

AMENDMENT TO WATER/WASTEWATER FACILITIES AGREEMENT

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

1. Agreed Facts. The parties entered into an agreement dated March 13, 1998 and entitled "Water/Wastewater Facilities Agreement" ("Agreement"). Subsequent changes in applicable law and circumstances make it mutually beneficial for the parties to amend the Agreement to add the option of effecting the conveyance of the subject water and wastewater facilities to MCWD either through a no-cost economic development conveyance through FORA or through a public benefit conveyance through the US Department of Health and Human Services. Such an amendment will benefit both parties by potentially expediting the conveyance and providing greater flexibility in operating the facilities with greater public and economic benefit to the communities served by the parties.

2. Amendment Procedure. Paragraph 10.7 of the Agreement requires consent of the governing Boards of both parties to amend the Agreement. As with the Agreement, FORA will adopt this Amendment by ordinance and MCWD will adopt this Agreement by resolution. FORA is the lead agency for adoption of this Amendment.

3. Definitions. The definitions of words and terms in the Agreement shall control the meaning of the same words and terms used in this Amendment.

4. Amendments. The Agreement is amended as follows:

4.1 Paragraph 1.4 is amended as follows:

"EXISTING FACILITIES. The USA presently owns all existing facilities. The USA has determined to divest itself of the existing facilities. Federal law authorizes such divestiture by either a "public benefit conveyance" or a "no-cost economic development conveyance" to a local governmental entity satisfying certain criteria, which criteria are satisfied by MCWD. FORA and MCWD have formally determined that MCWD's acquisition of the existing facilities for the service area by either a public benefit conveyance or a no-cost economic development conveyance will benefit mutually the service area and the area within MCWD's jurisdictional boundaries."

4.2 Paragraph 1.5 is amended as follows:

"CONTEXT. The public health, safety and welfare of the present population of the Ft. Ord reuse area and all future population require continued operation of a water distribution system and a wastewater collection system. The U.S. Army has agreed to convey the systems pursuant to federal law and regulations. Following organization of FORA, discussions commenced with the USA regarding transfer of ownership and operation of the facilities, and FORA evolved a process to assure continuity of management and operation. FORA has been given a limited statutory life and must find reliable utility providers to assume the responsibility for system operation. The FORA

Board appointed a select committee from technical staff of its members to design a set of minimum requirements for water system operators and invited statements of qualifications from those interested. Three statements were received and referred to the same select committee for evaluation, analysis, and recommendation. After receiving the select committee's analysis and recommendation, and after providing opportunity for public input, at its meeting of October 11, 1996, the FORA Board authorized staff to commence negotiations with MCWD for the purpose of negotiating an agreement with MCWD whereby MCWD would assume the responsibility of the operation, maintenance, and ownership of the existing water (and wastewater collection) systems on the former Fort Ord. The same select committee was authorized to oversee the negotiations that were undertaken by FORA staff. Negotiations included detailed financial analyses by FORA staff/consultants and by Stone & Youngberg LLC. These analyses are very comprehensive and demonstrate MCWD's fiscal capacity. The Stone & Youngberg Financial Analysis includes provision for possible payments to FORA and various land use agencies in accordance with law. On May 9, 1997, the FORA Board authorized the staff to work with MCWD to develop an agreement regarding the systems and to prepare an application for Public Benefit Conveyance (PBC) to be filed after the FORA/MCWD agreement is authorized for execution by the FORA Board. Effective June 2, 1997, MCWD has been selected by the USA to be the interim operator of the facilities pending a full transfer. The parties anticipate that such full transfer will be by either a public benefit conveyance or a no-cost economic development conveyance pursuant to this Agreement."

4.3 The heading of Paragraph 3.1 is amended as follows:

"APPLICATION FOR PUBLIC BENEFIT CONVEYANCE OR NO-COST ECONOMIC DEVELOPMENT CONVEYANCE; PERMITS TO OPERATE."

4.4 Paragraph 3.1.1 is amended as follows:

"MCWD Responsibilities. MCWD, as lead agency, will diligently either prosecute an application to the USA for a public benefit conveyance to MCWD, or through FORA prosecute a no-cost economic development conveyance to MCWD of all of the USA's existing sewer and water facilities and appurtenances and incidental rights of access, extraction, discharge, and use for the service area. MCWD will also act diligently to obtain and maintain in good standing all permits needed to operate all such facilities."

4.5 Paragraph 3.1.2 is amended as follows:

"FORA Responsibilities. FORA will forego and forebear its rights to acquire the facilities through negotiated sale, economic development conveyance, or any other procedure permitted under law, and FORA hereby nominates and designates MCWD as the appropriate local governmental entity to acquire the facilities for the benefit of FORA, its member agencies, and the general public. FORA will support MCWD's application for conveyance of the facilities and incidental rights to MCWD through either a public benefit conveyance or a no-cost economic development conveyance.

4.6 Paragraph 7.1.4 is amended as follows:

"Payments to FORA. Upon the effective date of either a public benefit conveyance or a no-cost economic development conveyance of the facilities to MCWD, when MCWD has the ability to levy and collect rates for service through the facilities within the Service Area, MCWD will commence to pay to FORA monies determined to be due as provided in this section. The amount of MCWD's payments to FORA under this section will be included in each budget and request for change presented to FORA under section 7.1.3."

4.7 Paragraph 9.3 is amended as follows:

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

5. Incorporation of Terms. This Amendment is incorporated into the Agreement by this reference, and all the provisions of the Agreement as specifically amended by this Amendment, including but not limited to execution in counterparts are incorporated in and apply to this Amendment.

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

FORT ORD REUSE AUTHORITY

By 
Executive Officer

MARINA COAST WATER DISTRICT

By 
President, Board of Directors

Dated: 3-2-01

ATTEST:

By 
Secretary