

# FORT ORD REUSE AUTHORITY BOARD REPORT

## BUSINESS ITEMS

<b>Subject:</b>	Transition Planning Update	
<b>Meeting Date:</b>	January 12, 2018	<b>INFORMATION/ACTION</b>
<b>Agenda Number:</b>	8a	

### RECOMMENDATION

- i. Receive 2018 Transition Planning Draft Schedule;
- ii. Receive Transition Plan Summary Charts for Water and Financing/Assets;
- iii. Review Draft Joint Powers Agency Outline/Concept;
- iv. Provide direction to Staff; and
- v. Schedule follow-up discussion/meetings for this topic.

### BACKGROUND/DISCUSSION

In November 2017, the FORA Board approved an incremental step towards transition planning by directing staff to focus on a single agency successor/JPA to complete the FORA program. The Board also noted that a final Transition Plan ("Plan") will assign assets and liabilities, designate responsible successor agencies, and provide a schedule of remaining obligations. The final Plan requires a majority vote of the Board, before it is provided for consideration to the Monterey County Local Agency Formation Commission ("LAFCO"). LAFCO is required to ensure that all contracts, agreements and pledges to pay/repay money are honored and properly administered. The Plan must be submitted to LAFCO **on or before December 30, 2018**.

There is much work to be completed and/or compiled to prepare and present a Plan to LAFCO. Accordingly, the draft work plan to accomplish the Plan is as follows:

1. Transition Plan Summary/Charts
  - a. Water/Wastewater and Financial/Assets JANUARY
  - b. Administration/ Environmental Services  
Cooperative Agreement (ESCA) FEBRUARY
  - c. Habitat Conservation Plan and Transportation MARCH
  - d. DRAFT FINAL PLAN TO BOARD AUGUST/SEPTEMBER
2. Draft Joint Powers Agency (JPA) Agreement JANUARY-AUGUST
  - a. Discuss with Jurisdictions/Agency FEBRUARY-AUGUST
  - b. Consult with Jurisdiction/Agency Counsel FEBRUARY-AUGUST
  - c. Adjust/Refine/Edit JPA Agreement MAY-AUGUST
  - d. Submit for Board Review JULY
3. Consult/Collaborate with LAFCO staff re: Plan ongoing
  - a. Water/Wastewater, Financial/Assets, FEBRUARY
  - b. Administration/ESCA MARCH
  - c. Habitat Conservation Plan and Transportation APRIL
  - d. Joint Powers Authority AUGUST
  - e. "Final" Transition Plan OCTOBER




The basic components to the Plan are found in FORA's current Capital Improvement Program (Obligations and schedule for improvements), California Public Employee Retirement System (CalPERS) contract requirements and the munitions and explosives of concern cleanup, monitoring and reporting. Information regarding these post-2020 obligations was presented to the Board, Legislative Committee, and Transition Task Force.

Accordingly, today we bring forward the first draft summary charts which will be the basis for the final Transition Plan to be submitted to LAFCO. Ultimately, these will be compiled in a binder or CD with corresponding documents for LAFCO review. One might consider these Summary Charts as "chapters" for the Plan. Staff has prepared these in draft form and expect that these charts may be revised or refined as we move forward in the Plan process, ultimately returning to the Board as the core of a Draft Final Transition Plan for transmittal to LAFCO. Today we also present the financial assets and water charts for your consideration. You might note that these summary charts briefly outline the obligation, note issues and a "To Do" list of what must be accomplished in order to effectuate a transfer to a successor. In some cases, requirements that a successor must meet and/or issues related to utilizing a Joint Powers Agency as the single entity successor are noted.

Also, at the January 4, 2018 meeting staff will present the first draft JPA Agreement outline/concept. The draft is loosely patterned after the Draft Habitat Conservation Plan Joint Powers Authority Agreement, which has the benefit of having been reviewed by many of the potential members. **Please ignore any spelling, formatting or numbering errata, this is provided purely for conceptual purposes only.** Staff fully recognizes that a final JPA will ultimately be the outcome of input and deliberations by and between the parties that join the JPA and their respective staff, Board direction and decisions, LAFCO input and (potentially) legislative action. There are several questions that will need to be addressed in the documents as we move forward in the process: such as who are the members, how parties are added or removed, the voting rights, the powers, etc. Again, this is a first draft outline/concept which will be revised and refined over the coming months.

### FISCAL IMPACT

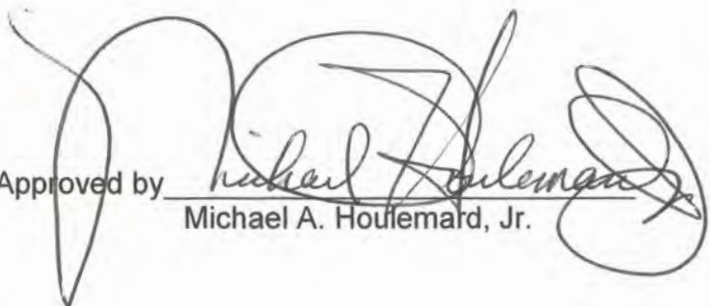
Reviewed by FORA Controller 

Staff time/legal are generally within the approved annual budget, and have been added to current staff workload. Staff anticipates presenting future transition plan budget items for Board consideration.

### COORDINATION

Prepared by   
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Reviewed by   
Steve Endsley

Approved by   
Michael A. Houlemard, Jr.

### ATTACHMENTS:

- Attachment A1: Summary Chart: Water/Wastewater
- Attachment A2 Summary Chart: Financial/Assets
- Attachment B: Draft Joint Powers Agreement Outline/Concept

## **TRANSITION PLANNING/SUMMARY CHART**

### **WATER/WASTEWATER**

#### **SUMMARY OF OBLIGATIONS AND SOURCE**

Water and wastewater are complex subject matters. In general there are three categories of obligations outlined in the contracts with FORA. FORA received infrastructure and water rights through its agreement with the Army. FORA entered into agreements with Marina Coast Water District as a water and wastewater purveyor. MCWD initially requested a public benefit conveyance of the water and wastewater rights, easements and infrastructure, converting its request to an Economic Development Conveyance for water and wastewater to access FORA's Economic Development Conveyance benefits. Many of those rights and obligations were passed along to MCWD through Quitclaim Deeds. FORA additionally retains its first right of refusal to excess water/wastewater capacity through its Memorandum of Agreement with the Army. Of primary concern flowing from the Agreements with the Army are the requirements of providing a fair and equitable water and wastewater allocations to the end users of the former Fort Ord property. Successors and assigns are required to comply with these provisions. Second, there are water augmentation obligations which are set forth in the Base Reuse Plan. It was always contemplated and a part of the ongoing collections for the basewide benefits of augmented water to complete the Base Reuse Plan. Finally, there are reimbursement agreements which address backbone infrastructure pipeline obligations for augmented water supply.

#### **EXISTING CONTRACTS AFFECTING WATER**

Please see **Attachment A1**.

#### **NOTES:**

MCWD ANNEXATION: All infrastructure and water rights were provided to MCWD to provide for a fair and equitable water allocation. Can MCWD later only annex a portion of the former Fort Ord? Is this consistent? Does LAFCO need to consider and abide by the Fort Ord Reuse Plan when considering MCWD annexation?

In the event of a water shortage how will MCWD provide a "fair and equitable" water supply to the former Fort Ord? Will only entitled projects receive water? Only projects with a water supply assessment?

## WATER/WASTE WATER CONTRACTS

Contract	Year	Asset/Liability Pledge/Obligation	Assignee/Successor	Notes
US-MCWRA Agreement	1993	Asset	JPA/Successor	
FORA-MCWD Water/Waste Water Facilities Agreement	1998			1
FORA-MCWD Water/Waste Water Facilities Agreement-Amendment 1	2001			
FORA-MCWD Water/Waste Water Facilities Agreement - Amendment 2	2007			
Army-FORA MOA for Sale of Portions of the Former Fort Ord	2000	Asset/Obligation	JPA/Successor; MCWD	2, 3
FORA, MCWD Quitclaim Deed Ord infrastructure	2001		JPA/Successor	4
Army-FORA MOA for Sale of Portions of the Former Fort Ord: Amendment 1	2002		JPA/Successor	5
MCWD-FORA Quitclaim deed L35.1 & L35.2	2004			
Army- FORA, MRWPCA, and MCWD MOA	2005			
MCWD-FORA Quitclaim deed L35.5	2006			
FORA Recycled Water allocations to jurisdictions	2007		JPA/Successor	6
FORA Potable Water allocation to jurisdictions	2007		JPA/Successor	7
Army-Seaside AYH Water Deed	2008			8
MOU Water Augmentation and 3 Party Agreement	2015	Liability/Obligation	JPA/Successor	9
FORA-MCWD Pipeline Reimbursement Agreement	2016	Liability	JPA/Successor	10

### Notes:

1. Agreement terminates on FORA sunset. Annexation does not automatically terminate agreement. Oversight continues until agreement terminates.
2. Article 5, provides FORA first right of refusal to excess water and waste water Rights. Successor must be consented to by Army and designated as Local Reuse Authority (Federal and State Law)
3. Article 5 requires fair and equitable water allocation to enable the effective base reuse.
4. Quitclaim Deed requires compliance with underlying obligations including but not limited to a fair and equitable allocation of water to the jurisdictions; JPA/Successor to enforce
5. Changes MCWD Public Benefit Conveyance to an EDC conveyance
6. Allocates 1427 afy reclaimed water to jurisdictions (fair and Equitable share); MCWD/JPA/Successor to enforce
7. Potable water allocations to jurisdictions (Fair and Equitable share); MCWD/JPA/Successor to enforce
8. 109 AFY water to Seaside (Stillwell Kidney)
9. Planning agreement to analyze alternatives for augmented water supply options
10. Six Million dollar liability to build infrastructure pipeline for delivery of reclaimed/augmented water supply to Ord Community

## **TRANSITION PLANNING/SUMMARY CHART**

### **ASSETS/FINANCING**

#### **SUMMARY OF OBLIGATIONS AND SOURCE**

FORA has three main statutory financial resources, Community Facilities District (Developer Fees), 50-50 split with Jurisdictions of land sale and rental receipts, and Property taxes. FORA utilizes these revenues pursuant to state law primarily for Base Reuse Plan mitigations and Basewide facilities (Transportation/Transit/Water Augmentation/Habitat Conservation and Building Removal). These financial resources are identified and authorized pursuant to the Authority Act and codified in contractual agreements with the underlying land use jurisdictions in the form of the Implementation Agreements. The Community Facilities District (CFD) expires upon expiration of FORA, unless extended by an election and concomitant legislative changes are made to the Mello Roos laws allowing for transfer of the existing FORA CFD.

#### **EXISTING CONTRACTS AFFECTING ASSETS**

Please see Attachment A2 Chart

#### **NOTES:**

Implementation Agreement assignability and the legal meaning of the terms post FORA Act are the subject of a legal memorandum provided by Authority Counsel.

Should the Implementation Agreements be determined not to be assignable or create obligations with the underlying jurisdictions, then the funding and completion of the remaining Base Reuse Plan CIP obligations will be jeopardized.

Likewise, should the Community Facilities District not be assignable or transferrable, then issues related to new replacement revenue streams and application to already approved development projects is a potential issue.

**Asset Contracts**

<b>Contract</b>	<b>Year</b>	<b>Asset/Liability Pledge/Obligation</b>	<b>Assignee/Successor</b>	<b>Notes</b>
County of Monterey Implementation Agreement	2001	Asset	JPA/Successor	1
Del Rey Oaks Implementation Agreement	2001	Asset	JPA/Successor	1
City of Marina Implementation Agreement	2001	Asset	JPA/Successor	1
City of Marina IA - Amendment #1: Establishing Development Fee Policy Formula	2013	Asset	JPA/Successor	1
City of Monterey Implementation Agreement	2001	Asset	JPA/Successor	1
City of Seaside Implementation Agreement	2001	Asset	JPA/Successor	1
CFD-Notice of Tax Lien		Asset	JPA/Successor	2
Southboundary Road Reimbursement Agreement (DRO)		Asset	JPA/Successor	3
FORA-UCSC Agreement Concerning Funding of Habitat Management Related Expenses on the Fort Ord Natural Resources	2005	Liability		
Pollution Legal Liability Reimbursement Agreement (DRO)		Asset	JPA/Successor	3
Pollution Legal Liability Insurance (PLL) CHUBB	2015		Successor Agencies	4

- 1 Implementation Agreements require ongoing completion of Base Reuse Plan obligations. Land sales revenues, development fees/CFD fees/ and Property tax revenues committed until CIP fully implemented. See
- 2 CFD only assignable if extended by vote and changes to state Mello Roos Act allowing transfer to JPA/Successor. If no CFD, then Jurisdictions required to replace pursuant to Implementation Agreement formula
- 3 DRO owes FORA for their proportional share of the PLL Insurance Contract and some costs on the prior Southboundary Road Improvement project.
- 4 Pollution Legal Liability Insurance Contract provides that upon FORA sunset, jurisdictions become successor beneficiaries.

**GOALS:**

Land Use Jurisdictions & Successor Entity will:

- Implement BRP Economic Recovery
- Implement BRP Mitigations
- Implement BRP Policies, *including but not limited to, affordable housing and/or jobs/housing balances*
- Collaborate to Maximize/Leverage Regional Resources
- Commit to Fair and Equitable Distribution and Contribution

**Adopted by FORA Board November 17, 2017**

**PLEASE NOTE THE FOLLOWING OUTLINE/DRAFT IS OFFERED FOR CONCEPTUAL PURPOSES ONLY AND IS DERIVED FROM PRIOR ACTIONS/DIRECTIONS TO ESTABLISH THE FORT ORD HABITAT COOPERATIVE. ACCORDINGLY, PLEASE IGNORE ANY TYPOGRAPHICAL, SPELLING, FORMATTING OR NUMBERING ISSUES WITH THE DRAFT DOCUMENT**

**GENERAL OUTLINE – JPA**

- A. PARTIES
- B. FUNDAMENTAL UNDERSTANDINGS/RECITALS
- C. DEFINITIONS
- D. PURPOSE
- E. ADDITION/REMOVAL OF PARTIES
- F. JPA GOVERNANCE
  - a. VOTING STRUCTURE
  - b. MEETING/CONTRIBUTIONS/POWERS/ETC.
- G. RESOURCES AND PLANNING
- H. BOILERPLATE (SECTIONS 6-16)

JOINT EXERCISE OF POWERS AGREEMENT

CREATING THE

**FORT ORD REGIONAL RECOVERY COOPERATIVE**

(pursuant to the Joint Exercise of Powers Act,  
California Government Code Sections 6500 to 6599.3)

\_\_\_\_\_, 2018

(for reference purposes)

DRAFT



## JOINT EXERCISE OF POWERS AGREEMENT

### CREATING THE FORT ORD REGIONAL RECOVERY COOPERATIVE

This Joint Exercise of Powers Agreement (this "Agreement") is dated for reference purposes \_\_\_\_\_, 2018 and is entered into by and among:

- (a) County of Monterey ("County"),
- (b) City of Marina ("Marina"),
- (c) City of Seaside ("Seaside"),
- (d) City of Del Rey Oaks ("Del Rey Oaks"),
- (e) City of Monterey ("Monterey"), and
- (f) The Board of Trustees of the California State University, on behalf of the Monterey Bay Campus ("CSUMB")

### RECITALS

- A. Each of the parties to this Agreement is a public agency within the meaning of the Joint Exercise of Powers Act (California Government Code Section 6500 *et seq.*, hereinafter referred to as the "JPA Act"). The parties may be referred to collectively as the "Parties" and each individually as a "Party."
- B. The JPA Act authorizes the Parties to create a joint exercise of powers entity that has the power to exercise jointly the powers common to the Parties.
- C. The Fort Ord Reuse Authority (FORA) was established in 1994 by state legislation and when each Jurisdiction voted to create the Fort Ord Reuse Authority in accordance with Government Code section 67700 and following (FORA Act). As a regional agency, FORA's primary legislative directive was to plan, facilitate, and manage the transfer of former Fort Ord property from the United States Army (the "Army") to the governing local jurisdictions or their designee(s). Government Code section 67700 requires that FORA sunset when eighty percent (80%) of the base has been reused or on June 30, 2020 and that FORA file a transition plan with the Local Agency Formation Commission ("LAFCO") on December 31, 2018 or eighteen months prior to expiration of FORA.
- D. Each of the Parties to this Agreement has the power, in addition to other powers which are common to each of them, to undertake and perform: planning, financing and implementation of the Fort Ord Base Reuse plan and its attendant components, including the public financing plan or creation of new or replacement financing mechanisms; construction of public improvements generated within each of the Parties' jurisdictional boundaries.
- E. FORA, as a regional agency, adopted a Base Reuse Plan in June 1997, which identified (1) environmental actions required to mitigate development and redevelopment of the former Fort Ord (the "Basewide Mitigation Measures"), and (2) infrastructure and related costs necessary to accommodate development and redevelopment of the former Fort Ord (the "Basewide Costs").

- F. FORA is obligated by the California Environmental Quality Act, the Base Reuse Plan and the Authority Act (as defined in Section 1 below) to implement the Basewide Mitigation Measures and incur the Basewide Costs. To carry out such obligations, FORA intends to arrange a financing mechanism to apply to all former Fort Ord properties.
- G. In the Base Reuse Plan, FORA identified land sale and lease (or “property based”) revenues, redevelopment revenues, and basewide assessments or development fees, as the primary sources of funding to implement the Basewide Mitigation Measures and to pay the Basewide Costs.
- H. In June 23, 2000, the Fort Ord Reuse Authority entered into a Memorandum of Agreement (MOA) for the No-Cost Economic Development Conveyance of former Fort Ord Lands. This document is recorded at Series #2000040124. The MOA provided the vehicle for the Army to transfer property to FORA under the EDC Agreement without monetary consideration. Under this legislation any Sale or Lease Proceeds must be applied to the economic development of the former Fort Ord.
- I. On or about \_\_\_\_\_ the entire former Fort Ord was designated as a Superfund Site due to contamination. The Army is obligated to clean up the former Fort Ord by state and Federal law, including the removal of munitions and explosives. The timeline for the Army cleanup was based in part upon the contingent nature of funding and Department of Defense priorities for funds. Accordingly, in order to receive the properties early and facilitate an orderly and timely clean up of former Fort Ord lands, the Army and FORA entered into an early transfer agreement. Through a series of agreements between Army, FORA, Environmental Protection Agency, and Department of Toxic Substance Control, FORA has proceeded pursuant to an Army contract to clean up the former Fort Ord. The clean up obligations will be ongoing post dissolution of FORA.
- J. The Parties find that it would be to their mutual advantage and benefit to work together and share costs to continue orderly reuse and implement Base Reuse Plan (BRP) economic recovery, implement BRP mitigations and policies, including but not limited to affordable housing and/or jobs/housing balances, collaborate to maximize/leverage regional resources and to meet the mutual financial obligations of the Parties, and to provide for a smooth transfer of assets and liabilities from FORA to its successor(s) and to provide mutual assurances between the Parties of the commitment to pursue and fund the Basewide Mitigation Measures and Basewide Costs in a fair and equitable manner.
- K. The Parties acknowledge that they are responsible for ensuring implementation of the Base Reuse Plan obligations and liabilities as outlined in Exhibit \_\_ including, without limitation, collection of the Community Facilities District (“CFD”) Special Taxes established by FORA and any replacement revenues and arranging for construction or other completion of obligations.

## **AGREEMENT**

**NOW, THEREFORE**, based on the foregoing and in consideration of the mutual terms, covenants, and conditions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **1.0 DEFINITIONS**

The following terms as used in this Agreement will have the meanings set forth below:

**1.1 Terms defined in Implementation Agreements.** Terms used in this Agreement have the same meanings as those terms in the Implementation Agreements, previously entered into between FORA and underlying land use Jurisdictions, unless this Agreement expressly provides otherwise.

**1.2 “CFD Special Taxes”** means the FORA Community Facilities District special taxes or equivalent replacement revenue, upon FORA’s sunset, paid by developers of the former Fort Ord property, as adopted as a base-wide tax or other financing mechanism to pay for mitigation of the adverse environmental impacts of the former Fort Ord development.

**1.3 “County”** means the County of Monterey, a California general law county.

**1.4 “CSUMB”** means the Board of Trustees of the California State University, acting on behalf of the Monterey Bay Campus.

**1.5 “Del Rey Oaks”** means the City of Del Rey Oaks, a California general law city.

**1.6 “FORA”** means the Fort Ord Reuse Authority, a public corporation of the State of California.

**1.7 “FORA’s Sunset”** means the date on which the “Fort Ord Reuse Authority Act” (California Government Code Section 67650 *et seq.*) becomes inoperative or is repealed or FORA ceases to exist or operate as a governmental entity (presently anticipated to occur on June 30, 2020).

**1.8 “Implementation Agreements”** means the Implementation Agreements previously entered into between FORA and the underlying land use jurisdictions and previously recorded.

**1.9 “Marina”** means the City of Marina, a California charter city.

**1.10 “Monterey”** means the City of Monterey, a California charter city.

**1.11 “Party” or “Parties”** means any or all, respectively, of the signatories to this Agreement.

**1.12 “Seaside”** means the City of Seaside, a California general law city.

## **2.0 PURPOSE**

**2.1 Establish Agency.** The Parties intend by this Agreement to establish the **Fort Ord Regional Recovery Cooperative**, the principal purposes of which are to continue orderly reuse and implement Base Reuse Plan (BRP) economic recovery, implement and enforce BRP mitigations and policies, including but not limited to affordable housing and/or jobs/housing balances, to pursue and fund the Basewide Mitigation Measures and Basewide

Costs in a fair and equitable manner and implement the environmental services clean-up agreement.

**2.2 JPA's Responsibilities.** The Parties further intend by this Agreement to require the Cooperative to (a) oversee, monitor, and report on environmental services clean up agreement; (b) collect, manage, and distribute funding for ; (c) secure or receive funding for completion of Base Reuse Plan obligations and mitigations; and (e) exercise the powers described in Section 6.0 of this Agreement.

### **3.0 ADDITIONAL PARTIES, TERMINATION AND WITHDRAWAL**

**3.1. Additional Parties. Basis for additional parties to be added**

**3.2 Termination.** This Agreement will become effective on the Contract Date and will continue in effect until terminated

**3.2. Withdrawal.** Any Party may withdraw from this Agreement upon affirmative concurrence [different language]

**3.3. Effect of Withdrawal.**

### **4.0 JPA**

**4.1. JPA Establishment.** There is hereby established under the JPA Act an agency and public entity to be known as the "Fort Ord Regional Recovery Cooperative.." As provided in the JPA Act, the Fort Ord Regional Recovery Cooperative is a public entity separate from its members. Debts, liabilities, and obligations of the Cooperative are its own and not those of its members.

**4.2. State Filing.** Within thirty (30) days after the Contract Date or any amendment to this Agreement, the JPA will cause appropriate notice thereof to be filed with the office of the Secretary of State of the State of California, as provided in Government Code Section 6503.5.

**4.3. JPA Governing Board.** The JPA will be governed by a Governing Board consisting of

**4.4 Voting.** The initial Cooperative Governing Board shall

Each voting Cooperative Governing Board member shall have one (1) vote for each decision relating to the governance, budget, or administration of the Cooperative. Non-voting members include FORA and BLM. After FORA's Sunset, BLM shall be the sole non-voting member. Or Alternatively,

The voting shall be by weighted vote based upon a member jurisdiction's relative amount of unentitled development. OR Alternatively

**4.4.1 Non-Voting Member Assurances.** Each non-voting member agrees to fulfill its responsibilities in compliance with the

**4.4.2 Voting Member Assurances.**

**4.5 Pay.** JPA Governing Board members serve without compensation, but may be entitled to reimbursement for expenses incurred on behalf of the JPA at the direction of the JPA Governing Board.

**4.6 Staff Costs.** For so long as there are Basewide projects to complete pursuant to the Capital Improvement Program, the JPA staff assumptions

**4.7 Meetings of JPA Governing Board.**

**4.7.1 Regular Meetings.** The Cooperative Governing Board shall hold regular meetings at least twice per year at dates and times established by the Cooperative Governing Board. The Cooperative Governing Board may establish a meeting schedule that sets regular meetings at more frequent intervals. The Chair of the Cooperative Governing Board may call, cancel, or reschedule meetings.

**4.7.2 Legal Notice.** Meetings of the Cooperative Governing Board shall be called, noticed, held, and conducted subject to the provisions of the Ralph M. Brown Act (California Government Code Section 54950 *et seq.*).

**4.7.3 Minutes.** The Cooperative Program Administrator shall cause minutes of meetings of the Cooperative Governing Board to be kept and shall present minutes for review and approval by the Cooperative Governing Board at its regular meetings.

**4.7.4 Quorum.** A majority of the voting members of the Cooperative Governing Board constitutes a quorum for the transaction of business, except that less than a quorum may adjourn meetings.

**4.8 Officers: Duties; Bonding.**

**4.8.1 Chair.** The Cooperative Governing Board shall annually elect from its members a Chair and a Vice Chair. The Chair and the Vice Chair shall have the duties assigned by the Cooperative Governing Board or set forth in by-laws adopted by the Cooperative Governing Board.

**4.8.2 Administrator.** The Program Administrator, or designee, shall (a) serve as the custodian of the Cooperative's records; (b) prepare minutes to be submitted for review and approval by the Cooperative Governing Board; (c) act as Secretary at meetings; (d) keep a Cooperative Proceedings journal record; and (e) perform duties incident to the office as assigned by the Cooperative Governing Board.



**4.8.3 Controller.** The Accounting Controller/Manager shall have the powers, duties, and responsibilities specified in California Government Code Section 6505.5. The Accounting Manager shall draw checks to pay demands against the Cooperative under the direction of the Cooperative Governing Board.

**4.8.4 Bonded Officers.** The Cooperative [] are designated as the public officers or persons who have charge of, handle, or have access to the Cooperative's property and funds. Such officers shall file official bonds in the amounts such officers determine is necessary as required by Government Code Section 6505.1, provided that such bonds shall not be required if the Cooperative's property and funds have an aggregate value less than One Thousand Five Hundred Dollars (\$1,500), as adjusted for inflation according to a generally accepted index adopted by the Cooperative Governing Board.

**4.8.5 Audits.** The [] of the Cooperative are hereby authorized and directed to prepare or cause to be prepared: (a) a special audit as required by California Government Code Section 6505 every year during the term of this Agreement and (b) a report in writing on the first day of February, May, August, and November of each year to the Cooperative Governing Board and the Parties. The report shall: (a) describe the amount of money held by the Cooperative; (b) the manner in which the money is held and invested; (c) include the income received since the last such report; and (d) the amount paid out since the last such report.

**4.8.8 Other Officers.** The Cooperative Governing Board may: (a) appoint such other officers and employees as it may deem necessary and (b) retain independent counsel, consultants and accountants.

**4.8.9 FORA's Sunset.** Upon FORA's Sunset, the Cooperative shall assume FORA's liabilities, obligations, and responsibilities under this Agreement and the Cooperative shall select its own employees and officers, as described in Section 4.8 of this Agreement. The Cooperative shall remain liable for performing FORA's obligations under this Agreement. The Cooperative shall have the authority to hire a management firm to implement its responsibilities. This Agreement shall not authorize FORA, or its successors, to assign its responsibilities or obligations under this Agreement to a third party without the prior approval of USFWS and CDFW, which approval shall not be unreasonably withheld, conditioned, or delayed.

## **5.0 RESOURCE MANAGEMENT AND PLANNING PROGRAM.**

## **6.0 POWERS AND RESPONSIBILITIES**

The Cooperative has the powers granted to joint powers authorities by the JPA Act. The Cooperative may do acts necessary to exercise those powers including any of the following: (a) make contracts; (b) employ agents and employees; (c) receive, collect, manage, and disburse funds; (d) receive grants contributions and donations of property, funds, and services; and (e) sue and be sued in its own name including, without limitation, to file or intervene in lawsuits that pertain to Base Reuse Plan or environmental clean up obligations or implementation. The Cooperative's principal responsibility shall be to carry out the successor agency responsibilities as outlined in Paragraph \_\_\_\_ hereinabove.

## **7.0 TERMINATION OF POWERS**

The Cooperative shall continue to exercise its powers until the termination of this Agreement. The Cooperative's statutory authority is subject to legislative amendments to the JPA Act.

## **8.0 DISBURSEMENTS AND DEPOSITS OF FEES**

**8.1 Fee Collection.** The Agreement requires the participating members to enforce the collection of fees pursuant to the Implementation Agreement, FORA CFD Special Taxes or the equivalent replacement revenue provided by the Parties.

**8.2 Fee Disbursement.**

## **9.0 ACCOUNTABILITY**

In managing the capital improvement funds, the Cooperative is subject to the requirements of California Government Code Sections 65965-65968. The Cooperative Governing Board shall assure that revenue is accounted for in the manner required by law.

## **10.0 FISCAL YEAR**

Unless and until changed by majority vote of the Cooperative Governing Board, the fiscal year of the Cooperative shall be the period from July 1 of each year to and including the following June 30, except for the first fiscal year which shall be the period from the Contract Date to the following June 30.

## **11.0 DISPOSITION OF ASSETS AND REAL PROPERTY**

Upon termination of this Agreement,

## **12.0 CONTRIBUTIONS AND ADVANCES**

With the Cooperative Governing Board's approval, any Party may contribute money, personnel services, equipment, materials, or property to the Cooperative for any of the purposes of this Agreement. Such advances must be recorded and repaid in the manner

agreed upon, by the Cooperative and the Party making the advance, in writing prior to the date of the advance. Except as otherwise expressly provided in this Agreement, no Party is obligated to pay the Cooperative's administrative expenses.

### **13.0 ACCOUNTS AND REPORTS**

**13.1 Accounts.** The Cooperative shall establish and maintain such funds and accounts as may be required by good accounting practice and as may be required by the terms of any state or federal grant that the Cooperative may receive. The books and records of the Cooperative shall be open to inspection at reasonable times by the Parties and their representatives. The Cooperative shall give an audited written report of financial activities for the fiscal year to the Parties within six (6) months after the close of each fiscal year during the term of this Agreement.

**13.2 Audits.** To the extent required by California Government Code Section 6505.6, the Accounting Manager of the Cooperative shall contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the Cooperative. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under California Government Code Section 26909 and shall conform to generally-accepted auditing standards. When such an audit of an account and records is made by a certified public accountant or public accountant, a report thereof shall be filed as a public record with the Parties and, if required by California Government Code Section 6505.6, also with the Auditor Controller of County. Such report shall be filed within twelve (12) months of the end of the fiscal year or years under examination. The Cooperative may replace the annual special audit with an audit covering a two (2) year period.

**13.3 Audit Costs.** Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants, in making an audit under this Section 13 shall be borne by the Cooperative and shall be a charge against any unencumbered funds of the Cooperative available for that purpose.

### **14.0 CONFLICT OF INTEREST CODE**

The Cooperative shall adopt a conflict of interest code as required by law and shall comply with the terms of Fair Political Practices Commission Ethics Training requirements.

### **15.0 FORM OF APPROVALS**

Approvals by the Cooperative required in this Agreement, unless the context specifies otherwise, must be given by resolution of the Cooperative Governing Board. When consent or approval is required in this Agreement, it may not be unreasonably withheld, conditioned, or delayed.

### **16.0 MISCELLANEOUS PROVISIONS**

**16.1 No Partnership.** Neither this Agreement nor the HCP shall make or be deemed to make any Party to this Agreement the agent for or the partner of any other Party.

**16.2 Notices.** Notices to the Parties shall be sufficient if delivered to the chief executive of the Party at the Party's principal location within five (5) working days prior to any action to be taken or any meeting to be called. The following notice list contains the notification addresses of the Parties:

ATTN: Resource  
Management Agency  
Director  
County of Monterey  
168 W. Alisal St., 2<sup>nd</sup> Floor  
Salinas, CA 93901

ATTN: Monterey County  
Administrative Officer  
168 W. Alisal Street, 3rd  
Floor  
Salinas, CA 93901

ATTN: City Manager  
City of Marina  
211 Hillcrest Ave.  
Marina, CA 93933

ATTN: City Manager  
City of Seaside  
440 Harcourt Ave.  
Seaside, CA 93955

ATTN: City Manager  
City of Del Rey Oaks  
650 Canyon Del Rey  
Del Rey Oaks, CA 93940

ATTN: City Manager  
City of Monterey  
City Hall  
Monterey, CA 93940

ATTN: President  
California State University  
Monterey Bay  
100 Campus Center, Blding 1  
Seaside, CA 93955-8001

**16.3 Entire Agreement.** This Agreement constitutes the entire agreement among the Parties. It supersedes any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

**16.4 Amendment of Agreement.** No addition, alteration, amendment, change, or modification to this Agreement shall be binding upon the Parties, or any of them, unless reduced to writing and signed by each and all of the Parties.

**16.8 Counterparts.** This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same complete instrument. The signature page of each counterpart may be detached from such counterpart and attached to a single document which shall for all purposes be treated as an original. Faxed, photocopied or e-mailed signatures shall be deemed originals for all purposes.

**16.9 No Third-Party Beneficiaries.** This Agreement shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and

responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.

**16.10 Applicable Laws.** All activities undertaken pursuant to this Agreement, must be in compliance with all applicable state and federal laws and regulations.

**16.11 Successors; Assignment.** This Agreement binds and benefits successors to the Parties. No Party may assign any right or obligation hereunder without the consent of the other Parties.

**16.12 Calendar Days.** Throughout this Agreement the use of the term “day” or “days” means calendar days, unless otherwise specified.

**16.13 No Waiver.** The failure of any Party at any time to require the performance by any other Party of any provision of this Agreement shall in no way affect the right to require such performance at any later time. No extension of time for performance of any obligation or act shall be deemed an extension of time for any other obligation or act. No waiver of any breach of any provision of this Agreement shall be deemed to be any waiver of the provision itself. No waiver shall be binding unless executed in writing by the Party making the waiver. Any and all rights and remedies which any Party may have under this Agreement or at law or in equity shall be cumulative, and shall not be deemed inconsistent with each other; no one of them, whether exercised or not, shall be deemed to be an exclusion of any other, and any or all of such rights and remedies may be exercised at the same time.

**16.14 Mediation.** The Parties must submit any disputes arising under this Agreement to non-binding mediation before filing suit to enforce or interpret this Agreement. Upon request by any Party to the dispute, the Parties will within ten (10) days select a single mediator, or if the Parties cannot agree, they shall ask the then presiding judge of the Monterey County Superior Court to select a mediator to mediate the dispute within fifteen (15) days of such selection.

**16.15 Attorneys’ Fees.** If any action at law or equity, including any action for declaratory relief is brought to enforce or interpret the provisions of this Agreement, the Parties to the litigation shall bear their own attorneys’ fees and costs, provided that attorneys’ fees and costs recoverable against the United States shall be governed by applicable federal law.

**16.16 Severability.** In the event one or more of the provisions contained in this Agreement is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such portion shall be deemed severed from this Agreement and the remaining parts of this Agreement shall remain in full force and effect as though such invalid, illegal, or unenforceable portion had never been a part of this Agreement. The Permits are severable such that revocation of one does not automatically cause revocation of the other.

**16.17 Due Authorization.** The Parties represent and warrant that (a) the execution and delivery of this Agreement has been duly authorized and approved by requisite action, (b) no other authorization or approval, whether of governmental bodies or otherwise, will be necessary in order to enable the Parties to enter into and comply with the terms of this



Agreement, and (c) the persons executing this Agreement on behalf of the Parties have the authority to bind the Parties.

**16.18 Headings.** Headings are using in this Agreement for convenience only and do not affect or define this Agreement's terms and conditions.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Joint Exercise of Powers Agreement to be in effect as of the Contract Date.

DRAFT