

**MEMORANDUM OF AGREEMENT
REGARDING FUNDING TO BE PROVIDED FOR REMOVAL OF THE
CITY OF MARINA STOCKADE AND ANCILLARY BUILDINGS**

This Memorandum of Agreement ("MOA") is made and entered into effective as of June 9, 2020, (the "Effective Date") by and between the Fort Ord Reuse Authority ("FORA"), a California public agency, and the City of Marina (the "City"), a California charter city. FORA and the City are sometimes referred to herein in the singular as a "Party" and collectively as the "Parties."

Recitals

A. Early in 2016, FORA and the City began discussions regarding the removal of certain buildings on former Fort Ord including the former Fort Ord Stockade (the "Stockade") and ancillary buildings, all as shown on Exhibit A attached hereto and by this reference made a part hereof. The ancillary buildings may collectively with the Stockade be referred to as the "Stockade Complex." The Stockade Complex is situated on approximately 13.4 acres of land located in the City east of the Marina Equestrian Center between 9th Street and Imjin Parkway on former Fort Ord. The Stockade Complex and the land on which is situated have been transferred by FORA to the City and are now owned by the City.

B. In February 2017, FORA's Board of Directors (the "Board") awarded a professional services contract for hazardous materials assessment services to Vista Environmental Consulting. Vista Environmental Consulting has finished a focused hazardous materials assessment of specific buildings/facilities within the Stockade Complex, but delivery of project close-out information remains to be completed.

C. In November 2017, the Board awarded Harris & Associates a contract for project management, preparation of plans, specifications, and estimates (PS&E) documents, and bid preparation services. Harris & Associates' services have largely been performed, but delivery of project close-out information remains to be completed.

D. In the fall of 2019, FORA authorized The Don Chapin Company to detach and cap specific underground wet utilities at the Stockade Complex. The Don Chapin Company has completed the field/construction work, but delivery of project close-out information remains to be completed.

E. Plans, specifications, and estimates for the abatement and removal of specific buildings/facilities within the Stockade Complex as described in the "Fort Ord Reuse Authority, Hazardous Material and Building Removal Stockade Phase 1, 2 & 3, Request for Sealed Bid Proposals S202-RFP1" (published 10/03/19) including all attachments; serve to define the "Project" for purposes of this MOA. Bids for the Project were solicited, received, and reviewed and on December 11, 2019, FORA issued its "Notice of Intent to Award (S201-RFP-1) Stockade Hazardous Materials and Building Removal" to award a contract for the Project to PARC Environmental.

F. On March 19, 2020, FORA elected not to proceed with the Project and issued a notice rejecting all bids.

G. FORA has not received any stop notices in connection with the Project.

H. FORA's Capital Improvement Program for fiscal year 2019/2020 includes the planned removal of the Project. The Board has recently approved and committed to reserving the amount of Two Million Fifty Thousand Dollars (\$2,050,000) to cover the currently estimated cost of the Project.

I. FORA has now requested that the City undertake the Project and the City is willing to do so, each on all of the terms and conditions set forth in this MOA. Accordingly, the Parties now wish to enter into this MOA to provide for the amount of Two Million Fifty Thousand Dollars (\$2,050,000) to be transferred to the City as funds to carry out the Project.

J. FORA is scheduled to terminate in accordance with state law on June 30, 2020 (FORA's Termination Date").

K. Upon execution of this MOA, the City will become the Lead Agency for the Project and the waste generator with respect to any hazardous materials associated with the Project.

Agreement

In consideration of the mutual terms, covenants and conditions contained herein the Parties agree as follows:

1. **Recitals.** The Recitals set forth above are true and correct and are incorporated into this MOA by this reference.

2. **FORA's Obligations.** Within seven (7) calendar days of the execution of this MOA, FORA will transfer and pay to the order of the City, and the City agrees to accept from FORA, the amount of Two Million Fifty Thousand Dollars (\$2,050,000) in full satisfaction of any obligation of FORA to provide funding to abate and remove hazardous materials and deconstruct and remove the Stockade Complex. FORA will close out the contracts with Vista Environmental Consulting, Harris & Associates, and The Don Chapin Company (collectively, the "Contractors") and make good faith and commercially reasonable efforts to arrange for the timely completion of services, delivery of work products, and transfer of information which FORA has authorized and for which FORA has made payment but which remain to be performed by the Contractors as of the time of the applicable contract close out; provided, however, that FORA shall not be obligated to incur any out-of-pocket expense in connection with any efforts beyond contract close out and any amounts required to be paid for the completion of services, delivery of work products, and transfer of information not already paid

for by FORA at the time of contract close out shall be the responsibility of the City.

3. **City's Obligations.** The City will use the funds received from FORA to promptly complete the removal of hazardous materials and deconstruction and removal of the Stockade Complex. The City will enter into agreements for the completion of the Project (which agreements shall include requirements to pay prevailing wages in accordance with state law and the FORA Master Resolution), will have final approval of all contractors or consultants employed on the Project, and will be responsible for paying all costs. The City shall timely and fully carry out all responsibilities as Lead Agency for the Project, including without limitation the implementation and supervision of any mitigation monitoring program adopted in connection with any environmental approvals for the Project. Environmental permitting, monitoring, and reporting requirements are identified in the Project plans and specifications listed in Exhibit B. Similarly, as to any hazardous material removed, transported, or disposed of in connection with the Project on or after the Effective Date, the City shall timely and fully carry out all responsibilities as waste generator for the Project, including without limitation by signing manifests for any such hazardous material.

4. **Notification to State Clearinghouse.** Promptly following the execution of this MOA, the Parties shall cooperate in providing appropriate notification to the California Office of Planning and Research's State Clearinghouse that FORA is no longer the Lead Agency for the Project and that the City has assumed that role.

5. **Term.** The term of this MOA shall begin on the Effective Date and continue until FORA's Termination Date, unless terminated earlier as provided herein; provided, however, that the City's obligations to complete the Project in accordance with the terms of this MOA shall remain in full force and effect until final completion of the Project.

6. **Accounting and Records.** FORA (until FORA's Termination Date) and the City shall each maintain and account for the funds related to the Project. Attached as Exhibit B is a list of the contracts, plans, specifications, estimates, bid documents and other records relating to the Project of which the City has already been provided copies. Promptly following the execution of this MOA, FORA will exercise good faith and commercially reasonable efforts to provide the City with copies of available and appropriate documents and records pertaining to the Project which have reasonably been requested by the City in writing. The Parties acknowledge that due to the COVID 19 pandemic, not all private companies are currently open for business and that requests for documents from Vista Environmental Consulting, Harris & Associates, or The Don Chapin Company may not be capable of being responded to before FORA's Termination Date.

7. **Parties' Representatives.** This MOA shall be coordinated between the Parties through the City's Director of Public Works and FORA's Executive Officer.

8. **Advertising & Media Release.** Except as may be required by applicable law (including without limitation the California Public Records Act), FORA shall not release informational material related to this MOA or the Project to the media without first obtaining approval from the

City. FORA shall inform the City of all requests for interviews by media related to this MOA or the Project before such interviews take place; and the City is entitled to have a representative present at such interviews. The City shall provide to FORA language for all press releases concerning the Project.

9. **Indemnification.** Each party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying party or its agents, employees, contractors, subcontractors, or invitees.

10. **Termination.** If through any cause either Party fails to fulfill in a timely and proper manner its obligations under this MOA, or violates any of the terms or conditions of this MOA or applicable Federal or State laws and regulations, the non-breaching Party may terminate this MOA upon seven (7) calendar days written notice to the breaching Party. In the event that the Project has not been completed within ten (10) years after the Effective Date of this MOA, then any funds remaining unexpended as of that date shall be distributed as follows: Twenty percent (20%) may be retained by the City and twenty percent (20%) shall be distributed to each of the County of Monterey and the Cities of Del Rey Oaks, Monterey, and Seaside.

11. **Applicable Law.** This MOA shall be construed and interpreted under the laws of the State of California.

12. **Severability.** In the event any part of this MOA is declared by a court of competent jurisdiction to be invalid, void or unenforceable, such part shall be deemed severed from the remainder of the MOA and the remaining provisions shall continue in full force without being impaired or invalidated in any way.

13. **Assignment.** Neither Party may assign this MOA or any part hereof, without written consent and prior approval of the other Party and any assignment without said consent shall be void and unenforceable.

14. **Amendment.** No amendment, modification, alteration, or variation of the terms of this MOA shall be valid unless made in writing and signed by authorized representatives for the Parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the Parties thereto.

15. **Time of the Essence.** Time is of the essence for each and every provision of this MOA.

16. **Notices.** Any notice required or permitted under this MOA, shall be in writing and shall be deemed served on the date personally delivered or three (3) business days after being sent by certified mail, return receipt requested, addressed as follows, unless otherwise notified in writing of a change of address:

To the City: City Manager
City of Marina
211 Hillcrest Avenue
Marina, CA 93933

To FORA: Executive Officer
Fort Ord Reuse Authority
920 2nd Avenue, Suite A
Marina, CA 93933

17. **Authority.** Each Party represents and warrants to the other Party that it is authorized to execute, deliver and perform this MOA, and the terms and conditions hereof are valid and binding obligations of the Party making this representation.

18. **Compliance with Laws.** The Parties agree to comply with all applicable local, state and federal laws and regulations. The City further agrees to comply with all applicable public works contracting requirements.

19. **Venue.** Both Parties hereby agree and consent to the exclusive jurisdiction of the courts of the State of California and that the venue of any action brought thereunder shall be Monterey County, California.

20. **Survival.** All rights and obligations hereunder that by their nature are to be performed after any expiration or termination of this MOA shall survive any such expiration or termination.

21. **Relationship of the Parties.** It is understood that this MOA is entered into by and between two public entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or any other similar association.

22. **Third-Party Beneficiaries.** In order to provide a mechanism for enforcement of the City's obligations under this MOA after FORA's Termination Date (including without limitation the obligation to distribute unexpended funds in the event that the Project is not timely completed), the County of Monterey and the Cities of Del Rey Oaks, Monterey and Seaside are each hereby made an intended third-party beneficiary of this MOA.

23. **Agreement Shall Bind Successors.** The covenants and agreements of this MOA shall inure to the benefit of, and shall be binding upon, each of the Parties and their respective permitted successors and assigns.

24. **Interpretation.** This MOA, as well as its individual provisions, shall be deemed to have been prepared equally by both of the Parties hereto, and shall not be construed or interpreted more favorably for one Party on the basis that the other Party prepared it.

25. **Counterparts.** This MOA may be signed in counterparts, each of which shall constitute an original, but all of which shall constitute one and the same agreement. The signature page of

this MOA or any Amendment may be executed by way of a manual or authorized signature. Delivery of an executed counterpart of a signature page to this MOA or an Amendment by electronic transmission scanned pages shall be deemed effective as a delivery of a manually or digitally executed counterpart to this MOA or any Amendment.

26. **Reserved.**

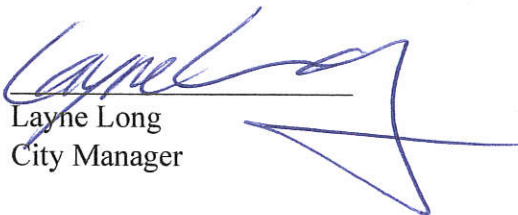
27. **Entire Agreement.** This MOA contains the entire understanding between the Parties and supersedes any prior written or oral understandings and agreements regarding the subject matter of this MOA. There are no representations, agreements, arrangements or understandings, or written, between the Parties relating to the subject matter of this MOA which are not fully expressed herein.

The Parties have executed this MOA on the date(s) written below:

FORT ORD REUSE AUTHORITY

CITY OF MARINA


Joshua Metz
Executive Officer


Layne Long
City Manager

Date: June 7, 2020

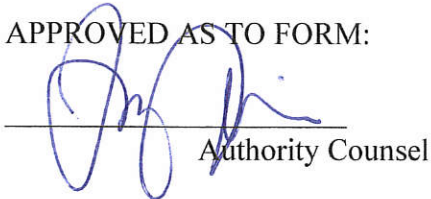
Date: JUNE 5, 2020

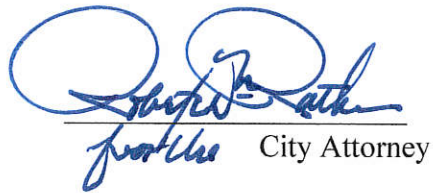
ATTEST:


Clerk of the Board


Deputy City Clerk

APPROVED AS TO FORM:


Authority Counsel


City Attorney