

RESOLUTION NO. 2020-82

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
RECEIVING FOR INFORMATION AND PROVIDING DIRECTION AS MAY BE
APPROPRIATE THE LATEST CITY-PROPOSED DRAFT OF A NEW
ORD COMMUNITY WATER AND WASTEWATER SERVICES AGREEMENT BETWEEN
THE CITY AND THE MARINA COAST WATER DISTRICT (MCWD).

WHEREAS, on September 21, 1993, the U.S. Government, represented by the U.S. Army, and the Monterey County Water Resources Agency (MCWRA) entered into an agreement (1993 Fort Ord Annexation Agreement) whereby Fort Ord would be annexed into MCWRA Zones 2 and 2A and the MCWRA recognized MCWD's right to pump 6,600 Acre Feet per Year (AFY) of groundwater for use on the entirety of Fort Ord lands; and

WHEREAS, under the 1998 Water/Wastewater Facilities Agreement between the Fort Ord Reuse Authority (FORA) and MCWD, MCWD was the exclusive provider of water and wastewater collection services within the entirety of the former Fort Ord, now designated as MCWD's Ord Community Service Area; and

WHEREAS, the 1998 Water/Wastewater Facilities Agreement as amended states, "This Agreement shall have a term coincident with the legal existence of FORA." FORA's legal existence terminates on June 30, 2020, pursuant to Government Code Section 67700; and

WHEREAS, on July 2, 2019, MCWD completed the annexation of lands within MCWD's Ord Community Service Area which receive both water and sewer collection services or for which MCWD had received land use approvals from the applicable land use jurisdiction; and

WHEREAS, subject to the Monterey County LAFCO annexation approval process, each development or parcel not included in this annexation and which will be provided both water and sewer collection service by MCWD will be annexed to MCWD when that development or parcel has received the required land use approvals; and.

WHEREAS, MCWD is obligated to continue to provide water and sewer collection services to lands within its jurisdictional boundaries and the City and MCWD have recently exchanged drafts of a New Ord Community Services Agreement to set forth proposals for the terms under which MCWD will continue to provide water and sewer service to the City's Ord Community Service Area to recognize the existing rights and obligations of MCWD and the City for the provision of potable and recycled water and sewer collection services; and

WHEREAS, The proposed Agreement allocates potable and recycled water in the amounts most recently established in the FORA Base Reuse Plan and also recognizes the terms and conditions of service are subject to compliance with all applicable laws including CEQA and SGMA; and.

WHEREAS, nothing in the draft Agreement commits either party to a course of action with regard to use of water, or limits the City Council's discretion or authority in the future to make decisions concerning water.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Marina, as follows:

1. That the City Council receives for information and direction as may be appropriate the latest City-proposed draft of a New Ord Community Water and Wastewater Services Agreement between the City and the Marina Coast Water District (MCWD).
2. That the draft attached her as **Exhibit A** as it may be modified by direction provided in accordance herein will be submitted to MCWD for further negotiations and a final proposed Agreement be subsequently brought before the City Council for approval.

PASSED AND ADOPTED by the City Council of the City of Marina at a special meeting duly held on June 30, 2020, by the following vote:

AYES: COUNCIL MEMBERS: Berkley, O'Connell, Morton, Delgado

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: Urrutia

ABSTAIN: COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

EXHBIIT A

New Ord Community Water and Wastewater Services Agreement between City of Marina and Marina Coast Water District

This Agreement is entered into as of the Effective Date of July 1, 2020, by and between the **City of Marina** ("City"), and the **Marina Coast Water District** ("MCWD"), with reference to the following facts:

Recitals

A. On September 21, 1993, the U.S. Government, represented by the U.S. Army, and the Monterey County Water Resources Agency (MCWRA) entered into an agreement (1993 Fort Ord Annexation Agreement) whereby Fort Ord would be annexed into MCWRA Zones 2 and 2A and the MCWRA recognized MCWD's right to pump 6,600 Acre Feet per Year (AFY) of groundwater for use on the entirety of Fort Ord lands. The U.S. Government paid MCWRA a \$7,400,000 annexation fee.

B. The Fort Ord Reuse Authority (FORA) was a regional agency established by the State of California for a statutorily prescribed period of time under Government Code Sections 67650, et seq., to plan, facilitate, and manage the transfer of former Fort Ord property from the United States Army to the governing local jurisdictions pursuant to the Fort Ord Base Reuse Plan adopted under Government Code Section 67675.

C. Under the 1998 Water/Wastewater Facilities Agreement between FORA and MCWD, MCWD is the exclusive provider of water and wastewater collection services within the entirety of the former Fort Ord, now designated as MCWD's Ord Community Service Area, except that MCWD does not currently provide wastewater collection services within those areas within the Cities of Seaside and Del Rey Oaks which are served by the Seaside County Sanitation District. Paragraph 9.3, Term, of the 1998 Water/Wastewater Facilities Agreement as amended states, "This Agreement shall have a term coincident with the legal existence of FORA." FORA's legal existence terminated on June 30, 2020, pursuant to Government Code Section 67700.

D. MCWD's right to pump and use of the 6,600 AFY of groundwater must be exercised in accordance with all limitations imposed on the maximum extraction of groundwater from both the 180/400' and the 900' Aquifers.

E. On October 23, 2001, the U.S. Government through the Secretary of the Army made an economic development conveyance by quitclaim deed of the following assets to FORA and the next day on October 24, 2001, FORA deeded those very same assets to MCWD: (1) all of Fort Ord's water and sewer infrastructure; (2) under the 1993 Fort Ord Annexation Agreement, 4,871 AFY of the Army's 6,600 AFY of MCWRA groundwater allocation with the Army reserving 1,729 AFY; and (3) 2.22 Million Gallons' per Day (MGD)

of the Army's prepaid wastewater treatment capacity under the 1993 Army-Monterey Regional Water Pollution Control Agency Agreement (MRWPCA).

E. On April 8, 2016, MRWPCA and MCWD entered into that certain Pure Water Delivery and Supply Project Agreement, as amended, wherein MRWPCA agreed, among other things, to produce a minimum of 600 AFY of advanced treated water with the ability to produce a maximum day demand of 1.37 MGD for MCWD under Phase 1 and to later produce an additional 827 AFY of purified recycled water under Phase 2 on terms specified in that agreement. The FORA Base Reuse Plan has a water augmentation target of 2,400 AFY. This combined 1,427 AFY of advanced treated water would meet all but 973 AFY of the 2,400 AFY water augmentation target.

F. As FORA terminated as of June 30, 2020, all Fort Ord Water Augmentation Program costs, will be collected by MCWD.

G. On July 2, 2019, MCWD completed the annexation of lands within MCWD's Ord Community Service Area which receive both water and sewer collection services or for which MCWD had received land use approvals from the applicable land use jurisdiction. Subject to the Monterey County LAFCO annexation approval process, each development or parcel not included in this annexation and which will be provided both water and sewer collection service by MCWD will be annexed to MCWD when that development or parcel has received the required land use approvals from the City.

Definitions

- 1993 Fort Ord Annexation Agreement shall mean that certain Agreement No. A-06404, Agreement between the United States of America and the Monterey County Water Resources Agency concerning Annexation of Fort Ord into Zones 2 and 2A of the Monterey County Water Resources Agency, as modified in part by that certain Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands dated March 1996.

- Advanced Treated Water shall mean wastewater that has gone through an advanced water treatment purification process.

- Allocation or Allocations shall mean potable water and/or recycled water allocations as the context indicates as set forth in the Section 1 table of this Agreement and as those Allocations may be amended in the future in accordance with the terms of this Agreement.

- CEQA shall mean the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the California Public Resources Code.

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- City Service Area shall mean the area within the Ord Community Service Area within which MCWD will provide potable water, recycled water and sewer collection services to the City, which area is shown in attached **Exhibit A** to this Agreement and incorporated herein by reference.
- Central Marina Service Area shall mean the area within the Marina city limits but not within the Ord Community Service Area wherein MCWD provides potable water, recycled water, and sewer collection services to the City, which area is shown in attached **Exhibit B** to this Agreement and incorporated herein by reference.
- Groundwater Action shall mean any final, unappealable and legally binding action by a court or regulatory or administrative agency having jurisdiction over the exercise by MCWD of its groundwater rights that would directly change the Potable Water Allocations set forth in Section 1 below. For the purpose of this definition, the term “regulatory or administrative agency” shall be deemed to refer to the State Water Resources Control Board (SWRCB), the Regional Water Quality Control Board, the Monterey County Water Resources Agency (MCWRA), or the groundwater sustainability agency having jurisdiction over the groundwater basin from which the allocations are provided (GSA). Groundwater Actions shall be deemed to include final, unappealable and legally binding actions in the form of: (i) judgments in groundwater adjudications conducted in accordance with Code of Civil Procedure Section 830, et seq., (ii) actions undertaken for the protection of groundwater quality pursuant to Water Code Sections 2100 – 2102, and (iii) actions required by the GSA actions which are necessary to implement a final, unappealable and legally binding groundwater sustainability plan for the applicable groundwater subbasin (GSP). Groundwater Action shall also mean the approval of new well permits that will pump potable, brackish or other types of groundwater and which will adversely impact the availability of potable water for MCWD provided such new well permits are consistent with the terms of the GSP and MCWD has diligently undertaken all actions necessary, including the pursuit of administrative and judicial remedies, to prevent such new well permits from being issued in a manner that adversely affects MCWD.
- LAFCO shall mean the Local Agency Formation Commission of Monterey County.
- Land Use Jurisdiction(s) (or LUJ(s)), shall mean the Cities of Marina, Monterey, Seaside, and Del Rey Oaks; the County of Monterey; California State University, Monterey Bay; California State Department of Parks and Recreation; and University of California Monterey Bay Education, Science, and Technology Center. The Army is not a LUJ.
- Monterey Regional Water Pollution Control Agency (MRWPCA) shall also mean Monterey One Water (M1W) as MRWPCA is now known. M1W is a joint powers agency and MCWD is a member of M1W.

- Ord Community Service Area shall mean the area designated in attached **Exhibit C**, which is incorporated herein by reference, within which MCWD provides water, recycled water, and, where applicable, wastewater collection services.
- Party or Parties to this Agreement shall mean the City and the Marina Coast Water District.
- Potable water shall mean potable groundwater.
- Pure Water Monterey (PWM) shall mean an advanced water recycling project of M1W and the Monterey Peninsula Water Management District.
- Recycled water shall mean advanced treated water unless the context indicates otherwise.
- “RUWAP” shall mean the Recycled Urban Water Augmentation Project, a recycled water transmission and distribution system serving both the MCWD Water Augmentation Program and the Pure Water Monterey Project.
- SGMA shall mean the Sustainable Groundwater Management Act, Water Code Sections 10720, et seq.

Purpose

The purpose of this Agreement is to recognize the existing rights and obligations of the City and MCWD regarding the continuing provision of potable water, recycled water, and sewer collection services by MCWD to the City Service Area. Subject to the limitations, restrictions, and funding obligations described in this Agreement, MCWD will continue to strictly enforce the Allocations as to every LUJ receiving Potable Water Allocations and/or Recycled Water Allocations on substantially similar terms and conditions as are contained in this Agreement, recognizing that each LUJ has different Allocations, has redevelopment plans specifically tailored for that LUJ, and LUJs served by the Seaside County Sanitation District do not contribute sewer flows for the Ord Recycled Water Allocation.

Key Service Terms

1. The Parties agree that MCWD will allocate potable and recycled water to the City Service Area in accordance with the table immediately set forth below (Allocations or alternatively Section 1 Allocations), unless the City agrees to a new Allocation, and will abide by the existing water Allocations for the other LUJs as immediately set forth below and limit water delivery to each jurisdiction to those Allocations in conformity with the established ratios to the total water available, subject to Groundwater Actions and any other requirements of applicable law.

Allocations¹

Land Use Jurisdiction or Use Type	Potable Water AFY	Recycled Water AFY	Total Water AFY
City of Marina (Ord Community)	1,340.0	345.0	1,685.0
City of Monterey	65.0	0.0	65.0
City of Seaside ²	1,012.5	453.0	1,465.5
County of Monterey	720.0	134.0	854.0
CSUMB (CSU Trustees)	1,035.0	87.0	1,122.0
City of Del Rey Oaks	242.5	280.0	522.5
State Parks and Recreation Dept	44.5	0.0	44.5
U.S. Army ³	1,562.0	0.0	1,562.0
UCMBEST (UC Regents)	230.0	60.0	290.0
Assumed Line Loss	348.5	68.0	416.5
TOTAL ALL (ORD)	6,600.0	1,427.0	8,027.0

2. **MCWD's Authority to Enforce the Section 1 Allocations.** In the event that the City's approved developments or water uses within the City Service Area exceed the City's approved Allocation, MCWD shall have the authority to decline to issue any water connection permits for any over-allocation until the City Service Area's Potable Water and/or Recycled Water Allocation is brought into compliance. MCWD shall update the Section 1 Allocations by amendment to this Agreement when there are changes to any LUJ's Allocation due to Section 4, Section 5, or some other cause.

3. **No Guarantee.** City agrees that the above Potable Water Allocations and Recycled Water Allocations are not guaranteed to be supplied to the City Service Area by MCWD. MCWD will supply the respective Allocations in accordance with the terms of this Agreement. City acknowledges that a Groundwater Action or Groundwater Actions may result in less than the amount of Potable Groundwater and/or Recycled Water being available to MCWD to meet the above-stated non-Army jurisdictions' Allocations. To limit the possibility of such an impairment, MCWD agrees diligently to undertake all actions necessary, including the pursuit of administrative and judicial remedies to

¹ The water supply sources for the 973 AFY of additional potable and/or recycled water are not included in the above table and they have not yet been identified and developed under Phase 3 described below.

² Under Article 2.a of Amendment No. 1 dated October 23, 2001, the Army agreed to reserve only 1,691 AFY, or 38 AFY less than the amount actually reserved by the Army in the October 23, 2001 deed. The 38 AFY was to be transferred to FORA and then to MCWD. FORA was to allocate the 38 AFY to the City of Seaside for the benefit of Bay View Mobile Home Park subject to use limitations prescribed in Amendment No. 1 to be administered by the City of Seaside pursuant to its land use authority. MCWD requested FORA and the City of Seaside to correct this oversight with the Army. Until the deeds are corrected, the City of Seaside's Potable Water Allocation should be reduced by 38 AFY and the Army's reserved amount should be increased by 38 AFY.

³ This is the amount of the 1993 MCWRA Potable Water Allocation that the Army has reserved to date for Federal Government uses and was not a FORA Allocation.

prevent a Groundwater Action from occurring.

4. Reductions in Available Potable Water or Recycled Water.

a. For determining the City's recycled water use under its Recycled Water Allocation, all recycled water used within the City's portion of the Ord Community Service Area shall be counted against the City Service Area's Recycled Water Allocation unless otherwise determined by MCWD.

b. In the event of a Groundwater Action or other cause resulting in less than the amount of Potable Water or Recycled Water being available to MCWD to meet the above stated non-Army jurisdictions' Allocations, then MCWD would reduce the available Potable and/or Recycled Water Allocations in direct proportion to the Allocations set forth in the then current Section 1 table unless all of the LUJs agree to a different Allocation reduction formula or method. MCWD has no authority to reduce the Army's reserved Potable Water Allocation.

c. For example, if as a result of a Groundwater Action, MCWD needs to reduce the total Potable Water Allocations (excluding the Army) by 1,000 AFY and assuming the Section 1 Potable Water Allocations have not changed and the Army does not agree to be subject to the reduction, then the City of Marina's Ord Community Potable Water Allocation shall be reduced by 266 AFY calculated as follows: $1,340/5,038 = 26.60\% \times 1,000 = 266$ AFY; unless all of the LUJs agree to a different Allocation reduction formula or method, including but not limited to changes in Allocations as the result of a transfer or transfers under Section 5.

5. Transfers or Leases of Allocations between Willing LUJs. Any two or more LUJs may agree to transfer or lease Potable Water or Recycled Water Allocations on terms agreeable to the involved LUJs, subject to MCWD's approval only as to: (i) whether any infrastructure improvements or changes would be required by MCWD to implement any such transfer or lease; (ii) a written agreement with the involved LUJs and MCWD including but not limited to, as to how all such infrastructure costs to MCWD are to be paid; (iii) any resulting operational changes or service limitations required of MCWD; and (iv) for changes to be made to the Section 1 Allocations.

6. Description of post-FORA RUWAP Phases 1 through 4. The table below sets forth the targets for water augmentation under the RUWAP by Phase:

Phase 1	600 AFY of PWM advanced treated water
Phase 2	827 AFY of PWM advanced treated water
Phase 3	927 AFY of yet to be determined potable and/or recycled water
Phase 4	Additional potable and/or recycled water needed by LUJs

a. Phases 1, 2, and 3 are intended to develop the water supply needed to meet FORA's 2007 Potable and Recycled Water Allocations described in Section 1 for the

FORA Base Reuse Plan redevelopment projects over approximately the next 15 years. Phase 4 is any additional water needed by MCWD after Phases 1 – 3 to meet water demands within the Ord Community service area.

b. Phase 1 of the RUWAP will provide 600 AFY of Pure Water Monterey (“PWM”) advanced treated water. Under the Pure Water Delivery and Supply Project Agreement dated April 8, 2016, as amended, between MRWPCA and MCWD, MCWD will receive up to 600 AFY of advance treated water. CSUMB has contractually committed to take delivery of its full 87 AFY of recycled water during Phase 1.

c. When funded and constructed, Phase 2 of the RUWAP will provide an additional 827 AFY, or a total 1,427 AFY of PWM advanced treated water from Phases 1 and 2 for the Ord Community Service Area and will be allocated in accordance with Section 1 above.

d. Phase 3 of the RUWAP is for 973 AFY, the remaining balance of the 2,400 AFY Water Augmentation Target described in the FORA Base Reuse Plan.

e. Phase 4 of the RUWAP would be additional water supplies over and above the 2,400 AFY to be supplied under Phases 1, 2, and 3. The Phase 4 water sources and projects have yet to be identified, planned, and developed. Uses for this water could include, but are not limited to, water needed to meet increased water demand within the Ord Community Service Area, for new development, and to further secure and protect Potable Water supplies.

7. Water Supply Sources. MCWD agrees to develop and secure any and all water supply sources necessary to supply the water for the Potable Allocations and the Recycled Water Allocations, subject to compliance with all applicable laws including, but not limited to, CEQA and SGMA. In the event of a Groundwater Action or other cause that limits MCWD's extraction of groundwater to less than the total Potable Allocations, MCWD commits to pursuing in a diligent manner a replacement water supply in accordance with this Agreement.

a. Any project by MCWD to develop or secure new or replacement water supply sources under this Agreement shall be subject to a process of thorough public review and input and all necessary and appropriate approvals. That process must also include environmental review under CEQA before MCWD may consider approving the project; and the project may require discretionary approvals by a number of government bodies after public hearings and environmental review. Nothing in this Agreement commits, or shall be deemed to commit, MCWD to approve any specific project to develop or secure new water supplies unless and until environmental review of the project as required under CEQA has been completed and MCWD has made the CEQA findings or taken the other actions set forth in the following sentence. MCWD shall have discretion before approving the project to, based upon substantial evidence in the record: (i) make such modifications to the project as may be necessary to mitigate significant

environmental impacts; (ii) select other feasible alternatives to avoid or substantially reduce significant environmental impacts; (iii) require the implementation of specific measures to mitigate any specific impacts of the project; (iv) balance the benefits of the project against any significant environmental impacts before taking final action if such significant impacts cannot otherwise be avoided; and (v) determine whether or not to proceed with the project.

b. MCWD has rights to the wastewater flows from MCWD wastewater collection system conveyed to M1W for treatment. Wastewater conveyed by MCWD from MCWD's service areas to M1W can be returned to MCWD's service areas as advanced treated recycled water, less treatment losses. MCWD will work with M1W to devise an agreed upon schedule for the recycled water portions of RUWAP Phases 2 and 3 and MCWD commits to use those flows to secure the water supplies necessary to meet the Recycled Water Allocations, new or replacement water, drought reserves, and sustainable groundwater management plans. Under prior agreements, MCWD agreed to allow 300 AFY of Central Marina summer wastewater flows to be used for RUWAP for the benefit of the Ord Community Service Area. The Parties to this Agreement agree that the Ord Community Service Area needs to payback or credit the Central Marina Service Area for the 300 AFY of summer wastewater flows.

c. Any wastewater flows that MCWD has rights to and are surplus to providing the Recycled Water Allocations, Phase 3 recycled water, new or replacement water, drought reserves, and SGMA groundwater sustainability plans will be returned to the LUJ where the flows were originally derived as an additional new water supply for that jurisdiction under RUWAP Phase 4 or later phases, provided that: (i) MCWD has rights to the new water supply source, (ii) a funding source to develop the new water supply has been secured, and (iii) the environmental review for the new supply as required under CEQA has been completed. The amount to be returned is the net quantity of treated water (amount of usable water remaining after treatment). The LUJ that has the right to the surplus flow described in this section shall also have the right to transfer, sell, or lease those rights to another LUJ within the Ord Community Service Area pursuant to Section 5. This provision only applies to LUJs for whom MCWD provides sewer collection services.

d. MCWD agrees to develop and provide other, additional, new water supplies as part of RUWAP Phase 4 or later phases as requested by the City provided that MCWD can obtain: (i) sufficient rights in the new water supply source, (ii) secure a funding source to develop the new water supply and (iii) complete the environmental review for the new supply as required under CEQA.

e. The Parties agree to work with the other LUJs for RUWAP Phase 4 and later phases to optimize economies of scale and scope in meeting the needs of all the parties that are participating in the applicable work.

8. New or Replacement Water Supply Sources. MCWD will not be required to implement the development of a new or replacement water supply approved by MCWD in accordance with Section 7 above until: (i) until a funding source and a rate structure to recover all costs are identified, secured, and approved by MCWD; (ii) compliance with SGMA and any other applicable law reasonably appear to be achievable; and (iii) MCWD can obtain sufficient rights in the new or replacement water supply source(s).

9. Release of Unutilized Federal Government Potable Water Allocation and Wastewater Treatment Capacity.

a. City agrees that the 38 AFY of the Army's potable water Allocation described in the footnote 2 to the Section 1 Allocations table of this Agreement shall be transferred by the Army to MCWD to be included in the City of Seaside's Potable Water Allocation.

b. City agrees that MCWD shall have the first right of refusal to any other Potable Water Allocation released by the Army. MCWD agrees to reallocate any such additional water on an equitable basis subject to agreement of all of the LUJs, provided that if all of the LUJs cannot agree, then MCWD will reallocate proportionately, in accordance with the direct proportion to the Allocations in the then current Section 1 Allocation table., subject to MCWD securing a funding source to develop the new water supply and the environmental review for the new supply as required under CEQA has been completed.

c. City agrees that MCWD shall have the first right of refusal to any sewer treatment capacity released by the Army. Unless otherwise agreed by all of the LUJs, including the City, MCWD agrees to reallocate any such additional water in a manner proportional to the Allocations.

10. Annexation. For new developments or parcels within the Ord Community where MCWD will provide both water and wastewater services, the Parties agree that a condition precedent for MCWD to provide those services to any new development or parcel not included in MCWD's 2019 LAFCO-approved Ord annexation is that MCWD shall require annexation to MCWD as part of the applicable LUJ's approval process for the development or parcel and service to the area proposed for annexation will not impair in any manner MCWD's ability to provide service to MCWD's existing territory in accordance with the then current Section 1 Allocations. The annexation shall be conducted at no cost to MCWD. If the annexation process is delayed or denied through no fault of the developer or the LUJ or MCWD services are necessary prior to the successful completion of the annexation, MCWD will provide service indefinitely so long as all required MCWD capacity charges and other MCWD fees and charges are paid or a development-specific water and wastewater services contract is entered into with MCWD

addressing, among other things, the payment of all required MCWD capacity charges, fees, and other charges. MCWD shall not agree to provide by contract any extra-territorial water service unless ordered to do so by LAFCO and such service will not impair in any manner MCWD's ability to provide service to MCWD's existing territory in accordance with the then current Section 1 Allocations.

11. Water User Advisory Committee. The Parties agree that regular coordination meetings may be held between MCWD and all LUJs who sign a New Ord Community Services Agreement.

12. Rights-of-Way/Easements for MCWD Water Infrastructure.

a. City agrees to provide the necessary rights-of-way/easements within its jurisdictional boundaries to MCWD over City-owned property or over existing City easements without charge to MCWD in order for MCWD to provide potable, recycled water, and/or sewer collection services to customers within the City's jurisdictional boundaries In accordance with Water Code Section 31060, et seq.

b. In accordance with Government Code Section 6103.6, City may charge MCWD reasonable fees to process the rights-of-way/easements and to inspect any MCWD right-of-way work within its jurisdictional boundaries.

Where a right-of-way or easement is oversized to accommodate a larger pipeline or other infrastructure to serve customers outside of the City's jurisdictional boundaries, then City and MCWD will enter into a reimbursement agreement to provide reasonable compensation for the oversizing.

Dispute Resolution

13. Dispute Resolution.

a. Dispute resolution procedure. If any dispute arises between the Parties as to the proper interpretation or application of this Agreement, the Parties shall resolve the dispute in accordance with this section.

b. Duty to meet and confer. If any dispute under this Agreement arises, the Parties shall first meet and confer in an attempt to resolve the matter. Each Party shall make all reasonable efforts to provide to the other Party all the information that the Party has in its possession that is relevant to the dispute, so that both Parties will have ample information with which to reach a decision.

c. Mediation and Voluntary Binding Arbitration.

(1) If the dispute is not resolved within sixty (60) days after the first meeting under Subsection 13.b, then either Party may notify the other Party that the notifying Party elects to submit the dispute to mediation. If the other Party agree to submit the dispute to mediation, then the Parties will jointly select a mediator. The terms of mediation shall be set by agreement of the Parties and the mediator.

(2) If the dispute is not resolved by meeting and conferring, and mediation does not occur or is unsuccessful, any Party may serve the other Party with a request for binding arbitration by a single neutral arbitrator. The request must set forth the nature of the dispute and the claim or relief sought.

(3) If the other Party to the dispute does not agree to submit the dispute to binding arbitration, then the other Party shall serve written notice of rejection of binding arbitration to the Party requesting binding arbitration. Alternatively, the Parties may agree to submit the dispute to binding arbitration.

(4) If the Parties agree to submit the matter to binding arbitration, the Parties will jointly select a single arbitrator. If the Parties cannot agree on a person to serve as the arbitrator, the dispute shall be submitted to one neutral arbitrator selected from a list of at least three neutral arbitrators proposed by mutual agreement of the Parties. Each candidate shall have at least five (5) years' experience with the same or similar type disputes as the dispute or disputes at issue unless the Parties agree otherwise. The Parties agree to select the arbitrator by alternate strikes. The Party who served the request for binding arbitration shall strike first. If the Parties are unable to agree on a single arbitrator, then the Parties shall request the Presiding Judge of the Monterey County Superior Court to appoint an arbitrator who has the above minimum required experience. The cost of the arbitrator shall be shared equally among the Parties. Unless otherwise agreed by the Parties, the arbitration shall be conducted in accordance with the JAMS Comprehensive Arbitration Rules & Procedures ("Rules"), but not necessarily under the auspices of JAMS. The Parties agree that they will faithfully observe the Rules and will abide by and perform any award rendered by the arbitrator, and that a judgment of the court having jurisdiction may be entered on the award. Notwithstanding the Rules, discovery will be permitted and the provisions of the California Code of Civil Procedure Section 1283.05 are incorporated herein unless the Parties agree otherwise. The Parties hereby consent to the jurisdiction of the Monterey Superior Court for the confirmation, correction or vacation of any arbitration award. The arbitrator may grant any remedy or relief deemed by the arbitrator just and equitable under the circumstances, whether or not such relief could be awarded in a court of law. The arbitrator and any court having jurisdiction will have no power to award punitive damages or other damages not measured by the Party's actual damages against the other Party. The arbitrator's award will be deemed final, conclusive, and binding to the fullest extent allowed by California law, and may be entered as a final judgment in court.

14. Lawsuit in lieu of Voluntary Binding Arbitration. If the Parties do not agree to submit the dispute to binding arbitration, then any Party may file a lawsuit in a court with jurisdiction over the dispute within ninety (90) calendar days of the date of the notice or agreement under Subsection 13.c.(3) above. Nothing in this Agreement is intended to prevent any disputing Party from filing a motion under Code of Civil Procedure Section 394.

General Provisions

15. Assignment. No Party may sell, transfer, or assign any of its right or interest under this Agreement, in whole or in part, without prior written consent of the other Party.

16. Amendment. This Agreement or any provision hereof may be changed, waived, or terminated only by a writing signed by both Parties.

17. No Waiver. No delay in enforcing or failing to enforce any right under this Agreement will constitute a waiver of such right. No waiver of any default under this Agreement will operate as a waiver of any other default or of the same default on a future occasion.

18. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Agreement are to any extent declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, the Parties agree to amend the terms in a reasonable manner to achieve the intention of the Parties without invalidity. If the terms cannot be amended thusly, the invalidity of one or several terms will not affect the validity of the Agreement as a whole, unless the invalid terms are of such essential importance to this Agreement that it can be reasonably assumed that the Parties would not have contracted this Agreement without the invalid terms. In such case, the Party affected may terminate this Agreement by written notice to the other Party without prejudice to the affected Party's rights in law or equity.

19. Entire Agreement. This Agreement is intended by the Parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof. Acceptance of or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing Party had knowledge of the nature of the performance and opportunity for objection.

20. Choice of Law. This Agreement will be construed in accordance with the laws of the State of California.

21. Further Assurances. Each Party agrees to execute and deliver all further instruments and documents and take all further action that may be reasonably

necessary to complete performance of its obligations hereunder and otherwise to effectuate the purposes and intent of this Agreement.

22. Headings. The headings of the sections hereof are inserted for convenience only and shall not be deemed a part of this Agreement.

23. Notices. Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to this Agreement shall be acknowledged by the Party receiving such notice, and shall to the extent reasonably practicable be sent by hand delivery, and if not reasonably practicable to send by hand delivery, then by facsimile, overnight courier, or registered mail, in each case to the other Party at the address for such Party set forth below (Note: A Party may change its place of notice by a notice sent to the other Party in compliance with this section):

If delivered to City:

City of Marina
Attn: City Manager
Marina, CA 93933
Facsimile: (831) 384-9148

211 Hillcrest Avenue

If delivered to MCWD:

Mr. Keith Van Der Maaten
General Manager
11 Reservation Road
Marina, CA 93933
Facsimile: (831) 883-5995

24. No Third-Party Beneficiaries. Except for the Parties and their respective successors and assigns, nothing in this Agreement, whether express or implied, is intended to confer any rights on any person or entity whatsoever.

25. No Breach of Other Agreements. Each Party warrants that the Party's execution and performance of this Agreement will not result in the breach of any other agreement to which that Party is a party, or to which that Party is otherwise subject or bound.

26. No Party Drafter. No Party to this agreement shall be considered its drafter. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any Party.

27. Term of Agreement: This Agreement shall be effective on the Effective Date specified at the beginning of the Agreement and shall remain in effect unless and until terminated by mutual agreement of the Parties.

IN WITNESS WHEREOF, each Party has executed the Agreement with the approval of its governing body as of the date first written above.

City of Marina

Marina Coast Water District

By: _____
City Manager

By: _____
Board President

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
City Attorney

By: _____
District Legal Counsel

Date: _____

Date: _____

ATTEST:

ATTEST:

By: _____
Deputy City Clerk
Resolution: 2020 - _____

By: _____
Board Secretary
Resolution 2020 - _____

EXHIBIT A [To the Agreement]
CITY OF MARINA'S ORD SERVICE AREA

EXHIBIT B [To the Agreement]
CENTRAL MARINA SERVICE AREA

EXHIBIT C [To the Agreement]
MCWD'S ORD COMMUNITY SERVICE AREA

DRAFT

Honorable Mayor and Members
Of the Marina City Council

City Council Meeting
of June 30, 2020

**CITY COUNCIL RECEIVE FOR INFORMATION AND DIRECTION AS
APPROPRIATE THE LATEST CITY-PROPOSED DRAFT OF A NEW
ORD COMMUNITY WATER AND WASTEWATER SERVICES
AGREEMENT WHICH IS PRESENTLY UNDER NEGOTIATION
BETWEEN THE CITY AND THE MARINA COAST WATER DISTRICT.**

It is requested that the City Council:

1. Consider adopting Resolution No. 2020-, receiving for information and direction as may be appropriate the latest City-proposed draft of a New Ord Community Water and Wastewater Services Agreement between the City and the Marina Coast Water District (MCWD).

BACKGROUND:

On September 21, 1993, the U.S. Government, represented by the U.S. Army, and the Monterey County Water Resources Agency (MCWRA) entered into an agreement (1993 Fort Ord Annexation Agreement) whereby Fort Ord would be annexed into MCWRA Zones 2 and 2A and the MCWRA recognized MCWD's right to pump 6,600 Acre Feet per Year (AFY) of groundwater for use on the entirety of Fort Ord lands. .

Under the 1998 Water/Wastewater Facilities Agreement between the Fort Ord Reuse Authority (FORA) and MCWD, MCWD was the exclusive provider of water and wastewater collection services within the entirety of the former Fort Ord, now designated as MCWD's Ord Community Service Area, (except that MCWD does not currently provide wastewater collection services within those areas within the Cities of Seaside and Del Rey Oaks which are served by the Seaside County Sanitation District.) Paragraph 9.3, Term, of the 1998 Water/Wastewater Facilities Agreement as amended states, "This Agreement shall have a term coincident with the legal existence of FORA." FORA's legal existence terminates on June 30, 2020, pursuant to Government Code Section 67700.

On July 2, 2019, MCWD completed the annexation of lands within MCWD's Ord Community Service Area which receive both water and sewer collection services or for which MCWD had received land use approvals from the applicable land use jurisdiction. Subject to the Monterey County LAFCO annexation approval process, each development or parcel not included in this annexation and which will be provided both water and sewer collection service by MCWD will be annexed to MCWD when that development or parcel has received the required land use approvals.

MCWD is obligated to continue to provide water and sewer collection services to lands within its jurisdictional boundaries and the City and MCWD have recently exchanged drafts of a New Ord Community Services Agreement to set forth proposals for the terms under which MCWD will continue to provide water and sewer service to the City's Ord Community Service Area to recognize the existing rights and obligations of MCWD and the City for the provision of potable and recycled water and sewer collection services. The draft Agreement allocates potable and recycled water in the amounts most recently established in the FORA Base Reuse Plan and also recognizes the terms and conditions of service are subject to compliance with all applicable laws including CEQA and SGMA. Nothing in the draft Agreement commits either party to a course of action with regard to use of water, or limits the City Council's discretion or authority in the future to make decisions concerning water.

Following Council receipt of this latest draft and receipt of any direction given, the draft will be submitted to MCWD for further negotiations and a final proposed Agreement will then be brought before both the MCWD Board of Directors and the City Council for approval.

CONCLUSION:

The draft New Ord Community Water and Wastewater Agreement is submitted for information and direction as may be appropriate.

Respectfully submitted,

Layne Long
City Manager
City of Marina

Robert Rathie
City Attorney's Office