

MEMORANDUM OF AGREEMENT
 Among
DEPARTMENT OF THE ARMY
MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY
FORT ORD REUSE AUTHORITY
MARINA COAST WATER DISTRICT

This Memorandum of Agreement (“MOA”) is hereby entered into by and among the United States of America, acting by and through the Secretary of the Army (“Army”); and the Monterey Regional Water Pollution Control Agency (“MRWPCA”); and the Fort Ord Reuse Authority (“FORA”); and the Marina Coast Water District (“MCWD”), hereinafter referred to collectively as the “Parties.”

WHEREAS, on May 1, 1981, by Contract No. DACA05-81-C-0021, the Army and MRWPCA entered into a contract to provide for Army participation in the construction of the Monterey Regional Wastewater Treatment Plant; and

WHEREAS, Contract No. DACA05-81-C-0021 has been modified four times -- Contract Modification No. P00001, dated February 15, 1985; P00002, dated April 24, 1986; P00003, dated March 26, 1987; and P00004, dated October 5, 2001; and

WHEREAS, on March 9, 1984, by Contract DAKF03-83-C-0527, the Army and MRWPCA entered into a contract for MRWPCA to provide sanitary sewage service to receive, carry, and dispose of all sanitary sewage delivered by the government at the premises to be served; and

WHEREAS, Contract DAKF03-83-C-0527 has been modified 8 times, with the last P00008, dated September 12, 1999. Modification P00003 provided for capacity for point of delivery number one, Main Garrison, and for connection of points of delivery number two, Fritzsche Army Airfield, and number three, Ord Village Area; and

WHEREAS, by Contract No. DACA05-81-C-0021 and its four modifications, the Army purchased, and MRWPCA promised to accept, transport, and treat, up to 3.3 million gallons per day (MGD) of wastewater capacity as defined therein; and

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WHEREAS, Article 2(f) of the 1985 P00001 contract modification to Contract No. DACA05-81-C-0021 allows the Army to assign its prepaid wastewater capacity rights, subject to MRWPCA's approval; and

WHEREAS, a significant portion of Fort Ord was officially closed on September 30, 1994, in accordance with the authority contained in the Defense Base Closure and Realignment Act of 1990, Public Law 101-510, as amended; and

WHEREAS, the Army and MRWPCA, in accordance with a Memorandum of Understanding dated June 22, 1998, determined that the prepaid wastewater capacity rights can best be managed and accounted for by converting the prepaid wastewater capacity rights from a measured flow to an Equivalent Dwelling Unit ("EDU") basis; and

WHEREAS, on October 23, 2001, the Army made an Economic Development Conveyance to FORA by a *Quitclaim Deed for Water and Wastewater Systems Former Fort Ord, County of Monterey*, which Deed granted 2.22 MGD of the Army's 3.3 MGD prepaid wastewater capacity rights and the water/wastewater systems and associated rights to FORA; and

WHEREAS, on October 24, 2001, FORA transferred said 2.22 MGD wastewater capacity rights and water/wastewater systems and associated rights to MCWD; and

WHEREAS, the Parties intend to delineate their respective rights and obligations, including right to wastewater capacity and separate billing;

NOW, THEREFORE, the Parties agree as follows:

I. DEFINITIONS. The following definitions and designations apply only for the purposes of this MOA and other instruments entered into pursuant to this MOA.

A. Average Dry Weather Flow (ADWF) is the value obtained by taking the total volume during all calendar months in which less than ½ inch of measurable precipitation occurred within the tributary area of the wastewater collection system within the former Fort Ord and dividing by the number of days in those calendar months. This value will normally be expressed in MGD.

B. Peak Wet Weather Flow – 24 Hour (PWWF – 24 hr) is the total flow measured during any 24-hour period of a calendar year. This value will normally be expressed in MGD.

C. Peak Wet Weather Flow - Instantaneous (PWWF) is the highest flow measured during a 15-minute period of a calendar year. This value will normally be expressed in MGD.

D. Equivalent Dwelling Unit (EDU) is the measure of demand of the typical single family dwelling, which measure is used by wastewater agencies for purposes of assessing capacity fees and sizing treatment facilities. An EDU is comprised of two principal components:

1. Flow as stated in terms of gallons per day (GPD); and
2. Sewage strength measured by
 - a. Milligrams per liter (mg/l) of biochemical oxygen demand (BOD); and
 - b. Milligrams per liter (mg/l) of suspended solids (SS).

II. APPROVAL OF PRIOR ASSIGNMENT.

A. Inasmuch as the Parties seek to resolve questions regarding the Army's assignment of 2.22 MGD of its prepaid wastewater capacity rights to FORA, and FORA's assignment of 2.22 MGD of prepaid wastewater capacity rights to MCWD, MRWPCA hereby unconditionally approves of such assignment, retroactive to October 23, 2001, the date of Army's conveyance to FORA.

B. Future sale or transfer of capacity is addressed in Section VII.

III. CAPACITY TO BE PROVIDED.

A. In light of the foregoing assignments, MRWPCA, therefore, agrees to accept and treat up to 1.08 MGD of wastewater generated by those entities covered under Contract No DAKF03-83-C-0527, as modified, and up to 2.22 MGD of wastewater generated by entities on former Fort Ord lands other than those covered under Contract No DAKF03-83-C-0527.

B. Contract No. DACA05-81-C-0021 and DAKF03-83-C-0527 and their modifications provide that wastewater discharge to MRWPCA's interceptors will not exceed the following:

Delivery Points	ADWF	PWWF (24 hour)	PWWF (Instantaneous)
No. 1 Main Garrison	*	*	*
No. 2 Fritzsche AAF	0.01	0.01	0.02
No. 3 Ord Village Area	*	*	*
*Max Combined Discharges from Delivery Points No. 1 & 3.	3.29	3.83	7.87
Total Capacity to be Provided	3.30	3.84	7.89

C. Although Contract No. DAKF03-83-C-0527 Modification P00003 provides for wastewater discharges into Delivery Point No. 3, the quantity of allowable discharges was not specified. A hydraulics study is required to determine such matters as the impact of discharges on MRWPCA pump stations and collection mains, potential increases in interceptor odors or corrosion, and the likelihood of increased spill hazards due to potential backflow into upstream wastewater collection facilities. MRWPCA is not responsible for capital upgrades or increased O&M costs specified by the hydraulics study.

IV. CONVERSION TO EDUs.

A. MRWPCA currently deems one EDU to produce 210 gallons of wastewater per day ("GPD") throughout its service area outside the former Fort Ord.

B. From and after the effective date of this MOA, the measurement, tracking, accounting, billing, sub allocations, assignments, and all other applicable considerations related to wastewater capacity rights at the former Fort Ord shall be on an EDU basis. The EDU equivalency factor is set initially at 210 GPD per EDU. The capacity-based EDUs for the former Fort Ord are initially as follows:

	<u>MGD</u>	<u>EDU Equivalency Factor</u>	<u>EDUs</u>
Army	1.08	210	5,143
FORA and/or MCWD	<u>2.22</u>	210	<u>10,571</u>
Total Former Fort Ord	3.30	210	15,714

C. The Parties shall reassess the EDU equivalency factor to assure that conservation and appropriate related measures are in place and to confirm the 210 gallons per EDU equivalency factor. The reassessment shall take place when the first of either of the following conditions are met:

1. Fifteen (15) years from the date of this MOA; or
2. Total wastewater flows from within the former Fort Ord reach 2.5 MGD, ADWF.

D. The EDU reassessment calculation will be conducted by MRWPCA and will be based on the regulatory regimen then in effect within the MRWPCA's service area. MRWPCA will provide the other Parties with an EDU reassessment calculation test plan sixty days prior to initiating the reassessment process. In the event that MRWPCA determines that the EDU equivalency factor should be adjusted, MRWPCA shall provide to the other Parties a minimum of sixty (60) days written notice to such effect and shall provide appropriate documentation to support any proposed adjustment to the equivalency factor. The other Parties shall have the right to present comments to the governance board of

MRWPCA in accordance with the review and comment rights applicable to similarly-situated entities.

E. Upon completion of the above process, MRWPCA shall adjust the total EDUs assignable to the other Parties, or their successors or assigns.

V. CAPACITY CHARGE.

A. Any other Party, or subsequent property owner, as appropriate, shall pay to the MRWPCA a capacity charge for any new or modified connection to the wastewater collection system that causes or may cause the total number of EDUs for such user to be exceeded. The capacity charge shall be based on the standard charges specified in MRWPCA's Ordinance No. 2001-1, *Amending Ordinance No. 2000-02, in Part, to Change the Sewer User Charges and Capacity Charges*, as amended or superseded, provided that the standard charges are applicable to all, or substantially all, of the MRWPCA's customers.

B. Conversely, the other Parties, or their successors or assigns, shall not be liable for any capacity charges as long as the total number of EDUs does not exceed the number of EDUs as specified initially in Section IV above, or as later adjusted pursuant to a reassessment.

VI. SEPARATE BILLINGS.

No later than sixty (60) days after the effective date of this MOA, MRWPCA shall separately bill the other Parties, or subsequent owners, as appropriate, and the other Parties, or subsequent owners, as appropriate, shall be responsible only for wastewater treatment service charges for buildings and other structures that are located within their respective areas.

VII. FUTURE SALE OR TRANSFER OF CAPACITY.

A. The Army has the right to sell or otherwise transfer its capacity rights and other interests as a matter of right to FORA or MCWD at any time in the future without the prior written review and approval by MRWPCA. The Army has the right to sell or otherwise transfer its capacity rights and other interests to another entity or user at any time in the future subject to the review and approval of MRWPCA, and such approval shall not be unreasonably withheld.

B. FORA and/or MCWD have the right to sell or otherwise transfer their capacity rights and other interests as a matter of right to each other or to FORA member political jurisdictions at any time in the future without the prior written review and approval by MRWPCA. FORA and/or MCWD have the right to sell or otherwise transfer their capacity

rights and other interests to any other entity or user at any time in the future subject to the review and approval of MRWPCA, and such approval shall not be unreasonably withheld.

C. Notwithstanding the above, capacity rights may not be transferred to any parcel of property outside of the former Fort Ord other than as may be provided by MRWPCA Ordinance.

D. MRWPCA shall adjust the applicable prepaid wastewater capacity rights identified above within thirty (30) days from the receipt of written notice by the Army, FORA, or MCWD, as appropriate, that such sale or transfer has taken place.

VIII. ABANDONMENT OF TREATMENT SERVICES AND PLANT.

A. Should MRWPCA permanently discontinue providing treatment and disposal services and permanently abandon its treatment plant within the time frame established by Contract No. DACA05-81-C-0021, MRWPCA shall reimburse the other Parties, as appropriate, for a portion of the remaining land and salvage value of the treatment plant.

B. The amount of any such reimbursement shall be determined by the following formula: the salvage value of the plant plus the appreciated land value multiplied by 11.15% (which represents the ratio of the 3.3 MGD of capacity purchased under Contract No. DACA05-81-C-0021 to the 29.60 MGD design capacity of the treatment plant). Any payment amounts shall be paid to the other Parties based on their respective share of the total EDU-based capacity rights.

IX. SEWAGE AND WASTEWATER REQUIREMENTS.

The other Parties agree to abide with MRWPCA's Ordinance 92-2, *An Ordinance Establishing Regulations for the Interception, Treatment and Disposal of Sewage and Wastewater; Providing for and Requiring Charges and Fees Therefore; and Fixing Penalties for the Violation of Said Regulations*, as amended or superseded. Among other things, Article 2 of Ordinance 92-2 specifies the types of wastes that cannot be discharged into the MRWPCA's sewage system, and Article 4 of Ordinance 92-2 addresses discharging, reporting and permitting, monitoring facilities, inspection and sampling, and pretreatment requirements.

X. WASTEWATER TREATMENT SERVICE RATES.

A. Pursuant to Article 5, Sections 5.01-5.05 of MRWPCA's Ordinance No. 79-2 and Ordinance No. 81-1, *An Ordinance Establishing User Charges and Connection Fees, and providing for the Billing, Payment and Collection of Same*, user classifications or categories are established and user charges levied for the use, rent, and availability of sewage facilities

and services furnished by the MRWPCA. Except as noted in Section X.B herein, wastewater treatment service charges, as appropriate, shall be predicated on the user classifications, categories, and charges within such ordinances, as amended or superseded.

B. The Army's wastewater treatment services charges, as appropriate, shall be predicated on modifications to Contract No. DAKF03-83-C-0527.

XI. WASTEWATER ALLOCATION PLAN.

The other Parties, as appropriate, shall comply with MRWPCA's Wastewater Allocation Plan, as defined in MRWPCA's Ordinance No. 98-01, *An Ordinance of the Monterey Regional Water Pollution Control Agency Adopting a Plan for the Allocation of Available Wastewater Treatment Capacity Among the Agency's Member Jurisdictions for the period October 1, 2004 through September 20, 2008*, as amended or superseded, provided nothing herein prevents the other Parties, as appropriate, from reaching the full capacity amount set forth in Section II. The Wastewater Allocation Plan incorporates Monterey Bay Unified Air Pollution Control District Regional Air Plan population data, which limits the rate of connections to MRWPCA's system.

XII. ARMY - MRWPCA CONTRACT MODIFICATION.

The Army and MRWPCA agree to negotiate in good faith a contract modification consistent with this MOA. The other Parties agree not to contest such modification, provided such modification is consistent with this MOA.

XIII. GENERAL PROVISIONS.

A. Cooperation; Further Acts. The Parties shall fully cooperate with one another and shall take any further acts or sign any additional documents as may be reasonably necessary, appropriate, or convenient to attain the purposes of this MOA.

B. Dispute Resolution. If any dispute arises between the Parties as to proper interpretation or application of this MOA, the Parties shall first meet and confer in a good faith attempt to resolve the matter among themselves. If the dispute is not resolved by meeting and conferring, the matter shall be submitted for formal mediation to a mediator selected mutually by the Parties. The expenses of such mediation shall be shared equally among the Parties. If the dispute is not or cannot be resolved by mediation, the Parties may mutually agree (but only as to those issues of the matter not resolved by mediation) to submit their dispute to arbitration. Before commencement of the arbitration, the Parties may elect to have the arbitration proceed on an informal basis; however, if the Parties are unable so to agree, then the arbitration shall be conducted in accordance with the rules of the Judicial Arbitration and Mediation Services (JAMS) dispute resolution organization. The decision of the arbitrator shall be binding, unless within thirty (30) days after issuance of the arbitrator's

written decision, any Party files an action in court. The Parties note that the provisions of this paragraph may not be applicable to or binding upon the Army.

C. Amendments, Changes or Modifications. This MOA is not subject to amendment, change, or modification except by a writing signed by the authorized representatives of each Party.

D. Attorney's Fees. In the event of any controversy, claim, or dispute relating to this MOA, or the breach thereof, the prevailing Party or Parties shall be entitled to recover from the losing Party or Parties reasonable attorney's fees and costs.

E. Successors and Assigns. All of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns provided, however, that no assignment shall be made without written consent of each of the other Parties to this MOA.

F. Authority to Enter Agreement. Each Party has all requisite power and authority to execute, deliver, and perform the MOA, and each Party warrants that the individuals who have signed this MOA have the legal power, right, and authority to make this MOA and bind each respective Party.

G. Waiver. A waiver of a default of any term of this MOA shall not be construed as a waiver of any succeeding default or as a waiver of the provision itself. A Party's performance after another Party's default shall not be construed as a waiver of that default.

H. Severability. Should any portion of this MOA be determined to be void or unenforceable, such shall be severed from the whole and the MOA will continue as modified.

I. Construction, References, Captions. Since the Parties or their agents have participated fully in the preparation of this MOA, the language of this MOA shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. The captions of the various sections are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this MOA.

J. Counterparts. This MOA may be executed by facsimile signature and in counterparts, as if a wholly integrated document, each of which shall constitute an original.


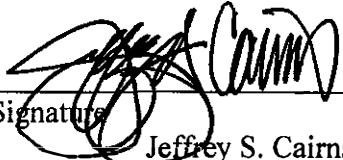
K. Entire Agreement. This MOA contains the entire agreement of the Parties with respect to the matters as set forth in this MOA, and no other agreement, statement, or promise made by or to any Party or by or to any employee, officer, or agent of any Party, which is not contained in this MOA shall be binding or valid.

Signature Page Follows

Memorandum of Agreement Among Department of the Army; Monterey Regional Water Pollution Control Agency; Fort Ord Reuse Authority; and Marina Coast Water District

IN WITNESS of the foregoing provisions, the Parties have executed and delivered this Memorandum of Agreement as of the date of the last signing Party as set forth below.

UNITED STATES OF AMERICA
acting by and through the Department of the Army

	2 NOV 05		25 OCT 05
Signature	Date	Signature	Date
Joseph W. Whitaker		Jeffrey S. Cairns	
Deputy Assistant Secretary of the Army		Colonel, U.S. Army	
(Installations & Housing)		Garrison Commander	
Office of the Assistant Secretary of the Army			

On behalf of the Department of the Army

Monterey Regional Water
Pollution Control Agency

Fort Ord Reuse Authority

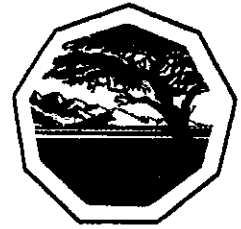
Marina Coast Water District

	9/27/05				28 Sept 2005
Signature	Date	Signature	Date	Signature	Date
Mayor David Pendergrass		Ila Mettee-McCutcheon		Thomas P. Moore	
Chair of the Board of Directors		Chair		President	

On Behalf of the Monterey
Regional Water Pollution Control
Agency

On behalf of the Fort Ord Reuse
Authority

On behalf of the Marina Coast
Water District



August 23, 2005

Memorandum for Record

The undersigned representatives agree to diligently and in good faith seek approval from their respective approval authorities of the terms and conditions of the attached Memorandum of Agreement, along with authorization to execute the attached Memorandum of Agreement.

Wesley L. Truscott, Jr.

Wesley L. Truscott, Jr.
On behalf of the Department of the Army

Robert R. Wellington

Robert R. Wellington
On behalf of the Monterey Regional
Water Pollution Control Agency

Michael A. Houlemard, Jr.

Michael A. Houlemard, Jr.
On behalf of the Fort Ord Reuse Authority

Michael D. Armstrong

Michael D. Armstrong
On behalf of the Marina Coast Water
District