

This **REIMBURSEMENT AGREEMENT FOR THE RUWAP RECYCLED PROJECT (AWT PHASE 1)** (this “Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2016 (“Effective Date”), by and between Fort Ord Reuse Authority (“FORA”) and Marina Coast Water District (“MCWD”), hereinafter the “Parties.”

FORA was established by state law (California Government Code Sections 67650-67700) effective May 9, 1994. MCWD is a County Water District and political subdivision of the State of California, organized under C California Water Code Section 30000 *et seq.*

### **RECITALS**

**A.** The 1997 Fort Ord Base Reuse Plan (the “BRP”) identifies the availability of water as a resource constraint, estimating that an additional 2,400 acre-feet per year (“AFY”) of water is needed to augment the existing groundwater supply to achieve the permitted development level as reflected in the BRP (Volume 3, figure PFIP 2-7); and,

**B.** Under Section 3.2.2 of the 1998 Water/Wastewater Facilities Agreement (the “1998 Agreement”), FORA has the responsibility to determine, in consultation with MCWD, what additional water and sewer facilities are necessary for MCWD’s Ord Community service area in order to meet the BRP requirements, and that, once FORA determines that additional water supply and/or sewer conveyance capacity is needed, under Section 3.2.1, it is MCWD’s responsibility to plan, design, and construct such additional water and sewer facilities. MCWD will recover all of its direct and indirect, short term and long term costs of furnishing the facilities to the service area. MCWD shall not be required to take any action in connection with furnishing the facilities to the service area unless and until a source of funds is secured from the service area to pay in full in a reasonable manner consistent with normal accounting practices all of MCWD’s direct and indirect, short term and long term costs of the action to be taken by MCWD, including costs of administration, operation, maintenance and capital improvements to provide adequate system capacity to meet existing and anticipated service demands, per Section 7.1.2 of the 1998 Agreement; and,

**C.** On January 18, 2002, FORA’s Board of Directors adopted Resolution No. 02-1 establishing the Fort Ord Reuse Authority Basewide Community Facilities District (the “CFD”) to collect fees for, among other impacts caused by development, 2,400 AFY of water augmentation to support the BRP; and,

**D.** In 2002, MCWD, in cooperation with FORA, initiated the Regional Urban Water Augmentation Project (the “RUWAP”) to explore water supply alternatives to provide the additional 2,400 AFY of water supply needed under the BRP; and,

**E.** As a result of an extensive environmental review, FORA and MCWD agreed to adopt a modified Hybrid Alternative, which would provide 1,427 AFY of recycled water to the Ord Community without the need for seasonal storage (the “RUWAP Recycled Project”), and this in turn resulted in the FORA Board adopting in May 2007 Resolution 07-10, which allocated that 1,427 AFY of RUWAP recycled water to FORA’s member agencies having land use jurisdiction, and constituted FORA’s determination under Section 3.2.2 of the 1998 Agreement that MCWD

was required to develop recycled facilities to provide the 1,427 AFY of RUWAP recycled water; and

**F.** MCWD has been and continues to work collaboratively with FORA and with the Monterey Peninsula Regional Water Pollution Control Agency (“MRWPCA”) to carry out MCWD’s obligation to provide the 1,427 AFY of recycled water for the Ord Community; and

**G.** On October 8, 2015, MRWPCA’s Board of Directors unanimously voted to certify the environmental impact report (“EIR”) for the Pure Water Monterey Project and to approve the Pure Water Monterey Project. The MRWPCA Board selected the RUWAP Alignment for the Product Water Conveyance Pipeline; and,

**H.** On October 9, 2015, the FORA Board unanimously voted to adopt a resolution to endorse the Pure Water Monterey Project as an acceptable option as the recycled component of the RUWAP and, as part of the Pure Water Monterey Project implementation, the FORA Board will review and consider project component costs and scheduling through annual consideration of the FORA capital improvement program and Ord Community budgets; and,

**I.** On December 2, 2015, MCWD and MRWPCA each applied for separate State Revolving Fund Loans to finance their RUWAP and Pure Water Monterey Projects respectively and allowing for the shared use of a single Product Water Conveyance Pipeline. MCWD commenced further CEQA review for shared use of a single Product Water Conveyance Pipeline for both MRWPCA’s Pure Water Monterey Project and MCWD’s RUWAP ; and,

**J.** On April 8, 2016, MCWD and MRWPCA entered into the Pure Water Delivery and Supply Project Facilities Agreement (“2016 MRWPCA-MCWD Agreement”) pursuant to which the Product Water Conveyance Facilities will be designed, constructed, owned, and operated by MCWD in accordance with the 1998 Agreement with a capacity sufficient to convey the 1,427 AFY of advance treated water for the Ord Community and pursuant to which MCWD will have the right to utilize up to and including a net 1,427 AFY of the AWT facility’s treatment capacity to implement FORA Board Resolution 07-10; and

**K.** AWT Phase 1 and 2 of the 2016 MRWPCA-MCWD Agreement would fully implement the RUWAP Recycled Project; and

**L.** FORA desires to financially contribute to the capital costs of a shared, single Product Water Conveyance Pipeline thereby reducing the costs to users of the advance treated water within the Ord Community and to contribute a source of funds from which MCWD can recover some of its costs as described under Section 7.1.2 of the 1998 Agreement.

**NOW, THEREFORE,** for and in reliance of the foregoing, the Parties hereby agree as follows:

1. **PURPOSE.** The purpose of this Agreement is to establish the extent and manner in which FORA will contribute to MCWD’s costs to implement AWT Phase 1 under the 2016 MRWPCA-MCWD Agreement. Implementation of AWT Phase 2 is not covered by this Agreement.

2. **DEFINITIONS.** For the purposes of this Agreement, unless expressly provided otherwise in this Agreement, the terms used in this Agreement shall have the same meaning as the same terms are defined in the 2016 MRWPCA-MCWD Agreement. As used in this Agreement, the term “Parties” or “Both Parties” shall mean MCWD and FORA and their respective Boards.

### **3. OBLIGATIONS**

#### **3.01 FORA Financial Obligation**

(a) FORA shall provide a total of \$6,000,000 towards the RUWAP Recycled Project.

(b) Subject to the limit stated in subsection 3.01(a) above, FORA shall honor and pay invoices for services rendered by MCWD and/or its consultants and contractors in providing the services enumerated in section 3.02 and 3.03 below after the execution of this Agreement.

(c) FORA shall have sole discretion as to the source of funds for use in satisfying its obligation under this Agreement.

#### **3.02 FORA Obligation for RUWAP Startup Costs**

(a) FORA shall provide to MCWD up to \$500,000 (inclusive of the amount set forth in subsection 3.02(b) below) for start-up costs incurred after the execution of this Agreement, and make funds available in the FORA budget starting in the Fiscal Year 2016-2017 and carrying over into subsequent years, should the work be delayed.

(b) Upon execution of this Agreement, FORA will provide MCWD with \$250,000 and will reimburse the remainder as invoiced.

- (c) Startup costs covered by this Agreement:
- i. Property, easements, and/or acquisition of rights of way.
  - ii. Preparation of a negative declaration, mitigated negative declaration, or environmental impact report (EIR).
  - iii. Scoping meeting(s).
  - iv. Design, engineering, and support, including consultants, legal, and the costs of administrative and operational overhead, needed for MCWD to obtain project funding approval, process bids, award contracts, and/or issue a “Notice to Proceed” on the RUWAP Recycled Project.

### 3.03 FORA Obligation for RUWAP Implementation Costs

(a) FORA shall provide to MCWD up to the amount set forth in subsection 3.01(a) above, less any amounts provided pursuant to subsections 3.02(a) or (b) above), for the implementation of the RUWAP Recycled Project.

(b) Implementation Costs include:

- i. Direct and indirect, short term and long term costs of the RUWAP Recycled Project incurred by MCWD, including consultants, legal, and the costs of administration and operational overhead.
- ii. Debt Service, Capital Financing, and Capital costs.
- iii. Legal costs with regard to litigation between FORA and/or its member agencies shall not be reimbursable expense within the meaning of this Agreement.

### 3.04 Timing of FORA Reimbursements

(a) FORA shall reimburse MCWD for implementation costs described in Section 32.03 and incurred after the execution of this Agreement based on the progress and completion of RUWAP design and construction as follows:

- i. \$1,000,000 in FY 16-17 (in addition to amounts paid pursuant to Section 3.02).
- ii. \$1,600,000 in FY 17-18.
- iii. \$1,200,000 to \$1,900,000 in FY 18-19. FORA commits to \$1,200,000 in FY 18-19, the remainder is contingent upon real-estate market conditions and the receipt of revenues from land sales and the CFD, which are based upon the issuance of building permits within the developable lands of the former Fort Ord.
- iv. \$1,000,000 in FY 19-20 is contingent upon real-estate market conditions and the receipt of revenues from land sales and the CFD, which are based upon the issuance of building permits within the developable lands of the former Fort Ord.

(b) In setting and establishing FORA's annual budget and capital improvements plan, FORA's obligations outlined in subsection 3.04(a) above shall be junior only to FORA's Habitat Conservation Plan fund obligation, which assigns 30.2% of monies received by FORA to a reserve.

(c) Any remaining annual funds budgeted in each fiscal year for payments under this Agreement will be carried over into the following fiscal year(s), up until the work is complete, this Agreement is terminated, or FORA ceases to exist.

(d) If RUWAP work proceeds faster than anticipated, MCWD may apply to FORA for accelerated reimbursement. In order to so apply, MCWD shall provide at least three (3) months prior written notice with supporting documentation satisfactory to FORA

demonstrating the need to accelerate reimbursements. Provided that FORA has surplus funds available and is satisfied that accelerated reimbursement is necessary to the successful completion of the project, FORA will advance up to \$500,000 from funds allocated to a subsequent fiscal year.

(e) FORA shall review RUWAP invoices submitted by MCWD and shall within fifteen (15) business days following receipt either approve such invoices or notify MCWD as to why such invoices are not approved. FORA shall disburse RUWAP payment within fifteen (15) business days of approving the invoices. FORA reserves the right to exclude disputed elements of any invoice from payment until any such dispute is resolved.

(f) In the event of a dispute regarding the approval of invoices as described in subsection 3.04(e) above, the Contract Administrators (identified in Section 6.04 below) shall work to resolve the dispute within fifteen (15) business days. If no resolution can be achieved it shall be resolved according to the Dispute Resolution Process in the 1998 Agreement.

### 3.05 FORA coordination with MCWD

(a) FORA will work in coordination with MCWD to obtain binding commitments from the land use jurisdictions within the Ord Community (1) to take delivery of the 600 AFY of recycled water when the recycled water is available for delivery by MCWD and (2) to pay for MCWD's actual cost of service for the recycled water, which cost will be based upon all applicable CEQA and design costs, capital costs, financing costs, an estimated renewal and replacement cost reserve, estimated annual operations and maintenance costs, and such other costs included in a cost of service study for recycled water.

(b) The binding commitments may be achieved through the modification of existing implementation agreements with the land use jurisdictions or through other agreements including but not limited to recycled water supply agreement with customers. FORA and MCWD will make a good faith effort to obtain such commitment by November 30, 2016.

(c) FORA will support MCWD in obtaining or acquiring any remaining property, easements, or rights-of-way necessary for the implementation of the RUWAP Recycled Project by facilitating meetings, and assisting in negotiations.

### 3.06 MCWD Obligations

(a) In accordance with Section 3.05(a) MCWD will cooperate and coordinate with FORA to obtain binding commitments from the land use jurisdictions.

(b) MCWD will apply FORA's financial contributions only towards the types of costs listed in subsections 3.02(c) and 3.03(b).

(c) MCWD shall provide FORA the right to inspect the RUWAP Recycled

Project facilities, while under construction, upon the giving of three (3) days advance notice to MCWD and the party administering the construction contract. Such inspections may take place at any time during the day or night; however, nighttime inspections will not take place without at least one week's notice, except in case of emergency or by agreement. FORA's right to inspect is for the purpose of processing reimbursement requests in accordance with Sections 3.01, 3.03 and 3.04 and for observation only and not for the purpose of supervision or direction of the work observed.

(d) MCWD shall provide monthly status updates on the progress of the project to FORA staff which will include current and cumulative information on the project plans, milestones, objectives, and budget, and support RUWAP invoicing.

(e) MCWD shall submit requests for RUWAP reimbursement(s) monthly to:

Fort Ord Reuse Authority  
Attn: Accounting Services  
920 2<sup>nd</sup> Ave. Suite A  
Marina, CA 93933

(f) Upon completion of the RUWAP Recycled Project, MCWD shall provide FORA a copy of a Notice of Completion filed with the County Recorder's office for the project.

(g)

3.07 MCWD Obligations Pertaining to Recycled Water Rates

(a) If MCWD negotiates a recycled water supply agreement with an individual public entity or with specific customers for use within the Ord Community, and which agreements specify a schedule of recycled water rates for multiple years, then the FORA Board shall have the right to approve any such agreement before the agreement takes effect but not thereafter.

(b) If MCWD determines to generally provide recycled water to individual Ord Community customers, MCWD will provide to the FORA Board proposed recycled water rates for a five (5) successive year period based upon a cost of service study prepared by a qualified outside consultant. Upon approval of the proposed rates by the FORA Board, MCWD shall initiate a Proposition 218 process for those approved rates.

(c) Upon successful completion of the Proposition 218 process, FORA agrees that those rates shall be put into effect for the specified five-year period and will not be subject to annual review by FORA.

(d) In reviewing any recycled water rates, FORA acknowledges its obligation to comply with Section 7.1.2 of the 1998 Agreement.

**4. INDEMNIFICATION.** MCWD agrees to indemnify, defend and hold FORA harmless from and against any loss, cost, claim, or damages directly related to MCWD's actions or inactions under this Agreement. FORA agrees to indemnify, defend and hold MCWD harmless from and against any loss, cost, claim, or damage directly related to FORA's actions or inactions under this Agreement.

**5. DISPUTE RESOLUTION.** All disputes arising under this Agreement shall be submitted to the Dispute Resolution Procedure in Section 10.1 of the 1998 Agreement.

**6. GENERAL PROVISIONS**

**6.01 Governing Law.** This Agreement shall be governed by and interpreted by and in accordance with the laws of the State of California.

**6.02 Attorney's fees.** If either Party commences an action against the other Party arising out of or in connection with this Agreement, the prevailing Party shall be entitled to have and recover from the losing Party reasonable attorneys' fees and costs.

**6.03 Entire Agreement; Amendments.** This Agreement, along with any exhibits and attachments hereto, constitutes the entire agreement between the Parties concerning the specific subject matter hereof. No amendment or modification shall be made to this Agreement, except in writing, approved by the respective Boards and duly signed by both Parties.

**6.04 Contract Administrators**

(a) MCWD hereby designates its General Manager as its contract administrator for this Agreement. All matters concerning this Agreement which are within the responsibility of MCWD shall be under the direction of or shall be submitted to the General Manager or such other MCWD employee in MCWD as the General Manager may appoint. MCWD may, in its sole discretion, change its designation of the contract administrator and shall promptly give written notice to FORA of any such change.

(b) FORA hereby designates its Executive Officer as its contract administrator for this Agreement. All matters concerning this Agreement which are within the responsibility of FORA shall be under the direction of or shall be submitted to the Executive Officer or such other FORA employee in FORA as the Executive Officer may appoint. FORA may, in its sole discretion, change its designation of the contract administrator and shall promptly give written notice to MCWD of any such change.

6.05 Assignment. Any assignment of this Agreement shall be void without the written consent of the non-assigning Party.

6.06 Negotiated Agreement. This Agreement has been arrived at through negotiation between the Parties. Neither Party is to be deemed the Party which prepared this Agreement within the meaning of Civil Code Section 1654.

6.07 Time is of Essence. Time is of the essence of this Agreement.

6.08 Headings. The article and paragraph headings are for convenience only and shall not be used to limit or interpret the terms of this Agreement.

6.09 Notices. All notices and demands required under this Agreement shall be deemed given by one Party when delivered personally to the principal office of the other Party; when faxed to the other Party, to the fax number provided by the receiving Party; or five (5) days after the document is placed in the US mail, certified mail and return receipt requested, addressed to the other Party as follows:

To FORA:

Executive Officer  
FORA  
920 2<sup>nd</sup> Ave., Suite A  
Marina, CA 93933  
Fax: (831) 883-3675

To MCWD:

General Manager  
MCWD  
11 Reservation Road  
Marina, CA 93933  
Fax: (831) 883-5995

6.10 Execution of Documents. The Parties will execute all documents necessary to complete their performance under this Agreement.

6.11 Waiver. No waiver of any right or obligation of any of the Parties shall be effective unless in writing, specifying such waiver, executed by the Party against whom such waiver is sought to be enforced. A waiver by any of the parties of any of its rights under this Agreement on any occasion shall not be a bar to the exercise of the same right on any subsequent occasion or of any other right at any time.

6.12 Written Authorization. For any action by any Party which requires written authorization from the other Party, the written authorization shall be signed by authorizing Party's General Manager/Executive Director, or the written designee.

In witness whereof, the Parties execute this Agreement as follows:

**FORA**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Board Chair, Board of Directors

Approved as to form:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Counsel, FORA

**MCWD**

Dated: \_\_\_\_\_

\_\_\_\_\_  
President, Board of Directors

Dated: \_\_\_\_\_

\_\_\_\_\_  
Counsel, MCWD