following deposit of the same in any United States Post Office in California, registered or certified, postage prepaid, addressed as follows:

The Authority:	Fort Ord Reuse Authority 920 2 nd Avenue, Suite A Marina, California 93933 Attention: Executive Officer
Administrator:	City of Marina 211 Hillcrest Avenue Marina, California 93933 Attention: City Manager
Funding Recipient:	City of Seaside 440 Harcourt Avenue Seaside, California 93955 Attention: City Manager

A copy of any notice to be given to the Authority hereunder shall be given to the Administrator. Each party may change its address for delivery of notice by delivering written notice of such change of address to the other parties hereto.

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

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

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

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

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

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

17. Prepayment of Bonds. The Funding Recipient hereby agrees to use its best efforts to prevent the Successor Agency to the Redevelopment Agency of the City of Seaside (the "Successor Agency") from redeeming such entities' outstanding bonds prior to their stated maturity. To that end, the Funding Recipient agrees to exercise any influence it may have over the Successor Agency or the consultants for the Successor Agency to avoid the early redemption or retirement of the Successor Agency's bonds titled Successor Agency to the Redevelopment Agency of the City of Seaside Tax Allocation Refunding Bonds Series 2014.

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

FORT ORD REUSE AUTHORITY

By: _____
Josh Metz,
Executive Director

CITY OF MARINA, CALIFORNIA,
as Administrator

By: _____
Layne Long,
City Manager

CITY OF SEASIDE, CALIFORNIA

By: _____
Craig Malin,
City Manager

06006.05:J16872

DRAFT

EXHIBIT A

BUILDING REMOVAL COSTS AND RELATED PARCELS

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

“Building Removal” means any or all of the following: waste characterization, abatement, building demolition, building removal, building repair, waste disposal, and remediation of buildings and building sites located at certain parcels of property within the boundaries of the former Fort Ord listed below.

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

L32.4.1.1	Surplus II
L19.4	Surplus II
L15.1	Surplus II
F2.3.2	Main Gate
F2.3.3	GJMB Parcel
F5.2	National Guard
L23.5.1	Chartwell School
E18.1.3	Nurses Barracks

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

BUILDING REMOVAL FUNDING AGREEMENT

among the

FORT ORD REUSE AUTHORITY,

and the

**CITY OF MARINA, CALIFORNIA,
as Administrator,**

and the

MARINA COAST WATER DISTRICT

Dated as of May 1, 2020

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

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EXHIBIT A – BUILDING REMOVAL COSTS AND RELATED PARCELS

DRAFT

BUILDING REMOVAL FUNDING AGREEMENT

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

RECITALS:

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

WHEREAS, the Funding Recipient is one of the Local Agencies, and the Indenture provides for the deposit of a portion of the proceeds of the Bonds on the date of issuance of the Bonds (the "Closing Date") to an MCWD Account of a Project Fund held by the Trustee as set forth in Section 3.02(a)(iv) of the Indenture; and

WHEREAS, pursuant to Section 3.04(b) of the Indenture, the Trustee will remit the amount in the MCWD Account to the Funding Recipient on the Closing Date to be used by the Funding Recipient as provided in this Agreement; and

WHEREAS, the Authority will be dissolved on June 30, 2020, and the Administrator is entering into this Agreement as assignee of the Authority under the Indenture solely to perform certain limited administrative activities as expressly set forth in the Indenture;

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

AGREEMENT:

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

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

2. Issuance of the Bonds. The Authority hereby agrees to (a) issue the Bonds, (b) cause ____% of the proceeds of the Bonds to be deposited to the MCWD Account under the Indenture, and (c) cause the Trustee to remit the amount deposited to the MCWD Account to the Funding Recipient on the Closing Date. Notwithstanding the foregoing, this Agreement shall be null and void ab initio if for any reason whatsoever the Authority does not perform its obligations under the preceding sentence prior to its dissolution, and no damages or liability whatsoever shall arise or be incurred by the Authority as a consequence of its failure to perform such obligations. In no event shall the Funding Recipient have a right to compel the issuance of the Bonds.

The Funding Recipient hereby advises that its wire transfer instructions for the transfer of funds provided for in clause (c) of the first sentence of the preceding paragraph are: _____.

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

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

The Funding Recipient shall have the sole right to direct the investment of the amounts on deposit in the Building Removal Account. While the Funding Recipient shall have no obligation or liability with respect to any such investment, including any losses with respect thereto, any investment earnings on funds in the Building Removal Account shall be credited to such account and used solely for the purposes thereof as provided in this Section 3.

The Funding Recipient agrees to maintain accounting records relating to the use of amounts disbursed to or upon its order from the Building Removal Account in accordance with Funding Recipient's accounting procedures for similar funds. The Funding Recipient will, upon written request, provide the Authority or the Administrator, whichever requests the same, complete copies of the Funding Recipient's records related to such disbursements.

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

Neither the Authority nor the Administrator shall have any liability or responsibility whatsoever with respect to any Building Removal activities of the Funding Recipient or any Building Removal Costs or other costs incurred for any reason by the Funding Recipient. The Funding Recipient hereby agrees to hold the Authority and the Administrator harmless with respect to any claim by any entity in opposition to the provisions of the preceding sentence.

4. Reimbursement of Administrative Costs. The Funding Recipient hereby agrees to pay, other than from amounts in the Building Removal Account, any and all costs with respect to its review, execution and performance of this Agreement. Neither the Authority nor the Administrator shall have any obligation to pay any costs of the Funding Recipient incurred by it in connection with this Agreement or the Building Removal activities of the Funding Recipient.

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

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

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

The only obligations of the Funding Recipient hereunder shall be to expend amounts in Building Removal Account for Building Removal Costs, and to maintain records as to the use of the amounts withdrawn from the Building Removal Account. If, for any reason whatsoever, there are insufficient funds in the Building Removal Account to pay all of the Building Removal Costs of the Funding Recipient, none of the Funding Recipient, the Authority or the Administrator shall have any obligation under this Agreement to fund any such shortfall. If the Funding Recipient shall fail to perform any of its obligations hereunder, the sole remedy of the Authority or the Administrator shall be the commencement of an action in the Superior Court for specific performance by the Funding Recipient of such obligations. No member of the governing board of the Funding Recipient, or any officer or employee thereof, shall in any event be personally liable hereunder.

The Administrator shall have no obligation or liability to the Funding Recipient or the Authority under this Agreement. It is hereby acknowledged that the sole reason for the Administrator to be a party to this Agreement is to recognize its rights to accounting records of, and to compel performance by, the Funding Recipient hereunder, and to consent to amendments hereto in its sole discretion. In no event shall the Administrator have any liability to the Authority or the Funding Recipient under or by reason of this Agreement, and no Councilmember, officer or employee of the Administrator shall in any event be personally liable hereunder.

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

8. Amendment. This Agreement may be amended at any time but only in writing signed by (a) prior to the dissolution of the Authority, the Authority, the Administrator and the Funding Recipient, and (b) after dissolution of the Authority, the Administrator and the Funding Recipient.

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

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

The Authority:	Fort Ord Reuse Authority 920 2 nd Avenue, Suite A Marina, California 93933 Attention: Executive Officer
Administrator:	City of Marina 211 Hillcrest Avenue Marina, California 93933 Attention: City Manager
Funding Recipient:	Marina Coast Water District 11 Reservation Road Marina, California 93933-2099 Attention: General Manager

A copy of any notice to be given to the Authority hereunder shall be given to the Administrator. Each party may change its address for delivery of notice by delivering written notice of such change of address to the other parties hereto.

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

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

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

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

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

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

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

FORT ORD REUSE AUTHORITY

By: _____
Josh Metz,
Executive Director

CITY OF MARINA, CALIFORNIA,
as Administrator

By: _____
Layne Long,
City Manager

MARINA COAST WATER DISTRICT

By: _____
Its: _____

06006.05:J16856

EXHIBIT A

BUILDING REMOVAL COSTS AND RELATED PARCELS

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

"Building Removal" means any or all of the following: waste characterization, abatement, building demolition, building removal, building repair, waste disposal, and remediation of buildings and building sites located at certain parcel(s) of property within the boundaries of the former Fort Ord listed below.

The parcel(s) on which the Building Removal activities of the Funding Recipient are to occur are as follows:

<u>Jurisdiction</u>	<u>USACE Parcel Number</u>	<u>Description</u>
City of Marina	L35.1	MCWD Storage
State Parks	S3.1.1	Wastewater Plant

BUILDING REMOVAL FUNDING AGREEMENT

among the

FORT ORD REUSE AUTHORITY,

and the

**CITY OF MARINA, CALIFORNIA,
as Administrator,**

and

MONTEREY-SALINAS TRANSIT

Dated as of May 1, 2020

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

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EXHIBIT A – BUILDING REMOVAL COSTS AND RELATED PARCELS

DRAFT

BUILDING REMOVAL FUNDING AGREEMENT

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

RECITALS:

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

WHEREAS, the Funding Recipient is one of the Local Agencies, and the Indenture provides for the deposit of a portion of the proceeds of the Bonds on the date of issuance of the Bonds (the "Closing Date") to an MST Account of a Project Fund held by the Trustee as set forth in Section 3.02(a)(v) of the Indenture; and

WHEREAS, pursuant to Section 3.04(b) of the Indenture, the Trustee will remit the amount in the MST Account to the Funding Recipient on the Closing Date to be used by the Funding Recipient as provided in this Agreement; and

WHEREAS, the Authority will be dissolved on June 30, 2020, and the Administrator is entering into this Agreement as assignee of the Authority under the Indenture solely to perform certain limited administrative activities as expressly set forth in the Indenture;

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

AGREEMENT:

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

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

2. Issuance of the Bonds. The Authority hereby agrees to (a) issue the Bonds, (b) cause [1.75]% of the proceeds of the Bonds to be deposited to the MST Account under the Indenture, and (c) cause the Trustee to remit the amount deposited to the MST Account to the Funding Recipient on the Closing Date. Notwithstanding the foregoing, this Agreement shall be null and void ab initio if for any reason whatsoever the Authority does not perform its obligations under the preceding sentence prior to its dissolution, and no damages or liability whatsoever shall arise or be incurred by the Authority as a consequence of its failure to perform such obligations. In no event shall the Funding Recipient have a right to compel the issuance of the Bonds.

The Funding Recipient hereby advises that its wire transfer instructions for the transfer of funds provided for in clause (c) of the first sentence of the preceding paragraph are: _____.

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

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

The Funding Recipient shall have the sole right to direct the investment of the amounts on deposit in the Building Removal Account. While the Funding Recipient shall have no obligation or liability with respect to any such investment, including any losses with respect thereto, any investment earnings on funds in the Building Removal Account shall be credited to such account and used solely for the purposes thereof as provided in this Section 3.

The Funding Recipient agrees to maintain accounting records relating to the use of amounts disbursed to or upon its order from the Building Removal Account in accordance with Funding Recipient's accounting procedures for similar funds. The Funding Recipient will, upon written request, provide the Authority or the Administrator, whichever requests the same, complete copies of the Funding Recipient's records related to such disbursements.

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

Neither the Authority nor the Administrator shall have any liability or responsibility whatsoever with respect to any Building Removal activities of the Funding Recipient or any Building Removal Costs or other costs incurred for any reason by the Funding Recipient. The Funding Recipient hereby agrees to hold the Authority and the Administrator harmless with respect to any claim by any entity in opposition to the provisions of the preceding sentence.

4. Reimbursement of Administrative Costs. The Funding Recipient hereby agrees to pay, other than from amounts in the Building Removal Account, any and all costs with respect to its review, execution and performance of this Agreement. Neither the Authority nor the Administrator shall have any obligation to pay any costs of the Funding Recipient incurred by it in connection with this Agreement or the Building Removal activities of the Funding Recipient.

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

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

6. Limited Obligations. All obligations of the Authority under and pursuant to this Agreement shall be limited to those specified in the first sentence of Section 1, subject in any event to the provisions of the provisions of the second sentence of Section 1. No Boardmember, officer or employee of the Authority shall in any event be personally liable hereunder. Following any deposit of Bond proceeds in the Building Removal Account as provided in Section 1 above, the Authority shall have no liability with respect to the handling or the investment of such funds by the Funding Recipient, or the disposition of such funds by the Funding Recipient.

The only obligations of the Funding Recipient hereunder shall be to expend amounts in Building Removal Account for Building Removal Costs, and to maintain records as to the use of the amounts withdrawn from the Building Removal Account. If, for any reason whatsoever, there are insufficient funds in the Building Removal Account to pay all of the Building Removal Costs of the Funding Recipient, none of the Funding Recipient, the Authority or the Administrator shall have any obligation under this Agreement to fund any such shortfall. If the Funding Recipient shall fail to perform any of its obligations hereunder, the sole remedy of the Authority or the Administrator shall be the commencement of an action in the Superior Court for specific performance by the Funding Recipient of such obligations. No member of the governing board of the Funding Recipient, or any officer or employee thereof, shall in any event be personally liable hereunder.

The Administrator shall have no obligation or liability to the Funding Recipient or the Authority under this Agreement. It is hereby acknowledged that the sole reason for the Administrator to be a party to this Agreement is to recognize its rights to accounting records of, and to compel performance by, the Funding Recipient hereunder, and to consent to amendments hereto in its sole discretion. In no event shall the Administrator have any liability to the Authority or the Funding Recipient under or by reason of this Agreement, and no Councilmember, officer or employee of the Administrator shall in any event be personally liable hereunder.

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

8. Amendment. This Agreement may be amended at any time but only in writing signed by (a) prior to the dissolution of the Authority, the Authority, the Administrator and the Funding Recipient, and (b) after dissolution of the Authority, the Administrator and the Funding Recipient.

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

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

The Authority: Fort Ord Reuse Authority
920 2nd Avenue, Suite A
Marina, California 93933
Attention: Executive Officer

Administrator: City of Marina
211 Hillcrest Avenue
Marina, California 93933
Attention: City Manager

Funding Recipient: Monterey-Salinas Transit District
19 Upper Ragsdale Drive, Suite 200
Monterey, California 93940
Attention: General Manager/Chief Executive Officer

A copy of any notice to be given to the Authority hereunder shall be given to the Administrator. Each party may change its address for delivery of notice by delivering written notice of such change of address to the other parties hereto.

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

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

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

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

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

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

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

FORT ORD REUSE AUTHORITY

By: _____
Josh Metz,
Executive Director

CITY OF MARINA, CALIFORNIA,
as Administrator

By: _____
Layne Long,
City Manager

MONTEREY-SALINAS TRANSIT

By: _____
Carl Sedoryk,
General Manager/
Chief Executive Officer

06006.05:J16854

EXHIBIT A

BUILDING REMOVAL COSTS AND RELATED PARCELS

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

"*Building Removal*" means any or all of the following: waste characterization, abatement, building demolition, building removal, building repair, waste disposal, and remediation of buildings and building sites located at certain parcels of property within the boundaries of the former Fort Ord listed below.

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

<u>Jurisdiction</u>	<u>USACE Parcel Number</u>	<u>Description</u>
City of Marina	L2.1	MST Transit Center
City of Seaside	L2.4.3.1	MST Storage

BUILDING REMOVAL FUNDING AGREEMENT

among the

FORT ORD REUSE AUTHORITY,

and the

**CITY OF MARINA, CALIFORNIA,
as Administrator,**

and the

TRANSPORTATION AGENCY FOR MONTEREY COUNTY

Dated as of May 1, 2020

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

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EXHIBIT A – BUILDING REMOVAL COSTS AND RELATED PARCELS

DRAFT

BUILDING REMOVAL FUNDING AGREEMENT

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

RECITALS:

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

WHEREAS, the Funding Recipient is one of the Local Agencies, and the Indenture provides for the deposit of a portion of the proceeds of the Bonds on the date of issuance of the Bonds (the "Closing Date") to a TAMC Account of a Project Fund held by the Trustee as set forth in Section 3.02(a)(vii) of the Indenture; and

WHEREAS, pursuant to Section 3.04(b) of the Indenture, the Trustee will remit the amount in the TAMC Account to the Funding Recipient on the Closing Date to be used by the Funding Recipient as provided in this Agreement; and

WHEREAS, the Authority will be dissolved on June 30, 2020, and the Administrator is entering into this Agreement as assignee of the Authority under the Indenture solely to perform certain limited administrative activities as expressly set forth in the Indenture;

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

AGREEMENT:

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

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

2. Issuance of the Bonds. The Authority hereby agrees to (a) issue the Bonds, (b) cause ____% of the proceeds of the Bonds to be deposited to the TAMC Account under the Indenture, and (c) cause the Trustee to remit the amount deposited to the TAMC Account to the Funding Recipient on the Closing Date. Notwithstanding the foregoing, this Agreement shall be null and void ab initio if for any reason whatsoever the Authority does not perform its obligations under the preceding sentence prior to its dissolution, and no damages or liability whatsoever shall arise or be incurred by the Authority as a consequence of its failure to perform such obligations. In no event shall the Funding Recipient have a right to compel the issuance of the Bonds.

The Funding Recipient hereby advises that its wire transfer instructions for the transfer of funds provided for in clause (c) of the first sentence of the preceding paragraph are: _____.

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

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

The Funding Recipient shall have the sole right to direct the investment of the amounts on deposit in the Building Removal Account. While the Funding Recipient shall have no obligation or liability with respect to any such investment, including any losses with respect thereto, any investment earnings on funds in the Building Removal Account shall be credited to such account and used solely for the purposes thereof as provided in this Section 3.

The Funding Recipient agrees to maintain accounting records relating to the use of amounts disbursed to or upon its order from the Building Removal Account in accordance with Funding Recipient's accounting procedures for similar funds. The Funding Recipient will, upon written request, provide the Authority or the Administrator, whichever requests the same, complete copies of the Funding Recipient's records related to such disbursements.

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

Neither the Authority nor the Administrator shall have any liability or responsibility whatsoever with respect to any Building Removal activities of the Funding Recipient or any Building Removal Costs or other costs incurred for any reason by the Funding Recipient. The Funding Recipient hereby agrees to hold the Authority and the Administrator harmless with respect to any claim by any entity in opposition to the provisions of the preceding sentence.

4. Reimbursement of Administrative Costs. The Funding Recipient hereby agrees to pay, other than from amounts in the Building Removal Account, any and all costs with respect to its review, execution and performance of this Agreement. Neither the Authority nor the Administrator shall have any obligation to pay any costs of the Funding Recipient incurred by it in connection with this Agreement or the Building Removal activities of the Funding Recipient.

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

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

6. Limited Obligations. All obligations of the Authority under and pursuant to this Agreement shall be limited to those specified in the first sentence of Section 1, subject in any event to the provisions of the provisions of the second sentence of Section 1. No Boardmember, officer or employee of the Authority shall in any event be personally liable hereunder. Following any deposit of Bond proceeds in the Building Removal Account as provided in Section 1 above, the Authority shall have no liability with respect to the handling or the investment of such funds by the Funding Recipient, or the disposition of such funds by the Funding Recipient.

The only obligations of the Funding Recipient hereunder shall be to expend amounts in Building Removal Account for Building Removal Costs, and to maintain records as to the use of the amounts withdrawn from the Building Removal Account. If, for any reason whatsoever, there are insufficient funds in the Building Removal Account to pay all of the Building Removal Costs of the Funding Recipient, none of the Funding Recipient, the Authority or the Administrator shall have any obligation under this Agreement to fund any such shortfall. If the Funding Recipient shall fail to perform any of its obligations hereunder, the sole remedy of the Authority or the Administrator shall be the commencement of an action in the Superior Court for specific performance by the Funding Recipient of such obligations. No member of the governing board of the Funding Recipient, or any officer or employee thereof, shall in any event be personally liable hereunder.

The Administrator shall have no obligation or liability to the Funding Recipient or the Authority under this Agreement. It is hereby acknowledged that the sole reason for the Administrator to be a party to this Agreement is to recognize its rights to accounting records of, and to compel performance by, the Funding Recipient hereunder, and to consent to amendments hereto in its sole discretion. In no event shall the Administrator have any liability to the Authority or the Funding Recipient under or by reason of this Agreement, and no Councilmember, officer or employee of the Administrator shall in any event be personally liable hereunder.

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

8. Amendment. This Agreement may be amended at any time but only in writing signed by (a) prior to the dissolution of the Authority, the Authority, the Administrator and the Funding Recipient, and (b) after dissolution of the Authority, the Administrator and the Funding Recipient.

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

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

The Authority: Fort Ord Reuse Authority
920 2nd Avenue, Suite A
Marina, California 93933
Attention: Executive Officer

Administrator: City of Marina
211 Hillcrest Avenue
Marina, California 93933
Attention: City Manager

Funding Recipient: Transportation Agency for Monterey County
55-B Plaza Circle
Salinas, California 93901
Attention: Executive Director

A copy of any notice to be given to the Authority hereunder shall be given to the Administrator. Each party may change its address for delivery of notice by delivering written notice of such change of address to the other parties hereto.

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

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

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

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

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

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

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

FORT ORD REUSE AUTHORITY

By: _____
Josh Metz,
Executive Director

CITY OF MARINA, CALIFORNIA,
as Administrator

By: _____
Layne Long,
City Manager

TRANSPORTATION AGENCY FOR
MONTEREY COUNTY

By: _____
Debbie Hale,
Executive Director

06006.05:J16858

EXHIBIT A

BUILDING REMOVAL COSTS AND RELATED PARCELS

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

"*Building Removal*" means any or all of the following: waste characterization, abatement, building demolition, building removal, building repair, waste disposal, and remediation of buildings and building sites located at certain parcel of property within the boundaries of the former Fort Ord listed below.

The parcel on which the Building Removal activities of the Funding Recipient are to occur are as follows:

<u>Jurisdiction</u>	<u>USACE Parcel Number</u>	<u>Description</u>
City of Marina	L20.16.1	TAMC Transit Center

FORT ORD REUSE AUTHORITY
Resolution No. 20-_____

A RESOLUTION OF THE GOVERNING BODY OF THE FORT ORD REUSE AUTHORITY

Approving, and Authorizing the Execution and Delivery of, Building Removal Funding Agreements in Connection With Tax Allocation Bonds to Fund Building Removal Costs, and Approving Related Actions

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

- A. Pursuant to Government Code Section 67675 the Fort Ord Reuse Authority (the “Authority”) has prepared and adopted the Fort Ord Reuse Plan.
- B. Pursuant to Government Code Section 67679, the Authority has designated certain basewide public capital improvements to be planned, designed, constructed, repaired, remodeled or replaced, and financed by the Authority in the Fort Ord Reuse Plan, specifically including the demolition, removal, repair and remediation of buildings and building sites located at certain parcels within the boundaries of the former Fort Ord military base (collectively referred to in this Resolution as “Building Removal”).
- C. Pursuant to Government Code Section 67679 and the Fort Ord Reuse Plan, the Authority has determined that Building Removal constitutes the improvement of basewide capital facilities to be performed by the Authority as set forth in the Fort Ord Reuse Plan.
- D. The Authority is authorized by Section 67679(d)(9) of the California Government Code to issue bonds pursuant to the Marks-Roos Local Bond Pooling Act of 1985, constituting Section 6584 et seq. of the California Government Code, to finance the costs related to costs of Building Removal (defined as “Building Removal Costs” in the Indenture of Trust referred to below).
- E. In order to finance Building Removal Costs, the Authority desires to issue its Ford Ord Reuse Authority Tax Allocation Bonds, Series 2020 (Federally Taxable) (the “Bonds”).
- F. Pursuant to California Government Code Section 67679(a)(i) the Authority may conduct the Building Removal, or may delegate any of its powers related thereto to one or more of its member agencies.
- G. The County of Monterey (the “County”) and the Cities of Marina and Seaside have advised the Authority that they desire to use proceeds of the Bonds to pay for Building Removal Costs and also desire that a portion of the proceeds of the Bonds be used by the Transportation Agency of Monterey County, Marina Coast Water District and Monterey-Salinas Transit to pay for Building Removal Costs.
- H. The Authority expects that the Cities of Seaside and Marina, the County, the Transportation Agency of Monterey County, the Marina Coast Water District and Monterey-Salinas Transit (collectively, the “Local Agencies” and each a “Local Agency”) will each enter into a Building Removal Funding Agreement (collectively, the “Funding Agreements”) with the

Authority and the City of Marina, whereby they will each agree to use Bond proceeds allocated to them to pay Building Removal Costs.

I. On December 13, 2019, at a regular meeting of the Board of the Authority, the Board adopted Resolution No. 19-13 (the "Authorizing Resolution") authorizing the issuance of the Bonds and the execution and delivery of an Indenture of Trust (the "Indenture of Trust"), as well as the filing of judicial validation proceedings under Section 860 et. seq. of the California Code of Civil Procedure related to the Bonds, the Indenture and the revenues of the Authority pledged to the repayment of the Bonds under the Indenture (the "Validation Action").

J. On March 12, 2020, the Superior Court of the State of California, County of Monterey, rendered a judgement in the Validation Action in favor of the Authority with respect to the matters that were the subject of the Validation Action.

K. Copies of the Funding Agreements have been placed on file with the Secretary, and the Board now desires to approve the Funding Agreements in anticipation of the issuance of the Bonds.

NOW THEREFORE the Board hereby resolves that:

1. The foregoing recitals are true and correct.
2. The Board hereby approves the Funding Agreements in the respective forms on file with the Secretary. The Chair, the Executive Officer and the Treasurer of the Authority (each, an "Authorized Officer"), each acting alone, are hereby authorized and directed to execute and deliver the Funding Agreements for and in the name and on behalf of the Authority in such forms, together with such changes therein, deletions therefrom and additions thereto as the Authorized Officer executing the same shall approve, subject to the advice of Bond Counsel and the Counsel to the Authority, such approval to be conclusively evidenced by the execution and delivery by an Authorized Officer of the Funding Agreements. The changes may include, but are not limited to, changes to allow for funding of pension liabilities of the Authority with proceeds of the Bonds, if such funding is otherwise approved by the Board.

Notwithstanding the foregoing, the percentages of the allocation of Bond proceeds to be inserted in to the appropriate provisions of Section 2 of the several agreements, based on the allocations determined at the December 13, 2019, Board meeting, are as follows: City of Marina, 50.00%; Transportation Agency for Monterey County, 7.00%; Marina Coast Water District, 5.25%; Monterey-Salinas Transit, 1.00%; City of Seaside, 32.25%; and County of Monterey, 4.50%. The Board hereby authorizes the delivery and performance of the Funding Agreements.

3. The preparation of an Official Statement, in preliminary and final form, describing the Bonds for use in connection with the sale of the Bonds, is hereby authorized. Approval of the Official Statement shall occur at a subsequent meeting of the Board, and such approval is hereby made a condition precedent to the sale and issuance of the Bonds.

4. The Authorized Officers, and any and all other officers of the Authority, are hereby authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions, including the delivery to the County Auditor-Controller and the County Treasurer-Tax Collector of Irrevocable Instructions to Transfer Funds as described in the Indenture of Trust, and of any and all other assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents which they, or any of them, may deem necessary or advisable as contemplated by the Building Removal Funding Agreements or otherwise in order to prepare for the issuance and sale of the Bonds.

5. This Resolution shall take effect from and after the date of its passage and adoption.

Upon motion by _____, seconded by _____, the foregoing Resolution was passed on this 30th day of April, 2020, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Jane Parker, Chair

ATTEST:

Joshua Metz, Secretary

06006.05:J16873
4/23/20

INDENTURE OF TRUST

by and among the

FORT ORD REUSE AUTHORITY,

CITY OF MARINA, CALIFORNIA,

and

**U.S. BANK NATIONAL ASSOCIATION,
as Trustee**

Dated as of May 1, 2020

Relating to:

\$_____

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

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INDENTURE OF TRUST

This INDENTURE OF TRUST (this “Indenture”), dated as of May 1, 2020, is by and among the FORT ORD REUSE AUTHORITY, a public entity duly existing under the laws of the State of California (the “Authority”), the CITY OF MARINA, CALIFORNIA, a municipal corporation (the “Administrator”) and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as trustee (the “Trustee”).

RECITALS:

WHEREAS, the Authority is a public corporation of the State of California duly formed and presently existing and exercising its powers pursuant to the Fort Ord Reuse Authority Act, constituting Title 7.85 (commencing with Section 67650) of the California Government Code (the “Fort Ord Reuse Authority Act”); and

WHEREAS, the Authority is authorized by Section 67679(d)(9) of the California Government Code to issue bonds pursuant to the Marks-Roos Local Bond Pooling Act of 1985, constituting Section 6584 et seq. of the California Government Code (the “Marks-Roos Act”) to finance the Building Removal (as more fully described below); and

WHEREAS, the Authority is authorized pursuant to Section 6592(a) of the Marks-Roos Act to pledge to payment of its bonds any moneys of the Authority, including without limitation the portion of property tax revenues allocated to the Authority pursuant to California Health and Safety Code Section 33492.71(c)(1)(A) and (D), as applicable; and

WHEREAS, in order to finance costs of Building Removal, the Authority desires to issue its Ford Ord Reuse Authority Tax Allocation Bonds, Series 2020 (Federally Taxable) (the “Bonds”); and

WHEREAS, the Building Removal is with respect to property described in Exhibit B to this Indenture, which property is located within the boundaries of the County of Monterey, California (the “County”), and within the boundaries as the former Fort Ord Military Base; and

WHEREAS, on December 10, 2019, the Board of Supervisors of the County held a duly noticed public hearing regarding the financing of the Building Removal with the proceeds of the issuance of the Bonds in accordance with Section 6586.5 of the Marks-Roos Act; and

WHEREAS, following such public hearing, the Board of Supervisors of the County adopted Resolution No. 19-412 pursuant to which it found and determined that the Authority’s assistance in financing Building Removal by the issuance of the Bonds will result in significant public benefits of the type described in Section 6586(a) through (d), inclusive, of the Marks-Roos Act, and approved the Building Removal project and the financing thereof using proceeds of the Bonds; and

WHEREAS, pursuant to Government Code Section 67700, the Authority will be dissolved on and as of June 30, 2020; and

WHEREAS, the Bonds will be payable from Pledged Tax Revenues (as defined herein); and

WHEREAS, the Authority has submitted to the County, and the County has acknowledged, certain Irrevocable Instructions (as defined herein) pursuant to which the County

will transfer Pledged Tax Revenues directly to the Trustee, on behalf of the Authority, to ensure that scheduled principal and interest payments and other amounts due on the Bonds, as well as administrative expenses incurred in connection with the administration of this Indenture and the Bonds, are paid when due both prior to and following the dissolution of the Authority; and

WHEREAS, pursuant to California Government Code Section 67675 the Authority has prepared and adopted the Fort Ord Reuse Plan; and

WHEREAS, pursuant to California Government Code Section 67679, the Authority has designated certain basewide public capital improvements to be planned, designed, constructed, repaired, remodeled, or replaced, and financed by the Authority in the Fort Ord Reuse Plan, specifically including the demolition, removal, repair and remediation of buildings and building sites located at certain parcels within the boundaries of the former Fort Ord Military Base (as more fully defined herein, "Building Removal"); and

WHEREAS, pursuant to California Government Code Section 67679 and the Fort Ord Reuse Plan, the Authority has determined that Building Removal constitutes the improvement of basewide capital facilities to be performed by the Authority as set forth in the Fort Ord Reuse Plan; and

WHEREAS pursuant to California Government Code Section 67679(a)(i) the Authority may conduct the Building Removal, or may delegate any of its powers related thereto to one or more of its member agencies; and

WHEREAS, the County and the Cities of Marina and Seaside desire to use proceeds of the Bonds to pay for the costs of the Building Removal ("Building Removal Costs") and also desire that a portion of the proceeds of the Bonds be used by the Transportation Agency of Monterey County, Marina Coast Water District and Monterey-Salinas Transit to pay for Building Removal Costs; and

WHEREAS, each of the Cities of Seaside and Marina, the County, the Transportation Agency of Monterey County, the Marina Coast Water District and Monterey-Salinas Transit (collectively, the "Local Agencies" and each a "Local Agency") have each entered into a Building Removal Funding Agreement, dated as of May 1, 2020 (collectively, the "Funding Agreements") with the Authority and the Administrator, whereby they have each agreed to use Bond proceeds initially deposited into each such Local Agency's designated account provided for herein and thereafter transferred to the respective Local Agency for Building Removal Costs; and

WHEREAS on December 13, 2019, at a regular meeting of the Governing Body of the Authority, the Governing Body adopted Resolution No. 19-13 authorizing the issuance of the Bonds and the execution and delivery of this Indenture, as well as the filing of judicial validation proceedings under Section 860 et. Seq. of the California Code of Civil Procedure related to the Bonds, this Indenture and the Pledged Tax Revenues (the "Validation Action"); and

WHEREAS on March 12, 2020, the Superior Court of the State of California, County of Monterey, rendered a judgement in the Validation Action in favor of the Authority with respect to the matters that were the subject of the Validation Action; and

WHEREAS, the Administrator is entering into this Indenture solely to perform certain administrative functions as specified herein with respect to the Bonds following the dissolution of the Authority; and

WHEREAS, in order to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and secured and to secure the payment of the principal thereof and interest and redemption premium (if any) thereon, the Authority, the Administrator and the Trustee have duly authorized the execution and delivery of this Indenture; and

WHEREAS, the Authority has determined that all acts and proceedings required by law necessary to make the Bonds when executed by the Authority, and authenticated and delivered by the Trustee, the valid, binding and legal special obligations of the Authority, and to constitute this Indenture a legal, valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done or taken.

A G R E E M E N T :

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that in order to secure the payment of the principal of and the interest and redemption premium (if any) on the Bonds issued and Outstanding under this Indenture according to their tenor and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the Owners thereof, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Authority, the Administrator and the Trustee do hereby covenant and agree with one another, for the benefit of the respective Owners from time to time of the Bonds as follows:

ARTICLE I

DETERMINATIONS; DEFINITIONS

Section 1.01. Findings and Determinations. The Authority has reviewed all proceedings heretofore taken and, as a result of such review, hereby finds and determines that all things, conditions and acts required by law to exist, happen or be performed precedent to and in connection with the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the Authority is now duly empowered, pursuant to each and every requirement of law, to issue the Bonds in the manner and form provided in this Indenture.

Section 1.02. Definitions. Unless the context otherwise requires, the terms defined in this Section 1.02 shall, for all purposes of this Indenture, of any Supplemental Indenture, and of any certificate, opinion or other document herein mentioned, have the meanings herein specified.

“Administrative Expense Account” means the account by that name established in the Debt Service Fund in accordance with Section 4.02(d) hereof.

“Administrative Expenses” means the following actual or reasonably estimated costs directly related to the administration of this Indenture and the Bonds: fees and costs of the Trustee (including its legal counsel) in the discharge of the duties required of it under this Indenture; any fees or expenses of the County (including its legal counsel) under or in connection with the Irrevocable Instructions; any [Policy Costs] (other than in respect of the reimbursement of draws under the Reserve Policy); the costs incurred by the Authority or the Administrator to comply with or implement any provision of this Indenture, the Continuing Disclosure Certificate or any provision of the Marks-Roos Act

or the Fort Ord Reuse Authority Act relating to the Bonds or the payment thereof; an allocable share of the salaries of Authority and Administrator staff related to the foregoing and a proportionate amount of Authority or Administrator general administrative overhead related thereto.

“Administrator” means the City of Marina, California, in its capacity as Administrator under this Indenture.

“Annual Debt Service” means, for each Bond Year, the sum of (a) the interest payable on the Outstanding Bonds in such Bond Year, assuming that the Outstanding Bonds are retired as scheduled, and (b) the principal or sinking fund amount of the Outstanding Bonds payable by their terms in such Bond Year.

“Authority” means the Fort Ord Reuse Authority, a public corporation formed pursuant to the Fort Ord Reuse Authority Act, Title 7.85 of the California Government Code, commencing with Section 67650.

“Authorized Denomination” means \$5,000 or any integral multiple thereof.

“Bond Counsel” means (a) Quint & Thimmig LLP, or (b) any other attorney or firm of attorneys appointed by or acceptable to the Authority, of nationally-recognized experience in the issuance of obligations the interest on which is excludable from gross income for federal income tax purposes.

“Bond Year” means each twelve (12) month period extending from September 2 in one calendar year to September 1 of the succeeding calendar year, both dates inclusive; provided that the first Bond Year with respect to the Bonds shall commence on the Closing Date and end on September 1, 2020.

“Bonds” means the Fort Ord Reuse Authority Tax Allocation Bonds, Series 2020 (Federally Taxable) issued and Outstanding under this Indenture..

“Building Removal” means any or all of the following: waste characterization, abatement, building demolition, building removal, building repair, waste disposal, and remediation of buildings and building sites located at certain parcels of property within the boundaries of the former Fort Ord listed on Exhibit B hereto.

“Building Removal Costs” means the costs of Building Removal, including, without limitation, all costs of planning, engineering, management, risk management (including insurance premiums, legal fees and litigation costs associated with the Building Removal), and associated administrative services required to remove blighted buildings from certain parcels of property within the boundaries of the former Fort Ord listed on Exhibit B.

“Business Day” means any day, other than a Saturday or Sunday or a day on which commercial banks in New York, New York, or any other city or cities where the Principal Corporate Trust Office of the Trustee is located are required or authorized by law to close or a day on which the Federal Reserve System is closed.

“Closing Date” means the date on which a series of Bonds is delivered by the Authority to the original purchaser thereof. The Closing Date with respect to the Bonds is May __, 2020.

“Continuing Disclosure Certificate” means the Continuing Disclosure Certificate, dated as of May 1, 2020, executed by the Authority and the Administrator, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the Authority relating to the authorization, issuance, sale and delivery of the Bonds, including but not limited to printing expenses, bond insurance and surety bond premiums, if any, rating agency fees, filing and recording fees, initial fees and charges and first annual administrative fee of the Trustee and fees and expenses of its counsel, fees, charges and disbursements of attorneys, financial advisors, accounting firms, consultants and other professionals, fees and charges for preparation, execution and safekeeping of the Bonds, administrative costs of the Authority and the Administrator incurred in connection with the issuance of the Bonds, expenses of the underwriters of the Bonds, the fees and expenses of counsel to the underwriters of the Bonds, and any other cost, charge or fee in connection with the original issuance of the Bonds.

“Costs of Issuance Fund” means the fund by that name established and held by the Trustee pursuant to Section 3.03.

“County” means the County of Monterey, California.

“County Auditor-Controller” means the Auditor-Controller of the County.

“County Bond Proceeds Account” means the account of that name established within the Project Fund.

“Debt Service Fund” means the fund by that name established and held by the Trustee pursuant to Section 4.02.

“Defeasance Obligations” means any of the following which, at the time of investment, are legal investments under the laws of the State for the moneys proposed to be invested therein and are in compliance with the Authority’s investment policies then in effect (provided that the Trustee shall be entitled to rely upon any investment direction from the Authority as conclusive certification to the Trustee that investments described therein are legal and are in compliance with the Authority’s investment policies then in effect): (a) Cash; (b) non-callable, direct obligations of the United States of America; (c) securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America; and (d) other investments approved by the Insurer.

“Depository” means (a) initially, DTC, and (b) any other Securities Depository acting as Depository pursuant to Section 2.11.

“Depository System Participant” means any participant in the Depository’s book-entry system.

“DTC” means The Depository Trust Company, New York, New York, and its successors and assigns.

“Dissolution Date” means June 30, 2020, the day on which the Authority will be dissolved.

“Event of Default” means any of the events described in Section 8.01.

“Federal Securities” means any direct, noncallable general obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America and CATS and TGRS), or obligations the payment of principal of and interest on which are directly or indirectly guaranteed by the United States of America.

“Fiscal Year” means any twelve-month period beginning on July 1 in any year and extending to the next succeeding June 30, both dates inclusive, or any other twelve month period selected and designated by the Authority to the Trustee in writing as its official fiscal year period.

“Fort Ord Reuse Authority Act” means the Fort Ord Reuse Authority Act, codified at Title 7.85 of the California Government Code, commencing with Section 67650, and the acts amendatory thereof and supplementary thereto.

“Funding Agreements” means, collectively, the Building Removal Funding Agreements, each dated as of May 1, 2020, each among a Local Agency, the Authority and the Administrator.

“Indenture” means this Indenture of Trust by and among the Authority, the Administrator and the Trustee, as originally entered into or as it may be amended or supplemented by any Supplemental Indenture entered into pursuant to the provisions hereof.

“Independent Accountant” means any accountant or firm of such accountants duly licensed or registered or entitled to practice as such under the laws of the State, appointed by the Administrator, and who, or each of whom: (a) is in fact independent and not under domination of the Authority or the Administrator; (b) does not have any substantial interest, direct or indirect, with the Authority or the Administrator; and (c) is not connected with the Authority or the Administrator as an officer or employee of the Authority or the Administrator, but who may be regularly retained to make reports to the Authority or the Administrator.

“Independent Fiscal Consultant” means any consultant or firm of such consultants appointed by the Administrator, and who, or each of whom: (a) is judged by the Administrator to have experience in matters relating to the collection of Pledged Tax Revenues or otherwise with respect to the financing of redevelopment projects; (b) is in fact independent and not under domination of the Authority or the Administrator; (c) does not have any substantial interest, direct or indirect, with the Authority or the Administrator; and (d) is not connected with the Authority or the Administrator as an officer or employee of the Authority or the Administrator, but who may be regularly retained to make reports to the Authority or the Administrator.

“Information Services” means, in accordance with then current guidelines of the Securities and Exchange Commission, such services providing information with respect to the redemption of bonds as the Administrator may designate in a Written Request of the Administrator filed with the Trustee.

“Insurance Policy” means the insurance policy issued by the Insurer guaranteeing the scheduled payment of principal of and interest on the Bonds when due.

“Insurer” means _____.

“Interest Account” means the account by that name established and held by the Trustee pursuant to Section 4.02(a).

“Interest Payment Date” means each March 1 and September 1, commencing September 1, 2020, for so long as any of the Bonds remain Outstanding hereunder.

“Irrevocable Instructions” means that certain Irrevocable Direction to Transfer of the Authority to, and acknowledged by, the County Auditor-Controller and the County Treasurer and Tax Collector and the Administrator, dated as of the Closing Date for the Bonds.

“Local Agency” and “Local Agencies” means, individually and collectively, the County, the City of Marina, California, the City of Seaside, California, TAMC, MCWD and MST.

“Marina Bond Proceeds Account” means the account of that name established within the Project Fund.

“Marks-Roos Act” means the Marks-Roos Local Bond Pooling Act of 1985, codified at Article 4 of Chapter 6 of Division 7 of Title 1 of the California Government Code, commencing with Section 6584, and the acts amendatory thereof and supplementary thereto.

“MCWD” means the Marina Coast Water District.

“MCWD Bond Proceeds Account” means the account of that name established within the Project Fund.

“Maximum Annual Debt Service” means, as of the date of calculation, the largest amount for the current or any future Bond Year payable on the Bonds in such Bond Year. For purposes of such calculation, (i) the amount of interest on any Bonds that is payable from the proceeds of such Bonds that is set aside solely for such purpose shall not be included in the calculation of Maximum Annual Debt Service; and (ii) there also shall be excluded payments with respect to the Bonds to the extent that amounts due with respect to the Bonds are prepaid or otherwise discharged in accordance with this Indenture.

“MST” means Monterey-Salinas Transit.

“MST Bond Proceeds Account” means the account of that name established within the Project Fund.

“Minimum Administrative Expense Requirement” means \$_____ per Fiscal Year.

“Moody’s” means Moody’s Investors Service and its successors.

“Nominee” means (a) initially, Cede & Co., as nominee of DTC, and (b) any other nominee of the Depository designated pursuant to Section 2.11(a).

“Original Purchaser” means, collectively, Stifel Nicolaus & Company Incorporated and Citibank, N.A.

“Outstanding” when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 9.05) all Bonds except: (a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (b) Bonds paid or deemed to have been paid within the meaning of Section 9.03; and (c) Bonds in lieu of or in substitution for which other Bonds shall have been authorized, executed, issued and delivered by the Authority pursuant hereto.

“Owner” or “Bondowner” means, with respect to any Bond, the person in whose name the ownership of such Bond shall be registered on the Registration Books.

“Participating Underwriter” has the meaning ascribed thereto in the Continuing Disclosure Certificate.

“Permitted Investments” means any of the following which, at the time of investment, are legal investments under the laws of the State for the moneys proposed to be invested therein and are in compliance with the Authority’s investment policies then in effect (provided that the Trustee shall be entitled to rely upon any investment direction from the Authority as conclusive certification to the Trustee that investments described therein are legal and are in compliance with the Authority’s investment policies then in effect):

(a) Federal Securities;

(b) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the Authority itself): (i) direct obligations or fully guaranteed certificates of beneficial ownership of the U.S. Export-Import Bank; (ii) certificates of beneficial ownership of the Farmers Home Administration; (iii) Federal Housing Administration debentures; (iv) participation certificates of the General Services Administration; (v) Federal Financing Bank bonds and debentures; (vi) guaranteed mortgage-backed bonds or guaranteed pass-through obligations of Ginnie Mae (formerly known as the Government National Mortgage Association); (vii) guaranteed Title XI financings of the U.S. Maritime Administration; and (viii) project notes, local authority bonds, new communities debentures and U.S. public housing notes and bonds of the U.S. Department of Housing and Urban Development;

(c) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities only as stripped by the Authority itself): (i) senior debt obligations of the Federal Home Loan Bank System; (ii) participation certificates and senior debt obligations of the Federal Home Loan Mortgage Corporation; (iii) mortgaged-backed securities and senior debt obligations of Fannie Mae; (iv) senior debt obligations of Sallie Mae (formerly known as the Student Loan Marketing Association); (v) obligations of the Resolution Funding Corporation; and (vi) consolidated system-wide bonds and notes of the Farm Credit System;

(d) Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of at least AAAM-G, AAAM or AAM, and

a rating by Moody's of Aaa, Aa1 or Aa2, including such funds for which the Trustee, its affiliates or subsidiaries provide investment advisory or other management services or for which the Trustee or an affiliate of the Trustee serves as investment administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (i) the Trustee or an affiliate of the Trustee receives fees from funds for services rendered, (ii) the Trustee collects fees for services rendered pursuant to this Indenture, which fees are separate from the fees received from such funds, and (iii) services performed for such funds and pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or an affiliate of the Trustee;

(e) Certificates of deposit (including those of the Trustee, its parent and its affiliates) secured at all times by collateral described in (a) or (b) above or by collateral that may be used by a national bank for purposes of satisfying its obligations to collateralize pursuant to federal law, which have a maturity not greater than one year from the date of investment and which are issued by commercial banks, savings and loan associations or mutual savings banks;

(f) Certificates of deposit, savings accounts, deposit accounts or money market deposits (including those of the Trustee and its affiliates), but only to the extent that the amount being invested in such certificates of deposit, savings accounts, deposit accounts or money market deposits are fully insured by FDIC, including BIF and SAIF, secured at all times by collateral described in (a) or (b) above or by collateral that may be used by a national bank for purposes of satisfying its obligations to collateralize pursuant to federal law;

(g) Investment agreements, including guaranteed investment contracts, forward purchase agreements, reserve fund put agreements and collateralized investment agreements with an entity rated "A" or better by Moody's and "A" or better by S&P, or unconditionally guaranteed by an entity rated "A" or better by Moody's and "A" or better by S&P;

(h) Commercial paper rated, at the time of purchase, "Prime-1" by Moody's and "A-1+" or better by S&P;

(i) Bonds or notes issued by any state or municipality which are rated by Moody's and S&P in one of the two highest rating categories assigned by such agencies;

(j) Federal funds, money market deposits or bankers acceptances of any bank which has an unsecured, uninsured and unguaranteed obligation rating of "Prime-1" or "A3" or better by Moody's, and "A-1+" or better by S&P; and

(k) The Local Authority Investment Fund that is administered by the California Treasurer for the investment of funds belonging to local agencies within the State of California, provided that for investment of funds held by the Trustee, the Trustee is entitled to make investments and withdrawals in its own name as Trustee.

"Pledged Tax Revenues" means all taxes that are allocated, or available to be allocated, to (a) the Authority pursuant to California Health and Safety Code Section 33492.71, subsection (c)(1)(A) or (b) the Administrator, as successor in interest to the

Authority upon its dissolution, pursuant to California Health and Safety Code Section 33492.71, subsection (c)(1)(D), as applicable.

“Principal Account” means the account by that name established and held by the Trustee pursuant to Section 4.02(b).

“Principal Corporate Trust Office” means the corporate trust office of the Trustee in San Francisco, California, or such other or additional offices as the Trustee may designate in writing to the Authority from time to time as the corporate trust office for purposes of the Indenture; except that with respect to presentation of Bonds for payment or for registration of transfer and exchange, such term means the office of the Trustee at which, at any particular time, its corporate trust agency or corporate trust operations business is conducted.

“Project Fund” means the fund by that name established and held by the Trustee pursuant to Section 3.04.

“Qualified Reserve Account Credit Instrument” means (i) the Reserve Policy, and (ii) an irrevocable standby or direct-pay letter of credit, insurance policy, or surety bond issued by a commercial bank or insurance company and deposited with the Trustee, provided that all of the following requirements are met at the time of acceptance thereof by the Trustee: (a) S&P or Moody’s have assigned a long-term credit rating at the time of issuance of such Qualified Reserve Account Credit Instrument to such bank or insurance company of “A” (without regard to modifier) or higher; (b) such letter of credit, insurance policy or surety bond has a term of at least 12 months; (c) such letter of credit, insurance policy or surety bond has a stated amount at least equal to the portion of the Reserve Requirement with respect to which funds are proposed to be released; and (d) the Trustee is authorized pursuant to the terms of such letter of credit, insurance policy or surety bond to draw thereunder an amount equal to any deficiencies which may exist from time to time in the Interest Account or the Principal Account for the purpose of making payments required pursuant to Sections 4.02(a), 4.02(b) or 4.02(c) of this Indenture.

“Record Date” means, with respect to any Interest Payment Date, the close of business on the fifteenth (15th) calendar day of the month preceding such Interest Payment Date, whether or not such fifteenth (15th) calendar day is a Business Day.

“Redemption Account” means the account by that name established and held by the Trustee pursuant to Section 4.02(e).

“Registration Books” means the records maintained by the Trustee pursuant to Section 2.08 for the registration and transfer of ownership of the Bonds.

“Report” means a document in writing signed by an Independent Fiscal Consultant and including: (a) a statement that the person or firm making or giving such Report has read the pertinent provisions of this Indenture to which such Report relates; (b) a brief statement as to the nature and scope of the examination or investigation upon which the Report is based; and (c) a statement that, in the opinion of such person or firm, sufficient examination or investigation was made as is necessary to enable said consultant to express an informed opinion with respect to the subject matter referred to in the Report.

“Reserve Account” means the account by that name established and held by the Trustee pursuant to Section 4.02(c).

“Reserve Policy” means the Municipal Bond Debt Service Reserve Insurance Policy issued by the Insurer for the Bonds.

“Reserve Requirement” means, subject to Section 4.02(c) of this Indenture, the lesser of (i) 125% of average Annual Debt Service, (ii) Maximum Annual Debt Service, or (iii) 10% of the original principal amount of the Bonds; provided, that the Authority may meet all or a portion of the Reserve Requirement by providing to the Trustee for deposit to the Reserve Account a Qualified Reserve Account Credit Instrument meeting the requirements of Section 4.02(c) hereof.

“Reuse Plan” means the Fort Ord Reuse Plan prepared by the Authority, dated May 1996, as amended and supplemented from time to time.

“S&P” means S&P Global Ratings, LLC, a Standard & Poor’s Financial Services LLC business, and its successors.

“Seaside Bond Proceeds Account” means the account of that name established within the Project Fund.

“Securities Depositories” means The Depository Trust Company, New York, New York 10041-0099, Fax-(212) 855-7232; or, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the Authority may designate in a Written Request of the Authority delivered to the Trustee.

“Serial Bonds” means all Bonds other than Term Bonds.

“State” means the State of California.

“Supplemental Indenture” means any resolution, agreement or other instrument which has been duly adopted or entered into by the Authority and the Administrator (if prior to the Dissolution Date), or by the Administrator (after the Dissolution Date), but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

“Surplus Account” means the account by that name established and held by the Trustee pursuant to Section 4.02(f).

“TAMC” means the Transportation Agency for Monterey County.

“TAMC Bond Proceeds Account” means the account of that name established within the Project Fund.

“Term Bonds” means (i) the Bonds maturing on September 1, 20__ and September 1, 20__, payable from mandatory sinking account payments.

“Trustee” means U.S. Bank National Association, as trustee hereunder, or any successor thereto appointed as trustee hereunder in accordance with the provisions of Article VI.

“Written Request of the Administrator” or “Written Certificate of the Administrator” means a request or certificate, in writing signed by the City Manager of

the Administrator, or the designee of either, or by any other officer of the Administrator or the City duly authorized by the Administrator for that purpose.

“Written Request of the Authority” or “Written Certificate of the Authority” means a request or certificate, in writing signed by the Executive Officer or Treasurer of the Authority, or the designee of either, or by any other officer of the Authority duly authorized by the Authority for that purpose.

Section 1.03. Rules of Construction. All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture, and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

BOND AUTHORIZATION AND TERMS

Section 2.01. Authorization of the Bonds. The Bonds are hereby authorized to be issued by the Authority under and subject to the terms of this Indenture, the Marks-Roos Act and the Fort Ord Reuse Authority Act. This Indenture constitutes a continuing agreement with the Owners of all of the Bonds issued or to be issued hereunder and then Outstanding to secure the full and final payment of principal and redemption premiums (if any) and the interest on all Bonds which may from time to time be executed and delivered hereunder, subject to the covenants, agreements, provisions and conditions herein contained. The Bonds shall be designated the “Fort Ord Reuse Authority Tax Allocation Bonds, Series 2020 (Federally Taxable).” The Bonds shall be issued in the initial aggregate principal amount of \$_____.

Section 2.02. Terms of the Bonds. The Bonds shall be issued in fully registered form without coupons. The Bonds shall be issued in Authorized Denominations, and no Bond shall have more than one maturity date. The Bonds shall be dated the Closing Date. The Bonds shall be lettered and numbered as the Trustee shall prescribe.

The Bonds shall mature on the dates, and shall bear interest (calculated on the basis of a 360-day year comprised of twelve 30-day months) at the rates per annum, as follows:

<u>Maturity Date (September 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
	\$	%

* Term Bond.

Each Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless (a) it is authenticated after a Record Date and on or before the following Interest Payment Date, in which event it shall bear interest from such Interest Payment Date; or (b) it is authenticated on or before August 15, 2020, in which event it shall bear interest from its Closing Date; provided, however, that if, as of the date of authentication of any Bond, interest thereon is in default, such Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

Interest on the Bonds (including the final interest payment upon maturity or redemption) is payable when due by check or draft of the Trustee mailed on the Interest Payment Date to the Owner thereof at such Owner's address as it appears on the Registration Books at the close of business on the preceding Record Date; provided that at the written request of the Owner of at least \$1,000,000 aggregate principal amount of the Bonds, which written request is on file with the Trustee as of any Record Date, interest on such Bonds shall be paid on the succeeding Interest Payment Date to such account in the United States as shall be specified in such written request. The principal of the Bonds and any premium upon redemption, are payable in lawful money of the United States of America upon presentation and surrender thereof at the Principal Corporate Trust Office of the Trustee.

Section 2.03. Redemption of Bonds.

(a) Optional Redemption. The Bonds maturing on or prior to _____ 1, 20__ are not subject to optional redemption. The Bonds maturing on or after _____ 1, 20__, are subject to optional redemption prior to their respective maturity dates as a whole, or in part by lot, on any date on or after _____ 1, 20__, by such maturity or maturities as shall be directed by the Authority (or in absence of such direction, pro rata by maturity and by lot within a maturity), from any source of available funds. Such optional redemption shall be at a redemption price equal to the principal amount to be redeemed, plus accrued but unpaid interest to the date fixed for redemption, without premium.

The Authority shall be required to give the Trustee written notice of its intention to redeem Bonds under this subsection (a) with a designation of the principal amount and maturities to be redeemed at least forty five (45) days prior to the date fixed for such redemption (or such later date as shall be acceptable to the Trustee in the sole determination of the Trustee), and shall transfer to the Trustee for deposit in the Debt Service Fund all amounts required for such redemption not later than the date fixed for such redemption.

(b) Mandatory Sinking Fund Redemption. The Term Bonds maturing September 1, 20__ and September 1, 20__ shall be subject to mandatory redemption in whole, or in part by lot, on September 1 in each year, commencing September 1, 20__ and September 1, 20__, respectively, as set forth below, from sinking fund payments made by the Authority to the Principal Account pursuant to Section 4.02(b), at a redemption price equal to the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts and on _____ 1 in the respective years as set forth in the following tables; provided however, that (y) in lieu of redemption thereof the Term Bonds may be purchased by the Authority pursuant to Section 2.03(h) hereof, and (z) if some but not all of the Term Bonds have been redeemed pursuant to subsection (a) above, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of such Term Bonds so redeemed, to be allocated among such sinking fund payments in integral multiples of \$5,000 as determined by the Administrator (notice of which determination shall be given by the Administrator to the Trustee).

Term Bonds of 20__

September 1 Principal Amount
\$

† Final Maturity.

Term Bonds of 20__

September 1 Principal Amount
\$

† Final Maturity.

(c) [reserved]

(d) Notice of Redemption; Rescission. The Trustee on behalf and at the expense of the Administrator shall mail (by first class mail, postage prepaid) notice of any redemption at least twenty (20) (or such longer period, up to thirty (30) days, as may be required by the Depository) but not more than sixty (60) days prior to the redemption date, (i) to the Owners of any Bonds designated for redemption at their respective addresses appearing on the Registration Books, and (ii) to the Securities Depositories and one or more Information Services designated in a Written Request of the Administrator filed with the Trustee; but such mailing shall not be a condition precedent to such redemption and neither failure to receive any such notice nor any defect therein shall affect the validity of the proceedings for the redemption of such Bonds or the cessation of the accrual of interest thereon. Such notice shall state the redemption date and the redemption price, shall state, in the case of a redemption pursuant to (a) above, that such redemption is conditioned upon the timely delivery of the redemption price to the Trustee for deposit in the Redemption Account, shall designate the CUSIP number of the Bonds to be redeemed, shall state the individual number of each Bond to be redeemed or shall state that all Bonds between two stated numbers (both inclusive) or all of the Bonds Outstanding are to be redeemed, and shall require that such Bonds be then surrendered at the Principal Corporate Trust Office of the Trustee for redemption at the redemption price, giving notice also that further interest on such Bonds will not accrue from and after the redemption date.

The Administrator shall have the right to rescind any optional redemption by written notice to the Trustee on or prior to the date fixed for redemption. Any such notice of optional redemption shall be canceled and annulled if for any reason funds will not be or are not available in the Redemption Account on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default under this Indenture. None of the Authority, the Administrator or the Trustee shall have any liability to the Owners or any other party related to or arising from such rescission of redemption. The Trustee shall mail notice of such rescission of redemption in the same manner and to the same recipients as the original notice of redemption was sent; provided, however, the notice of rescission shall not be required to be mailed within the time period required for the notice of redemption.

Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall, to the extent practicable, bear the CUSIP number

identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

(e) Partial Redemption of Bonds. In the event only a portion of any Bond is called for redemption, then upon surrender of such Bond the Authority shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Administrator, a new Bond or Bonds of the same interest rate and maturity, of Authorized Denominations, in aggregate principal amount equal to the unredeemed portion of the Bond to be redeemed.

(f) Effect of Redemption. From and after the date fixed for redemption, if funds available for the payment of the redemption price of and interest on the Bonds so called for redemption shall have been duly deposited with the Trustee, such Bonds so called shall cease to be entitled to any benefit under this Indenture other than the right to receive payment of the redemption price and accrued interest to the redemption date, and no interest shall accrue thereon from and after the redemption date specified in such notice.

All Bonds redeemed and purchased by the Trustee pursuant to this Section shall be canceled by the Trustee. The Trustee shall destroy the canceled Bonds and, upon written request of the Administrator, issue a certificate of destruction thereof to the Administrator.

(g) Manner of Redemption. Whenever any Bonds or portions thereof are to be selected for redemption by lot, the Trustee shall make such selection in such manner as the Trustee shall deem appropriate and shall notify the Administrator thereof to the extent Bonds are no longer held in book-entry form. In the event of redemption by lot of Bonds, the Trustee shall assign to each Bond then Outstanding a distinctive number for each \$5,000 of the principal amount of each such Bond. The Bonds to be redeemed shall be the Bonds to which were assigned numbers so selected, but only so much of the principal amount of each such Bond of a denomination of more than \$5,000 shall be redeemed as shall equal \$5,000 for each number assigned to it and so selected. All Bonds redeemed or purchased pursuant to this Section 2.03 shall be cancelled and destroyed by the Trustee.

(h) Purchase in Lieu of Redemption. In lieu of redemption of the Term Bonds pursuant to the subsection (b) above, amounts on deposit in the Principal Account may also be used and withdrawn by the Trustee, upon the Written Request of the Administrator, for the purchase of the Term Bonds at public or private sale as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as the Administrator may in its discretion determine. The par amount of any Term Bonds so purchased by the Authority in any twelve-month period ending on July 15 in any year shall be credited towards and shall reduce the par amount of the Term Bonds required to be redeemed pursuant to subsection (e) on September 1 in each year; provided that evidence satisfactory to the Trustee of such purchase has been delivered to the Trustee by said July 15.

Section 2.04. Form of Bonds. The Bonds, the form of Trustee's Certificate of Authentication, and the form of Assignment to appear thereon, shall be substantially in the form set forth in Exhibit A, which is attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture.

Section 2.05. Execution of Bonds. The Bonds delivered on the Closing Date and at any time prior to the Dissolution Date shall be executed on behalf of the Authority by the signature of the Chair or the Executive Officer or the written designee of either of them and the signature of the Secretary of the Authority who are in office on the date of execution and delivery of this Indenture. Bonds executed on or after the Dissolution Date shall be executed on behalf of the

Administrator by the signature of the Mayor or City Manager of the Administrator who are in office as of the date of execution thereof. Any of such signatures may be made manually or may be affixed by facsimile thereof. If any officer whose signature appears on any Bond ceases to be such officer before delivery of the Bonds to the purchaser, such signature shall nevertheless be as effective as if the officer had remained in office until the delivery of the Bonds to the purchaser. Any Bond may be signed and attested on behalf of the Authority or the Administrator by such persons as at the actual date of the execution of such Bond shall be the proper officers of the Authority or the Administrator, respectively, although on the date of such Bond any such person shall not have been such officer of the Authority or the Administrator.

Only such of the Bonds as shall bear thereon a Certificate of Authentication in the form hereinbefore set forth, manually executed and dated by the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such Certificate shall be conclusive evidence that such Bonds have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture. In the event temporary Bonds are issued pursuant to Section 2.09 hereof, the temporary Bonds may bear thereon a Certificate of Authentication executed and dated by the Trustee, may be initially registered by the Trustee, and, until so exchanged as provided under Section 2.09 hereof, the temporary Bonds shall be entitled to the same benefits pursuant to this Indenture as definitive Bonds authenticated and delivered hereunder.

Section 2.06. Transfer of Bonds. Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by a duly authorized attorney of such person, upon surrender of such Bond to the Trustee at its Principal Corporate Trust Office for cancellation, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. Whenever any Bond shall be surrendered for transfer, the Authority (prior to the Dissolution Date) or the Administrator (on or after the Dissolution Date) shall execute and the Trustee shall thereupon authenticate and deliver to the transferee a new Bond or Bonds of like tenor, maturity and aggregate principal amount of Authorized Denominations. The Trustee shall require the payment by the Owner of any tax or other governmental charge on the transfer of any Bonds pursuant to this Section 2.06. The cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer shall be paid by the Administrator.

The Trustee may refuse to transfer, under the provisions of this Section 2.06, either (a) any Bonds during the period fifteen (15) days prior to the date established by the Trustee for the selection of Bonds for redemption, or (b) any Bonds selected by the Trustee for redemption.

Section 2.07. Exchange of Bonds. Bonds may be exchanged at the Principal Corporate Trust Office of the Trustee for Bonds of the same tenor and maturity and of other Authorized Denominations. The Trustee shall require the payment by the Owner of any tax or other governmental charge on the exchange of any Bonds pursuant to this Section 2.07. The cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any exchange shall be paid by the Administrator.

The Trustee may refuse to exchange, under the provisions of this Section 2.07, either (a) any Bonds during the fifteen (15) days prior to the date established by the Trustee for the selection of Bonds for redemption or (b) any Bonds selected by the Trustee for redemption.

Section 2.08. Registration of Bonds. The Trustee will keep or cause to be kept, at its Principal Corporate Trust Office, sufficient records for the registration and registration of transfer of the Bonds, which shall at all times during normal business hours be open to inspection and copying by the Administrator, upon reasonable prior notice to the Trustee; and, upon

presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on the Registration Books Bonds as hereinbefore provided.

Section 2.09. Temporary Bonds. The Bonds may be initially issued in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such Authorized Denominations as may be determined by the Authority, and may contain such reference to any of the provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the Authority upon the same conditions and in substantially the same manner as the definitive Bonds. If the Authority issues temporary Bonds, it will execute and furnish definitive Bonds without delay and in any event prior to the Dissolution Date, and thereupon the temporary Bonds shall be surrendered, for cancellation, in exchange therefor at the Principal Corporate Trust Office of the Trustee, and the Trustee shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of Authorized Denominations, interest rates and like maturities. Until so exchanged, the temporary Bonds shall be entitled to the same benefits pursuant to this Indenture as definitive Bonds authenticated and delivered hereunder.

Section 2.10. Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the Authority (prior to the Dissolution Date) or the Administrator (after the Dissolution Date), at the expense of the Owner of such Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor and amount in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be canceled by it. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence be satisfactory to it and indemnity for the Trustee, the Authority and the Administrator satisfactory to the Trustee shall be given, the Administrator, at the expense of the Owner, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor and amount in lieu of and in substitution for the Bond so lost, destroyed or stolen (or if any such Bond has matured or has been called for redemption, instead of issuing a substitute Bond, the Trustee may pay the same without surrender thereof upon receipt of indemnity satisfactory to the Trustee and the Authority). The Authority or the Administrator, as applicable, may require payment by the Owner of a sum not exceeding the actual cost of preparing each new Bond issued under this Section 2.10 and of the expenses which may be incurred by the Authority or the Administrator, and the Trustee, in the premises. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the Authority whether or not the Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds issued pursuant to this Indenture.

Section 2.11. Book-Entry System.

(a) Original Delivery. The Bonds shall be initially delivered in the form of a separate single fully registered Bond without coupons (which may be typewritten) for each maturity of the Bonds. Upon initial delivery, the ownership of each such Bond shall be registered on the Registration Books in the name of the Nominee. Except as provided in subsection (c), the ownership of all of the Outstanding Bonds shall be registered in the name of the Nominee on the Registration Books.

With respect to Bonds the ownership of which shall be registered in the name of the Nominee, none of the Authority, the Administrator or the Trustee shall have any responsibility or obligation to any Depository System Participant or to any person on behalf of which the

Depository System Participant holds an interest in the Bonds. Without limiting the generality of the immediately preceding sentence, none of the Authority, the Administrator or the Trustee shall have any responsibility or obligation with respect to (i) the accuracy of the records of the Depository, the Nominee or any Depository System Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Depository System Participant or any other person, other than a Bondowner as shown in the Registration Books, of any notice with respect to the Bonds, including any notice of redemption, (iii) the selection by the Depository of the beneficial interests in the Bonds to be redeemed in the event the Administrator elects to redeem the Bonds in part, (iv) the payment to any Depository System Participant or any other person, other than a Bondowner as shown in the Registration Books, of any amount with respect to principal, premium, if any, or interest on the Bonds or (v) any consent given or other action taken by the Depository as Owner of the Bonds. The Authority, the Administrator and the Trustee may treat and consider the person in whose name each Bond is registered as the absolute owner of such Bond for the purpose of payment of principal, premium and interest on such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers of ownership of such Bond, and for all other purposes whatsoever. The Trustee shall pay the principal of and interest and premium, if any, on the Bonds only to the respective Owners or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge all obligations with respect to payment of principal of and interest and premium, if any, on the Bonds to the extent of the sum or sums so paid. No person other than a Bondowner shall receive a Bond evidencing the obligation of the Authority to make payments of principal, interest and premium, if any, pursuant to this Indenture. Upon delivery by the Depository to the Nominee of written notice to the effect that the Depository has determined to substitute a new nominee in its place, and subject to the provisions herein with respect to Record Dates, such new nominee shall become the Nominee hereunder for all purposes; and upon receipt of such a notice the Authority shall promptly deliver a copy of the same to the Trustee.

(b) Representation Letter. In order to qualify the Bonds for the Depository's book-entry system, the Authority shall execute and deliver to such Depository a letter representing such matters as shall be necessary to so qualify the Bonds and provide a copy of such letter to the Trustee. The execution and delivery of such letter shall not in any way limit the provisions of subsection (a) above or in any other way impose upon the Authority, the Administrator or the Trustee any obligation whatsoever with respect to persons having interests in the Bonds other than the Bondowners. The Trustee agrees to comply with all provisions in such letter with respect to the giving of notices thereunder by the Trustee. In addition to the execution and delivery of such letter, upon written request of the Depository or the Trustee, the Authority or the Administrator, as applicable, may take any other actions, not inconsistent with this Indenture, to qualify the Bonds for the Depository's book-entry program.

(c) Transfers Outside Book-Entry System. In the event that either (i) the Depository determines not to continue to act as Depository for the Bonds, or (ii) the Administrator determines to terminate the Depository as such, then the Administrator shall thereupon discontinue the book-entry system with such Depository. In such event, the Depository shall cooperate with the Administrator and the Trustee in the issuance of replacement Bonds by providing the Trustee with a list showing the interests of the Depository System Participants in the Bonds, and by surrendering the Bonds, registered in the name of the Nominee, to the Trustee on or before the date such replacement Bonds are to be issued. The Depository, by accepting delivery of the Bonds, agrees to be bound by the provisions of this subsection (c). If, prior to the termination of the Depository acting as such, the Administrator fails to identify another Securities Depository to replace the Depository, then the Bonds shall no longer be required to be registered in the Registration Books in the name of the Nominee, but shall be registered in whatever name or names the Owners transferring or exchanging Bonds shall designate, in accordance with the

provisions of this Article II. Prior to its termination, the Depository shall furnish the Trustee with the names and addresses of the Depository System Participants and respective ownership interests thereof.

(d) Payments to the Nominee. Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of the Nominee, all payments with respect to principal of and interest and premium, if any, on such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the letter described in subsection (b) of this Section or as otherwise instructed by the Depository.

ARTICLE III

DEPOSIT AND APPLICATION

Section 3.01. Issuance of Bonds. Upon the execution and delivery of this Indenture, the Authority shall execute and deliver to the Trustee the Bonds in the aggregate principal amount of \$_____, and the Trustee shall authenticate and deliver the Bonds upon the Written Request of the Authority.

Section 3.02. Application of Proceeds of Sale and Certain Other Amounts.

(a) On the Closing Date with respect to the Bonds, the net proceeds of sale of the Bonds, being \$_____ (calculated as the par amount thereof, less (plus) net original issue discount (premium) in the amount of \$_____, less the discount of the Original Purchaser in the amount of \$_____, and less the portion of the premiums for the Insurance Policy and the Reserve Policy allocable to the Bonds in the amount of \$_____ paid directly to the Insurer), shall be paid to the Trustee and applied as follows:

(i) The Trustee shall deposit the amount of \$_____ in the Costs of Issuance Fund.

(ii) The Trustee shall deposit \$_____ in the County Bond Proceeds Account of the Project Fund.

(iii) The Trustee shall deposit \$_____ in the Marina Bond Proceeds Account of the Project Fund.

(iv) The Trustee shall deposit \$_____ in the MCWD Bond Proceeds Account of the Project Fund.

(v) The Trustee shall deposit \$_____ in the MST Bond Proceeds Account of the Project Fund.

(vi) The Trustee shall deposit \$_____ in the Seaside Bond Proceeds Account of the Project Fund.

(vii) The Trustee shall deposit \$_____ in the TAMC Bond Proceeds Account of the Project Fund.

(viii) The Trustee shall deposit \$_____ in the Administrative Expense Account.

(b) The Trustee may establish a temporary account to facilitate the deposits referred to in Section 3.02(a).

Section 3.03. Costs of Issuance Fund. There is hereby established a separate fund to be known as the “Costs of Issuance Fund,” which shall be held by the Trustee in trust. The moneys in the Costs of Issuance Fund shall be used and withdrawn by the Trustee from time to time to pay the Costs of Issuance with respect to the Bonds, upon submission of a Written Request of the Authority (delivered to the Trustee prior to the Dissolution Date) or the Written Request of the Administrator (delivered to the Trustee on or after the Dissolution Date), stating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. On the date which is six (6) months following the Closing Date with respect to the Bonds, or upon the earlier Written Request of the Administrator, all amounts (if any) remaining in the Costs of Issuance Fund shall be withdrawn therefrom by the Trustee and transferred to the Administrative Expense Account and the Costs of Issuance Fund shall be closed.

Section 3.04. Project Fund.

(a) There shall be established a separate and segregated fund to be known as the Project Fund and within the Project Fund a County Bond Proceeds Account, a Marina Bond Proceeds Account, a Seaside Bond Proceeds Account, a MCWD Bond Proceeds Account, a MST Bond Proceeds Account, and a TAMC Bond Proceeds Account.

(b) On the Closing Date, the Trustee will remit the amount deposited in the respective Accounts of the Project Fund to the applicable Local Agency as directed in the Funding Agreement for the Local Agency, to be applied by the Local Agencies to the payment of the costs of the Building Removal and of expenses incidental thereto pursuant to the Funding Agreements and the Trustee shall close the respective Accounts of the Project Fund. The Trustee shall be provided a copy of the Funding Agreement for each Local Agency and the Trustee may conclusively rely upon the wire transfer instructions in the respective Funding Agreement for the Local Agency.

(c) It is hereby expressly understood and agreed that none of the Authority, the Administrator, the County (except only with respect to the County’s obligations set forth in the Funding Agreement to which it is a party) or the Trustee shall be under any liability of any kind or character whatsoever with respect to the use by the Local Agencies of the amounts remitted to them, or the payment of any Building Removal Costs, and that any such Building Removal Costs shall be the responsibility of the applicable Local Agency.

ARTICLE IV

SECURITY FOR THE BONDS; FLOW OF FUNDS

Section 4.01. Security of Bonds; Equal Security. Except as may otherwise be provided below and in Section 6.06, the Bonds shall be equally secured by a pledge of, security interest in and lien on all of the Pledged Tax Revenues, and the Bonds shall also be secured by a first and exclusive pledge of, security interest in and lien upon all of the moneys in the Debt Service Fund, the Interest Account, the Principal Account, the Redemption Account and the Reserve Account without preference or priority for series, issue, number, dated date, sale date, date of execution or date of delivery. Except for the Pledged Tax Revenues and such moneys, no funds or properties of the Authority, the County or the Administrator shall be pledged to, or otherwise liable for, the payment of principal of or interest or redemption premium (if any) on the Bonds.

In the event the Administrator receives any moneys that constitute Pledged Tax Revenues, the Administrator shall promptly transfer to the Trustee such Pledged Tax Revenues for deposit by the Trustee in the Debt Service Fund. Prior to the payment in full of the principal of and interest and redemption premium (if any) on the Bonds and the payment in full of all other amounts payable hereunder, neither the Authority nor the Administrator shall have any beneficial right to or interest in the Pledged Tax Revenues, except as may be provided in this Indenture.

Amounts in the Project Fund (and the accounts therein) and the Administrative Expense Account are not pledged to the repayment of the Bonds.

The Authority and the Administrator shall not be obligated to make any payments required hereunder or under any Bond, or be deemed to incur any liability hereunder or by reason hereof or arising out of any of the transactions contemplated hereby, payable from any funds or assets other than the Pledged Tax Revenues as provided herein. The Bonds and the obligation to pay principal of and interest thereon and any redemption premium with respect thereto will not constitute an indebtedness or an obligation of the Authority, the members and officers of the Authority, the Administrator, any agency, any district, any city, the County, the State or any other political subdivision thereof, within the meaning of any constitutional or statutory debt limitation, or a charge against the general credit or taxing powers of any of them. The Bonds shall be limited obligations of the Authority, payable solely from the Pledged Tax Revenues duly pledged therefor. Neither the faith and credit nor the taxing power of the Authority, any member of the Authority, the Administrator, any agency, any district, any city, the County, the State or any political subdivision thereof is pledged to the payment of the Bonds.

In consideration of the acceptance of the Bonds by those who shall hold the same from time to time, this Indenture shall be deemed to be and shall constitute a contract between the Authority and the Administrator, and the Owners from time to time of the Bonds, and the covenants and agreements herein set forth to be performed on behalf of the Authority or the Administrator shall be for the equal and proportionate benefit, security and protection of all Owners of the Bonds without preference, priority or distinction as to security or otherwise of any of the Bonds over any of the others by reason of the number or date thereof or the time of sale, execution and delivery thereof, or otherwise for any cause whatsoever, except as expressly provided therein or herein.

Section 4.02. Deposit of Amounts by Trustee. There is hereby established a trust fund to be known as the Debt Service Fund, and within the Debt Service Fund a Principal Account, an Interest Account, a Reserve Account, an Administrative Expense Account, a Redemption Account and a Surplus Account, each which shall be held by the Trustee hereunder in trust. Pledged Tax Revenues received by the Trustee pursuant to the Irrevocable Instructions or otherwise shall be deposited by the Trustee in the Debt Service Fund. The Trustee shall transfer from the Debt Service Fund the following amounts, at the following times, to the following respective special accounts, which are hereby established in the Debt Service Fund, and in the following order of priority:

(a) Interest Account. Not later than the fifth (5th) Business Day preceding each Interest Payment Date, commencing with the Interest Payment Date of September 1, 2020 the Trustee shall deposit in the Interest Account an amount which when added to the amount contained in the Interest Account on that date, will be equal to the aggregate amount of the interest becoming due and payable on the Outstanding Bonds on such Interest Payment Date. No such transfer and deposit need be made to the Interest Account if the amount contained therein is at least equal to the interest to become due on the next succeeding Interest Payment Date upon all of the Outstanding Bonds. All moneys in the

Interest Account shall be used and withdrawn by the Trustee solely for the purpose of paying the interest on the Bonds as it shall become due and payable (including accrued interest on any Bonds redeemed prior to maturity pursuant to this Indenture).

(b) Principal Account. Not later than the fifth (5th) Business Day preceding September 1 in each year beginning September 1, 202__ the Trustee shall deposit in the Principal Account an amount which, when added to the amount then contained in the Principal Account, will be equal to the principal becoming due and payable on the Outstanding Serial Bonds and Outstanding Term Bonds, including pursuant to mandatory sinking account redemption, on the next September 1. No such transfer and deposit need be made to the Principal Account if the amount contained therein is at least equal to the principal to become due on the next September 1 on all of the Outstanding Serial Bonds and Term Bonds. All moneys in the Principal Account shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of the Serial Bonds and the Term Bonds, including by mandatory sinking account redemption, as the same shall become due and payable.

(c) Reserve Account. In the event that the amount on deposit in the Reserve Account as of any Interest Payment Date is less than the then Reserve Requirement (taking into account the amount available to be drawn on the Reserve Policy), the Trustee shall transfer to the Reserve Account an amount sufficient to increase the amount in the Reserve Account to the then amount of the Reserve Requirement.

[The Reserve Requirement will be satisfied by the delivery of the Reserve Policy by the Insurer on the Closing Date with respect to the Bonds. Neither the Authority nor the Administrator will have any obligation to replace the Reserve Policy or to fund the Reserve Account with cash if, at any time that the Bonds are Outstanding, any rating assigned to the Insurer is downgraded, suspended or withdrawn or amounts are not available under the Reserve Policy other than in connection with a draw on the Reserve Policy. Notwithstanding anything to the contrary set forth herein the amounts available under the Reserve Policy shall be used and withdrawn by the Trustee solely for the purpose of making transfers to the Interest Account and the Principal Account in such order of priority, in the event of any deficiency at any time in any of such accounts with respect to the payment of debt service on the Bonds.]

The Trustee shall ascertain the necessity for a claim upon the Reserve Policy in accordance with the provisions of this Section 4.02(c) and provide notice to the Insurer in accordance with the terms of the Reserve Policy at least five Business Days prior to each date upon which interest or principal is due on the Bonds.

If there shall then not be sufficient Pledged Tax Revenues to transfer an amount sufficient to maintain the Reserve Requirement on deposit in the Reserve Account, the Authority shall be obligated to continue making transfers as Pledged Tax Revenues become available until there is an amount sufficient to maintain the Reserve Requirement on deposit in the Reserve Account. No such transfer and deposit need be made to the Reserve Account so long as there shall be on deposit therein a sum at least equal to the Reserve Requirement. All money in the Reserve Account shall be used and withdrawn by the Trustee solely for the purpose of making transfers hereunder to the Interest Account and the Principal Account, in the event of any deficiency at any time in any of such accounts or for the retirement of all the Bonds then Outstanding, except that so long as the Authority (prior to the Dissolution Date) or the Administrator (after the Dissolution Date) is not in default hereunder, any amount in the Reserve Account in excess of the Reserve Requirement shall be withdrawn from the Reserve Account semiannually on or

before two (2) Business Days preceding each Interest Payment Date by the Trustee and deposited in the Surplus Account. All amounts in the Reserve Account on the Business Day preceding the final Interest Payment Date shall be withdrawn from the Reserve Account and shall be transferred to the Interest Account and the Principal Account, in such order, to the extent required to make the deposits then required to be made pursuant to this Section 4.02.

[With the prior written consent of the Insurer, the Administrator shall have the right at any time to direct the Trustee to release funds from the Reserve Account, in whole or in part, by tendering to the Trustee a Qualified Reserve Account Credit Instrument. Upon tender of such items to the Trustee, and upon delivery by the Administrator to the Trustee of written calculation of the amount permitted to be released from the Reserve Account (upon which calculation the Trustee may conclusively rely), the Trustee shall transfer such funds from the Reserve Account to the Surplus Account to be applied in accordance with Section 4.02(f) hereof. The Trustee shall comply with all documentation relating to a Qualified Reserve Account Credit Instrument as shall be required to maintain such Qualified Reserve Account Credit Instrument in full force and effect and as shall be required to receive payments thereunder in the event and to the extent required to make any payment when and as required under this paragraph (d). Upon the expiration of any Qualified Reserve Account Credit Instrument, the Administrator shall either (i) replace such Qualified Reserve Account Credit Instrument with a new Qualified Reserve Account Credit Instrument, or (ii) deposit or cause to be deposited with the Trustee an amount of funds equal to the Reserve Requirement, to be derived from the first legally available Pledged Tax Revenues. If the Reserve Requirement is being maintained partially in cash and partially with a Qualified Reserve Account Credit Instrument, including the Reserve Policy, the cash shall be first used to meet any deficiency which may exist from time to time in the Interest Account or the Principal Account for the purpose of making payments required pursuant to Sections 4.02(a) or 4.02(b) of this Indenture. If the Reserve Requirement is being maintained with two or more Qualified Reserve Account Credit Instruments, including the Reserve Policy, on which there is available coverage, any draw to meet a deficiency which may exist from time to time in the Interest Account or the Principal Account for the purpose of making payments required pursuant to Sections 4.02(a), 4.02(b) or 4.02(c) of this Indenture shall be pro-rata with respect to each such instrument after applying all cash and investments in the Reserve Account. For the avoidance of doubt, "available coverage" means the coverage then available for disbursement pursuant to the terms of the applicable alternative credit instrument without regarding to the legal or financial ability or willingness of the provider of such instrument to honor a claim or draw thereon or the failure of such provider to honor any such claim or draw.]

(d) Administrative Expense Account. On the Closing Date, the Trustee shall make a deposit to the Administrative Expense Fund as required by Section 3.02(a)(viii). Thereafter, on each September 1, following the deposits required by subsections (a), (b), and (if applicable) (c) of this Section 4.02 on such date, the Trustee shall transfer an amount equal to the Minimum Expense Requirement to the Administrative Expense Fund. Deposits may also be made to the Administrative Expense Fund as provided in Section 4.02(f).

Amounts in the Administrative Expense Account shall be withdrawn by the Trustee and paid to or as directed by the Administrator upon receipt by the Trustee of a Written Certificate of the Administrator stating the amount to be withdraw, that such amount is to be used to pay an Administrative Expense and the nature of such Administrative Expense.

(e) Redemption Account. On or before the Business Day preceding any date on which Bonds are to be redeemed pursuant to Section 2.03(a), the Trustee shall withdraw from the Debt Service Fund any amount transferred to the Trustee to be applied to the redemption of Bonds pursuant to Section 2.03(a) for deposit in the Redemption Account, such amount being the amount required to pay the principal of and premium, if any, on the Bonds and on other Bonds to be redeemed on such date pursuant to Section 2.03(a). All moneys in the Redemption Account shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of and premium, if any, on the Bonds to be redeemed pursuant to Section 2.03(a) on the date set for such redemption. Interest due on the Bonds to be redeemed on the date set for redemption shall, if applicable, be paid from funds available therefor in the Interest Account. Notwithstanding the foregoing, at any time prior to giving notice of redemption of any such Bonds, the Trustee may, at the direction of the Administrator, apply amounts deposited or otherwise to be deposited in the Redemption Account to the purchase of the Bonds at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest on such Bonds, which is payable from the Interest Account) as shall be directed by the Administrator.

(f) Surplus Account. On September 2 of each year, after making the deposits required under subsections (a) through (e) above on the preceding September 1, the Trustee shall transfer all amounts remaining on deposit in the Debt Service Fund to the Surplus Account. Any amounts transferred to the Surplus Account shall be disposed of by the Trustee as follows: (i) transfer to the Administrative Expense Account an amount determined by the Administrator as necessary to pay Administrative Expenses to the extent amounts in the Administrative Expense Account are not sufficient for such purpose as directed in a Written Request of the Administrator delivered to the Trustee by ____ of each year; and (ii) promptly following the foregoing transfer to the Administrative Expense Fund, and in any event no later than 10 Business Days following the deposit of funds in the Surplus Fund each year, any remaining amount in the Surplus Fund shall be transferred by the Trustee, without further direction, to the County Auditor-Controller for redistribution by the County Auditor-Controller as provided in Section 33492.71(c)(1)(D) of the Health and Safety Code.

ARTICLE V

OTHER COVENANTS OF THE AUTHORITY AND THE ADMINISTRATOR

Section 5.01. Punctual Payment. The Administrator, on behalf of the Authority, shall punctually pay or cause to be paid the principal and interest to become due on the Bonds together with any premium thereon, if applicable, in strict conformity with the terms of the Bonds and of this Indenture, solely from the Pledged Tax Revenues and other amounts pledged to such payments hereunder. The Authority shall faithfully observe and perform all of the conditions, covenants and requirements of this Indenture, all Supplemental Indentures and the Bonds.

Section 5.02. Limitation on Additional Indebtedness; Against Encumbrances. The Authority hereby covenants that, so long as the Bonds are Outstanding, the Authority shall not issue any bonds, notes or other obligations, enter into any agreement or otherwise incur any indebtedness, which is in any case payable from all or any part of the Pledged Tax Revenues. Neither the Authority nor the Administrator will encumber, pledge or place any charge or lien upon any of the Pledged Tax Revenues or other amounts pledged to the Bonds.

Section 5.03. Extension of Payment. Neither the Authority nor the Administrator will directly or indirectly, extend or consent to the extension of the time for the payment of any Bond or claim for interest on any of the Bonds and will not, directly or indirectly, be a party to or approve any such arrangement by purchasing or funding the Bonds or claims for interest in any other manner. In case the maturity of any such Bond or claim for interest shall be extended or funded, whether or not with the consent of the Authority or the Administrator, such Bond or claim for interest so extended or funded shall not be entitled, in case of default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest which shall not have been so extended or funded.

Section 5.04. Enforcement of Irrevocable Instructions. The Administrator, on behalf of the Authority, hereby covenants to take such actions within its power as may be reasonable and necessary to compel the County Auditor-Controller to comply with the direction set forth in the Irrevocable Instructions to transfer to the Trustee for deposit in the Debt Service Fund, all of the Pledged Tax Revenues in the amounts and at the times provided in the California Health and Safety Code and other applicable law.

Section 5.05. Payment of Claims. The Administrator, on behalf of the Authority, shall promptly pay and discharge from funds in the Administrative Expense Fund, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the Pledged Tax Revenues or any part thereof, or upon any funds in the hands of the Trustee, or which might impair the security of the Bonds. Nothing herein contained shall require the Administrator to make any such payment so long as the Administrator in good faith shall contest the validity of said claims or if there are not sufficient funds in the Administrative Expense Fund to make such payment.

Section 5.06. Books and Accounts; Financial Statements. The Administrator, on behalf of the Authority, shall keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the Administrator, in which complete and correct entries shall be made of all transactions relating to the Pledged Tax Revenues and the Administrative Expense Fund. Such books of record and accounts shall at all times during business hours be subject to the inspection of the Owners of not less than ten percent (10%) in aggregate principal amount of the Bonds then Outstanding, or their representatives authorized in writing.

Section 5.07. Protection of Security and Rights of Owners. The Administrator, on behalf of the Authority, will preserve and protect the security of the Bonds and the rights of the Owners. From and after the Closing Date with respect to the Bonds, the Bonds shall be incontestable by the Authority or the Administrator.

Section 5.08. Maintenance of Pledged Tax Revenues. The Authority (prior to the Dissolution Date) and the Administrator on behalf of the Authority (after the Dissolution Date) shall comply with all requirements of the California Health and Safety Code to ensure the allocation and payment to the Trustee of the Pledged Tax Revenues pursuant to the Irrevocable Instructions or otherwise. The Authority shall not undertake proceedings for amendment of the Reuse Plan or the Authority's transition plan if such amendment shall result in a reduction in the amount of Pledged Tax Revenues available to pay the Bonds.

Section 5.09. Continuing Disclosure. The Administrator hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Indenture, failure of the Administrator to comply with the Continuing Disclosure Certificate shall not be considered an Event of Default; however, any Owner or beneficial owner of the Bonds may take such actions as may be necessary

and appropriate to compel performance, including seeking mandate or specific performance by court order.

Section 5.10. Further Assurances. The Authority and the Administrator, as applicable, will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture, and for the better assuring and confirming unto the Owners of the Bonds the rights and benefits provided in this Indenture.

ARTICLE VI

THE TRUSTEE

Section 6.01. Duties, Immunities and Liabilities of Trustee.

(a) The Trustee shall, prior to the occurrence of an Event of Default, and after the curing or waiver of all Events of Default which may have occurred, perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants, duties or obligations shall be read into this Indenture against the Trustee. The Trustee shall, during the existence of any Event of Default (which has not been cured or waived), exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) The Administrator may remove the Trustee at any time, and shall remove the Trustee (i) if at any time requested to do so by an instrument or concurrent instruments in writing signed by the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding (or their attorneys duly authorized in writing) or (ii) if at any time the Administrator has knowledge that the Trustee shall cease to be eligible in accordance with subsection (f) of this Section, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property shall be appointed, or any public officer shall take control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation. In each case such removal shall be accomplished by the giving of written notice of such removal by the Administrator to the Trustee, whereupon the Administrator shall appoint a successor Trustee by an instrument in writing.

(c) The Trustee may at any time resign by giving written notice of such resignation to the Administrator and by giving the Owners notice of such resignation by first class mail, postage prepaid, at their respective addresses shown on the Registration Books. Upon receiving such notice of resignation, the Administrator shall promptly appoint a successor Trustee by an instrument in writing, with notice of such appointment to be furnished to any Insurer.

(d) Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective only upon acceptance of appointment by the successor Trustee. If no successor Trustee shall have been appointed and have accepted appointment within forty-five (45) days of giving notice of removal or notice of resignation as aforesaid, the resigning Trustee or any Owner (on behalf of such Owner and all other Owners) may petition any court of competent jurisdiction at the expense of the Administrator for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture shall signify its acceptance of such appointment by executing, acknowledging and delivering to the Administrator and to its predecessor Trustee a written acceptance thereof, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the

moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless at the Written Request of the Administrator or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to any property held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the Administrator shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the Administrator shall cause either the predecessor Trustee or the successor Trustee to mail a notice of the succession of such Trustee to the trusts hereunder to each rating agency which then has a current rating on the Bonds and to the Owners at their respective addresses shown on the Registration Books.

(e) If an Event of Default hereunder occurs with respect to any Bonds of which the Trustee has been given or is deemed to have notice, as provided in Section 6.03(d) hereof, then the Trustee shall immediately give written notice thereof, by first-class mail to the Owner of each such Bond, unless such Event of Default shall have been cured before the giving of such notice; provided, however, that unless such Event of Default consists of the failure to make any payment on the Bonds when due, the Trustee shall, within thirty (30) days of the Trustee's knowledge thereof, give such notice to the Bondowners, provided that the Trustee may elect not to give such notice if and so long as the Trustee in good faith determines that it is in the best interests of the Bondowners not to give such notice.

(f) The Authority and the Administrator agree that, so long as any Bonds are Outstanding, the Trustee shall be a financial institution having a corporate trust office in the State, having (or in the case of a corporation or trust company included in a bank holding company system, the related bank holding company shall have) a combined capital and surplus of at least \$75,000,000, and subject to supervision or examination by federal or state authority. If such financial institution publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this subsection the combined capital and surplus of such financial institution shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this subsection (f), the Trustee shall resign immediately in the manner and with the effect specified in this Section.

Section 6.02. Merger or Consolidation. Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible under subsection (f) of Section 6.01, shall be the successor to such Trustee without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

Section 6.03. Liability of Trustee.

(a) The recitals of facts herein and in the Bonds contained shall be taken as statements of the Authority and the Trustee shall not assume responsibility for the correctness of the same, nor make any representations as to the validity or sufficiency of this Indenture or of the security for

the Bonds nor shall incur any responsibility in respect thereof, other than as expressly stated herein. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Bonds. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct. The Trustee shall not be liable for the acts of any agents of the Trustee selected by it with due care. The Trustee and its officers and employees may become the Owner of any Bonds with the same rights it would have if they were not Trustee and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of the Owners, whether or not such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding.

(b) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in accordance with the direction of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.

(c) The Trustee shall not be liable for any action taken by it and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture, except for actions arising from the negligence or willful misconduct of the Trustee. Where the Trustee is given the permissive right to do things enumerated in this Indenture, such right shall not be construed as a mandatory duty.

(d) The Trustee shall not be deemed to have knowledge of any Event of Default hereunder unless and until a responsible officer shall have actual knowledge thereof, or shall have received written notice thereof from the Administrator at its Principal Corporate Trust Office. In the absence of such actual knowledge or notice, the Trustee may conclusively assume that no Event of Default has occurred and is continuing under this Indenture. Except as otherwise expressly provided herein, the Trustee shall not be bound to ascertain or inquire as to the performance or observance by any other party of any of the terms, conditions, covenants or agreements herein or of any of the documents executed in connection with the Bonds, or as to the existence of an Event of Default thereunder. The Trustee shall not be responsible for the validity or effectiveness of any collateral given to or held by it. Without limiting the generality of the foregoing, the Trustee may rely conclusively on the Administrator's certificates to establish the Administrator's compliance with its financial covenants hereunder, including, without limitation, its covenants regarding the deposit of Pledged Tax Revenues into the Debt Service Fund.

(e) The Trustee shall have no liability or obligation to the Bondowners with respect to the payment of debt service on the Bonds or with respect to the observance or performance by the Authority or the Administrator of the other conditions, covenants and terms contained in this Indenture.

(f) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers. The Trustee shall be entitled to interest on all amounts advanced by it at the maximum rate permitted by law.

(g) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys or receivers and the Trustee shall not be responsible for any intentional misconduct or negligence on the part of any agent, attorney or receiver appointed with due care by it hereunder.

(h) The Trustee shall have no responsibility, opinion, or liability with respect to any information, statements or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Bonds.

(i) Before taking any action under Article VIII or this Article at the request of the Owners, the Trustee may require that a satisfactory indemnity bond be furnished by the Owners for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful misconduct in connection with any action so taken.

(j) The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the Authority or the Administrator elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Authority or the Administrator, as applicable, agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

(k) The Trustee shall not be liable to the parties hereto or deemed in breach or default hereunder if and to the extent its performance hereunder is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the Trustee and could not have been avoided by exercising due care. Force majeure shall include but not be limited to acts of God, terrorism, war, riots, strikes, fire, floods, earthquakes, epidemics, pandemics or other similar occurrences.

(l) The Trustee shall not be responsible for or accountable to anyone for the subsequent use or application of any moneys which shall be released or withdrawn in accordance with the provisions hereof.

Section 6.04. Right to Rely on Documents and Opinions. The Trustee shall have no liability in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, facsimile transmission, electronic mail, or other paper or document reasonably believed by it to be genuine and to have been signed or prescribed by the proper party or parties, and shall not be required to make any investigation into the facts or matters contained thereon. The Trustee may consult with counsel, including, without limitation, counsel of or to the Authority, with regard to legal questions, and, in the absence of negligence or intentional misconduct by the Trustee, the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Trustee hereunder in accordance therewith.

The Trustee shall not be bound to recognize any person as the Owner of a Bond unless and until such Bond is submitted for inspection, if required, and his title thereto is established to the satisfaction of the Trustee.

Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking

or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Written Certificate of the Authority or a Written Certificate of the Administrator, which shall be full warrant to the Trustee for any action taken or suffered under the provisions of this Indenture in reliance upon such written certificate, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as it may deem reasonable. The Trustee may conclusively rely on any certificate or report of any Independent Accountant or Independent Fiscal Consultant appointed by the Administrator.

Section 6.05. Preservation and Inspection of Documents. All documents received by the Trustee under the provisions of this Indenture shall be retained in its possession and shall be subject at all reasonable times upon reasonable notice to the inspection of and copying by the Administrator and any Owner, and their agents and representatives duly authorized in writing, during regular business hours and under reasonable conditions.

Section 6.06. Compensation and Indemnification. The Administrator shall pay to the Trustee from time to time, solely from amounts in the Administrative Expense Account, reasonable compensation for all services rendered under this Indenture in accordance with the letter proposal from the Trustee approved by the Authority and/or the Administrator, as applicable, and also all reasonable expenses, charges, legal and consulting fees and other disbursements and those of its attorneys (including the allocated costs and disbursement of in-house counsel to the extent such services are not redundant with those provided by outside counsel), agents and employees, incurred in and about the performance of its powers and duties under this Indenture. The Trustee shall have a lien on the Pledged Tax Revenues and all funds and accounts held by the Trustee hereunder, subordinate to the lien of the Bondowners thereon, to secure the payment to the Trustee of all fees, costs and expenses, including reasonable compensation to its experts, attorneys and counsel (including the allocated costs and disbursement of in-house counsel to the extent such services are not redundant with those provided by outside counsel).

The Administrator further covenants and agrees to indemnify, defend and save the Trustee and its officers, directors, agents and employees, harmless against any loss, expense and liabilities including legal fees and expenses which it may incur to the extent arising out of or in connection with the exercise and performance of its powers and duties hereunder, including the costs and expenses of defending against any claim of liability, but excluding any and all losses, expenses and liabilities which are due to the negligence or willful misconduct of the Trustee, its officers, directors, agents or employees. The obligations of the Administrator and the rights of the Trustee under this Section 6.06 shall survive resignation or removal of the Trustee under this Indenture and payment of the Bonds and discharge of this Indenture.

The Trustee's compensation and costs related to its indemnification under this Indenture shall constitute Administrative Expenses.

Section 6.07. Deposit and Investment of Moneys in Funds. Moneys in the Debt Service Fund, the Interest Account, the Principal Account, the Reserve Account, the Administrative Expense Account, the Redemption Account, the Surplus Account and the Costs of Issuance Fund shall be invested by the Trustee in Permitted Investments as directed by the Administrator in the Written Request of the Administrator filed with the Trustee, except that moneys in the Reserve Account shall not be invested in Permitted Investments having a maturity of more than five (5) years, unless any such Permitted Investment is described in clause (g) of the definition thereof. In the absence of any such Written Request of the Administrator, the Trustee shall invest any such moneys in Permitted Investments described in clause (d) of the definition thereof, which by their terms mature prior to the date on which such moneys are required to be paid out hereunder;

provided, however, that any such investment shall be made by the Trustee only if, prior to the date on which such investment is to be made, the Trustee shall have received a Written Request of the Administrator specifying a specific money market fund and, if no such Written Request of the Administrator is so received, the Trustee shall hold such moneys uninvested. The Trustee shall be entitled to rely conclusively upon the written instructions of the Administrator directing investments in Permitted Investments as to the fact that each such investment is permitted by the laws of the State, and shall not be required to make further investigation with respect thereto. Obligations purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account. All interest or gain derived from the investment of amounts in any of the funds or accounts held by the Trustee hereunder shall be retained in the respective fund or account from which the investment was made. The Trustee may act as principal or agent in the acquisition or disposition of any investment and may impose its customary charges therefor. The Trustee shall incur no liability for losses arising from any investments made at the direction of the Authority or otherwise made in accordance with this Section. For investment purposes only, the Trustee may commingle the funds and accounts established hereunder, but shall account for each separately.

The Authority and the Administrator acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Administrator the right to receive brokerage confirmations of security transactions effected by the Trustee as they occur, the Authority and the Administrator specifically waive receipt of such confirmations to the extent permitted by law. The Authority and the Administrator further understands that trade confirmations for securities transactions effected by the Trustee will be available upon request and at no additional cost and other trade confirmations may be obtained from the applicable broker. The Trustee will furnish the Administrator monthly cash transaction statements which shall include detail for all investment transactions made by the Trustee hereunder. Upon the Administrator's election, such statements will be delivered via the Trustee's online service and upon electing such service, paper statements will be provided only upon request.

All moneys held by the Trustee shall be held in trust, but need not be segregated from other funds unless specifically required by this Indenture. Except as specifically provided in this Indenture, the Trustee shall not be liable to pay interest on any moneys received by it, but shall be liable only to account for earnings derived from funds that have been invested. Investments of funds on deposit in the Reserve Account shall be valued on _____ of each year at their market value.

Section 6.08. Accounting Records and Financial Statements. The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with corporate trust industry standards, in which complete and accurate entries shall be made of all transactions relating to the proceeds of the Bonds made by it and all funds and accounts held by the Trustee established pursuant to this Indenture. Such books of record and account maintained by the Trustee shall be available for inspection by the Administrator upon reasonable prior notice, at reasonable hours and under reasonable circumstances. The Trustee shall furnish to the Administrator, on at least a monthly basis, an accounting of all transactions in the form of its customary statements relating to the proceeds of the Bonds and all funds and accounts held by the Trustee pursuant to this Indenture.

Section 6.09. Other Transactions with Administrator. The Trustee, either as principal or agent, may engage in or be interested in any financial or other transaction with the Administrator.

ARTICLE VII

MODIFICATION OR AMENDMENT OF THIS INDENTURE

Section 7.01. Amendment With And Without Consent of Owners. This Indenture and the rights and obligations of the Authority, the Administrator, the Trustee and of the Owners may be modified or amended at any time by a Supplemental Indenture which shall become binding upon adoption without the consent of any Owners to the extent permitted by law, but only for any one or more of the following purposes:

(a) to add to the covenants and agreements of the Authority, or of the Administrator for itself or on behalf of the Authority, in this Indenture contained, other covenants and agreements thereafter to be observed, including any covenant or agreement that provides for additional security for the Bonds, or to limit or surrender any rights or powers herein reserved to or conferred upon the Authority or the Administrator; or

(b) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Indenture, or in any other respect whatsoever as the Administrator may deem necessary or desirable, provided under any circumstances that such modifications or amendments shall not, in the reasonable determination of the Administrator, materially adversely affect the interests of the Owners; or

(c) to comply with additional requirements of a provider of a Qualified Reserve Account Credit Instrument; provided that such amendment does not have an adverse impact on the Insurer's rights under the Indenture or the availability of Pledged Tax Revenues for the Bonds.

Except as set forth in the preceding paragraph, this Indenture and the rights and obligations of the Authority, or of the Administrator for itself or on behalf of the Authority, and of the Owners may be modified or amended at any time by a Supplemental Indenture which shall become binding when the prior written consent of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding are filed with the Trustee. No such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the Authority, or of the Administrator on behalf of the Authority, to pay the principal, interest, or redemption premiums (if any) at the time and place and at the rate and in the currency provided therein of any Bond without the express written consent of the Owner of such Bond, or (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification. In no event shall any Supplemental Indenture modify any of the rights or obligations of the Trustee without its prior written consent. In no event shall any Supplemental Indenture modify any of the rights or obligations of any Insurer without its prior written consent.

Section 7.02. Effect of Supplemental Indenture. From and after the time any Supplemental Indenture becomes effective pursuant to this Article VII, this Indenture shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations of the parties hereto or thereto and all Owners, as the case may be, shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 7.03. Endorsement or Replacement of Bonds After Amendment. After the effective date of any amendment or modification hereof pursuant to this Article VII, the Administrator may determine that any or all of the Bonds shall bear a notation, by endorsement in form approved by the Administrator, as to such amendment or modification and in that case upon demand of the Administrator the Owners of such Bonds shall present such Bonds for that purpose at the Principal Corporate Trust Office of the Trustee, and thereupon a suitable notation as to such action shall be made on such Bonds. In lieu of such notation, the Administrator may determine that new Bonds shall be prepared at the expense of the Administrator and executed in exchange for any or all of the Bonds, and in that case, upon demand of the Administrator, the Owners of the Bonds shall present such Bonds for exchange at the Principal Corporate Trust Office of the Trustee, without cost to such Owners.

Section 7.04. Amendment by Mutual Consent. The provisions of this Article VII shall not prevent any Owner from accepting any amendment as to the particular Bond held by such Owner, provided that due notation thereof is made on such Bond and, provided further that written consent to such amendment shall first be obtained from any Insurer.

Section 7.05. Opinion of Counsel. Prior to executing any Supplemental Indenture, the Trustee shall be furnished an opinion of counsel, upon which it may conclusively rely to the effect that all conditions precedent to the execution of such Supplemental Indenture under this Indenture have been satisfied and such Supplemental Indenture is authorized and permitted under this Indenture and does not adversely affect the exclusion of interest on the Bonds issued as tax-exempt bonds from gross income for federal income tax purposes or adversely affect the exemption of interest on the Bonds from personal income taxation by the State.

Section 7.06. Copy of Supplemental Indenture to S&P. The Trustee shall provide to S&P, for so long as S&P maintain a rating on any of the Bonds (without regard to any municipal bond or financial guaranty insurance), a copy of any Supplemental Indenture at least fifteen (15) days prior to its proposed effective date.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES OF OWNERS

Section 8.01. Events of Default. The following events shall constitute Events of Default hereunder:

(a) if default shall be made in the due and punctual payment of the principal of or interest or redemption premium (if any) on any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by declaration or otherwise;

(b) if default shall be made by the Authority or the Administrator in the observance of any of the covenants, agreements or conditions on its respective part in this Indenture or in the Bonds contained, other than a default described in the preceding clause (a), and such default shall have continued for a period of thirty (30) days following receipt by the Authority and the Administrator (prior to the Dissolution Date), or to the Administrator (from and after the Dissolution Date) of written notice from the Trustee or written notice from any Owner (with a copy of said notice delivered to the Trustee) of the occurrence of such default, provided that if in the reasonable opinion of the Administrator the failure stated in the notice can be corrected, but not within such thirty (30) day period, such failure will not constitute an event of default if corrective action is instituted by the Administrator within such thirty (30) day period and the Administrator thereafter diligently and in good faith cures such failure in a reasonable period of time; or

(c) If the Authority or the Administrator files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction will approve a petition by the Administrator seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or, if under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction will approve a petition by the Authority or the Administrator, seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or, if under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction will assume custody or control of the Authority or the Administrator or of the whole or any substantial part of its respective property.

Immediately upon receiving notice or actual knowledge of the occurrence of an Event of Default, the Trustee shall give notice of such Event of Default to the Authority and the Administrator (if prior to the Dissolution Date) or the Administrator (from and after the Dissolution Date) confirmed in writing. With respect to any Event of Default described in subsections (a) or (c) above the Trustee shall, and with respect to any Event of Default described in subsection (b) above the Trustee in its sole discretion may, also give such notice to the Owners by mail.

If an Event of Default has occurred under this Section and is continuing, the Trustee, may, and, if requested in writing by the Owners of a majority in aggregate principal amount of the Bonds then Outstanding, the Trustee shall, subject to the provisions of Section 8.06, exercise any remedies available to the Trustee and the Bondowners in law or at equity, including mandamus.

Any Bondowner shall have the right, for the equal benefit and protection of all Bondowners similarly situated:

(a) by mandamus, suit, action or proceeding, to compel the Authority, prior to the Dissolution Date, and the Administrator, from and after the Dissolution Date, and their respective officers, agents or employees to perform each of their respective covenants and agreements contained in this Indenture and in the Bonds, and to require the carrying out of any or all such covenants and agreements and the fulfillment of the respective duties specifically imposed upon them under this Indenture;

(b) by suit, action or proceeding in equity, to enjoin any acts or things which are unlawful, or the violation of any of the Bondowners' rights; or

(c) upon the happening of any Event of Default, by suit, action or proceeding in any court of competent jurisdiction, to require the Authority, prior to the Dissolution Date, and the Administrator, from and after the Dissolution Date, and their respective employees to account as if they were the trustees of an express trust with regard to any of the Pledged Tax Revenues or any funds held in any of the funds and accounts under this Indenture.

Section 8.02. Application of Funds Upon Default. So long as an Event of Default has occurred and is continuing, all amounts received by the Trustee pursuant to any right given or action taken by the Trustee under the provisions of this Indenture (including any Pledged Tax Revenues) and all sums in the funds and accounts established and held by the Trustee hereunder, and all sums thereafter received by the Trustee hereunder, shall be applied by the Trustee in the following order upon presentation of the Bonds, and the stamping thereon of the payment if only partially paid, or upon the surrender thereof if fully paid:

First, to the payment of the fees, costs and expenses of the Trustee in declaring such Event of Default and in exercising the rights and remedies set forth in this Article VIII, including reasonable compensation to its agents, advisors, attorneys (including the allocated costs and disbursements of its in-house counsel to the extent such services are not redundant with those provided by outside counsel) and counsel and any outstanding fees and expenses of the Trustee; and

Second, to the payment of the whole amount then owing and unpaid upon the Bonds for principal and interest, as applicable, with interest on the overdue principal, and installments of interest at the net effective rate then borne by the Outstanding Bonds (to the extent that such interest on overdue installments of principal and interest shall have been collected), and in case such moneys shall be insufficient to pay in full the whole amount so owing and unpaid upon the Bonds, then to the payment of such principal and interest without preference or priority, ratably to the aggregate of such principal and interest.

Section 8.03. Power of Trustee to Control Proceedings. In the event that the Trustee, upon the happening of an Event of Default, shall have taken any action, by judicial proceedings or otherwise, pursuant to its duties hereunder, whether upon its own discretion or upon the request of the Owners of a majority in principal amount of the Bonds then Outstanding, it shall have full power, in the exercise of its discretion for the best interests of the Owners of the Bonds, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; provided, however, that the Trustee shall not, unless there no longer continues an Event of Default, discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, if at the time there has been filed with it a written request signed by the Owners of a majority in principal amount of the Outstanding Bonds hereunder opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation.

Section 8.04. Limitation on Owner's Right to Sue. No Owner of any Bond issued hereunder shall have the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Indenture, unless (a) such Owner shall have previously given to the Authority and the Administrator (prior to the Dissolution Date) or the Administrator (from and after the Dissolution Date), and the Trustee written notice of the occurrence of an Event of Default; (b) the Owners of a majority in aggregate principal amount of all the Bonds then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) said Owners shall have tendered to the Trustee indemnity reasonably acceptable to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request; and (d) the Trustee shall have refused or omitted to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of any remedy hereunder; it being understood and intended that no one or more Owners shall have any right in any manner whatever by his or their action to enforce any right under this Indenture, except in the manner herein provided, and that all proceedings at law or in equity to enforce any provision of this Indenture shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners of the Outstanding Bonds.

The right of any Owner of any Bond to receive payment of the principal of (and premium, if any) and interest on such Bond as herein provided, shall not be impaired or affected without the written consent of such Owner, notwithstanding the foregoing provisions of this Section or any other provision of this Indenture.

Section 8.05. Non-Waiver. Nothing in this Article VIII or in any other provision of this Indenture or in the Bonds, shall affect or impair the obligation of the Authority, and the Administrator on behalf of the Authority, which is absolute and unconditional, to pay from the Pledged Tax Revenues and other amounts pledged hereunder, the principal of and interest and redemption premium (if any) on the Bonds to the respective Owners on the respective Interest Payment Dates, as herein provided, or affect or impair the right of action, which is also absolute and unconditional, of the Owners or the Trustee to institute suit to enforce such payment by virtue of the contract embodied in the Bonds.

A waiver of any default by any Owner or the Trustee shall not affect any subsequent default or impair any rights or remedies on the subsequent default. No delay or omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy conferred upon the Owners and the Trustee by the Marks-Roos Act or by this Article VIII may be enforced and exercised from time to time and as often as shall be deemed expedient by the Owners and the Trustee.

If a suit, action or proceeding to enforce any right or exercise any remedy shall be abandoned or determined adversely to the Owners or the Trustee, the Authority, the Administrator, the Trustee and the Owners shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

Section 8.06. Actions by Trustee as Attorney-in-Fact. Any suit, action or proceeding which any Owner shall have the right to bring to enforce any right or remedy hereunder may be brought by the Trustee for the equal benefit and protection of all Owners similarly situated and the Trustee is hereby appointed (and the successive respective Owners by taking and holding the Bonds shall be conclusively deemed so to have appointed it) the true and lawful attorney-in-fact of the respective Owners for the purpose of bringing any such suit, action or proceeding and to do and perform any and all acts and things for and on behalf of the respective Owners as a class or classes, as may be necessary or advisable in the opinion of the Trustee as such attorney-in-fact, provided, however, the Trustee shall have no duty or obligation to exercise any such right or remedy unless it has been indemnified to its satisfaction from any loss, liability or expense (including fees and expenses of its outside counsel and the allocated costs and disbursements of its in-house counsel to the extent such services are not redundant with those provided by outside counsel).

Section 8.07. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Owners is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise, and may be exercised without exhausting and without regard to any other remedy conferred by the Marks-Roos Act or any other law.

Section 8.08. Determination of Percentage of Bondowners. Whenever in this Indenture the consent, direction or other action is required or permitted to be given or taken by a percentage of the Owners of an aggregate principal amount of Outstanding Bonds (including by the Owners of a majority in aggregate principal amount of the Outstanding Bonds), such percentage shall be calculated on the basis of the principal amount of the Outstanding Bonds determined as of the next succeeding Interest Payment Date.

ARTICLE IX

THE ADMINISTRATOR

Section 9.01. Duties, Immunities and Liabilities of Administrator. It is hereby acknowledged that the Administrator is entering into this Indenture solely as an accommodation to the Authority, the Trustee and the Bondowners in light of the dissolution of the Authority on the Dissolution Date. To that end, the Administrator shall be obligated to perform such duties and only such duties as are specifically set forth in this Indenture to be performed by it and no implied covenants, duties or obligations shall be read into this Indenture against the Administrator. Where the Administrator is given the permissive right to do things enumerated in this Indenture, such right shall not be construed as a mandatory duty.

Section 9.02. Liability of Administrator.

(a) The Administrator shall have no obligation to use any of its own funds (i) to make payments on the Bonds or to the Trustee in respect thereof, or (ii) to pay any costs or expenses of the Trustee, except from amounts in the Administrative Expense Account. The recitals of facts herein and in the Bonds contained shall be taken as statements of the Authority, and the Administrator shall not assume responsibility for the correctness of the same, nor make any representations as to the validity or sufficiency of this Indenture or of the security for the Bonds nor shall incur any responsibility in respect thereof. The Administrator shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or misconduct.

(b) The Administrator shall not be liable for any action taken by it and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture, except for actions arising from the negligence or misconduct of the Administrator.

(c) The Administrator shall not be deemed to have knowledge of any Event of Default hereunder unless and until it shall have received written notice thereof from the Trustee or an owner of the Bonds. In the absence of such actual knowledge or notice, the Administrator may conclusively assume that no Event of Default has occurred and is continuing under this Indenture. Except as otherwise expressly provided herein, the Administrator shall not be bound to ascertain or inquire as to the performance or observance by any other party of any of the terms, conditions, covenants or agreements herein or of any of the documents executed in connection with the Bonds, or as to the existence of any default thereunder.

(d) No provision of this Indenture shall require the Administrator to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if amounts in the Administrative Expense Account are not available for that purpose. Nonetheless, the Administrator shall be entitled to interest on any amounts voluntarily advanced by it from its own funds at the maximum rate permitted by law.

(e) The Administrator shall have no responsibility, opinion, or liability with respect to any information, statements or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Bonds.

(f) The Administrator shall not be liable to the parties hereto or deemed in breach or default hereunder if and to the extent its performance hereunder is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the

Administrator and could not have been avoided by exercising due care. Force majeure shall include but not be limited to acts of God, terrorism, war, riots, strikes, fire, floods, earthquakes, epidemics or other similar occurrences.

(g) The Administrator shall not be responsible for or accountable to anyone for the subsequent use or application of any moneys which are transferred to Local Agencies in accordance with the provisions hereof.

Section 9.03. Right to Rely on Documents and Opinions. The Administrator shall have no liability in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, facsimile transmission, electronic mail, or other paper or document reasonably believed by it to be genuine and to have been signed or prescribed by the proper party or parties, and shall not be required to make any investigation into the facts or matters contained thereon. The Administrator may consult with counsel, including, without limitation, counsel of or to the Authority, with regard to legal questions, and, in the absence of negligence or intentional misconduct by the Administrator, the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Administrator hereunder in accordance therewith.

Section 9.04. Compensation and Indemnification. The Administrator shall be entitled to reasonable compensation for all services rendered under this Indenture and also payment or reimbursement of all reasonable expenses, charges, legal and consulting fees and other disbursements and those of its attorneys, agents and employees, incurred in and about the performance of its powers and duties under this Indenture. All such compensation and payment or reimbursements shall be Administrative Expenses payable from amounts in the Administrative Expense Account. The Administrator shall have a lien on the Pledged Tax Revenues and all funds and accounts held by the Trustee hereunder to secure the payment to the Administrator of all costs and expenses, including reasonable compensation to its attorneys, subordinate to the lien thereon for the benefit of the Bondowners and the Trustee.

ARTICLE X

MISCELLANEOUS

Section 10.01. Benefits Limited to Parties. Nothing in this Indenture, expressed or implied, is intended to give to any person other than the Authority, the Administrator, the Trustee and the Owners, any right, remedy or claim under or by reason of this Indenture. Any covenants, stipulations, promises or agreements in this Indenture contained by and on behalf of the Authority shall be for the sole and exclusive benefit of the Trustee, the Administrator and the Owners. Any covenants, stipulations, promises or agreements in this Indenture contained by and on behalf of the Administrator shall be for the sole and exclusive benefit of the Trustee, the Authority and the Owners. To the extent that this Indenture confers upon or gives any Insurer any right, remedy or claim under or by reason of this Indenture, such Insurer is hereby explicitly recognized as being third-party beneficiaries hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder.

Section 10.02. Successor is Deemed Included in All References to Predecessor. Whenever in this Indenture or any Supplemental Indenture any of the Authority, the Administrator or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the Authority, the Administrator or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 10.03. Discharge of Indenture.

(a) If the Administrator shall cause to be paid from the Pledged Tax Revenues or amounts in the funds and accounts created hereunder and discharge the entire indebtedness on all Bonds or any portion thereof in any one or more of the following ways:

(i) by well and truly paying or causing to be paid the principal of and interest and premium (if any) on all or the applicable portion of Outstanding Bonds, as and when the same become due and payable;

(ii) by irrevocably depositing with the Trustee, in trust, or an escrow agent, in an irrevocable escrow, at or before maturity, money which, together with the available amounts then on deposit in the funds and accounts established pursuant to this Indenture, is fully sufficient to pay all or the applicable portion of Outstanding Bonds, including all principal, interest and redemption premiums, or;

(iii) by irrevocably depositing with the Trustee, in trust, or an escrow agent, in an irrevocable escrow, Defeasance Obligations in such amount as an Independent Accountant shall determine will, together with such other money as may be deposited with the Trustee plus the interest to accrue thereon and available moneys then on deposit in the funds and accounts established pursuant to this Indenture, be fully sufficient to pay and discharge the indebtedness on all Bonds or the applicable portion thereof (including all principal, interest and redemption premiums) at or before maturity;

and, if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given pursuant to Section 2.03(d) or provision satisfactory to the Trustee shall have been made for the giving of such notice, then, at the election of the Administrator, and notwithstanding that any Bonds shall not have been surrendered for payment, the pledge of the Pledged Tax Revenues and other funds provided for in this Indenture and all other obligations of the Trustee, the Authority and the Administrator under this Indenture shall cease and terminate with respect to all Outstanding Bonds or, if applicable, with respect to that portion of the Bonds which has been paid and discharged, except only (A) the obligation of the Trustee to transfer and exchange Bonds hereunder, (B) the obligations of the Administrator under Section 6.06 hereof, and (C) the obligation of the Administrator to pay or cause to be paid to the Owners from the amounts so deposited with the Trustee, all sums due thereon and to pay the Trustee all fees, expenses and costs of the Trustee. In the event the Administrator shall, pursuant to the foregoing provision, pay and discharge any portion or all of the Bonds then Outstanding, the Trustee shall be authorized to take such actions and execute and deliver to the Administrator all such instruments as may be necessary or desirable to evidence such discharge, including, without limitation, selection by lot of Bonds of any maturity of the Bonds that the Administrator has determined to pay and discharge in part.

In the case of a defeasance or payment of all of the Bonds Outstanding, any funds thereafter held by the Trustee which are not required for said purpose or for payment of amounts due the Trustee pursuant to Section 6.06 shall be paid over to the Administrator and applied by the Administrator consistent with the Fort Ord Reuse Authority Act and the Marks-Roos Act, as applicable.

Section 10.04. Execution of Documents and Proof of Ownership by Owners. Any request, consent, declaration or other instrument which this Indenture may require or permit to be executed by any Owner may be in one or more instruments of similar tenor, and shall be executed by such Owner in person or by such Owner's attorneys appointed in writing.

Except as otherwise herein expressly provided, the fact and date of the execution by any Owner or his attorney of such request, declaration or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the person signing such request, declaration or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

The ownership of Bonds and the amount, maturity, number and date of ownership thereof shall be proved by the Registration Books.

Any demand, request, direction, consent, declaration or other instrument or writing of the Owner of any Bond shall bind all future Owners of such Bond in respect of anything done or suffered to be done by the Authority, the Administrator or the Trustee and in accordance therewith, provided, however, that the Trustee shall not be deemed to have knowledge that any Bond is owned by or for the account of the Authority or the Administrator unless the Authority or the Administrator is the registered Owner or the Trustee has received written notice that any other registered Owner is such an affiliate.

Section 10.05. Disqualified Bonds. In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned or held by or for the account of the Authority or the Administrator (but excluding Bonds held in any employees' retirement fund) shall be disregarded and deemed not to be Outstanding for the purpose of any such determination. Upon request of the Trustee, the Authority and the Administrator shall specify in a Written Certificate to the Trustee those Bonds disqualified pursuant to this Section and the Trustee may conclusively rely on such Certificate.

Section 10.06. Waiver of Personal Liability. No member, Councilmember, officer, agent or employee of the Authority or the Administrator shall be individually or personally liable for the payment of the principal or interest or any premium on the Bonds; but nothing herein contained shall relieve any such member, Councilmember, officer, agent or employee from the performance of any official duty provided by law.

Section 10.07. Destruction of Cancelled Bonds. Whenever in this Indenture provision is made for the surrender to the Trustee of any Bonds which have been paid or cancelled pursuant to the provisions of this Indenture, the Trustee shall destroy such bonds and provide the Authority a certificate of destruction. The Administrator shall be entitled to rely upon any statement of fact contained in any certificate with respect to the destruction of any such Bonds therein referred to.

Section 10.08. Notices. Any notice, request, demand, communication or other paper shall be sufficiently given and shall be deemed given when delivered or upon receipt when mailed by first class, registered or certified mail, postage prepaid, or sent by facsimile, addressed as follows:

If to the Authority:

Fort Ord Reuse Authority
920 2nd Avenue, Suite A
Marina, California 93933
Attention: Executive Officer

If to the Administrator:	City of Marina 211 Hillcrest Avenue Marina, California 93933 Attention: City Manager
If to the Trustee:	U.S. Bank National Association One California Street, 10th Floor San Francisco, California 94111 Attention: Global Corporate Trust
If to the Insurer:	[To come]

The Authority, the Administrator, the Trustee and the Insurer may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 10.09. Partial Invalidity. If any Section, paragraph, sentence, clause or phrase of this Indenture shall for any reason be held illegal, invalid or unenforceable, such holding shall not affect the validity of the remaining portions of this Indenture. The Authority and the Administrator hereby declare that they would have entered into this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and the Authority would have authorized the issuance of the Bonds irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Indenture may be held illegal, invalid or unenforceable. If, by reason of the judgment of any court, the Trustee is rendered unable to perform its duties hereunder, all such duties and all of the rights and powers of the Trustee hereunder shall, pending appointment of a successor Trustee in accordance with the provisions of Section 6.01 hereof, be assumed by and vest in the person serving as the chief financial officer of the Administrator in trust for the benefit of the Owners. The Administrator covenants for the direct benefit of the Owners that the person serving as its chief financial officer in such case shall be vested with all of the rights and powers of the Trustee hereunder, and shall assume all of the responsibilities and perform all of the duties of the Trustee hereunder, in trust for the benefit of the Bonds, pending appointment of a successor Trustee in accordance with the provisions of Section 6.01 hereof.

Section 10.10. Unclaimed Moneys. Anything contained herein to the contrary notwithstanding, any money held by the Trustee in trust for the payment and discharge of the interest or premium (if any) on or principal of the Bonds which remains unclaimed for two (2) years after the date when the payments of such interest, premium and principal have become payable, if such money was held by the Trustee at such date, or for two (2) years after the date of deposit of such money if deposited with the Trustee after the date when the interest and premium (if any) on and principal of such Bonds have become payable, shall be repaid by the Trustee to the Administrator free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Bondowners shall look only to the Administrator for the payment of the principal of and interest and redemption premium (if any) on of such Bonds.

Section 10.11. Execution in Counterparts. This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.12. Governing Law. This Indenture shall be construed and governed in accordance with the laws of the State applicable to contracts made and performed in the State.

ARTICLE XI

INSURANCE POLICY AND RESERVE POLICY

Section 11.01. Provisions Relating to the Insurance Policy. [To come]

Section 11.02. Provisions Relating to the Reserve Policy. [To come]

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IN WITNESS WHEREOF, the FORT ORD REUSE AUTHORITY has caused this Indenture to be signed in its name by its Executive Officer, the CITY OF MARINA, CALIFORNIA has caused this Indenture to be signed in its name by its City Manager, and U.S. BANK NATIONAL ASSOCIATION, in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name by its officer thereunto duly authorized, all as of the day and year first above written.

FORT ORD REUSE AUTHORITY

By: _____
Executive Officer

CITY OF MARINA, CALIFORNIA

By: _____
City Manager

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Officer

06006.05:J16759

EXHIBIT A
FORM OF BOND

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY TO THE TRUSTEE FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY AND ANY PAYMENT IS MADE TO CEDE & CO., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

R-_____ \$ _____

**UNITED STATES OF AMERICA
STATE OF CALIFORNIA
COUNTY OF MONTEREY**

**FORT ORD REUSE AUTHORITY
TAX ALLOCATION BOND,
SERIES 2020 (FEDERALLY TAXABLE)**

INTEREST RATE:	MATURITY DATE:	DATED DATE: May __, 2020	CUSIP:
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REGISTERED OWNER: CEDE & CO.

PRINCIPAL SUM: _____ DOLLARS

The FORT ORD REUSE AUTHORITY, a public entity duly existing under and by virtue of the laws of the State of California (the "Authority"), for value received hereby promises to pay to the Registered Owner stated above, or registered assigns (the "Registered Owner"), on the Maturity Date stated above (subject to any right of prior redemption hereinafter provided for), the Principal Sum stated above, in lawful money of the United States of America, and to pay interest thereon in like lawful money from the Interest Payment Date (as hereinafter defined) next preceding the date of authentication of this Bond, unless (i) this Bond is authenticated on or before an Interest Payment Date and after the close of business on the fifteenth (15th) day of the month immediately preceding an Interest Payment Date (the "Record Date"), in which event it shall bear interest from such Interest Payment Date, or (ii) this Bond is authenticated on or before August 15, 2020, in which event it shall bear interest from the Dated Date above; provided however, that if at the time of authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment on this Bond, until payment of such Principal Sum in full, at the Interest Rate per annum stated above, payable semiannually on March 1 and September 1 in each year, commencing September 1, 2020 (each an "Interest Payment Date"), calculated on the basis of 360-day year comprised of twelve 30-day months. Principal hereof and premium, if any, upon early redemption hereof are payable upon surrender of this Bond at the corporate trust office of U.S. Bank National Association, as trustee (the "Trustee"), in Saint Paul, Minnesota, or at such other place designated by the Trustee (the "Principal Corporate Trust Office"). Interest hereon (including the final interest payment upon maturity or earlier redemption) is payable by check of

the Trustee mailed by first class mail, postage prepaid, on the Interest Payment Date to the Registered Owner hereof at the Registered Owner's address as it appears on the registration books maintained by the Trustee as of the Record Date for such Interest Payment Date; provided however, that payment of interest may be by wire transfer to an account in the United States of America to any registered owner of Bonds in the aggregate principal amount of \$1,000,000 or more upon written instructions of any such registered owner filed with the Trustee for that purpose prior to the Record Date preceding the applicable Interest Payment Date.

This Bond is one of a duly authorized issue of bonds of the Authority designated as "Fort Ord Reuse Authority Tax Allocation Bonds, Series 2020 (Federally Taxable)" (the "Bonds"), of an aggregate principal amount of \$_____ all of like tenor and date (except for such variation, if any, as may be required to designate varying series, numbers, maturities, interest rates, or redemption and other provisions) and all issued pursuant to the provisions of the Marks-Roos Local Bond Pooling Act of 1985, codified at Article 4 of Chapter 6 of Division 7 of Title 1 of the California Government Code (the "Marks-Roos Act") and the Fort Ord Reuse Authority Act, codified at Title 7.85 of the California Government Code (the "Fort Ord Reuse Authority Act"), and pursuant to an Indenture of Trust, dated as of May 1, 2020, entered into by and among the Authority, the City of Marina, California, as Administrator (the "Administrator") and the Trustee (the "Indenture"), providing for the issuance of the Bonds. The Bonds are being issued in the form of registered Bonds without coupons. Reference is hereby made to the Indenture (copies of which are on file at the office of the Trustee) and all indentures supplemental thereto, to the Marks-Roos Act and to the Fort Ord Reuse Authority Act, for a description of the terms on which the Bonds are issued, the provisions with regard to the nature and extent of the Pledged Tax Revenues (as that term is defined in the Indenture), and the rights thereunder of the registered owners of the Bonds and the rights, duties and immunities of the Trustee and the rights and obligations of the Authority and the Administrator thereunder, to all of the provisions of which Indenture the Registered Owner of this Bond, by acceptance hereof, assents and agrees. Capitalized terms used and not otherwise defined herein have the meanings given them in the Indenture.

The Bonds are limited obligations of the Authority and this Bond and the interest hereon and on all other Bonds and the interest thereon (to the extent set forth in the Indenture), are payable from, and are secured by a pledge of, security interest in and lien on the Pledged Tax Revenues.

There has been created the Debt Service Fund (as defined in the Indenture), which will be maintained by the Trustee, into which Pledged Tax Revenues shall be deposited for payment, when due, of the principal of and the interest and redemption premium, if any, on the Bonds. As and to the extent set forth in the Indenture, all such Pledged Tax Revenues and the moneys in the Debt Service Fund, except the Administrative Expense Account and the Surplus Account therein, are exclusively and irrevocably pledged to and constitute a trust fund, in accordance with the terms hereof and the provisions of the Indenture, the Marks-Roos Act and the California Health and Safety Code, for the security and payment or redemption of, including any premium upon early redemption, and for the security and payment of interest on, the Bonds. Except for the Pledged Tax Revenues and such moneys, no funds or properties of the Authority or the Administrator shall be pledged to, or otherwise liable for, the payment of principal of or interest or redemption premium, if any, on the Bonds.

The Bonds are subject to optional and mandatory redemption prior to maturity as described in the Indenture.

As provided in the Indenture, notice of redemption shall be given by first class mail no less than twenty (20) (or such longer period, up to thirty (30) days, as may be required by the

Depository) nor more than sixty (60) days prior to the redemption date to the respective registered owners of any Bonds designated for redemption at their addresses appearing on the Bond registration books maintained by the Trustee, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for redemption.

The Administrator shall have the right to rescind any notice of optional redemption by written notice to the Trustee on or prior to the date fixed for redemption. Any notice of redemption shall be canceled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default under the Indenture. The Authority, the Administrator and the Trustee shall have no liability to the Owners or any other party related to or arising from such rescission of redemption. The Trustee shall mail notice of such rescission of redemption in the same manner and to the same recipients as the original notice of redemption was sent.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

The Bonds are issuable as fully registered Bonds without coupons in denominations of \$5,000 and any integral multiple thereof. Subject to the limitations and conditions and upon payment of the charges, if any, as provided in the Indenture, Bonds may be exchanged for a like aggregate principal amount of Bonds of other Authorized Denominations and of the same maturity.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the Principal Corporate Trust Office of the Trustee, but only in the manner and subject to the limitations provided in the Indenture, and upon surrender and cancellation of this Bond. Upon registration of such transfer a new fully registered Bond or Bonds, of any Authorized Denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor. The Trustee may refuse to transfer or exchange (a) any Bond during the fifteen (15) days prior to the date established for the selection of Bonds for redemption, or (b) any Bond selected for redemption.

The Authority, the Administrator and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Authority and the Trustee shall not be affected by any notice to the contrary.

The rights and obligations of the Authority, the Administrator, the Trustee and the registered owners of the Bonds may be modified or amended at any time in the manner, to the extent and upon the terms provided in the Indenture, but no such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the Authority to pay the principal, interest, or redemption premiums (if any) at the time and place and at the rate and in the currency provided therein of any Bond without the express written consent of any Insurer or the Owner of such Bond, (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification or (c) without its written consent thereto, modify any of the rights or obligations of the Trustee.

This Bond is not a debt, liability or obligation of any of the members, Councilmembers or officers of the Authority or the Administrator, any agency, any district, any city, the County of Monterey, the State of California, or any of its political subdivisions except the Authority, and no agency, district, or city, and none of said County, said State, nor any of its political subdivisions except the Authority is liable hereon, nor in any event shall this Bond be payable out of any funds

or properties other than those pledged therefor under the Indenture. The Bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

It is hereby certified that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist, have happened or have been performed in due and regular time and manner as required by the Law and the laws of the State of California, and that the amount of this Bond, together with all other indebtedness of the Authority, does not exceed any limit prescribed by the Marks-Roos Act, the Fort Ord Reuse Authority Act, or any other laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until the Trustee's Certificate of Authentication hereon shall have been manually signed by the Trustee.

IN WITNESS WHEREOF, the Fort Ord Reuse Authority has caused this Bond to be executed in its name and on its behalf with the facsimile signature of its Executive Officer and attested by the facsimile signature of its Secretary, all as of the Dated Date set forth above.

FORT ORD REUSE AUTHORITY

By: _____
Executive Officer

ATTEST:

Secretary

[FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION]

This is one of the Bonds described in the within-mentioned Indenture.

Authentication Date: _____

U.S. BANK NATIONAL ASSOCIATION, as
Trustee

By: _____
Authorized Signatory

[FORM OF STATEMENT OF INSURANCE]

[FORM OF ASSIGNMENT]

For value received the undersigned hereby sells, assigns and transfers unto

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within-registered Bond and hereby irrevocably constitute(s) and appoints(s)

_____ attorney,
to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: _____

Signatures Guaranteed:

Note: Signature(s) must be guaranteed by an eligible guarantor.

Note: The signatures(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

EXHIBIT B

BUILDING REMOVAL PARCELS

List of Building Removal Parcels by U.S. Army Corps of Engineers (“Army”) Parcel Number.

Jurisdiction	USACE Parcel Number	Description	Bond Account Owner
City of Marina	E4.1.1	Cypress Knolls	City of Marina
City of Marina	E4.1.2.1	Cypress Knolls	City of Marina
City of Marina	E4.1.2.2	Cypress Knolls	City of Marina
City of Marina	L5.9.1.1	Marina Radio Club	City of Marina
City of Marina	L5.4.2	Marina Park	City of Marina
City of Marina	L5.5.1	Marina Park	City of Marina
City of Marina	E2b.3.1.1	Marina Arts District	City of Marina
City of Marina	E2c.4.2.1	Commercial/Business Park	City of Marina
City of Marina	L5.5.1	PBC parcel 2nd Ave, across from CSBUB	City of Marina
City of Marina	L23.1.5	across from FORA on 11th street	City of Marina
City of Marina	E2d.3.2	Equestrian Center	City of Marina
City of Marina	L5.9.1.2	Equestrian Center	City of Marina
City of Marina	E2b.2.4	White Church across from VA/DOD clinic	City of Marina
City of Marina	L5.4.1	old pool, water city roller hockey	City of Marina
City of Marina	E2b.1.5	old fire station, 2nd ave.	City of Marina
City of Marina	L20.16.1	TAMC Transit Center	TAMC
City of Marina	L2.1	MST Transit Center	MST
City of Marina	L35.1	MCWD Storage	MCWD
State Parks	S3.1.1	MCWD Wastewater Plant	MCWD
City of Seaside	L2.4.3.1	MST Storage	MST
City of Seaside	L32.4.1.1	Surplus II	City of Seaside
City of Seaside	L19.4	Surplus II	City of Seaside
City of Seaside	L15.1	Surplus II	City of Seaside
City of Seaside	F2.3.2	Main Gate	City of Seaside
City of Seaside	F2.3.3	GJMB Parcel	City of Seaside
City of Seaside	F5.2	National Guard	City of Seaside
City of Seaside	L23.5.1	Chartwell School	City of Seaside
City of Seaside	E18.1.3	Nurses Barracks	City of Seaside
City of Seaside	Various	Any parcel that was within the boundaries of the former Fort Ord Military Base that is now located within the City of Seaside	City of Seaside
County of Monterey	E11b.8		County of Monterey
County of Monterey	L23.3.2.2		County of Monterey
County of Monterey	L23.3.3.1		County of Monterey
County of Monterey	L23.3.3.2		County of Monterey
County of Monterey	L20.2.1		County of Monterey
County of Monterey	L20.2.2		County of Monterey
County of Monterey	L23.3.2.1		County of Monterey

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

Subject: CalPERS Liability Funding Strategy

Meeting Date: April 30, 2020

Agenda Number: 7b

INFORMATION

RECOMMENDATION:

Receive CalPERS Liability Funding Strategy Report

BACKGROUND/DISCUSSION:

It appears now that the proposed bond building removal bond issue may be impacted by the termination of FORA's CalPERS membership on June 30, 2020. While FORA has been very pro-active in addressing the financial implication of its CalPERS membership termination, there are uncertainties regarding the final cost to FORA for terminating its membership that may impact the proposed bond issue. While the obligation to pay CalPERS is technically not a debt, the CalPERS obligation is a potential competing claim on FORA's statutorily allocated property tax increment revenues, which will be used to repay the building removal bonds.

Accordingly, FORA's financial advisor, NHA Advisors, has prepared a slide deck (**Attachment A**), that explains what this challenge is, and how it can be resolved. This item is informational only.

FISCAL IMPACT:

Reviewed by FORA Controller 

COORDINATION:

Authority Counsel. NHA Advisors

ATTACHMENTS:

- A. FORA CalPERS Liability Funding Strategy

Prepared by & Approved by


Joshua Metz

FORA CALPERS LIABILITY FUNDING STRATEGY

NHA | ADVISORS
Financial & Policy Strategies.
Delivered.

April 27, 2020

Scoping the CalPERS Issue

- ▶ Every CalPERS member has an asset balance that will be used toward covering the liabilities associated with plan members
 - ▶ The amount the liability is greater than the funded assets is called the unfunded accrued liability (“UAL”)
 - ▶ FORA has a current UAL of about \$150,000 (as of 6/30/2018 valuation report)
 - ▶ Each year, CalPERS updates the the amount owed, assuming that its public agency members remain liable for future payments through the death of its former employees who retire through CalPERS
- ▶ In view of the termination of FORA as a public entity on June 30, 2020, FORA’s board voted (December 2019) to terminate its contract with CalPERS on the same date
 - ▶ FORA will not be available to make additional payments to cover a shortfall in the future, so FORA must make a one-time termination payment to CalPERS after June 30
 - ▶ Calculating the unfunded termination liability so that FORA’s CalPERS assets are sufficient to cover all required payments to beneficiaries, assuming investment in risk-free assets
 - ▶ Difference between termination liability and asset value is the **unfunded termination liability – the amount FORA will owe CalPERS to terminate the plan**
- ▶ CalPERS will provide the final termination payment calculations about 90 days after FORA’s dissolution
 - ▶ CalPERS termination payment calculations expected in early October 2020

Estimating the Termination Liability

- ▶ CalPERS normally assumes that assets it invests to pay employee pensions earn about 7% per year when it calculates the UAL
 - ▶ This assumes that the FORA assets that CalPERS has on hand are invested in a diversified market portfolio
- ▶ When CalPERS no longer has any recourse to the former member to cover shortfalls that might develop in the future, CalPERS will take the assets for covering the future payments to FORA plan members and invest them in risk-free to minimize any risk of loss of capital
 - ▶ For purposes of calculating unfunded termination liability, CalPERS assumes investment returns equal to the 20-year Treasury yield (currently about 1%)
 - ▶ Based on most recently available plan data (6/30/2019) and current treasury rates, FORA's unfunded termination liability is estimated \$10.5 million
 - ▶ **This figure is likely to increase because the stock market has declined significantly since the last calculation of FORA's UAL**

Estimated Unfunded Termination Liability Based on 6/30/2019 Plan Data*

Plan	As of	6/30/2019 Funded Ratio	Termination Liability	6/30/2019 Asset Value	Unfunded Termination Liability
Miscellaneous	6/30/2019	97.6%	\$19,197,067	\$9,330,700	\$9,866,367
PEPRA Miscellaneous	6/30/2019	94.6%	\$1,079,203	\$436,800	\$642,403

**Source: CalPERS; these estimates for discussion purposes only; uses plan participant data, funded status, and asset values as of 6/30/2019; assumes 1.21% discount rate for termination calculations; analysis to be updated by CalPERS after 6/30/2020*

Why the CalPERS Problem Matters for the Proposed Bond Issue

- ▶ While CalPERS obligations are not technically a “debt”, the bankruptcy courts in the San Bernardino and Stockton bankruptcies de facto treated them as debts
- ▶ In the event that the CalPERS obligation is not satisfied before FORA’s termination, it is possible that CalPERS could seek recourse by legally attempting to get an allocation of FORA’s pledged tax increment revenues
- ▶ Such a legal intervention by CalPERS could impair the security for the bonds
- ▶ **To sell the bonds for building removal we need to be able to represent to bond investors that the CalPERS obligation is satisfied**

Resources Available to FORA

- ▶ FORA has set up a Section 115 Trust to fund its potential CalPERS liabilities
 - ▶ Section 115 Trust balance is irrevocably dedicated to paying future retirement costs for employees
 - ▶ FORA's Section 115 Trust currently has a balance of about \$6.9 million
- ▶ Board has approved reserving \$1.5 million of General Fund dollars for CalPERS termination
- ▶ Total funding available to pay the CalPERS Termination Payment is consequently **\$8.4 million**
- ▶ Remaining funding gap of at least \$2.1 million, though the final number will not be known until CalPERS actuaries provide the final termination payment calculations (by October 2020)

Description	Amount
Current Section 115 Trust Balance	\$6.9M
Board directed General Fund Set Aside	\$1.5M
Total Available to Pay Termination Payment	\$8.4M
Current Estimate of Termination Payment	\$10.4M
Funding Gap	(\$2.1M)

Note: Recent stock market declines due to COVID-19 will likely result in termination liability higher than \$10.5M

Suggestion for Addressing Remaining Liabilities

- ▶ Most common method by public agencies to fund their UAL is the issuance of pension obligation bonds (“POBs”)
 - ▶ POB proceeds are given to the pension benefits provider (CalPERS)
- ▶ POBs are typically secured by the general revenues of the public agency issuing the POBs
 - ▶ FORA’s general revenues are its statutory allocation of tax increment under its Authorizing Statute
- ▶ FORA has already committed its general revenues (tax increment) to secure bonds to be used for building remediation
- ▶ FORA’s finance team believes that a portion of the proceeds of the proposed FORA bond issue could be allocated to a “POB” and used to satisfy FORA’s remaining CalPERS obligation

Implementing the Suggested Strategy

- ▶ FORA can retain an actuarial consultant to estimate the required termination payment
 - ▶ This number will be an estimate, and cannot be considered final until we receive the actual final termination calculations in early October
- ▶ An amount equal to this estimate, perhaps with a “cushion” could be held back from allocation of bond proceeds
 - ▶ This amount, in conjunction with the \$8.4 million in the Section 115 Trust, would be transferred to CalPERS after receipt of the final termination calculations
 - ▶ This transfer would terminate all remaining liability to CalPERS for FORA and for any of its stakeholders
- ▶ Remaining proceeds to be distributed to building removal funding recipients as has been previously decided

Item	Amount	Notes
Estimated Bond Proceeds	\$35,000,000	Based on current market; no interest rate cushion
Estimated CalPERS Unfunded Termination Liability	\$10,500,000	Does not reflect increases due to recent stock market declines
FORA Section 115 Trust Balance	\$8,400,000	Assumes an additional \$1.5M from FORA fund balance is transferred to Section 115 Trust
Estimated CalPERS Termination Shortfall	\$2,100,000	(\$10.5 – \$8.4)
Additional Cushion for Shortfall	\$2,900,000	Amount TBD; current amount purely for illustrative purposes
Total Deposited to “POB” Escrow from Bond Proceeds	\$5,000,000	
Net Bond Proceeds Allocated to Funding Recipients at Closing	\$30,000,000	

Next Steps

- ▶ Retain actuary to estimate the termination payment
- ▶ Reach consensus amongst FORA stakeholders regarding use of “POB” approach to funding the final CalPERS Termination Payment
- ▶ Issue bonds as planned
- ▶ Escrow a portion of bond proceeds for termination payment
- ▶ Send termination payment to CalPERS
- ▶ Release any unused bond proceeds after termination, allocating them to various Funding Recipients pursuant to allocation percentages

FORT ORD REUSE AUTHORITY BOARD REPORT	
BUSINESS ITEM	
Subject:	Capital Improvement Program (“CIP”) Project Transfers Status
Meeting Date:	April 30, 2020
Agenda Number:	7c
INFORMATION	

RECOMMENDATION:

Receive a report on the status of FORA’s efforts to:

- a) Transition three on-going CIP projects and one General Fund project to the underlying jurisdictions;
- b) Document funds to be transferred as approved in the FY 19/20 Mid-Year General and CIP Budget update; and
- c) Status of Memoranda of Agreements ("MOAs").

BACKGROUND/DISCUSSION:

The fiscal year (“FY”) 2019/2020 CIP was approved by the FORA Board on May 10, 2019, establishing funding and priority projects to be completed during FY 2019/2020. As part of the approval of the CIP, the Board requested a review of the forecasted Community Facility District (CFD) collections.

At the April 9, 2020 Board Meeting, FORA approved the FY 2019/2020 Mid-Year General and CIP Budget (“Mid-Year Budget”) which represent revenues and expenditures based on current estimates through the end of the fiscal year. The approval and establishment of the FY 2019/2020 Mid-Year Budget was a critical step to facilitate the transfer of lead agency status, funds, and responsibility for three remaining CIP projects and one General Fund project to the underlying jurisdictions.

Due to FORA’s pending sunset on June 30, 2020, coupled with reduction of FORA Staff, several ongoing projects were unable to be completed. Meetings were held between FORA and the jurisdictions to discuss transfer of project responsibility and remaining funds in February and March 2020. FORA has been working with consultants to identify project close out requirements. These projects include:

CIP Projects

- Eucalyptus Road Storm Water Infiltrator Repair – City of Seaside
- South Boundary Roadway Improvement/Intersection at General Jim Moore Boulevard – City of Del Rey Oaks
- Stockade Building Demolition Project – City of Marina

General Fund Project(s)

- DDA Oak Woodlands contract – Monterey County

FORA completed an analysis of contractor remaining budgets and/or cost overruns and deliverable status during March 2020. The 2019/2020 CIP/Building Removal allocations were adjusted accordingly in March 2020. The status of each project is further detailed below.

Stockade Demolition Project – City of Marina

- FORA released a Notice of Intent (“NOI”) to award contract in December 2019 and received a bid award protest letter with a Writ of Mandate along with a threat to file a temporary restraining order to stop the project.
- A meeting was held between FORA and City of Marina on February 4, 2020 to discuss the path forward. Agreement between FORA and the City of Marina was reached to cancel the NOI to award contract and transfer project funds to the City of Marina for execution.
- FORA has been working with consultants to identify project close out requirements
- FORA is compiling and intends to transfer available and relevant project information, including Plans, Bid Documents, Bid Response, and As-Builts for utility relocation to the City of Marina
- *Building Removal construction-related funds approved in Mid-Year Budget to be transferred to the City of Marina: \$2,050,000.00*

Path Forward:

- FORA request for close out reports, files and data from consultants and works with consultants to identify information delivery requirements (March/April)
- Transfer project documents (May/June 2020)
- FORA to close out Service Work Orders (SWOs) and consultant contracts (May/June 2020)
- Transfer available and applicable project documents and files (May/June 2020)
- Draft and Execute MOA (May 2020)
- Transfer project funds to City of Marina based on terms and conditions of MOA

Eucalyptus Road Storm Water Infiltrator Project – City of Seaside

- A meeting between City of Seaside and FORA was held on February 27, 2020 to discuss project transfer, funding, and responsibilities
- Plans, Specifications, & Engineering and Bid documents to be completed by Harris & Associates under contract to FORA and then transferred to the City of Seaside
- FORA is compiling and intends to transfer available and relevant project information to the City of Seaside
- Draft Memorandum of Agreement (MOA) between FORA and the City of Seaside has been drafted, and discussions between legal representatives is in progress
- *FORA CIP construction-related funds as approved in the Mid-Year Budget to be transferred to City of Seaside: \$1,120,000.00*

- *Construction support consultant-related funds as approved in the Mid-Year Budget for transfer to City of Seaside:* \$10,530.00
- Harris & Associates existing contract with FORA to be closed out and not transferred to the City of Seaside

Path Forward:

- FORA request for close out reports, files and data from consultants and works with consultants to identify information delivery requirements (March/April)
- FORA to close out Service Work Orders (SWOs) and consultant contracts out (May/June 2020)
- Transfer available and applicable project documents and files (May/June 2020)
- Finalize MOA and execute (May 2020)
- Transfer project funds to City of Seaside based on terms and conditions of MOA

South Boundary Road Improvements/General Jim Moore Boulevard Intersection – City of Del Rey Oaks

- Meeting between FORA and Del Rey Oaks held January 30, 2020 to discuss project transfer, funding, and responsibility
- Draft Memorandum of Agreement (MOA) between FORA and the City of Del Rey Oaks/City of Monterey been drafted and discussions between legal representatives is in progress
- FORA is compiling and intends to transfer available and relevant project information, including draft plans, background information, and work products from existing consultants to the City of Del Rey Oaks
- Del Rey Oaks has requested that the Whitson Engineers, Inc. contract and excess contract capacity be transferred to complete engineering studies and design
- *CIP construction-related funds approved in Mid-Year Budget to be transferred to Del Rey Oaks/City of Monterey:*
 - *South Boundary Road:* \$7,269,813.00
 - *Intersection at General Jim Moore Boulevard:* \$1,056,168.00
- *Consultant contract funds approved in Mid-Year Budget to be transferred to Del Rey Oaks/City of Monterey:*
 - *South Boundary Road:* \$368,159.00
 - *Intersection at General Jim Moore Boulevard:* \$150,405.00

Path Forward:

- FORA request for close out reports, files and data from consultants and works with consultants to identify information delivery requirements (March/April)
- Discussion with Whitson concerning requirements for contract transfer (April/May)
- Receive final reporting/files associated with South Boundary Road/Intersection at General Jim Moore Boulevard
- FORA to close out SWOs as appropriate to facilitate transfer of contract

- Finalize MOA with City of Del Rey Oaks and execute (May/June 2020)
- Transfer available and applicable project documents and files (June 2020)
- Consultant contract transition (June 2020)
- Transfer construction funds and consultant contract and funds to City of Del Rey Oaks/City of Monterey based on Term Sheet and terms and conditions of MOA

Oak Woodlands Contract and Residual Funds – Monterey County

Monterey County requested that remaining capacity on the Denise Duffy & Associates (DDA) Oak Woodlands contract and remaining contract capacity be transferred to the County; which has been included in the Mid-Year Budget. The remaining contract value as estimated by DDA is: \$18,713.00

Path Forward:

- Meeting with Monterey County to discuss goals, requirements and path forward
- Draft and execute MOA that details contract transfer requirements and amount to be transferred (May/June 2020)
- DDA to complete outstanding tasks under SWO
- FORA to close out SWOs as appropriate to facilitate transfer of contract
- Transfer of available and applicable project documents and files (May/June 2020)
- Transfer remaining consultant funds (June 2020)
- Transfer remaining contract funds and DDA contract to Monterey County based on terms and conditions of MOA

FISCAL IMPACT:

Staff time and expenditures are included in the approved FY 19-20 Mid-Year Budget.

Reviewed by FORA Controller  _____

COORDINATION:

Authority Counsel, Administrative Committee, land use jurisdictions, Consultants.

Prepared by  _____
 Kristie Reimer, RAC

Approved by  _____
 Joshua Metz

FORT ORD REUSE AUTHORITY BOARD REPORT	
BUSINESS ITEMS	
Subject:	Consultant Services Contract Amendments
Meeting Date:	April 30, 2020
Agenda Number:	7d
	ACTION

RECOMMENDATION(S):

Authorize the Executive Officer to approve \$112,250 of contract amendments for:

- a) NHA Advisors;
- b) The Don Chapin Company; and
- c) Regional Government Services (“RGS”).

BACKGROUND/DISCUSSION:

As the Fort Ord Reuse Authority (“FORA”) moves towards sunset, amidst the global COVID-19 pandemic, projects and tasks related to sunset require increased support. This includes work to support the successful issuance of building removal bonds, completion of outstanding building removal related deconstruction, planning support services for Campus Town consistency determination, and strategy/communications support.

NHA Advisors (“NHA”) is the municipal advisor leading the pursuit of the \$40 Million building removal bond. NHA is operating on a contingent payment basis contract with FORA since summer 2019. Since then, NHA has expanded its workload to support the validation process, most notably through preparing quantitative analyses and a formal presentation to Department of Finance (“DOF”) in February 2020. In addition, COVID-19 has disrupted the bond market, resulting in a need for NHA to develop and consider a wide variety of alternative strategies for delivering funding for FORA building removal. NHA has also contributed to developing solutions to the challenge of satisfying all remaining CalPERS obligations in such a way that the building removal bond issue can proceed. The requested amendment of an additional \$30,000 to be paid from bond proceeds, would remain on a contingent basis (**Attachment A**).

The Don Chapin Company (“Chapin”). In 2016, at Seaside’s request, FORA performed a hazardous materials assessment of the Surplus II site and presented the results and a course of action to the City. Seaside concurred with the plan to utilize FORA’s \$5.2M CIP obligation to remove 17 of the 27 buildings. At the April 9, 2020 Board meeting, the City of Seaside expressed concern about the Surplus II project status and their strong desire that the project be completed prior to FORA sunset.

The majority of demolition activity for Surplus II was awarded to Resource Environmental Inc. who stopped work on the project in 2019. FORA also awarded a focused scope of work to address cutting and capping of wet utilities to Chapin. As FORA’s Construction Manager for the project, Harris & Associates tracked the demolition project efforts and identified a checklist of activities that were not completed when REI stopped work in 2019. Harris & Associates visited the site in March 2020 to confirm the remaining site work, which was followed up by a site walk with Chapin on April 10, 2020. The attached costs proposal as

submitted by Chapin identifies the remaining work required in support of the site close out activities for the Surplus II Demolition project (**Attachment B**). FORA staff and consultants are working diligently to wrap up the site related activities and project close out requirements for Surplus II. To complete these activities and support the successful completion of the Surplus II demolition project, FORA is requesting the FORA Board authorize FORA Executive Officer to approve additional funds be allocated to the current contract (FC-20190510) with Chapin not to exceed \$42,250 (proposal + 10% contingency) in support of site work and project closeout activities (**Attachment B**).

Regional Government Services (“RGS”) is seeking \$40,000 increase in its current not-to-exceed contract of \$130,000 to provide planning support services in the preparation of a Consistency Determination of the City of Seaside’s Campus Town development, facilitating and managing records transfers, and continued strategic planning support in the dissolution of FORA through June 30, 2020 (**Attachment D**).

FISCAL IMPACT:

Reviewed by FORA Controller  _____

Total requested additional funding is \$112,250 (\$82,250 General Fund/\$30,000 Contingent from Bond Proceeds)

COORDINATION:

Executive Officer. NHA Advisors. The Don Chapin Company. RGS.

Prepared by 
Joshua Metz

ATTACHMENTS:

- A. NHA Advisors Contract Amendment Request
- B. The Don Chapin Company Contract Amendment Request
- C. Regional Government Services Contract Amendment Request

April 17, 2020

Josh Metz
Executive Officer
Fort Ord Reuse Authority
920 2nd Street, Suite A
Marina, CA 93933

RE: Fort Ord Reuse Authority 2020 Tax Allocation Bonds – Regulatory Disclosure Letter

Dear Josh,

NHA Advisors, LLC (“NHA Advisors”) is required to send this Regulatory Disclosure Letter per Municipal Securities Rulemaking Board (“MSRB”) rules. This letter specifies the terms and details of the work that NHA Advisors will perform for the Fort Ord Reuse Authority (the “Authority”) relating to the above referenced project (the “Project”). Additionally, this letter provides certain duties and disclosures that municipal advisors must present to all clients prior to beginning work on a municipal transaction.

Scope of Municipal Advisory Activities to be Performed

A detailed Scope of Services can be found in Exhibit A.

Independent Registered Municipal Advisor (“IRMA”)

If acting in the capacity of an Independent Registered Municipal Advisor (“IRMA”), with regard to the IRMA exemption of the U. S. Securities and Exchange Commission (“SEC”) Rule, NHA Advisors will review all third-party recommendations submitted to NHA Advisors in writing by the Authority.

Term of the Project

The Project will commence on July 17, 2019 and end on June 30, 2020 or upon closing of the transaction, unless the term of the Agreement is otherwise terminated or extended. Any extensions must be mutually agreed upon by all parties in writing.

Termination of NHA Advisors’ Role on Project

The Authority may terminate NHA Advisors’ role on the Project at any time and without cause upon written notification to NHA Advisors.

In the event of termination, NHA Advisors shall be entitled to compensation for services performed to the effective date of termination. The Authority, however, may condition payment of such compensation upon NHA Advisors delivering to the Authority any or all documents, photographs, computer software, video and audio tapes, and other materials provided to NHA Advisors or prepared by or for NHA Advisors or the Authority in connection with NHA Advisors’ work on the Project.

NHA Advisors may terminate upon 45 days' written notice to the Authority and shall include in such notice the reasons for termination.

Compensation and Out-of-Pocket Expenses

A detailed proposal for compensation and expenses can be found in Exhibit B.

Fiduciary Duty

NHA Advisors is registered as a Municipal Advisor with the SEC and MSRB. As such, NHA Advisors has a fiduciary duty to the Authority and must provide both a Duty of Care and a Duty of Loyalty that entails the following.

Duty of Care:

- a) exercise due care in performing its municipal advisory activities;
- b) possess the degree of knowledge and expertise needed to provide the Authority with informed advice;
- c) make a reasonable inquiry as to the facts that are relevant to the Authority's determination as to whether to proceed with a course of action or that form the basis for any advice provided to the Authority; and
- d) undertake a reasonable investigation to determine that NHA Advisors is not forming any recommendation on materially inaccurate or incomplete information; NHA Advisors must have a reasonable basis for:
 - i. any advice provided to or on behalf of the Authority;
 - ii. any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the Authority, any other party involved in the municipal securities transaction or municipal financial product, or investors in the Authority securities; and
 - iii. any information provided to the Authority or other parties involved in the municipal securities transaction in connection with the preparation of an official statement.

Duty of Loyalty:

NHA Advisors must deal honestly and with the utmost good faith with the Authority and act in the Authority's best interests without regard to the financial or other interests of NHA Advisors. NHA Advisors will eliminate or provide full and fair disclosure (included herein) to Issuer about each material conflict of interest (as applicable). NHA Advisors will not engage in municipal advisory activities with the Authority as a municipal entity, if it cannot manage or mitigate its conflicts in a manner that will permit it to act in the Authority's best interest.

Conflicts of Interest and Other Matters Requiring Disclosures

- As of the commencement date of the Project, there are no actual or potential conflicts of interest that NHA Advisors is aware of that might impair its ability to render unbiased and competent advice or to fulfill its fiduciary duty. If NHA Advisors becomes aware of any potential conflict of interest that arise after this disclosure, NHA Advisors will disclose the detailed information in writing to the Authority in a timely manner.
- The fee paid to NHA Advisors increases the cost of investment to the Authority. The increased cost occurs from compensating NHA Advisors for municipal advisory services provided.

- NHA Advisors does not act as principal in any of the transaction(s) related to its role/work on the Project.
- During the term of the municipal advisory relationship, any agreement between the Authority and NHA Advisors will be promptly amended to reflect any material changes or additions.
- NHA Advisors does not have any affiliate that provides any advice, service, or product to or on behalf of the Authority that is directly or indirectly related to the municipal advisory activities to be performed by NHA Advisors;
- NHA Advisors has not made any payments directly or indirectly to obtain or retain the Authority's municipal advisory business;
- NHA Advisors has not received any payments from third parties to enlist NHA Advisors' recommendation to the Authority of its services, any municipal securities transaction or any municipal finance product;
- NHA Advisors has not engaged in any fee-splitting arrangements involving NHA Advisors and any provider of investments or services to the Authority;
- NHA Advisors has a conflict of interest from compensation for municipal advisory activities to be performed that is contingent on the size or closing of any transactions as to which NHA Advisors is providing advice;
- NHA Advisors does not have any other engagements or relationships that might impair NHA Advisors ability either to render unbiased and competent advice to or on behalf of the Authority, or to fulfill its fiduciary duty to the Authority, as applicable; and
- NHA Advisors does not have any legal or disciplinary event that is material to the Authority's evaluation of the municipal advisory or the integrity of its management or advisory personnel.

Pursuant to MSRB G-10, on Investor and Municipal Advisory Client Education and Protection, Municipal Advisors are required to provide certain written information to their municipal entity and obligated person clients which include the following:

- NHA Advisors is currently registered as a Municipal Advisor with the SEC and the MSRB.
- Within the MSRB website at www.msrb.org, the Authority may obtain the Municipal Advisory client brochure that is posted on the MSRB website. The brochure describes the protections that may be provided by the MSRB Rules along with how to file a complaint with financial regulatory authorities.

Legal Events and Disciplinary History

NHA Advisors does not have any legal events and disciplinary history on its Form MA and Form MA-I, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation. The Authority may electronically access NHA Advisors' most recent Form MA and each most recent Form MA-I filed with the Commission at the following website:

www.sec.gov/edgar/searchedgar/companysearch.html

There have been no material changes to a legal or disciplinary event disclosure on any Form MA or Form MA-I filed with the SEC.

Recommendations

If NHA Advisors makes a recommendation of a municipal securities transaction or municipal financial product or if the review of a recommendation of another party is requested in writing by the Authority and is within the scope of the engagement, NHA Advisors will determine, based on the information obtained through reasonable diligence of NHA Advisors whether a municipal securities transaction or municipal financial product is suitable for the Authority. In addition, NHA Advisors will inform the Authority of:

- the evaluation of the material risks, potential benefits, structure, and other characteristics of the recommendation;
- the basis upon which NHA Advisors reasonably believes that the recommended municipal securities transaction or municipal financial product is, or is not, suitable for the Authority; and
- whether NHA Advisors has investigated or considered other reasonably feasible alternatives to the recommendation that might also or alternatively serve the Authority objectives.

If the Authority elects a course of action that is independent of or contrary to the advice provided by NHA Advisors, NHA Advisors is not required on that basis to disengage from the Authority.

Record Retention

Effective July 1, 2014, pursuant to the SEC record retention regulations, NHA Advisors is required to maintain in writing, all communication and created documents between NHA Advisors and the Authority for five (5) years.

If there are any questions regarding the above, please do not hesitate to contact NHA Advisors.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark Northcross".

Mark Northcross, Principal
NHA Advisors, LLC

EXHIBIT A

SCOPE OF SERVICES MUNICIPAL ADVISORY SERVICES

NHA Advisors will work with the Authority and other parties to develop financing strategies for building removal and provide other general advice as needed by Authority staff.

Scope of Services

NHA Advisors will serve as the municipal advisor of record for the Authority and provide the following services:

◆ **Project Management**

- Provide information and advice on the timing of the financing process and develop timeline (schedule) of tasks.
- If requested, work with Authority staff to solicit and select trustee service provider and negotiate preferred terms and pricing.
- If requested, recommend options with respect to other consultants, as applicable, that may be required as part of financing process.
- Manage financing process, including the assignment of tasks for all parties involved in the financing.

◆ **Quantitative Analysis and Financial Structuring**

- Prepare, review, analyze, and provide structuring advice for the proposed financing and or refinancing.
- Evaluate the method of sale (private placement or public offering), bond structure, legal approaches, and financial advantages for each alternative, including the financing terms and call provisions.
- Analyze credit enhancement options (bond insurance and reserve surety bond policies).
- Meet with or have conference calls with credit enhancement/insurance companies to discuss the transaction, as appropriate.

◆ **Project Implementation**

- Coordinate the efforts of bond counsel, disclosure counsel, and/or any other legal counsel to prepare the financing documents for approval by the Authority Board.
- Provide advice on the financing structure for incorporation into financing documents.

- Upon request, NHA Advisors will make presentations or attend meetings with the Authority Board or stakeholders to answer questions about the financing and process.
- Work with Authority staff to solicit and select financing partner/funding source (e.g. bank, underwriter, etc.), as necessary.
- Work with selected financing partner/funding source to determine optimal bond structure, including serial/term bonds, premium/discount bonds, and redemption provisions.
- If a public offering method of sale is utilized:
 - Prepare and coordinate a comprehensive credit presentation to the rating services. This presentation will cover all relevant information regarding the proposed financing and will address the Authority's ability to fund the annual debt service payments through its revenue base. Prepare a similar credit package for bond insurance companies, if applicable.
 - Based on information provided to NHA Advisors by the Authority, work with disclosure counsel to assemble the official statement for the financing in a manner consistent with existing laws, regulations, and standards of the securities industry. The official statement serves as a marketing instrument and disclosure document for the Authority with respect to the financing.
 - If completed as a negotiated sale, assist the Authority in the negotiation of underwriting spreads and interest rates for the proposed financing. Monitor the underwriter's sales effort to ensure the lowest financing costs are achieved.
 - If completed as a competitive sale, work with a nationally recognized firm to market the bonds and establish a bidding platform.
- If a private placement method of sale is utilized:
 - Prepare a credit package (similar to the one outlined in the prior bullet) for potential investor banks.
 - Work with a placement agent to solicit bids from various banks that invest in municipal debt.
 - Manage bond pricing and final financing structure (debt service, bond terms).
- Work with bond counsel to finalize documents for execution by the Authority and prepare a closing memorandum outlining a detailed flow of funds at the time of closing.
- Coordinate the delivery, printing and final approval of legal documents, and the preparation of closing certificates and final official statement.



April 27, 2020

Mr. Josh Metz
Executive Officer
Fort Ord Reuse Authority
920 2nd Street, Suite A
Marina, CA 93933

RE: Amendment to FC-20190510 - Cost Proposal as Requested by FORA - Additional Site Work - Surplus II Demolition Project

Dear Mr. Metz,

As per your request, the Don Chapin Company is pleased to provide a cost proposal for the above mentioned project. This proposal is based on a site visit by Rick Nickel, our superintendent, and any communication you may have had with him about the project. The proposal is as follows:

Base Bid

- 1) Remove and install new concrete sidewalk – 240 SF.
- 2) Remove and install new concrete sidewalk – 80 SF
- 3) Import and compact new fill for existing depression hole – 270 CY
- 4) Import and fill cut slope embankment to 1:1 slope – 70 LF

Base Bid Price: \$38,410.00

Unit Prices for Scope Change Purposes (Note: All work in base bid included in above base bid price)

- 1) Remove and install new concrete sidewalk – 0 to 100 SF = \$35.00 SF
- 2) Remove and install new concrete sidewalk – 100 to 300 SF = \$25.00 SF
- 2) Remove and install new concrete Curb and Gutter – 0 to 100 LF = \$75.00 LF
- 4) Remove and install new concrete Curb and Gutter – 100 to 300 LF = \$60.00 LF
- 5) Remove and install new concrete Spandrel – 0 to 100 SF = \$35.00 SF
- 6) Remove and install new concrete Spandrel – 100 to 300 SF = \$30.00 SF

Exclusions and Qualifications

- 1) Base bid work all to be performed with one move in.
- 2) Permits, fees, bonds, staking, and any testing is excluded.
- 3) Removal or replacement of existing utilities is excluded.
- 4) Prevailing wage rates were used.
- 5) Any utility conflicts are not covered in this proposal.
- 6) Striping of any kind is excluded.
- 7) All concrete work installed on native sand material. No import of base
- 8) All concrete will be gray natural color.

If you have any questions please contact me or Rick Nickel at our direct lines respectively

1-831-444-4126 - GR

1-831-444-4191 - RN

Sincerely,

A handwritten signature in cursive script that reads "Greg J. Runnalls". The signature is written in black ink and is positioned above a horizontal dashed line.

Greg J Runnalls

Estimator – Don Chapin Co.

EXHIBIT B

COMPENSATION SCHEDULE

For work described in the Scope of Services, NHA Advisors will be compensated at the time of closing. Compensation will be contingent on completion of the financing and is expected to be paid from proceeds of the transaction (no budget impact).

The fee for these services is based on a number of factors, including the financing structure, complexity, series of bonds, funding source, and actual time expected to be spent managing the funding process. For a negotiated public offering, NHA Advisors will be entitled to a fee for services of \$120,000.

Expenses (Out-of-Pocket)

All expenses will be billed directly at cost to the Authority. Expenses will be limited to those necessary for completion of the project.

April 27, 2020

Mr. Joshua Metz
Executive Officer
Fort Ord Reuse Authority
620 2nd Ave, Suite A
Marina, CA 93933

SUBJECT: CONTRACT AMENDMENT #3

Dear Mr. Metz,

Regional Government Services (RGS) is requesting a contract amendment in the amount of \$40,000 to provide continuing and additional services as follows:

- Preparation of a Consistency Determination for the City of Seaside's Campus Town development project for presentation in June.
- Facilitating and managing transition of financial records from FORA to Monterey County.
- Contributing to the strategic planning process as it applies to cessation of FORA operations.
- Continue assisting in efforts required as a result of the dissolution of the Fort Ord Reuse Authority.

Please feel free to contact me with any questions or clarifications. Thank you!

Sincerely,

KBFlint

Kendall Flint
Director of Strategic Planning and
Communications
REGIONAL GOVERNMENT SERVICES

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

Subject:	Monterey County Local Agency Formation Commission ("LAFCO") Processing Fees	
Meeting Date:	April 30, 2020	ACTION
Agenda Number:	7e	

RECOMMENDATION:

Authorize payment of LAFCO Processing Fees

BACKGROUND/DISCUSSION:

On December 19, 2018, the Fort Ord Reuse Authority ("FORA") Board adopted Resolution 18-11: Approving a Transition Plan for Submission to the Monterey County Local Agency Formation Commission ("LAFCO"). This resolution includes direction to "the Executive Officer to submit this Transition Plan to LAFCO and execute required documents and pay all LAFCO required processing fees".

LAFCO recently provided the Commission with an update on the FORA Dissolution Process and adjustment to their target date for a Public Hearing on the Dissolution (**Attachment A**). LAFCO has submitted an invoice for processing fees thru 4/27/20 and a fee estimate through June 30, 2020 to fund LAFCO's administrative tasks, including LAFCO's planned Public Hearing on the Dissolution of FORA on June 22, 2020 (**Attachment B**).

FISCAL IMPACT:

Reviewed by FORA Controller 

Staff time and fee included in approved FY 19/20 Mid-Year Budget.

COORDINATION:

Authority Counsel. LAFCO.

ATTACHMENTS:

- A. LAFCO Commission Report
- B. LAFCO Invoice

Prepared by & Approved by


Joshua Metz

LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY

KATE McKENNA, AICP
Executive Officer

LOCAL AGENCY FORMATION COMMISSION
P.O. Box 1369
Salinas, CA 93902
Telephone (831) 754-5838

132 W. Gabilan Street, Suite 102
Salinas, CA 93901
www.monterey.lafco.ca.gov

DATE: April 27, 2020
TO: Chair and Members of the Commission
FROM: Kate McKenna, AICP, Executive Officer
PREPARED BY: Jonathan Brinkmann, Senior Analyst and Darren McBain, Principal Analyst
SUBJECT: Consider Status Report on Fort Ord Reuse Authority (FORA) Dissolution Process (LAFCO File No. 18-06)

SUMMARY OF RECOMMENDATIONS:

It is recommended that the Commission:

1. Receive the Executive Officer's report;
2. Receive any public comments; and
3. Provide for any questions or follow-up discussion by the Commission.

EXECUTIVE SUMMARY:

The FORA Act, California Government Code section 67700, mandates FORA dissolution on June 30, 2020 and describes a limited LAFCO role to provide for the orderly dissolution of FORA "including ensuring that all contracts, agreements, and pledges to pay or repay money entered into by the authority are honored and properly administered, and that all assets of the authority are appropriately transferred."

Many of the FORA Board's actions to date have been consistent with an orderly dissolution in the context of LAFCO's statutory role. For example, important work is in progress to transfer assets, liabilities, and related administrative responsibilities. However, LAFCO staff remains concerned about some aspects of remaining FORA dissolution-related tasks and processes. These concerns include: Transition Plan Implementing Agreements; status of LAFCO's previous requests for additional litigation defense funds and post-dissolution administrative task funds; Transition Plan amendments; designation of successor agencies for FORA's CEQA responsibilities on FORA-approved roadway projects; successor agency assignment for existing FORA contracts; and status of the Fort Ord Reuse Plan's programs, policies, and CEQA mitigation measures post-FORA dissolution.

Staff will schedule a public hearing on FORA dissolution at the June 22 regular LAFCO meeting rather than the May 18 meeting as previously planned. The extra month will allow FORA more time to review and address issues discussed in this report. In addition, FORA has postponed until May important actions such as consideration of amendments to the 2018 Transition Plan and distribution of unassigned funds. This timing essentially requires moving LAFCO's public hearing on FORA dissolution to June in order for LAFCO to be able to appropriately address FORA's dissolution actions.

DISCUSSION:

Following is an update on current dissolution matters.

1. Transfer of Assets, Liabilities, and Related Administrative Responsibilities is in Progress.

FORA has made significant progress in the planned transfer of assets, liabilities and administrative responsibilities. These include:

- The planned transfer of Community Facilities District funds and other fund balances;

- Assigning FORA's Environmental Services Cooperative Agreement, Local Redevelopment Authority role, and Economic Development Conveyance Agreement to the City of Seaside;
- Making payment provisions to terminate FORA's CalPERS liability and contract;
- Reviewing proposed amendments to the 2018 Transition Plan to reflect current FORA dissolution plans;
- Making plans to transfer records and office equipment to the County of Monterey; and
- Taking steps to ensure transfer of remaining FORA-held real estate to local agencies.

The FORA Board took specific actions needed to transfer certain fund balances when it adopted its mid-fiscal year General and Capital Improvement Program budget, and approved distribution of approximately \$17 million in habitat set-aside funds and an estimated \$30 million (depending on bond market conditions) in pending building removal bond proceeds among the five land use jurisdictions. On May 14, the FORA Board will consider distribution of remaining, unassigned funds in response to requests submitted by various agencies, including LAFCO. Please see item 4, below.

2. Implementing Agreements are Not Progressing and May Not be Completed by June 30.

The draft Multi-Agency Implementing Agreement, and individual water and wastewater services agreements with Marina Coast Water District, are not progressing as FORA had anticipated and may not be completed before dissolution. If these agreements are not finalized, the individual local agencies will need to rely on FORA's adopted Transition Plan for guidance. Section 1.1 of the adopted 2018 Transition Plan describes that Transition Plan Implementing Agreements, or, in their absence, the other provisions of the Transition Plan will establish a fair and equitable assignment of assets and liabilities, and provide a schedule of obligations. In summary, FORA dissolution will move forward with or without these agreements.

3. Existing Litigation is Not Resolved, Legal Risk is Increasing, and Coordination on Legal Risk is Not Resolved.

LAFCO has asked FORA to resolve its existing litigation, avoid taking on new risk, assign a successor to litigation that may not be resolved by June 30, and to coordinate on matters of legal risk. These issues are still of concern. Most significantly, FORA has authorized work toward certifying an Environmental Impact Report (EIR) for a proposed Habitat Conservation Plan (HCP) in June. This action increases the legal risk for LAFCO and FORA member agencies. Matters discussed in item #5, below, also have potential to involve LAFCO in future litigation.

Also, existing litigation involving a building demolition contractor's dispute over damaged equipment from removal of high-density concrete is scheduled for mediation in June, but it is possible that resolution will not occur by June 30. FORA has not yet created a plan to assign FORA's litigation role and funding for these and other matters of legal risk.

We expect that some FORA administrative and legal matters may carry over beyond June 30. LAFCO will continue to request that FORA assign its litigation role and funding to the appropriate likely successor agencies that have a logical connection to the subject of potential litigation. The FORA Act limits LAFCO's oversight role in FORA's dissolution. LAFCO may request that FORA take certain actions. However, LAFCO cannot compel FORA to take actions.

4. LAFCO's Requests for Additional Litigation Defense Funds and for Post-Dissolution Administrative Task Funds, Have Not Been Granted to Date.

To date, LAFCO has received \$500,000 for its litigation reserve fund from FORA. LAFCO staff continues to uphold the Commission's direction, as articulated in the March 3, 2020 letter to FORA. The letter requested an additional \$1.5 million for LAFCO's litigation reserve fund, \$100,000 for LAFCO administrative oversight post-June 30, and re-inclusion of funding assurance language in the Multi-Agency Implementing Agreement. FORA staff and counsel have indicated that they do not support these requests. However, LAFCO's requests remain, based on identified litigation risks and post-dissolution administrative oversight funding needs.

On May 14, 2020, the FORA Board may consider allocating \$100,000 to LAFCO (based on generally supportive statements by FORA Administrative Committee members at a prior meeting). FORA has not yet responded to LAFCO's recent invoice of \$10,000 for LAFCO Fee replenishment for administrative tasks through June 30. LAFCO's requests for supplemental litigation reserve funding, and language assuring

LAFCO's funding needs in the Multi-Agency Implementing Agreement have not been granted and do not appear likely to be granted. LAFCO staff and counsel have been discussing strategies to protect LAFCO in the event LAFCO's litigation reserve fund proves insufficient to address litigation matters after July 1. This matter remains under review and discussion.

5. LAFCO's Requests and Concerns related to Transition Plan Tasks, Designation of Successor Agencies for FORA CEQA Lead Agency Projects, Successor Agency Assignment for Existing FORA Contracts with the California Native Plant Society, and Other Stakeholders' Concerns are not Resolved.

Over the last several months, LAFCO – in our statutory role of providing for an orderly dissolution – has submitted several requests to FORA pertaining to:

- Implementing Transition Plan tasks, or amending the adopted Transition Plan tasks to reflect current FORA dissolution plans;
- Identification of FORA lead agency CEQA projects;
- Identification of FORA responsibilities for mitigation measures; and
- Assignment or designation of successor agencies for FORA lead agency projects.

Most recently, LAFCO staff submitted a letter to FORA on April 17, 2020 (**Attachment 1**). Our April 17 letter also transmitted an April 14 letter from the California Native Plant Society (CNPS) to LAFCO (**Attachment 2**). CNPS requested LAFCO assistance in ensuring that FORA name and secure agreements with successor CEQA lead agencies for FORA-approved road development projects (South Boundary Road and General Jim Moore Boulevard), as well as successors for existing FORA contracts with CNPS to protect rare plant reserve areas. In consideration of LAFCO's communications with FORA over the past few months and CNPS's letter, LAFCO's April 17 letter to the FORA Board requested that FORA address successor agency assignments of FORA CEQA lead agency status projects and the existing FORA contracts with CNPS by adding language in the 2020 Transition Plan and completing successor agreements. From LAFCO staff's perspective, these are important dissolution actions to assure assignment of FORA's duties and contractual obligations.

The FORA Board received an additional letter from CNPS on April 17 (**Attachment 3**), expressing concerns about naming successors for FORA lead agency road projects and FORA's contracts with CNPS, as well as FORA's email statements about transfer of its lead agency status, and FORA's proposed 2020 Transition Plan language characterizing certain road projects as "in progress construction projects." CNPS's letters are pertinent to LAFCO's oversight role of ensuring that FORA's contracts and agreements are honored and properly administered.

Also, on April 17, Keep Fort Ord Wild submitted a letter to the FORA Board (**Attachment 4**), responding to FORA's April 17 agenda item for consideration of amendments to the adopted 2018 Transition Plan. The letter asserts that FORA should clearly state in its Transition Plan the status of the Fort Ord Reuse Plan going forward after FORA sunsets, and identify the agency or agencies that will be responsible for enforcing the Reuse Plan and its programs, policies, and CEQA mitigations post-FORA dissolution. The letter also asserts that FORA must make a CEQA determination before acting on the Transition Plan, provide public notice prior to making a CEQA determination/decision, and take a second vote on the proposed amendments if the first vote is not unanimous. Staff notes that Section 1.1 of the 2018 Transition Plan includes ambiguous wording as to the status of the Fort Ord Reuse plan post-dissolution, stating that the "Transition Plan assigns all assets and liabilities relating to FORA's programs, policies, and mitigation measures of the Reuse Plan to the extent they survive the dissolution of FORA." Staff views the requests in Keep Fort Ord Wild's letter as substantive policy matters that must be addressed with the FORA Board and requests a written summary of FORA's responses to the issues raised.

The Carpenters Union Local 605 transmitted a letter to the FORA Board on April 8 (**Attachment 5**) requesting that FORA: 1) retain Transition Plan language directing FORA to record the FORA Master Resolution; 2) record the FORA Master Resolution, which includes requirements for paying prevailing wages to workers on former Fort Ord construction projects; and 3) remove language stating the draft Multi-Agency Transition Plan Implementing Agreement would supersede 2001 Implementation Agreements between FORA and its member agencies. FORA counsel confirmed recordation of the FORA Master Resolution on April 14. However, the Carpenters Union remains concerned about proposed Transition Plan

language stating that the Multi-Agency Implementing Agreement would supersede 2001 Implementation Agreements between FORA and its member agencies. As mentioned under item #2, above, it is currently unclear if the Multi-Agency TPIA will be approved. If FORA and its member agencies enter into a new agreement that replaces a previous agreement, LAFCO would need to ensure that the new agreement is honored and properly administered, in accordance with LAFCO's statutory role. The extent to which doing so could present an ongoing administrative burden, or involve LAFCO in future litigation, is unknown and is under discussion with counsel.

It is currently unclear whether and how FORA plans to address the issues raised in these recent letters. FORA is in the process of amending its adopted 2018 Transition Plan to reflect FORA's current understandings of its dissolution-related needs and goals. The FORA Board deferred action on a proposed set of Transition Plan amendments on the April 17 FORA Board agenda, and directed staff to discuss the various comments with LAFCO and others prior to the FORA Board meeting on May 14. FORA staff has indicated that the FORA Board may also consider agreements assigning FORA CEQA lead agency successors on May 14.

NEXT STEPS:

Given the requests and concerns expressed in the letters above, and elsewhere in this report, along with FORA postponing consideration of Transition Plan amendments until next month, staff is postponing LAFCO's public hearing on the dissolution of FORA until the June 22 regular meeting. This timing will allow FORA more time to address the identified issues and finalize documents related to its dissolution, and will afford LAFCO time to include these additional FORA actions as part of the public hearing record.

At the Commission's public hearing, staff will bring forward FORA's adopted Transition Plan as amended, along with any finalized implementing agreements, and a draft resolution making determinations on the orderly dissolution of FORA. LAFCO's oversight role of the FORA dissolution will officially end on December 31, 2020, since the FORA Act, which established LAFCO's oversight role, will be repealed on that date.

Throughout the FORA dissolution process, staff is continuing to work closely with FORA and its member agencies. Our objective is to collaborate with FORA representatives to address LAFCO and Monterey Bay community concerns and to achieve an orderly and efficient dissolution.

Respectfully Submitted,



Kate McKenna, AICP
Executive Officer

Attachments:

- 1) Letter from LAFCO to FORA Board of Directors dated April 17, 2020
- 2) Letter from the Law Offices of Stamp | Erickson dated April 14, 2020 on behalf of CNPS
- 3) Letter from the Law Offices of Stamp | Erickson dated April 17, 2020 on behalf of CNPS to FORA Board of Directors
- 4) Letter from the Law Offices of Stamp | Erickson dated April 17, 2020 on behalf of Keep Fort Ord Wild to FORA Board of Directors
- 5) Letter from the Carpenters Union Local 605 dated April 8, 2020 to FORA Board of Directors

CC: Josh Metz, FORA Executive Officer
Molly Erickson, Esq., Stamp | Erickson, Attorneys at Law
Sean Hebard, Field Representative, Carpenters Local 605

P.O. Box 1369
 Salinas, CA 93902
 Phone (831) 754-5838

DATE: April 24, 2020

Bill To:
 Fort Ord Reuse Authority
 Attn.: Josh Metz, Executive Officer

For:
 Application processing costs for FORA Dissolution (LAFCO file 18-06)

DATE	DESCRIPTION	Amount Billed/Estimated to be Billed	Amount Paid	Amount Owed
January 11, 2019	Initial Deposit		\$ 10,000.00	
Dec. 2018 through Dec. 2019	LAFCO analyst time and expenses (See attached details)	\$ 9,062.50		
Jan. 1, 2020 through April 24, 2020	LAFCO analyst time and expenses (See attached details)	\$ 7,950.00		
April 24, 2020 through June 30, 2020	Estimated LAFCO analyst time and expenses (See attached details)	\$ 2,985.00		
May 17, 2020	LAFCO Fee Replenishment			\$ (10,000.00)
TOTALS		\$ 19,997.50	\$ 10,000.00	\$ (10,000.00)

The 2018 FORA Transition Plan (pg. 14) states: "The Board directs the Executive Officer to submit the Transition Plan to LAFCO and execute all LAFCO required documents and pay all LAFCO required processing fees." In this regard, we ask for replenishment of funds in the amount of \$10,000 to address our FORA dissolution administrative processing costs through June 30, 2020. This amount of \$10,000 is due and payable now. Thank you.