

RESOLUTION NO. 2020-124

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA AUTHORIZING THE CITY MANAGER TO EXECUTE A CONVEYANCE AGREEMENT AND CORRESPONDING QUITCLAIM DEEDS WITH MONTEREY COUNTY RECEIVING OWNERSHIP TRANSFER OF 177.1 ACRES TOTALING SIX PARCELS, IDENTIFIED AS ASSESSOR'S PARCEL NUMBERS 031-101-039, 031-101-040, 031-101-041, 031-101-042, 031-101-056, 031-101-058, COLLECTIVELY KNOWN AS THE "LANDFILL BORDER PARCELS SITE, LOCATED ON IMJIN PARKWAY ON THE FORMER FORT ORD FROM THE COUNTY OF MONTEREY TO THE CITY OF MARINA; WHICH TRANSFER INCLUDES 10 ACRE FEET OF WATER RIGHTS KNOWN AS MARINA (SPHERE) WATER; CONDITIONED UPON APPROVAL OF THE SUPPLEMENTAL AGREEMENT WITH MONTEREY COUNTY; AND APPROVING DESIGNATION FROM THE COUNTY THAT THE CITY OF MARINA RECEIVE FROM THE UNITED STATES ARMY: A) 164 ACRES OF LAND OVER TWO PARCELS, IDENTIFIED AS ASSESSOR'S PARCEL NUMBERS 031-101-057 AND 031-101-067, COLLECTIVELY KNOWN AS THE "LANDFILL SITE" LOCATED ON IMJIN PARKWAY; B) 3.1 ACRES CONSISTING OF ONE PARCEL, IDENTIFIED AS ARMY CORPS OF ENGINEERS PARCEL NUMBER E4.7.2, KNOWN AS THE IMJIN PARKWAY E4.7.2 ROAD RIGHT-OF-WAY PARCEL; CONDITIONED UPON APPROVAL OF THE SUPPLEMENTAL AGREEMENT WITH MONTEREY COUNTY; AUTHORIZE THE CITY MANAGER TO EXECUTE A SUPPLEMENTAL AGREEMENT ACCEPTING FROM MONTEREY COUNTY \$300,000 IN HABITAT CONSERVATION PLAN MONIES FOR HABITAT MANAGEMENT AFTER IT IS APPROVED BY THE COUNTY BOARD OF SUPERVISORS AND REVIEWED BY THE CITY ATTORNEY

WHEREAS, pursuant to the Base Reuse Plan and the Monterey County Implementation Agreement, FORA conveyed by quitclaim deed the above listed parcels to the Successor Agency to the Redevelopment Agency of the County of Monterey (SARDA) between September 2006 and July 2007. SARDA then conveyed these parcels by quitclaim deed to the County by operation of law under the Dissolution Act between August 2016 and December 2019 pursuant to the Long-Range Property Management Plan, and;

WHEREAS, pursuant to the Base Reuse Plan and County Implementation Agreement, the Army will convey by quitclaim deed two Army parcels on the former Fort Ord commonly known as Landfill and a parcel known as Imjin Parkway E4.7.2 Road Right-of-Way parcel when cleanup of contaminants is completed on the site, and;

WHEREAS, The County of Monterey desires to transfer and the City of Marina wishes to accept a no cost land transfer of these parcels under the terms and conditions set forth in the attached Conveyance Agreement and the terms of the Supplemental Agreement, and;

WHEREAS, The Conveyance Agreement provides for the prompt annexation of the Landfill Boarder Site and Landfill Site properties; equal sharing of the costs associated with the annexation by the City and County, allocation of all property tax after annexation pursuant to City of Marina Resolution No. 81-25 and Monterey County Board of Supervisors Resolution No. 80-249; and good-faith negotiations with the current tenant operating the Ord Market for a right of first refusal to develop the property, within parameters of land use approvals

WHEREAS, the attached Exhibit A is the County Board of Supervisors Board approval of the Conveyance Agreement including their staff reports, deeds and maps

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marina does hereby:

1. Adopting Resolution No. 2020-, Authoring the City Manager to execute a conveyance agreement and corresponding quitclaim deeds with Monterey County receiving ownership transfer of 177.1 acres totaling six parcels, identified as Assessor's Parcel Numbers 031-101-039, 031-101-040, 031-101-041, 031-101-042, 031-101-056, 031-101-058, collectively known as the "Landfill Border Parcels Site, located on Imjin Parkway on the former Fort Ord from the County of Monterey to the City of Marina; which transfer includes 10 acre feet of water rights known as Marina (Sphere) water; conditioned upon approval of the Supplemental Agreement with Monterey County;
2. Approving designation from the County that the City of Marina receive from the United States Army: a) 164 acres of land over two parcels, identified as Assessor's Parcel Numbers 031-101-057 and 031-101-067, collectively known as the "Landfill Site" located on Imjin Parkway; b) 3.1 acres consisting of one parcel, identified as Army Corps of Engineers Parcel Number E4.7.2, known as the Imjin Parkway E4.7.2 Road Right-of-Way Parcel; conditioned upon approval of the Supplemental Agreement with Monterey County;
3. Authorize the City Manager to execute a Supplemental Agreement accepting from Monterey County \$300,000 in habitat conservation plan monies for habitat management after it is approved by the County Board of Supervisors and reviewed by the City Attorney

PASSED AND ADOPTED, at a regular meeting of the City Council of the City of Marina, duly held on the 15th day of September 2020, by the following vote:

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

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

**CONVEYANCE AGREEMENT
REGARDING PROPERTY RELATED TO THE
LANDFILL SITE AT THE FORMER FORT ORD, CALIFORNIA**

This Conveyance Agreement Regarding Property Related to the Landfill Site at the Former Fort Ord, California (“Agreement”) is made and entered into between the **COUNTY OF MONTEREY** (“County”), and **CITY OF MARINA** (“City”), (hereinafter referred to collectively as the “Parties”).

RECITALS:

WHEREAS, the Fort Ord Reuse Authority (“FORA”) was created under Title 7.85 of the California Government Code, and was a regional agency established under Government Code Section 67650 to plan, facilitate, and manage the transfer of property on the former Fort Ord from the United States Army (“Army”) to the governing local jurisdictions or their designee(s), and FORA was the federally recognized Local Reuse Authority (“LRA”) for property transfers from the Army;

WHEREAS, in June 1997, FORA adopted the Fort Ord Base Reuse Plan (“Base Reuse Plan”) governing the use and development of properties thereon;

WHEREAS, On June 23, 2000, FORA executed a no-cost economic development conveyance agreement (“EDC”) with the Army and acquired portions of the former Fort Ord consisting of approximately five thousand two hundred (5,200) acres of land, including all buildings, personal property, appurtenances, rights-of-way, drainage areas, and other real property interests as defined, to be transferred to the governing local jurisdictions, subject to the terms and conditions of the EDC;

WHEREAS, on May 1, 2001, FORA and the City entered into an Implementation Agreement (“City Implementation Agreement”) regarding, among other matters, properties identified to be transferred from FORA to the City or designee in accordance with the EDC;

WHEREAS, on May 8, 2001, FORA and the County entered into an Implementation Agreement (“County Implementation Agreement”) regarding, among other matters, properties identified to be transferred from FORA to the County or designee in accordance with the EDC;

WHEREAS, the Successor Agency to the Redevelopment Agency of the County of Monterey (“Agency”) is an agency created pursuant to the “Dissolution Act,” a portion of the Community Redevelopment Law of the State of California, commencing with Health and Safety Code section 33000, *et seq.* Pursuant to the Dissolution Act, the Agency has succeeded by operation of law to the rights and obligations of the former Redevelopment Agency of the County of Monterey;

WHEREAS, FORA received fee title to certain land parcels of the former Fort Ord from the Army pursuant to the EDC;

WHEREAS, pursuant to the EDC and the County Implementation Agreement, FORA conveyed by quitclaim deed the following former Fort Ord parcels to the Agency between September 2006 through July 2007, which the Agency then conveyed by quitclaim deed to the County between August 2016 through December 2019:

APN: 031-101-039 (Army Corps of Engineers Parcel No. E8a.1.2)
APN: 031-101-040 (Army Corps of Engineers Parcel No. E8a.1.3)
APN: 031-101-041 (Army Corps of Engineers Parcel No. E8a.1.4)
APN: 031-101-042 (Army Corps of Engineers Parcel No. E8a.1.5)
APN: 031-101-056 (Army Corps of Engineers Parcel No. E8a.1.1.2)
APN: 031-101-058 (Army Corps of Engineers Parcel No. E4.6.2)

These parcels constitute the property commonly referred to as the “Landfill Border Parcels Site” on the former Fort Ord and are further described in **Exhibit “A”** attached hereto and incorporated herein;

WHEREAS, FORA dissolved by operation of law on June 30, 2020 pursuant to Government Code section 67700;

WHEREAS, on February 21, 2020, in preparation for FORA dissolution, FORA approved a contract with the City of Seaside that, *inter alia*, nominated the City of Seaside to the United States Department of Defense as the Local Redevelopment Authority (LRA) under the (EDC) Economic Development Conveyance to complete the outstanding property transfer;

WHEREAS, on or about April 30, 2020, the United States Department of Defense recognized the City of Seaside as the successor Local Redevelopment Authority effective July 1, 2020 for the purpose of implementing the EDC;

WHEREAS, the Landfill Border Parcels Site contains some developable areas as well as land available for the widening of Imjin Parkway, and land available for open space, habitat, and environmental mitigation;

WHEREAS, under the County Implementation Agreement, it was anticipated that the following parcels currently held by the Army would be conveyed to the County or designee:

APN: 031-101-057 (Army Corps of Engineers Parcel No. E8a.1.1.1)
APN: 031-101-067 (Army Corps of Engineers Parcel No. E8a.2)

These parcels constitute property which is commonly known as the “Landfill Site” on the former Fort Ord and are further described in **Exhibit “B”** attached hereto and incorporated herein;

WHEREAS, under the County Implementation Agreement, it was anticipated that the following parcels currently held by the Army would be conveyed to the County or designee:

Army Corps of Engineers Parcel No. E4.7.2 (no APN)

This parcel constitute property which is commonly known as the “Imjin Parkway E4.7.2 Road Right-of-Way Parcel” on the former Fort Ord and is further described in **Exhibit “C”** attached hereto and incorporated herein;

WHEREAS, the City wishes to acquire the Landfill Border Parcels Site and Landfill Site, and the County is willing to convey such Sites upon the terms set forth below; and

WHEREAS, the County and City have complied with all regulatory conditions precedent to this transfer, including consultation with FORA prior to its dissolution;

WHEREAS, On April 21, 2020, the County Board of Supervisors approved a Quitclaim Deed (the “Quitclaim Deed”) dated _____ 2020, to convey the Landfill Border Parcels Site and delivered that Quitclaim Deed to the City for acceptance and recording, and the County approved a prior draft of a Conveyance Agreement which the City did not approve;

WHEREAS, the Landfill Border Parcels Site, the Landfill Site and the Imjin Parkway E4.7.2 Road Right-of-Way Parcel include land classified as habitat management area and development with reserve subject to certain habitat management requirements under the Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord, California (the “HMP”) dated April 1997, as revised and amended from time to time;

WHEREAS, FORA collected a Community Facilities District Special Tax to fund, among other things, habitat management on the former Fort Ord, and prior to FORA’s dissolution, the FORA Board approved an allocation formula to distribute the collected habitat funds to the local jurisdictions roughly in proportion to each jurisdiction’s amount of habitat land and level of required habitat management under the HMP;

WHEREAS, in accordance with the allocation formula, FORA and the County entered a Joint Community Facilities Agreement (JCFA), a copy of which is attached hereto as Exhibit F, whereby FORA transferred approximately \$13.77 million (“Allocated Funds”) to the County to be held in a separate account to be used exclusively for costs of Habitat Related Services, as that term is defined in the JCFA, on County habitat land on the former Fort Ord;

WHEREAS, the JCFA provides that County may elect to transfer a portion of the Allocated Funds to another public entity having habitat management responsibilities within the former Fort Ord (“Transferee Public Entity”), provided that the County and the Transferee Public Entity enter into a written agreement requiring the Transferee Public Entity to use the Allocated Funds only for Habitat Related Services, as defined in the JCFA, and to hold the Allocated Funds in an account separate and apart from the any other account maintained by the Transferee Public Entity;

WHEREAS, the Landfill Border Parcels Site, the Landfill Site and the Imjin Parkway Road Right-of-Way Parcel to be conveyed from County to the City include land classified as habitat management area and development with reserve subject to certain habitat management

requirements under the Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord, California (the “HMP”) dated April 1997, as revised and amended from time to time;

WHEREAS, the City requested and the County has agreed to transfer \$300,000 of the Allocated Funds to the City to be used exclusively for Habitat Related Services on former Fort Ord land within the City of Marina;

WHEREAS, the City has requested that County transfer 10 acre feet per year (afy) of County’s “water allocation” to the City along with the conveyance of the land herein described; and

WHEREAS, the parties recognize that the water allocations made by FORA are not a water right, and to the extent said water allocations survive FORA dissolution, the Transition Plan adopted by FORA on June 26, 2020 assigns management of the water allocation to Marina Coast Water District, which could include reduction of allocations in the event of ground water shortage, but within these limitations and to the extent MCWD continues to implement the water allocation without reduction, the County is in principle willing to forego 10 afy of its water allocation in favor of Marina utilizing those 10 afy.

NOW THEREFORE, the Parties agree as follows:

I. AGREEMENT

A. County agrees to convey, and City agrees to accept, the following properties:

APN: 031-101-039 (Army Corps of Engineers Parcel No. E8a.1.2)
APN: 031-101-040 (Army Corps of Engineers Parcel No. E8a.1.3)
APN: 031-101-041 (Army Corps of Engineers Parcel No. E8a.1.4)
APN: 031-101-042 (Army Corps of Engineers Parcel No. E8a.1.5)
APN: 031-101-056 (Army Corps of Engineers Parcel No. E8a.1.1.2)
APN: 031-101-058 (Army Corps of Engineers Parcel No. E4.6.2)

Said properties shall be conveyed “as is” and by quitclaim deed, subject to all documents of record, within thirty (30) days of the approval of this Agreement.

B. County hereby designates, and City accepts the designation, that the City receive APN 031-101-057 (Army Corps of Engineers Parcel No. E8a.1.1.1), APN 031-101-067 (Army Corps of Engineers No. E8a.2) and Army Corps of Engineers No. E4.7.2 (no APN) directly from the City of Seaside, at such time as the property is ready for conveyance, or directly from the United States Army, if the City of Seaside is no longer receiving and conveying property. Neither the County nor the Agency shall be a party to the actual conveyance.

C. City agrees to seek the prompt annexation of all property which is the subject of this Agreement. County agrees to support such annexation. County and City shall each pay fifty percent (50%) of all fees and costs associated with said annexation. County and City shall apportion all property tax after annexation pursuant to Monterey County Board of Supervisors Resolution No. 80-249 (attached hereto and incorporated herein as **Exhibit “D”**) and City of Marina Resolution No. 81-25 (attached hereto and incorporated herein as **Exhibit “E”**).

D. Concerning the existing tenant on APN 031-101-039 (Army Corps of Engineers Parcel No. E8a.1.2) and APN 031-101-058 (Army Corps of Engineers Parcel No. E4.6.2), known hereafter as “Ord Market Parcels”:

It is acknowledged that the City has not pre-zoned, annexed, zoned, or amended its General Plan concerning the land use of the Ord Market Parcels. After the proper land use approvals concerning the Ord Market Parcels, including zoning ordinance amendments, General Plan amendments, and adoption of any specific plans for the Ord Market Parcels, are deemed by the City to have been completed, the City will agree to negotiate, in good faith, with the tenant(s) of the Ord Market Parcels at that time, for a right of first refusal to develop the property, within the parameters of those land use approvals. Any right of first refusal agreement will include a clause which will require the tenant to expressly agree not to file any legal action against the City and to indemnify and hold the City harmless from any legal action.

The City agrees to allow the existing tenant to maintain the existing use of the Ord Market Parcels until such time as the lease expires. The City will grandfather in the current parking requirements now and after improvements are made to Imjin Parkway, but for only so long as the current lease remains in effect.

In the event that a right to first refusal agreement, as detailed above, cannot be negotiated, City shall allow the existing tenant to respond to any Requests for Proposals to develop the Ord Market Parcels, which shall be considered in good faith by the City.

E. The County shall transfer \$300,000 of its Allocated Funds to the City of Marina, and the City of Marina agrees hereby to utilize said funds in accordance with the terms and conditions of the JCFA (attached hereto and incorporated herein as **Exhibit “F”**), including using said funds exclusively for Habitat Related Services as defined by the JCFA and to hold said funds in an account separate and apart from the any other account maintained by the City of Marina.

F. This Agreement may be modified or terminated only as mutually agreed in writing by the Parties.

G. This Agreement shall be deemed “approved” only upon execution of all the Parties hereto.

- H. This Agreement has been arrived at through good-faith negotiations between the Parties; each Party waives the provisions of Civil Code Section 1654 concerning the interpretation of this Agreement.
- I. Time is of the essence in this Agreement. Each Party hereto shall act in good faith to expeditiously carry out each Party's respective obligations under this Agreement.
- J. This Agreement may be executed in one or more counterparts, each of which is deemed to be an original hereof, and all of which shall together constitute one and the same instrument.
- K. This Agreement contains the entire agreement of the Parties and supersedes all prior agreements, negotiations, or representations with respect to the sites which are not expressly set forth herein.
- L. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- M. All exhibits and addenda referred to in this Agreement are attached hereto and incorporated herein by reference.
- N. If any provision, or any portion thereof, contained in the Agreement is held unconstitutional, invalid, unenforceable, or contrary to public policy, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.
- O. The Parties agree that County shall provide a copy of this Agreement to the City of Seaside in its capacity as LRA, and County shall inform the City of Seaside that the Landfill Site parcels APN 031-101-039 (Army Corps of Engineers Parcel No. E8a.1.2) and APN 031-101-058 (Army Corps of Engineers Parcel No. E4.6.2) and Imjin Parkway E4.7.2 Road Right-of-Way parcel Army Corps of Engineers parcel No. E4.7.2 (no APN) are to be transferred to the City of Marina rather than the County of Monterey at such time that the property is ready for transfer to a local jurisdiction. The Parties agree to cooperate with the City of Seaside and the Army as needed to effect the transfer of the Landfill Site and Imjin Parkway E4.7.2 Road Right-of-Way parcels to the City of Marina rather than the County.

II. INDEMNITY

Each of the Parties shall indemnify and hold the other Parties, and its officers, directors, partners, affiliates, principals, employees, agents, successors, and permitted assigns (each an "Indemnified Party"), harmless from and against all claims, demands, losses, damages, liabilities, penalties, fines, assessments, and actions and all related attorneys' fees and expenses and costs of litigation (collectively "Claim(s)") for injury or death of any person or loss of or damage to tangible real or tangible personal property or the environment, to the extent that such Claims are proximately

caused by the acts or omissions or by the willful or intentional misconduct of the Party from whom indemnity is sought, or by its agents, employees, contractors, subcontractors, or material suppliers, in connection with or relating to this Agreement. The Indemnified Party will notify the indemnifying Party, in writing, promptly upon learning of any Claim for which indemnification may be sought, provided that the failure to do so shall not affect the indemnity except to the extent the indemnifying party is prejudiced thereby. The indemnifying Party shall have control of the defense or settlement provided that no settlement that materially affects the obligations under this Agreement of the other Party shall be entered into without the other Party's prior written approval, which shall not be unreasonably withheld or delayed, and provided further that the Indemnified Party shall have the right to participate in the defense or settlement with counsel of its own selection and at its sole expense. The indemnified Party shall reasonably cooperate with the defense and at the Indemnifying Party's expense.

III. NOTICES

Formal notices, demands, and communications among the Parties shall not be deemed given unless sent by certified mail, return receipt requested, or express delivery service with a delivery receipt, or personal delivery with a delivery receipt or facsimile, to the principal office of the Parties as follows:

County of Monterey:

COUNTY OF MONTEREY RESOURCE MANAGEMENT AGENCY
ATTN: CARL P. HOLM, AICP DIRECTOR
1441 SCHILLING PL SOUTH FL2
SALINAS, CA 93901-4527

With copy to:

COUNTY OF MONTEREY OFFICE OF THE COUNTY COUNSEL
ATTN: LESLIE J. GIRARD, COUNTY COUNSEL
168 W ALISAL ST FL3
SALINAS, CA 93901-2439

City of Marina:

CITY OF MARINA
ATTN: LAYNE LONG
211 HILLCREST AVE
MARINA CA 93933

With copy to:

Such written notices, demands, and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate as provided in this Section.

Receipt shall be deemed to have occurred on the date marked on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable

IV. LIST OF EXHIBITS

The following listed Exhibits are made a part of this Agreement:

- Exhibit A: Map of Landfill Border Parcels Site
- Exhibit B: Map of Landfill Site
- Exhibit C: Imjin Parkway E4.7.2 Road Right-of-Way Parcel
- Exhibit D: Monterey County Board of Supervisors Resolution No. 80-249
- Exhibit E: City of Marina Resolution No. 81-25
- Exhibit F: Joint Community Facilities Agreement

IN WITNESS WHEREOF, each Party hereto has executed this Agreement on the date set forth opposite their respective signatures. Each person signing represents that he or she holds full authority to enter this Agreement, and by signing intends to bind their principal to the terms hereof.

COUNTY OF MONTEREY

By: _____
Carl P. Holm, AICP
Resource Management Agency Director

Date: _____

Approved as to form:
Office of the County Counsel
Leslie J. Girard, County Counsel

By: _____
Brian P. Briggs
Deputy County Counsel

CITY OF MARINA

By: _____
Layne Long, City Manager

Date: _____

Approved as to form:
City Attorney

By: _____

Exhibit "A"
Map of Landfill Border Parcels Site

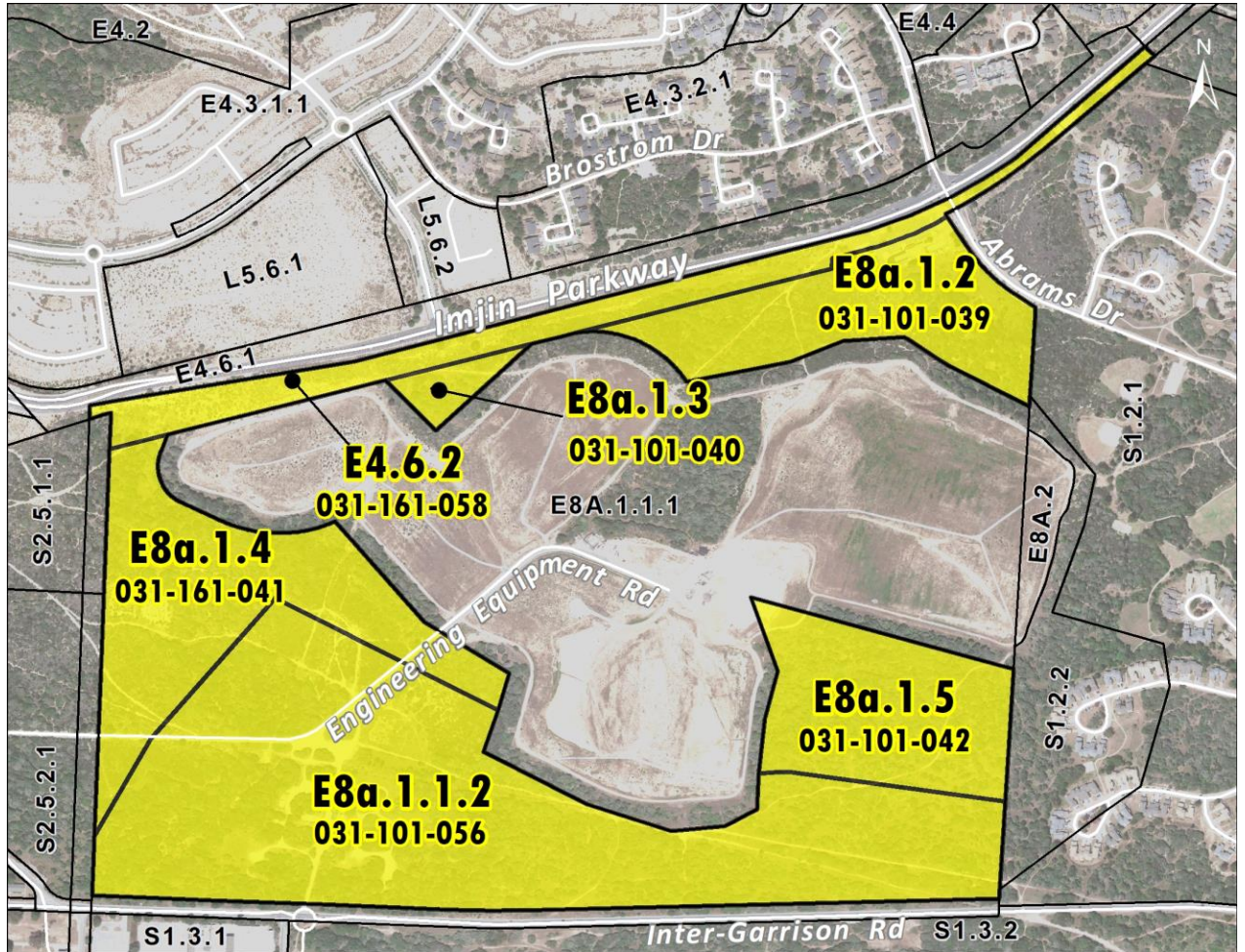


Exhibit "B"

Map of Landfill Site

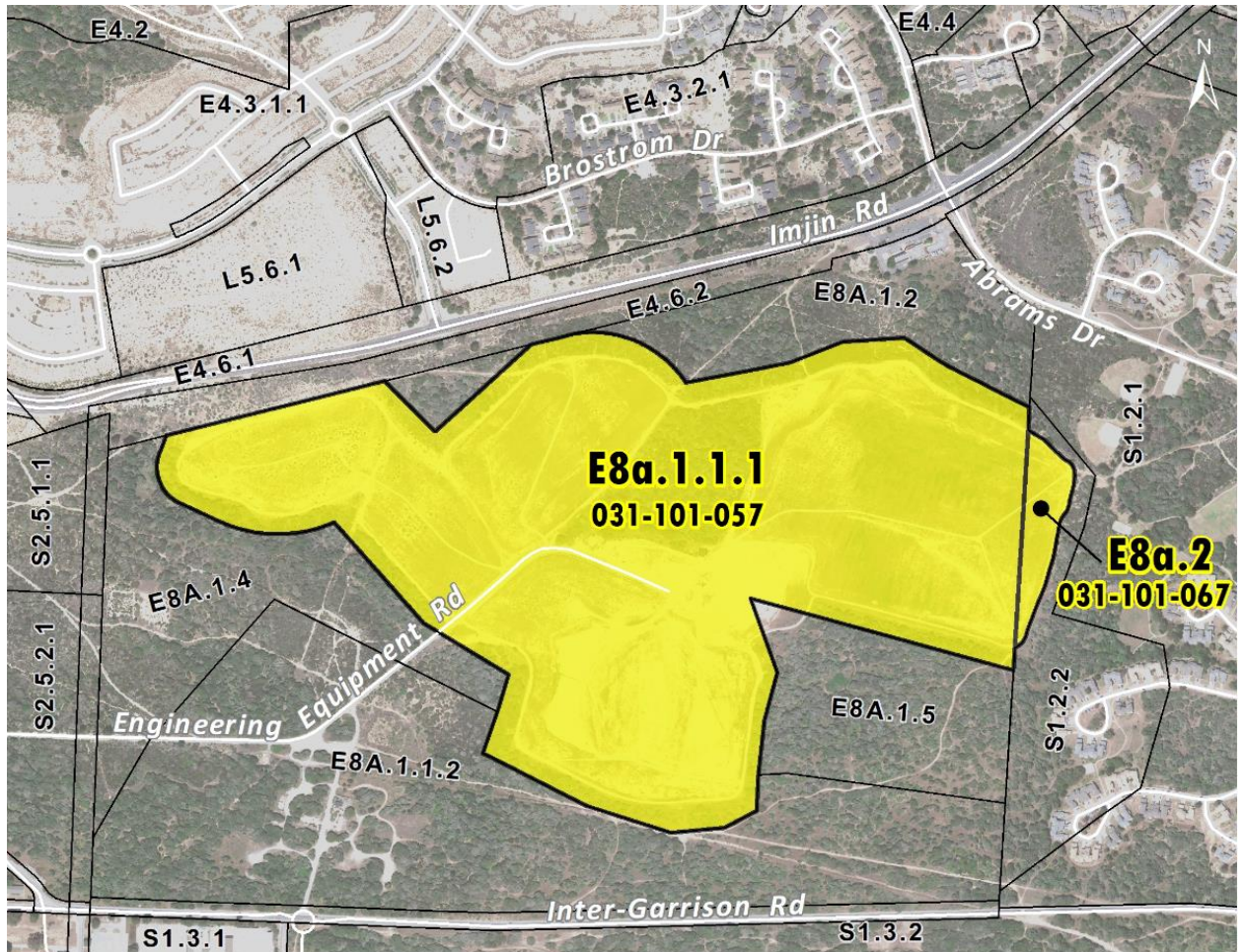


Exhibit "C"

Imjin Parkway E4.7.2 Road Right-of-Way Parcel

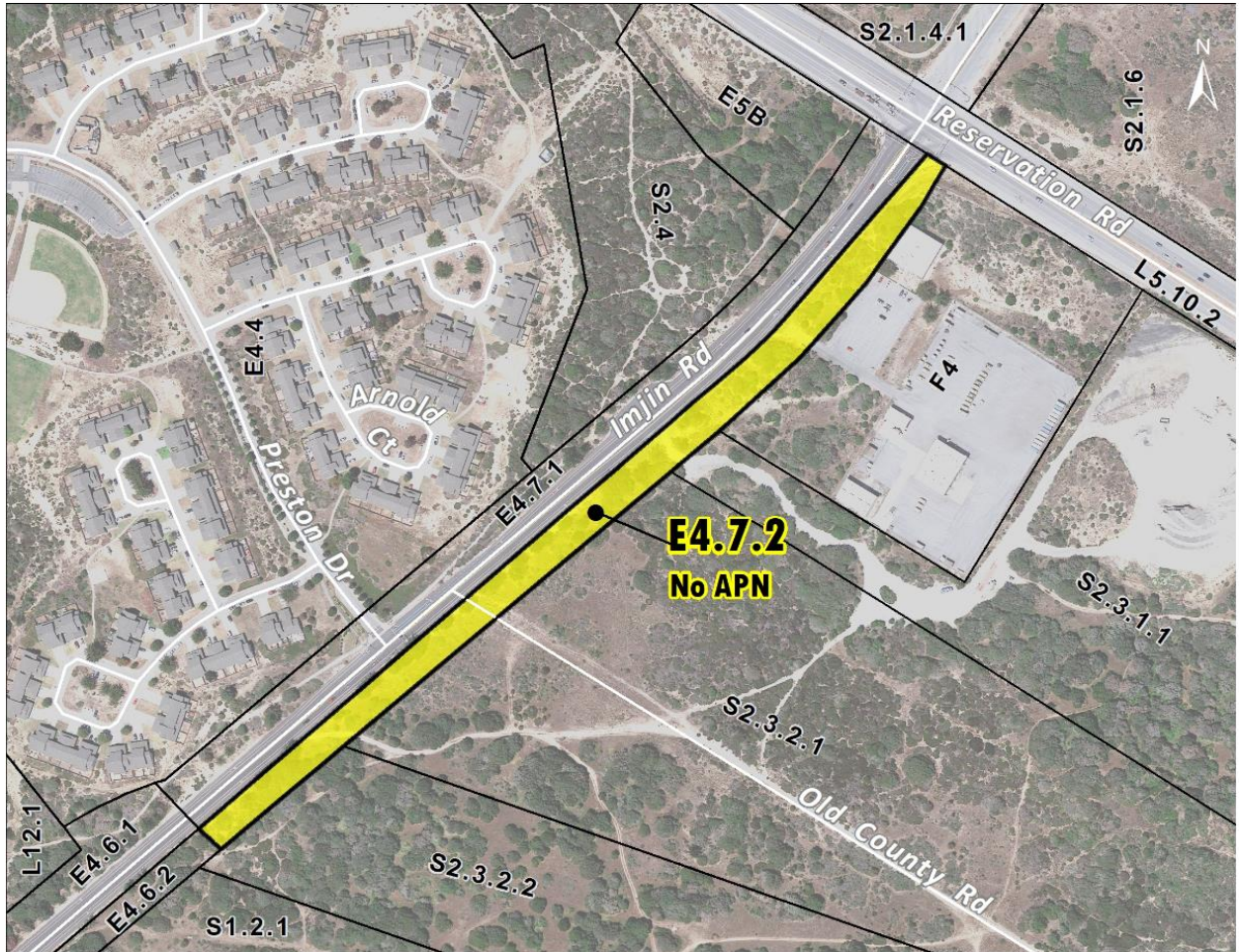


Exhibit "D"

Monterey County Board of Supervisors Resolution No. 80-249

Resolution Adopting Formula #1 b

*Before the Board of Supervisors in and for the
County of Monterey, State of California*

RESOLUTION NO. 80-249

Before the Board of Supervisors In }
and For the County of Monterey, }
State of California }

WHEREAS Assembly Bill 8 (Chapter 282) Statutes of 1979 provides for a mechanism for transferring base property tax revenues from one agency to another in conjunction with jurisdictional changes of organization; and

WHEREAS, the mechanism provided for in Chapter 282 is a "negotiated" tax transfer for the base or existing assessed value for all jurisdictional changes of organization having occurred since January 1, 1978, said transfer to be approved by Resolution by the Monterey County Board of Supervisors for each affected special district and by the City Council for each affected city; and

WHEREAS, said Chapter 282 provides for a procedure which allocates all future tax increment revenues resulting from new or increased assessed value within the affected territory to be distributed on a pro rata basis to each local agency that has jurisdiction within the tax rate area; and receives property tax revenue; and

WHEREAS, Monterey County and a consensus of cities within the County have negotiated a uniform formula approach to be used for all city annexations with the proviso that those proposals which involve extreme or unique service problems to one or more affected agencies can be considered and/or negotiated on a case by case basis,

NOW, THEREFORE, Monterey County Board of Supervisors DOES HEREBY RESOLVE, DETERMINE and ORDER the following formulas and policies to apply for determining all property tax transfers resulting from jurisdictional changes in organization to cities and special districts.

Section 1. The formulas outlined in Sections 3 through 5 set forth the amount, if any, of the base or existing property tax revenue to be reallocated as a result of a change of organization. The formulas are meant to redistribute or reallocate the existing tax base among the various affected local agencies. The formula is agreed to by both the County and the cities with the understanding that future year tax increment revenues will be allocated

to each agency having jurisdiction within a given tax rate area based upon its pro rata share of the composite equivalent tax rates within that code area. The transfer of base revenue will not change future tax increment allocations.

Section 2. The formulas outlined in Sections 3 through 5 will apply to all changes of organization for cities and special districts within Monterey County. However, for those proposals involving extreme or unique service problems to one or more affected agencies special considerations outside of the formula and/or negotiations may be considered.

Section 3. Special District to City or Special District to Special District Transfers (Annexation to City and Detachment from Special Districts or Exchange of Territory Between Agencies): When a city assumes the service responsibilities of a special district as a result of annexation, or when special districts exchange territory, the new agency will receive the percentage of property tax revenues previously received by the predecessor special district from the annexed area. The following formula will apply:

A = Percentage of assessed value of the predecessor special district within area to be annexed.

B = Property tax revenues to the predecessor special district.

Transfer Amount = A X B

Tax transfers would be prorated on a monthly basis effective for the first full calendar month following completion of a change of organization for annexations occurring during mid-year.

Section 4. County to City Tax Transfers: The tax transfer from the County to a city shall be based upon the proportionate share of the equivalent tax rates of the annexing city and the County. That is, the County will transfer a percentage of its "tax base revenue" based on the pro rata share of the city equivalent tax rate to the combined city/county equivalent tax rates. The Auditor-Controller will prepare each year the equivalent tax rate for each local agency within the County. The following formula will apply:

A = City equivalent tax rate
 B = County equivalent tax rate
 C = A + B or combined city/county tax effort

$$\text{Transfer Amount} = \frac{A}{C} \times \text{County property tax revenue generated by the base assessed value of the annexed territory}$$

Tax transfers would be prorated on a monthly basis, effective for the first full calendar month following a change of organization to account for annexations occurring during mid-year. The equivalent tax rates and percentage tax transfers that would apply for Fiscal Year 1979-80 are shown in the following table.

COUNTY TO CITY TAX TRANSFERS
FOR FISCAL YEAR 1979-80

City	A	B	C	Percentage of County Tax Revenue to be Transferred
Carmel	.458	1.062	1.52	30.1%
Del Rey Oaks	.871	1.062	1.933	45.1%
Gonzales	1.158	1.062	2.22	52.2%
Greenfield	.991	1.062	2.053	48.3%
King City	.969	1.062	2.031	47.7%
Marina	.844	1.062	1.906	44.3%
Monterey	.858	1.062	1.92	44.7%
Pacific Grove	.858	1.062	1.92	44.7%
Salinas	.829	1.062	1.891	43.8%
Sand City	.190	1.062	1.252	15.2%
Seaside	1.082	1.062	2.144	50.5%
Soledad	1.122	1.062	2.184	51.4%

Section 5. County to Special District Transfers: There will be no County to special district tax transfers unless the change of organization involves a transfer of service previously performed by the County. In these cases, the transfer will be based on the same formula as outlined in Section 3. Jurisdictional changes which result in the introduction of new service to an area will not involve a property tax exchange since no existing agency will realize a reduction in cost.

Exhibit "E"

City of Marina Resolution No. 81-25

A = City equivalent tax rate
 B = County equivalent tax rate
 C = A + B or combined city/county tax effort

Transfer Amount = $\frac{A}{C}$ X County property tax revenue
 generated by the base assessed
 value of the annexed territory

Tax transfers would be prorated on a monthly basis, effective for the first full calendar month following a change of organization to account for annexations occurring during mid-year. The equivalent tax rates and percentage tax transfers that would apply for Fiscal Year 1979-80 are shown in the following table.

COUNTY TO CITY TAX TRANSFERS FOR FISCAL YEAR 1979-80

City	A	B	C	Percentage of County Tax Revenue to be Transferred
Carmel	.458	1.062	1.52	30.1%
Del Rey Oaks	.871	1.062	1.933	45.1%
Gonzales	1.158	1.062	2.22	52.2%
Greenfield	.991	1.062	2.053	48.3%
King City	.969	1.062	2.031	47.7%
Marina	.844	1.062	1.906	44.3%
Monterey	.858	1.062	1.92	44.7%
Pacific Grove	.858	1.062	1.92	44.7%
Salinas	.829	1.062	1.891	43.8%
Sand City	.190	1.062	1.252	15.2%
Seaside	1.082	1.062	2.144	50.5%
Soledad	1.122	1.062	2.184	51.4%

Section 5. County to Special District Transfers: There will be no County to special district tax transfers unless the change of organization involves a transfer of service previously performed by the County. In these cases, the transfer will be based on the same formula as outlined in Section 3. Jurisdictional changes which result in the introduction of new service to an area will not involve a property tax exchange since no existing agency will realize a reduction in cost.

Section 3. County to City Transfer After a Change of Organization -
The tax transfer from the County to a city shall be based upon the proportionate sharing of the property taxes being available for negotiation. The amount available for negotiation is based upon the percentage of the total taxes collected (Based on the \$4 rate) that prior to a change or organization was allocated to the jurisdictions that are affected by the change.

The step by step procedure for establishing a property tax transfer rate is as follows:

- Step 1: Examine the tax distribution in the unincorporated tax rate area to determine what taxing entities would not be affected by the proposed reorganization.
- Step 2: Determine what percent of the property taxing effort these non-affected agencies constitute. This percent will remain constant as per provisions of Senate Bill 180.
- Step 3: Subtract the non-affected agencies percentage from 100% to determine what percent of current and future property tax revenues is available for distribution to the city and county.
- Step 4: Select an existing tax rate area within the city which is served by the same taxing entities that would serve the area to be annexed, i.e. same percentage tax distribution.
- Step 5: Calculate the ratio of city to county property tax revenues (expressed as percent) within the tax rate area.
- Step 6: Apply the ratios established in Step 5 to the percent of property tax revenue available for distribution to affected agencies. This step establishes the city and county's share of the negotiated base and incremental property tax revenue.
- Step 7: Pro rate calculation during the year of the reorganization; multiply the city/county amount of estimated revenues times (full months remaining in the year divided by twelve).

Exhibit “F”

JOINT COMMUNITY FACILITIES AGREEMENT

This Joint Community Facilities Agreement (this “**Agreement**”) is made by and between the Fort Ord Reuse Authority (“**FORA**”) and the County of Monterey, California (the “**Participating Agency**”) with reference to the following facts and objectives.

A. In 2002, FORA established the Fort Ord Reuse Authority Basewide Community Facilities District (the “**CFD**”), pursuant to the Mello-Roos Community Facilities Act of 1982 (California Government Code Section 53311 *et seq.*), as amended (the “**Act**”) for the purpose of collecting special taxes under the Act to finance, among other things, the construction of certain roadway improvements, transit improvements, water and storm drain improvements, other public facilities, and for costs related to habitat management within the CFD or otherwise incident to or required by reason of the development of property within or adjacent to the CFD, all as more particularly described in that Notice of Special Tax Lien recorded on May 22, 2002 as Document No. 2002048932 in the office of the County Recorder of the County of Monterey, California. FORA subsequently earmarked a portion of the special taxes so collected to finance the services described in Exhibit A attached hereto and incorporated herein by this reference (the “**Habitat-Related Services**”), resulting in accumulated funds having an approximate aggregate current unexpended balance of \$17,000,000 (the “**Habitat Funds**”).

B. FORA is scheduled to terminate on June 30, 2020 (“**FORA’s Termination Date**”) in accordance with the Fort Ord Reuse Authority Act (California Government Code Section 67650 *et seq.*), as amended. This Agreement is necessary to provide for the orderly transition of governmental finances in connection with the termination of FORA. Prior to FORA’s Termination Date, FORA plans to allocate, divide, and distribute to each of the Participating Agency and certain other public entities having habitat management responsibilities within the former Fort Ord and which enter into a joint community facilities agreement with FORA a portion of the then unexpended Habitat Funds in accordance with the formula set forth in Exhibit B attached hereto and incorporated herein by this reference. The Participating Agency’s allocated portion of such unexpended Habitat Funds may be referred to herein as the “**Allocated Funds**.”

C. The parties hereto expect that the Participating Agency will provide Habitat-Related Services, particularly those that pertain to real property within the Participating Agency’s territorial limits (the “**Covered Services**”). The parties acknowledge that such real property within the unincorporated area of the County may include real property under the authority and control of another public entity, such as, for example, real property under the jurisdiction of a public educational institution. The term “Covered Services” includes Habitat Related Services that pertain to such property.

D. FORA and the Participating Agency now desire to enter into this Agreement to satisfy the requirements of Section 53316.2 of the Act and to memorialize their understanding with respect to the use of that portion of the Habitat Funds allocated to the Participating Agency for its use in connection with the provision of the Covered Services, all as more particularly set forth below.

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:

Section 1. Delivery and Segregation of Allocated Funds. Prior to FORA's Termination Date, FORA shall deliver the Allocated Funds to the Participating Agency. The Allocated Funds, together with any earnings thereon, shall be held by the Participating Agency in an account separate and apart from any other account maintained by the Participating Agency (the "**Allocated Funds Account**"). Funds in the Allocated Funds Account shall be used exclusively for payment of the costs of the Covered Services. The Participating Agency may elect to transfer a portion of the Allocated Funds to another public entity having habitat management responsibilities within the former Fort Ord ("**Transferee Public Entity**"), provided that the Participating Agency and Transferee Public Entity enter into a written agreement requiring the Transferee Public Entity to use the Allocated Funds only for Habitat Related Services and to hold the Allocated Funds in an account separate and apart from the any other account maintained by the Transferee Public Entity. Other than by providing the Allocated Funds, FORA shall have no obligation to pay for any of the costs of the Covered Services. It will be the responsibility of the Participating Agency, in the exercise of its discretion, to address, pay, arrange for the payment or equivalent or reduce, any costs of the Covered Services in excess of the funds available in the Allocated Funds Account.

Section 2. Habitat Management. Following FORA's Termination Date, the Participating Agency shall be solely responsible for carrying out any habitat management or other similar requirements associated with the Covered Services.

Section 3. Limited Obligations. All obligations of FORA under and pursuant to this Agreement shall be limited to the amounts it provides for deposit into the Allocated Funds Account. No member of FORA's board of directors or any officer, employee, representative, or agent of FORA shall in any event be personally liable hereunder.

Section 4. Term. The term of this Agreement shall begin on the full signing of this Agreement by the parties and continue until FORA's Termination Date; provided, however, that the Participating Agency's obligations hereunder shall remain in full force and effect until the exhaustion of all amounts in the Allocated Funds Account by proper expenditure thereof by the Participating Agency to pay the costs of the Covered Services. All rights and obligations hereunder that by their nature are to be performed after any expiration or termination of this Agreement shall survive any such expiration or termination.

Section 5. Agreement of Public Benefit. By their respective approvals of this Agreement, FORA and the Participating Agency have each declared and hereby confirm that this Agreement is beneficial to the residents within the jurisdiction of their respective entities in assuring the provision of financing for a portion of the costs of the Covered Services in furtherance of the purposes of the Act.

Section 6. Partial Invalidity. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Section 7. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto

Section 8. Third-Party Beneficiaries. In order to provide a mechanism for enforcement of the Participating Agency's accounting obligations under this Agreement after FORA's Termination Date, the Cities of Del Rey Oaks, Marina, Monterey and Seaside are each hereby made an intended third-party beneficiary of this Agreement.

Section 9. Amendment. This Agreement may be amended at any time but only in writing signed by each party hereto.

Section 10. Cooperation. Each of the parties agrees to use reasonable and good faith efforts to take, or cause to be taken, all action to do, or cause to be done, and to assist and cooperate with any and all other parties in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement including signing, acknowledging, and delivering any instruments and documents as may be necessary, expedient, or proper, to carry out the intent and purpose of this Agreement.

Section 11. Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the matters provided for herein and supersedes all prior agreements and negotiations between the parties hereto with respect to the subject matter of this Agreement.

Section 12. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California applicable to contracts made and performed in such State.

Section 13. Interpretation. This Agreement, 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.

Section 14. Execution in 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. This Agreement shall be effective as to each party when that party has executed and delivered a counterpart hereof.

Section 15. Authority. Each party represents and warrants to the other that it is authorized to execute, deliver and perform this Agreement, and the terms and conditions hereof are valid and binding obligations of the party making this representation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year written beneath their respective signatures below.

FORT ORD REUSE AUTHORITY

By: _____
Josh Metz,
Executive Officer

Dated: _____, 2020

ATTEST:

Clerk of the Board

APPROVED AS TO FORM:

Jon Giffen,
Authority Counsel

COUNTY OF MONTEREY

By: _____
Chris Lopez, Chair
Monterey County Board of Supervisors

Dated: June 16, 2020

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO FORM:

Wendy Strimling,
Assistant County Counsel

EXHIBIT A

DESCRIPTION OF THE HABITAT-RELATED SERVICES

Habitat-Related Services consist of “Habitat Management” within or in the vicinity of the CFD, or otherwise incident to or required by reason of development of the property within and adjacent to the CFD.

In accordance with the Notice of Special Tax Lien referenced in Recital A of this Agreement, “Habitat Management” includes expenditures for, without limitation, all of the following but only as they relate to managing the habitat within the CFD boundaries: all work and activities to study, review environmental impacts and mitigation measures, planning and design, and all work to construct and install the improvements, including (as applicable) but not limited to, acquisition of right of way and land, soils testing, mobilization, permits, plan check and inspection fees, legal and overhead costs, clearing, grubbing, coordination and supervision costs, tree removal, environmental mitigation actions, grading, protective fencing and erosion control, trenching (including shoring and backfill), base and finish paving and pavement restoration, curbs, gutters and sidewalks, signage, and striping, signalization, landscaping and irrigation, lighting, relocation of existing facilities and improvements which are in existence and are to be retained in a different location, and related appurtenances. “Habitat Management” also includes administrative fees and expenses, and any other costs described in Section 53317(e) of the Mello-Roos Act and not specifically listed above.

EXHIBIT B

FORMULA FOR ALLOCATION OF UNEXPENDED HABITAT FUNDS

County of Monterey	79.9%
City of Marina	7.9%
City of Seaside	7.4%
City of Del Rey Oaks	4.5%
City of Monterey	<u>0.3%</u>
TOTAL	100%

Honorable Mayor and Members
of the Marina City Council

City Council Meeting of
September 15, 2020

**CITY COUNCIL TO CONSIDER ADOPTING RESOLUTION NO. 2020-,
AUTHORIZING THE CITY MANAGER TO EXECUTE A
CONVEYANCE AGREEMENT AND CORRESPONDING QUITCLAIM
DEEDS WITH MONTEREY COUNTY RECEIVING OWNERSHIP
TRANSFER OF 177 ACRES OF LAND PARCELS COLLECTIVELY
KNOWN AS “LANDFILL BORDER PARCELS”; LOCATED ON IMJIN
PARKWAY ON THE FORMER FORT ORD FROM MONTEREY
COUNTY TO THE CITY OF MARINA, WHICH TRANSFER INCLUDES
10 ACRE FEET OF WATER RIGHTS KNOWN AS MARINA (SPHERE)
WATER,**

**ACCEPTING DISGNATION THAT THE CITY OF MARINA WILL
RECEIVE FROM THE UNITED STATES ARMY 164 ACRES OF LAND
COLLECTIVELY KOWN AS THE “LANDFILL SITE” LOCATED ON
IMJIN PARKWAY.**

**AUTHORIZE THE CITY MANAGER TO EXECUTE A
SUPPLEMENTAL AGREEMENT ACCEPTING \$300,000 HABITAT
CONSERVATION PLAN MONIES FOR HABITAT MANAGEMENT**

REQUEST:

It is requested the City Council consider:

1. Adopting Resolution No. 2020-, Authoring the City Manager to execute a conveyance agreement and corresponding quitclaim deeds with Monterey County receiving ownership transfer of 177.1 acres totaling six parcels, identified as Assessor’s Parcel Numbers 031-101-039, 031-101-040, 031-101-041, 031-101-042, 031-101-056, 031-101-058, collectively known as the “Landfill Border Parcels Site, located on Imjin Parkway on the former Fort Ord from the County of Monterey to the City of Marina; which transfer includes 10 acre feet of water rights known as Marina (Sphere) water; conditioned upon approval of the Supplemental Agreement with Monterey County.
2. Approving designation from the County that the City of Marina receive from the United States Army: a) 164 acres of land over two parcels, identified as Assessor’s Parcel Numbers 031-101-057 and 031-101-067, collectively known as the “Landfill Site” located on Imjin Parkway; b) 3.1 acres consisting of one parcel, identified as Army Corps of Engineers Parcel Number E4.7.2, known as the Imjin Parkway E4.7.2 Road Right-of-Way Parcel; conditioned upon approval of the Supplemental Agreement with Monterey County.
3. Authorize the City Manager to execute a Supplemental Agreement accepting from Monterey County \$300,000 in habitat conservation plan monies for habitat management after it is approved by the County Board of Supervisors and reviewed by the City Attorney.

BACKGROUND:

Pursuant to the Base Reuse Plan and the Monterey County Implementation Agreement, FORA conveyed by quitclaim deed the above listed parcels to the Successor Agency to the Redevelopment Agency of the County of Monterey (SARDA) between September 2006 and July 2007. SARDA then conveyed these parcels by quitclaim deed to the County by operation of law under the Dissolution Act between August 2016 and December 2019 pursuant to the Long Range Property Management Plan. The parcels constitute property commonly referred to as Landfill Border Parcels Site on the former Fort Ord. The Landfill Border Parcels contain some developable areas as well as land available for widening of Imjin Parkway, with the majority of land available for open space, habitat, and environmental mitigation.

Pursuant to the Base Reuse Plan and County Implementation Agreement, the Army will convey by quitclaim deed two Army parcels on the former Fort Ord commonly known as Landfill and a parcel known as Imjin Parkway E4.7.2 Road Right-of-Way parcel when cleanup of contaminants is completed on the site.

The County of Monterey desires to transfer and the City of Marina wishes to accept a no cost land transfer of these parcels under the terms and conditions set forth in the attached Conveyance Agreement and the terms of the Supplemental Agreement.

ANALYSIS:

The attached **EXHIBIT A** is the County Board of Supervisors Board approval of the Conveyance Agreement including their staff reports, deeds and maps.

The County Board of Supervisors will also be approving a Supplemental Agreement allocating \$300,000 from their Habitat Conservation Plan fund monies to the City of Marina for habitat management. The agreement will be approved by the Board of Supervisors at a meeting later this month. Staff is requesting authority to execute this agreement, after review and approval by the City Attorney. A draft of this agreement should be available prior to the City Council meeting on Tuesday.

The Conveyance Agreement provides for the prompt annexation of the Landfill Boarder Site and Landfill Site properties; equal sharing of the costs associated with the annexation by the City and County, allocation of all property tax after annexation pursuant to City of Marina Resolution No. 81-25 and Monterey County Board of Supervisors Resolution No. 80-249; and good-faith negotiations with the current tenant operating the Ord Market for a right of first refusal to develop the property, within parameters of land use approvals.

Lease revenue of approximately \$11,000 per month from the Ord Market property will come to the City General Fund. There is approximately 21 acres of land designated around Ord Market for possible future development. When the property is annexed into the City, the City will also start receiving sales tax revenue generated by the property.

The consideration for the County transferring these properties to the City includes, but is not limited to the City accepting responsibility for maintenance costs including open space/habitat management for the parcels; and the City assuming any potential liability for the Landfill Border and Landfill site. In fair exchange for the City accepting this property, the City obtains the rights to develop and/or sell the properties including the Ord Market parcels.

The Landfill Border and Landfill Site are subject to the 1000-foot closed landfill buffer zone and Department of Toxic Substances Control Land Use Covenant related to contaminated groundwater and methane recovery zone. The Army is responsible for all clean up both current and future of

this site and any future liability associated with contaminants on this site. The Landfill Site will not be transferred by the Army until all contaminants and required cleanup are completed.

The Landfill Border parcels are subject to numerous restrictions related to habitat management and are important to habitat preservation, management, open space provisions and other related environmental policies and restrictions. These parcels can also be important parcels for future habitat mitigation from other properties owned by the City of Marina.

There are several parcels that are critical for the Imjin widening project. These parcels must be transferred to the City before October 5, 2020 in order for the City to qualify for State funds for the Imjin widening project.

Approximately 227 acres of this property will need to be maintained under a Habitat Management Plan. The City will have to develop a Habitat Management Resource Plan and provide annual habitat monitoring, management, and maintenance of these parcels. This will be funded by various options including agreements with developers utilizing alternate FORA CFD revenues.

FISCAL IMPACT:

The County will be allocating \$300,000 to the City of Marina for habitat management of the parcels. The remaining habitat management costs will need to be funded by developers and HCP funds received by the City from FORA.

Additionally, the City will receive about \$132,000 annually in Ord Market lease revenue and property tax and sales tax revenue after the property is annexed into the City.

CONCLUSION:

The request is submitted for City Council consideration and possible action.

Respectfully submitted,

Layne P. Long
City Manager
City of Marina