

**Construction and Transfer of
Water, Sewer and Recycled Water
Infrastructure Agreement**

DRAFT

CONSTRUCTION AND TRANSFER OF WATER, SEWER AND
RECYCLED WATER INFRASTRUCTURE AGREEMENT
BETWEEN MARINA COAST WATER DISTRICT AND
UNIVERSITY VILLAGE ASSOCIATES FOR THE
UNIVERSITY VILLAGE APARTMENTS

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CONSTRUCTION AND TRANSFER OF WATER, SEWER AND RECYCLED WATER INFRASTRUCTURE AGREEMENT

This Agreement made and entered into this _____ Day of _____ 2012 by and between **Marina Coast Water District**, 11 Reservation Road, Marina, CA, 93933, hereinafter called "District", and **UNIVERSITY VILLAGE ASSOCIATES** a California Limited Partnership, with its principal offices at 7455 Carmel Street, Gilroy, CA 95020, hereinafter called the "Developer." This Agreement pertains to the construction and transfer of water, sewer and recycled water infrastructure.

1. Recitals

1.1 The Developer owns and is developing 108 apartments on approximately 4.5 acres of land generally known as the UNIVERSITY VILLAGE APARTMENTS on property described in Exhibit "B" attached hereto and made a part hereof, on the former Fort Ord in the City of Marina, California, ("City") all hereafter referred to as the "Development".

1.2 The City has approved the allocation of water and sewer capacity for the Development from the water and sewer capacity allocated to the City by FORA. The City allocated 593-AFY of water for the Dunes at Monterey Bay (formerly University Villages) (City Resolution 2005-179). The sale of the parcel from Marina Community Partners LLC (the owner of the Dunes at Monterey Bay development) to Developer includes the water rights of 13.16 AFY, shown in Exhibit "A" attached hereto and made a part hereof. Neither the City nor the District may approve: (1) water allocations that exceed the allocations set by the Fort Ord Reuse Authority (FORA), or (2) sewer capacity established by the type and density of development as included in the FORA Consistency Determinations. The District's role in the Development is to approve the plans for, and inspect the construction of the water sewer, and recycled water "facilities", (defined to mean those certain infrastructure improvements provided for in this Agreement and as approved by District as part of its review of Development plans), accept the transfer of the title, to maintain and operate the systems, and to bill customers for water and sewer service at rates set for the District's Ord Service Area from time to time.

1.3 Term. This Agreement commences upon execution by the parties and continues for three years (thirty-six months) or until completion of the development construction and the associated warranty period, whichever comes first, unless terminated earlier as provided in section 17 of this Agreement.

2. Design and Construction Requirements

2.1 The water, sewer, and recycled water facilities shall be designed, constructed and be operable to the District's requirements, which shall be a condition of the District's acceptance of the system facilities under this Agreement. District's requirements include, but are not limited to the following:

2.1.1 Developer shall design and construct the water, sewer and recycled water system facilities in accordance with the District's most recent *Standard Plans and Specifications for Construction of Domestic Water, Sewer, and Recycled Water Facilities* (hereafter *Standards*) and any other applicable State Regulatory Agency requirements, whichever are most stringent. Any conflict in Development requirements shall be resolved during the plan review process. A licensed civil engineer registered in the State of California shall prepare all plans and specifications.

2.1.2 The Developer shall comply with the District's most recent *Procedure Guidelines and Design Requirements* (hereafter *Procedures*) and the District's *Standards* when submitting project plans and specifications to the District for review and consideration of approval. District's review shall commence after determining compliance with District's *Procedures* regarding the submittals and any other applicable State Regulatory Agency requirements, whichever are most stringent. District review of the project plans and specifications shall commence after receipt of the initial deposit (see Paragraph 2.1.7). District may approve plans concurrent with the City's Approval.

2.1.3 The Developer shall comply with most recent District Code including, but not limited to, section 4.28 *Recycled Water*. More specifically, section 4.28.010 *Applicability* states that "[T]his chapter applies to publicly owned properties, to commercial, industrial and business properties, and to other such properties as may be specified from time to time by Marina Coast Water District ... "Section 4.28 does not require the use of recycled water for irrigation to privately owned residential lots. Improvement plans for the Development must contain recycled water lines to serve common areas and other non-residential lot irrigation within the Development. The Developer and the District will cooperatively identify recycled water turnout location(s). The Developer will also install the lateral lines from each turnout. The Developer, or its successors or assignees (such as an owners association) will obtain required permits for recycled water. This shall include, complying with applicable California Department of Health Services and other regulatory agency requirements prior to constructing any recycled water facilities.

2.1.4 The District will inspect the construction of water, sewer and recycled water facilities and verify that construction conforms to project plans and specifications. District responsibilities for inspection extends to five (5) feet from the building exterior at the point where the utility enters the structure. The District will also inspect special fixtures including, zero water use urinals, hot water distribution systems, etc. The District will inform the Developer of required field changes and will contact the Developer and the City regarding easements outside publicly dedicated rights of way. Upon receipt of recorded private easements to serve the Development in accordance with the plans and specifications approved by the District, the District will quitclaim any easements not required to serve the Development and not required by the District.

2.1.5 All system facilities shall be tested to meet District requirements. No system facilities or portion thereof, including but not limited to pipes, pumps, electrical and instrumentation and control will be accepted without meeting District test requirements. The District shall have the right to inspect work in progress in the construction of either

in-tract or out-of-tract water, recycled water and sewer infrastructure facilities or special fixtures, as described above.

2.1.6 Plan Review Fees. The Developer agrees to pay all fees and charges, including additional plan check fees and construction inspection fees as required by the District for Developer's work. These fees will be paid when the fees are assessed. The District may also require a prepaid fee to cover staff time before preliminary level or concept level plan check begins. (See *Procedures* section 100.6.2) If the District Engineer determines consultant assistance is required for plan check review or portion thereof, the Developer agrees to prepay the additional plan check fees if that cost exceeds the balance on the initial deposit. The District shall obtain the Developer's written approval for any costs in excess of this amount, for which approval shall not be unreasonably withheld. Upon the execution of this Agreement by both parties, the Developer shall deposit with the District the applicable administration and plan check fees. Any surplus fees shall be returned to the Developer, or at Developer's request, used to pay subsequent fees, e.g., construction inspection fees.

2.1.7 Construction Inspection Fees. The District shall require the construction inspection fee before undertaking a construction inspection review of the proposed water, recycled water and sewer facilities. As a condition precedent to the District's obligation to undertake a construction inspection review of the proposed water, recycled water and sewer facilities, the Developer shall provide to the District the construction inspection fee, which is currently five hundred dollars (\$500.00) per unit plus three percent (3%) of water, recycled water and sewer facilities construction costs, pursuant to Developer's Engineer's estimate. (See *Procedures* section 200.3.2) Any surplus inspection fees shall be returned to Developer.

3. Existing Water and Sewer Infrastructure

3.1 The Developer will comply with the District's *In-Tract Policy* regarding any water, reclaimed water and sewer mains or appurtenances within the Development. Developer, or its successors or assignees, shall assume all responsibility, and will hold District harmless, for all water/sewer infrastructure within the Development boundaries that will be removed or abandoned by Developer. Abandonment-in-place requires written approval by the District. The Developer is responsible to repair or replace water and sewer facilities within the Development boundaries during the construction of the Development which are for the exclusive use of the Development.

4. District to Serve Development

4.1 District will provide water, recycled water and sewer service to the Development as shown on Exhibit C after final Board Acceptance of the conveyance of the water, recycled water, and sewer system facilities and final Board Acceptance of the system (see *Procedures* section 300.25). The District will bill and serve the Developer or its tenants. The bill will include the prepayment of applicable meter fees and charges, cross connection charges, and other applicable

fees and charges approved pursuant to the agreement with FORA for service on the former Fort Ord. Once the applicable fees and charges are **paid**, the District will immediately begin service with the installation of the water meter(s). The District's obligations in this section are subject to District's rules, regulations, policies and ordinances, which may be updated from time to time.

5. Capacity Charge

5.1 The current capacity charges for water and sewer services are **\$5,750 per EDU and \$2,150 per EDU** respectively. These charges are due when the first building permit is issued. The District Board of Directors reserves its right to review and revise these charges from time to time subject to applicable law and the District's approval procedures for such charges. **Per MCWD Code section 6.08.090D, after full payment of all then-current connection costs, accepted Residential Connection Form and Permit Applications remain valid for a period of one (1) year from the date the payment is received. For the purposes of this Agreement, a connection shall be deemed to have been made once the Residential Connection Form and Permit Application has been accepted and signed by the District Engineer.**

5.2 Developer shall include in each future tenant's lease a "Notice to Tenants of Water & Sewer Surcharge Payments" which is attached as Exhibit "E" hereto and made a part hereof.

6. Water Augmentation Project

6.1 In October 2004, the District Board of Directors certified its Regional Urban Water Augmentation Project Environmental Impact Report for a Water Augmentation Project. That project will provide additional water to the former Fort Ord. Alternatives included a 3,000 AFY recycled water project, a 3,000 AFY desalination project, or a 3,000 AFY hybrid project that includes a 1,500 AFY desalination plant and a 1,500 AFY recycled water project. In June 2005, the District and FORA Board of Directors approved the Hybrid Alternative and directed staff to initiate the scoping process. The selection of the Hybrid Alternative will result in the availability of recycled water. Therefore, improvement plans must be compatible with and anticipate the availability of a non-potable water supply to serve common area open spaces within the Development, as permitted by applicable laws and regulations. If an alternative water supply satisfies the foregoing requirements, Developer and District will cooperatively identify recycled water turnout location(s).

6.2 Developer, or its successors or assignees (such as an owners association), agrees to take recycled water for non-potable use at the time it becomes available. The District shall establish a separate cost for recycled water in the same manner that it establishes the cost of potable water. Developer, or its successors or assignees agree that the District-established cost will be paid by the recycled water customers. .

7. Licensed Contractor

7.1 The Developer, or **its** authorized representative (contractor) performing the work, shall be licensed under the provisions of the Business and Professions Code of the State of California to do the work called for in the project. District reserves the right to waive this requirement at its

discretion where permitted under state statute.

7.2 The Developer, or **its** contractor, shall be skilled and regularly engaged in the installation of water and sewer systems. The District may request evidence that the constructing party has satisfactorily installed other projects of like magnitude or comparable difficulty. Contractors must furnish evidence of their qualifications to do the work.

8. Permits, Easements, and Related Costs

8.1 Except as otherwise provided in this Agreement, the Developer shall obtain all necessary local, county and state permits (including encroachment permits) and conform to requirements thereof. Developer shall obtain all easements, for other than public rights of way, necessary for ingress and egress to and from the facilities for the purpose of installation, operation, maintenance and removal of said facilities. Pipeline easements shall be 20 feet in width or as otherwise agreed by the District Engineer and Developer. Easements shall be in a form reasonably approved by the District and shall be submitted/conveyed to the District in recordable form before the District provides service.

9. Final Inspection and Reimbursement of District Costs

9.1 The District's Engineer must inspect completed water, sewer and recycled water system facilities, or portion thereof. The District will not accept the facility until its Engineer has given written approval that it satisfies the District's requirements. Developer shall be responsible for all costs incurred by the District that are associated with interim and final inspection, completion, additional construction, and testing of the system facilities, subject to the limitations set forth in Paragraph 2 *Design and Construction* Requirements. Developer shall reimburse District for costs to correct any damages to facilities related to the construction of the Development caused by the Developer or any authorized representative **of Developer (i.e., Developer's contractor)**. This reimbursement obligation is limited to the warranty period described in paragraph 15 *Warranties*. Developer shall remit to District prior to the conveyance of the water, sewer and recycled water system facilities to the District, payment of reimbursable costs, if any, incurred for inspection, administration and plan review, over and above deposits previously paid to the District. If there is a surplus in such accounts or any refunds due Developer, then District shall return to Developer the amount of such surplus or refunds **within a reasonable period of time following District taking complete ownership of the facilities..**

10. Underground Obstructions

10.1 The District is not responsible for and does not assume any responsibility or liability whatsoever for Developer's (or Developers' contractors') acts and omissions during the design and construction of the water, sewer, and recycled water facilities. Any location of underground utility lines or surface obstructions given to the Developer or placed on the project drawing by District are for the Developer's convenience, and must be verified by Developer in the field. The District assumes no responsibility for the sufficiency or accuracy of such information, lines, or obstructions.

11. As-Built Plans, Specifications, Values, Etc.

11.1 Developer shall, as a condition of District's acceptance of the water, sewer and recycled water system facilities, provide **as-built plans and specifications** to the District in accordance with Section 400.13 of the *Procedures*. Developer agrees to supply the following:

11.1.1 A set of Mylar drawing prints and AutoCAD digitized files of the improvement plans which show the water, sewer and recycled water system facilities, and a hardcopy and electronic copy of the specifications, and any contract documents used for the construction of the water, sewer and recycled water system facilities. These files may be in Adobe Acrobat format.

11.1.2 A complete, detailed statement of account, the form and content to be provided by the District at the time of conveyance, of the amounts expended for the installation and construction of the system facilities, with values applicable to the various components thereof, together with a list of any other materials and equipment (and their values) being transferred.

11.1.3 Any other documents required by Section 400.13 of the *Procedures*.

12. Indemnity, Insurance, and Sureties

12.1 Insurance and Liability - The Developer agrees to have its contractor provide the indemnity, defense, and save harmless statements and certifications to the District, its officers, agents, and employees as provided in Exhibit D, attached hereto and hereby incorporated by reference. Insurance policies shall provide that such insurance is primary insurance. Coverages described in Exhibit D shall be maintained through the term of this Agreement, and the Developer's contractor shall file with the District prior to the execution of this Agreement, and as policy renewals occur, a Certificate of Insurance evidencing that the insurance coverages required herein have been obtained and are currently in effect.

12.2 Performance and Payment Surety - Developer or its authorized representative to do the work (contractor) shall furnish the District with a surety in the amount of the District's estimate of the project construction cost to secure the completion of and payment for the work. The surety shall be in a form satisfactory to the District such as a performance and payment bond, irrevocable letter of credit, cash deposit, or construction "set-aside" letter. Such surety may include evidence that it was submitted to another public agency of an equivalent or greater amount covering the work to be done under this Agreement.

12.3 Submittal of Insurance Certificates and Surety - The required insurance certificates shall be delivered prior to commencement of construction and performance, and payment surety shall be delivered to the District prior to District approval of plans and specifications.

13. Transfer of System Facilities to District after Completion

13.1 Developer will execute and obtain all signatures of any other parties having any interest

(including any Deed of Trust), and deliver a conveyance satisfactory in form and content to District. This conveyance shall transfer unencumbered ownership of the completed water, sewer and recycled water system facilities to the District together with all real property, interest in real property, easements and rights-of-ways (including any off-site easements or real property) other than those contained in public rights of way, and all overlying and other underground water rights that are a part of, appurtenant to, or belonging to the Development now or hereafter served by the water, sewer and recycled water system facilities that are necessary or appropriate in the opinion of the District for the ownership and operation of the system. Provided all other conditions set forth herein are satisfied, the District shall accept the conveyance. All costs of construction of the system facilities, for which the Developer is responsible, shall have been paid for by Developer, the time for filing mechanics liens shall have expired (or Developer shall provide other security to protect against liens), and the title to the water, sewer and recycled water system facilities and the interests in real property transferred shall be good, clear and marketable title, free and clear of all encumbrances, liens or charges. Developer shall pay costs of title insurance deemed necessary by the District and is reasonable and customary for the insured transaction type. All construction, including final inspection punch list items must be completed prior to transfer, and the transfer shall not be completed until the conveyance transferring the water, sewer and recycled water system facilities has been formally accepted by the District. After transfer, the District shall own and be free in every respect to operate and manage the water, sewer and recycled water system facilities and to expand or improve, or interconnect with adjacent facilities, as it deems appropriate, provided that any expansion of the facilities shall be within recorded easements or the public right of way..

14. Developer Assistance

14.1 Developer shall, both before and after the transfer, secure and provide any information or data reasonably needed by District to take over the ownership, operation and maintenance of the system facilities.

15. Warranties

15.1 Developer hereby warrants that as of the time of the District's acceptance of the conveyance of the water, sewer and recycled system facilities (or when Developer thereafter completes the installation of any works or components subsequently installed, repaired, or replaced) the water, sewer and recycled system facilities and all components thereof, will be in satisfactory working order and quality; and that the water, sewer and recycled systems facilities and all components thereof have been constructed and installed in compliance with specifications and as-built plans being provided to the District, and in accordance with applicable requirements of any governmental agency having jurisdiction. Developer also warrants that as of the time of the District's acceptance of the conveyance of the water, sewer and recycled water system facilities (or when Developer thereafter completes the installation of any works or components subsequently installed, repaired, or replaced) the system facilities will operate in good and sufficient manner for the purpose intended for one (1) year after the date of acceptance (see *Procedures* section 300.24), or 180-days from the date new facilities are subsequently re-installed, repaired, or replaced by Developer (hereafter *replacement facilities*), whichever is later

and the Developer shall indemnify District for any costs or expenses (including District's own labor costs) incurred by reason of failure, malfunction, replacements, repairs or any other expenses incurred by District as a result of Developer's or its contractor's work of installation, repair or replacement of the facilities during the one (1) year warranty period or 180-days for replacement facilities, whichever is later.

15.2 Developer shall furnish the District with a Warranty Bond (or other instrument satisfactory to the District) in the amount of twenty percent (20%) of the actual construction costs to protect the District against any failure of the work by Developer or its contractor due to faulty materials, poor workmanship or defective equipment within a period of one (1) year following the date of acceptance or 180-days for replacement facilities, whichever is later.

16. No Water, Recycled Water and Sewer Service Prior to Completion and Transfer

16.1 The Developer shall not allow any occupant or person to commence operations or use of any part of the water, recycled water and sewer system facilities without the express written consent of the District. Such consent may not be unreasonably withheld. District may impose conditions or restrictions upon any consent to such prior service, such as posting a surety bond. Notwithstanding any of the foregoing, Developer may use the sewer, water and recycled system facilities before they are accepted for fire protection and construction purposes in all phases, subject to satisfaction of applicable testing.

17. Performance

17.1 Developer agrees to promptly design and construct the water and sewer and recycled water system and, transfer the same to the District in accordance with the terms of this Agreement. If construction of the water and sewer and recycled water system facilities of the Development has not been completed and accepted by District within thirty-six (36) months from the date of execution of this Agreement (such date may be extended for delays beyond Developer's control, but in no event shall such delay exceed twelve (12) additional months), the District shall have the option to terminate this Agreement, at the District's discretion.

18. Assignment

18.1 Neither party may assign their rights or obligations under this Agreement within its term without the written consent of the other party. Rights to water, recycled water, and sewer service will be deemed assigned to each property owner upon acquisition of his/her commercial unit in the Development. Upon assignment, the Developer's responsibilities relating to recycled water facilities, use and approvals will become the assignee's responsibility. This provision will cease to have any effect when the District accepts title to the water facilities or the Agreement is terminated.

19. Dispute Resolution Procedure

19.1 Disputes arising under this agreement shall be resolved as follows:

19.1.1 Prevention of Claims / Meet and confer (3 days) - The parties agree that they share an interest in preventing misunderstandings that could become claims against one another under this agreement. The parties agree to attempt to identify and discuss in advance any areas of potential misunderstanding that could lead to a dispute. If either party identifies an issue of disagreement, the parties agree to engage in a face-to-face discussion of the matter within three calendar days of the initial request. If the dispute cannot be negotiated between the parties, the matter shall first be brought to the attention of the District's Board of Directors at the first available regularly scheduled Board Meeting. The District Board of Directors may seek to intervene in the negotiations or may direct staff to seek arbitration. If any disagreement remains unresolved for ten (10) days after direction is provided by the District Board of Directors, the parties agree to submit it to mediation as provided in Section 19.2 below.

19.1.2. Mediation (30 days) - Either party may demand, and shall be entitled to, mediation of any dispute arising under this agreement at any time after completing the meet and confer process described in subsection 19.1. Mediation shall commence not more than ten (10) days after the initial mediation demand and must be concluded not more than thirty (30) days after the date of the first mediation demand. If mediation is not concluded within that time, then either party may demand arbitration as set forth in Section 19.3.

Mediation shall be submitted first to a mediator with at least ten years' experience in Monterey County. The mediator shall be selected by mutual agreement of the parties. Failing such mutual agreement, a mediator shall be selected by the presiding judge of the Monterey County Superior Court. In the interest of promoting resolution of the dispute, nothing said, done or produced by either party at the mediation may be discussed or repeated outside of the mediation or offered as evidence in any subsequent proceeding. The parties acknowledge the confidentiality of mediation as required by Evidence Code 1152.5.

No mediator shall submit, and no arbitrator or court shall consider, any mediator recommendations, declarations, or findings unless the parties give their written consent to the proposed mediator statement.

19.1.3. Arbitration (60 days) - If mediation fails to resolve the dispute, the parties shall select an arbitrator by mutual agreement. Failing such agreement, the arbitrator shall be selected by the Presiding Judge of the Superior Court. The decision of the arbitrator shall be final and not subject to judicial litigation.

Arbitration shall be commenced within thirty days of the arbitration demand and concluded within 60 days of arbitration demand.

Arbitration shall follow the so-called "baseball arbitration" rule in which the arbitrator is required to select an award from among the final offers presented by the contending parties. The arbitrator may not render an award that compromises between the final offers.

Unless the arbitrator selects another set of rules, the arbitration shall be conducted under the J.A.M.S. Endispute Streamlined Arbitration Rules and Procedures, but not

necessarily under the auspices of J.A.M.S. Upon mutual agreement, the parties may agree to arbitrate under an alternative scheme or statute. The Arbitrator may award damages according to proof. Judgment may be entered on the arbitrator's award in any court of competent jurisdiction.

NOTICE: IN AGREEING TO THE FOREGOING PROVISION, YOU ARE WAIVING YOUR RIGHT TO HAVE YOUR RIGHTS UNDER THIS AGREEMENT TRIED IN A COURT OF LAW OR EQUITY. THAT MEANS YOU ARE GIVING UP YOUR RIGHT TO TRIAL BY JUDGE OR JURY. YOU ARE ALSO GIVING UP YOUR RIGHT TO DISCOVERY AND APPEAL EXCEPT AS PROVIDED IN THE ARBITRATION RULES. IF YOU REFUSE TO ARBITRATE YOUR DISPUTE AFTER A PROPER DEMAND FOR ARBITRATION HAS BEEN MADE, YOU CAN BE FORCED TO ARBITRATE OR HAVE AN AWARD ENTERED AGAINST YOU BY DEFAULT. YOUR AGREEMENT TO ARBITRATE IS VOLUNTARY.

BY INITIALING THIS PROVISION BELOW, THE PARTIES AFFIRM THAT THEY HAVE READ AND UNDERSTOOD THE FOREGOING ARBITRATION PROVISIONS AND AGREE TO SUBMIT ANY DISPUTES UNDER THIS AGREEMENT TO NEUTRAL BINDING ARBITRATION AS PROVIDED IN THIS AGREEMENT.

_____ s' INITIALS _____ 'S: INITIALS _____

20. Waiver of Rights

20.1 Waiver. No waiver of any breach or default by either party shall be considered to be a waiver of any other breach or default. The waiver by any party for the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act to be performed at a later time. None of the covenants or other provisions in this Agreement can be waived except by written consent of the waiving party.

21. Notices

21.1 All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered, or mailed by certified mail, return receipt requested, or delivered by reliable overnight courier, to the respective party as follows:

To District: Marina Coast Water District
Attn: Jim Heitzman, General Manager
11 Reservation Road
Marina, California 93933

To Developer: University Village Apartments

University Village Associates
Attn: South County Housing, President/CEO
7455 Carmel Street
Gilroy, CA 95020

21.2 The address to which notice may be sent may be changed by written notification of each party to the other as above provided.

22. Severability

22.1 If any portion or provision of this Agreement is found to be contrary to law or policy of the law or unenforceable in a court of competent jurisdiction, then the portion so found shall be null and void, but all other portions of the Agreement shall remain in full force and effect.

23. Paragraph Headings

23.1 Paragraph headings are for convenience only and are not to be construed as limiting or amplifying the terms of this Agreement in any way.

24. Successors and Assignees

24.1 This Agreement shall be binding on and benefit the assignees or successors to this Agreement in the same manner as the original parties hereto.

25. Integrated Agreement

25.1 This Agreement integrates and supersedes all prior and contemporaneous Agreements and understandings concerning the subject matter herein. This Agreement constitutes the sole agreement of the parties and correctly sets forth the rights, duties and obligations of each to the others. Future amendments must be in writing signed by the parties. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect.

26. Negotiated Agreement

26.1 This Agreement has been arrived at through negotiation between the parties. Neither party is deemed the party that prepared the Agreement within the meaning of Civil Code Section 1654.

27. Attorneys Fees

27.1 If arbitration or suit is brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover as an element of costs of suit, and not as damages, a reasonable attorneys' fee to be fixed by the arbitrator or Court, in addition to any other relief granted. The "prevailing party" shall be the party entitled to recover costs of suit, whether or not the suit proceeds to arbitrator's award or judgment. A party not entitled to recover costs shall not recover attorneys' fees. No sum for attorneys' fees shall be counted in calculating the amount of

an award or judgment for purposes of determining whether a party is entitled to recover costs or attorneys' fees.

27.2 If either party initiates litigation without first participating in good faith in the alternative forms of dispute resolution specified in this agreement, that party shall not be entitled to recover any amount as attorneys' fees or costs of suit even if such entitlement is established by statute.

28. Exhibits

28.1 All exhibits referred to in this Agreement and attached to this Agreement are incorporated in this Agreement by reference.

29. Disclaimer/Indemnity Regarding Public Works

29.1 District has not determined whether the project would be considered a "Public Works" project for the purposes of California law, and makes no warranties or representations to Developer about whether the project would be considered a "Public Works" project. Developer is aware that if the project is considered a "Public Works" project, then Developer would have to pay "prevailing wages" under California Labor Code section 1771. If Developer fails to pay such prevailing wages, Developer acknowledges that it will be liable to, among other things, pay any shortfall owed as well as any penalties that might be assessed for failure to comply with the law. If Developer does not pay prevailing wages, and an action or proceeding of any kind or nature is brought against the District based on such failure, Developer will defend and indemnify District in the action or proceeding. District agrees to reasonably cooperate and assist Developer in any the defense of any such action.

30. No Third Party Beneficiaries

30.1 There are no intended third party beneficiaries to this Agreement.

31. Compliance with Laws

31.1 Developer will comply with all laws, rules and regulations in carrying out its obligations under this Agreement.

32. Counterparts

32.1 This Agreement may be executed in counterparts, and each fully executed counterpart shall be deemed an original document.

Signature Page

By: University Village Associates, a California Ltd Partnership

By: SCHC University Village LLC

Its: Managing General Partner

By: South County Housing Corporation

Its: Sole Member

Dennis Lalor, President and CEO

By MARINA COAST WATER DISTRICT

Jim Heitzman, General Manager
Marina Coast Water District

EXHIBIT A

WATER ALLOCATION DOCUMENTATION

Included Documents:

- Document A1: Resolution 2005-09 from the City of Marina, with Exhibit
- Document A2: Excerpt from the Purchase Agreement between Master Developer and Developer
- Document A3: Excerpt from the Water Supply Assessment for the Master Development

AI

RESOLUTION NO. 2005-129

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA MAKING FINDINGS AND DETERMINATIONS PURSUANT TO CALIFORNIA WATER CODE SECTION 10911(c) AND CALIFORNIA GOVERNMENT CODE SECTION 66473(b)(3), AND RESERVING AND ALLOCATING WATER SUFFICIENT TO SERVE THE MCP DEVELOPMENT.

WHEREAS, the City Council of the City of Marina, California (the "City"), did on the 31st day of May, 2005, hold a duly-noticed public hearing, continued from the 17th day May 2005, to consider approval of the University Villages Specific Plan and related approvals consisting of a General Plan Amendment, Tentative Map, Design Review for Phase 1 Improvements, Tree Removal Permit, Zoning Map Amendment and a development agreement between the City and Marina Community Partners, LLC, covering the development of approximately 390 acres of the approximately 420 acre area covered by the Specific Plan controlled by Marina Community Partner, LLC (the "Development Agreement") (collectively, the "Project") (that portion of the Project controlled by Marina Community Partners, LLC, and to be developed in accordance with the Development Agreement is hereinafter referred to as the "MCP Development" and the remaining portion of the Project is referred to as the "Other UV Specific Plan Development"); and

WHEREAS, the Planning Commission of the City of Marina, California, did on the 5th day of May, 2005, hold a duly-noticed public hearing, continued from the 14th day of April, 2005 and a work session, on the 23rd day of April 2005, recommend approval, subject to conditions, of the University Specific Plan and other entitlements; and

WHEREAS, said University Villages Specific Plan has complied with the requirements of the California Environmental Quality Act of 1970, California Public Resources Code section 21000 et seq., in that the City of Marina has prepared and certified the University Villages Specific Plan Environmental Impact Report (SCH No. 2004091167); and

WHEREAS, the city has been allocated 1,325 acre feet of potable water annually under the Fort Ord Reuse Plan adopted by the Fort Ord Reuse Authority ("FORA") to serve property within the City that is also within the Fort Ord Reuse Plan planning area (the "FORA Allocation"); and

WHEREAS, in connection with the preparation of the University Villages Specific Plan Environmental Impact Report, on October 18, 2004 the City requested the Marina Coast Water District ("MCWD") to prepare a water supply and demand assessment and written verification of sufficient supply in compliance with Sections 10910 through 10912, inclusive, of the Water Code, and Sections 65867.5 and 66473.7 of the Government Code, respectively, to evaluate whether sufficient potable water will be available to serve the water demands associated with the Project, including, but not limited to, the MCP Development to be

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developed by Marina Community Partners, LLC, and its successors and assigns, under the Development Agreement (the "University Villages WSA"); and

WHEREAS, acting on the City's request, the MCWD did prepare the University Villages WSA, attached hereto as Exhibit A, which document was approved by the MCWD's governing body, in accordance with California Water Code section 10910(g)(1), following public hearings held on the 12th day of January 2005 and continued to the 26th day of January 2005; and

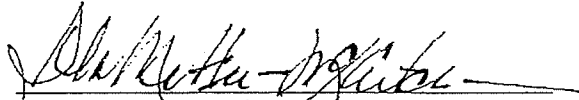
WHEREAS the University Villages WSA has been considered by the City, along with those documents included in the administrative record and listed on the attached Exhibit B, and a true and correct copy thereof included in the University Villages Specific Plan Environmental Impact Report, in accordance with California Water Code sections 10911(b-c).

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

1. That the above recitations are true and correct, incorporated herein by this reference, and constitute findings of the City Council in this matter;
2. That, in accordance with California Water Code section 10911(c) and in light of those considerations set forth in the attached Exhibit B and Exhibit B-1, the City Council hereby finds that, based on the entire record, projected water supplies will be sufficient to satisfy the demands of the Project, in addition to existing and planned future uses;
3. That, in accordance with California Government Code section 66473.7(b)(3) and in light of those considerations set forth in the attached Exhibit B and Exhibit B-1, the City Council hereby finds that, based on the entire record, in addition to overstating the Project's and the MCP Development's water demands, the University Villages WSA failed to account for additional water supplies that are, or will be, available prior to completion of the MCP Development subdivision that will satisfy the requirements of Government Code section 66473.7.
4. The City Council determines that the evidence in the records constitutes substantial evidence to support the actions taken and findings made in this Resolution.
5. That the City Council does hereby irrevocably reserve and allocate 593 acre feet annually of the FORA Allocation to that 390 acre portion of the Project covered by the Development Agreement and controlled by Marina Community Partner's LLC, its successors and assigns, to serve the MCP Development;
6. That the allocation of water under this resolution is deemed to be sufficient to meet the water demands associated with the full build-out of the MCP Development in a manner consistent with the Specific Plan and the Development Agreement, as described in the attached Exhibit B.

PASSED AND APPROVED by the City Council at a regular meeting of May 17, 2005 and continued to May 31, 2005, by the following vote

AYES, COUNCIL MEMBERS: Gray, Morrison, Wilmot, McCall and Mettee-McCutchon
NOES, COUNCIL MEMBERS: None
ABSENT, COUNCIL MEMBERS: None


Ila Mettee-McCutchon, Mayor

ATTEST:

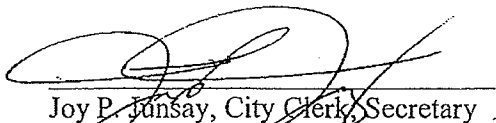

Joy P. Junsay, City Clerk, Secretary

EXHIBIT B

Finding 1:

In accordance with California Water Code section 10911(c), the City hereby determines, based on the entire record, that projected water supplies will be sufficient to satisfy the demands of the Project, in addition to existing and planned future uses.

Finding 2:

In accordance with California Government Code section 66473.7(b)(3), the City Council hereby determines, based on the entire record, additional water supplies not accounted for by the Marina Coast Water District ("MCWD") in its WSA issued for the University Villages Specific Plan are, or will be, available prior to completion of the MCP Development subdivision that will satisfy the requirements of Government Code section 66473.7.

Evidence in Support of Findings:

Background

Following its determination that the Project is subject to the requirements of SB 610 (California Water Code section 10910 *et seq.*), and SB 221 (California Government Code section 66473.7), the City identified the Marina Coast Water District (MCWD) as the relevant public water system that may supply water for the Project and, on October 18, 2004 requested MCWD to prepare a water supply assessment and written verification of supply to determine whether projected water supplies will be sufficient to serve the Project and the MCP Development, in addition to existing and planned future uses, as required by Water Code section 10910 and Government Code section 66473.7.

Pursuant to Water Code section 10910(g), on January 26, 2005, MCWD approved the Water Supply Assessment and Written Verification of Supply for the Proposed University Villages Specific Plan Development and Marina Community Partners Project ("University Villages WSA"). The University Villages WSA concluded that the MCP Development is, according to MCWD, expected to consume approximately 732 acre-feet of water per year ("AFY"). The University Villages WSA also concluded that additional development within the University Villages Specific Plan area is expected to consume approximately 124 AFY, bringing total expected water demand for the entire Project to approximately 856 AFY. The University Villages WSA estimated that of the City's existing 1,325 AFY water allocation from the Fort Ord Reuse Authority ("FORA") to the City of Marina for use on the former Fort Ord, approximately 694 AFY remains available to serve Fort Ord development within the City's jurisdictional boundaries. Accordingly, the University Villages WSA determined that (1) there is 162 AFY shortfall in water supplies necessary to serve buildout of the Project, and (2) there is a 38 AFY shortfall in water supplies necessary to serve the MCP Development.

Water Code section 10911(c) requires the City to make its own determination, based on substantial evidence in light of the entire record, whether there is a sufficient projected water

supply available to satisfy the demands of the Project, in addition to existing and planned future uses. When considered in light of the entire record, the City concludes that such water supply is available because, as explained below, (1) appropriate water demand factors for the Project indicate that the Project will consume less water than that amount assumed by the University Villages WSA, and (2) the planned MCWD Regional Urban Water Augmentation Project (Augmentation Project) will, when implemented, provide an additional 2,400 AFY for uses on the former Fort Ord, the City's share of which will be sufficient to serve the Project water demand, in addition to existing and planned uses. On May 26, 2004 MCWD approved the Notice of Determination for the Augmentation Project Final EIR, previously certified on October 27, 2004.

Revised Demand Factors

Based on the information and analysis contained in *Information Sources, Procedures and Comparisons, Water Demand Estimates for the University Villages Project, Marina, California*, prepared by RBF Consulting (the "RBF Report"), it is apparent that that water demand factors used by MCWD and incorporated into the University Villages WSA to determine the overall water demand associated with both the Project and the University Villages Specific Plan area are inappropriate because they do not reflect actual planned demand for the Project and the University Villages Specific Plan.

There are several errors in the water demand methodology relied upon in the University Villages WSA. First, as explained in the RBF Report, the University Villages WSA's methodology for calculating exterior non-residential water demand estimates is inaccurate because it calculates unit water demands as "Interior SF Demand Fac" by multiplying a unit factor by the proposed interior square footage for each land use. Second, the University WSA determines a Total Demand in acre feet per year for the exterior water demand on a Total Planning Area basis. The University Villages WSA roughly adopts the Project projections for percent turf and ornamental coverages, although the Project actually makes individual estimates of the exterior water demands based on the planned parcel acreage proposed for each land use. Third, in connection with estimating exterior water demand, the University Villages WSA evenly applies these values throughout the planning area, thus eliminating independent consideration of exterior water demand on per parcel basis. In short, the WSA assumes that, as to exterior water demands, one size fits all.

RBF's analysis (or the "project analysis," as described in the RBF Report), on the other hand, determines exterior water demands on a per parcel basis, adjusted for planned recycled water usages. This figure is subtracted from total water demands for each land use based on the unit water demands recommended by MCWD's own guidelines to determine interior water usages. By individualizing exterior demands based on planned parcel acreages for each land use, the RBF analysis provides a more accurate estimate of actual water demands associated with the Project. Based on the demand factors described in the RBF Report, the Project will have an estimated overall water demand of 701 AFY, rather than the 856 AFY demand assumed by the University Villages WSA, as shown on the attached Exhibit B-1. Based on the demands factors described in the RBF Report, the MCP Development portion of the Project will have an estimated overall water demand of 593 AFY, rather than the 732 AFY assumed by the University

Villages WSA. Table 1, below, compares current available supply against the total overall water demand (based on demand factors set forth in the RBF Report) of (1) existing uses within the City's portion of former Fort Ord, (2) approved uses within City's portion of former Fort Ord (i.e., the Marina Heights project), and (3) the MCP Development. According to Table 1, when appropriate demand factors are implemented, it is projected that the City has sufficient available potable and or recycled water to serve the MCP Development, in addition to existing and approved uses on the City's portion of former Fort Ord, and the residual net surplus amount of 187 AFY could supply the remainder of the Project (which requires 108 AFY) or such other priority uses as determined by the City Council.

Total Available Supply	1,325 AFY
Less Total Demand of Existing Development on Fort Ord Within City	(253 AFY)
Less Total Demand of Approved Marina Heights Project	(292 AFY)
Less Total Demand of MCP Development	(593 AFY)
Net Surplus of Available Supply	187 AFY

Table 2, below, compares the 187 AFY net surplus available supply, as shown in Table 1, above, against the Other UV Specific Plan Development and the total projected demands of future planned uses within the City's portion of the former Fort Ord, which projected demands are more fully described on the attached Exhibit B-1.

Total Net Surplus of Available Supply	187 AFY
Less Total Demand of Cypress Knolls Project	(148 AFY)
Less Other UV Specific Plan Development	(108 AFY)
Less Total Demand of Airport Business Park Project	(155 AFY)
Less Total Demand of Airport Area Golf Course	(420 AFY)
Less Total Demand of Other Planned Development (see Exhibit B-1)	(229 AFY)
Net Supply Deficit	(873 AFY)

As demonstrated in Tables 1 and 2, above, current available supplies are sufficient to serve the MCP Development, in addition to existing and approved uses on the City's portion of the Former Fort Ord, and the residual net surplus amount of 187 AFY could supply the remainder of the Project (which requires 108 AFY) or such other priority uses as determined by the City Council. When other planned future uses are considered, however, current available supplies are insufficient to meet total overall demands. To accommodate the projects identified in Table 2, the City must rely on reasonably foreseeable planned future water supplies to serve the Project, in addition to existing and planned future uses, in accordance with and as permitted by Water Code sections 10910 and 10911.

Augmentation Project Background

The Augmentation Project is being developed to supply an additional 2,400 AFY of water to be used by MCWD to serve the water demands of future buildout of the former Fort Ord. The Augmentation Project is necessary to meet the quantified water demand requirements of the Fort Ord Reuse Plan, as implemented by FORA and as evaluated in the FORA Reuse Plan EIR. The development of a potable water supply to augment Fort Ord's groundwater allocation has been a centerpiece of the plans to reuse former Fort Ord since, at least, the September 1993 execution of *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* (the "MCWRA Annexation Agreement").

The MCWRA Annexation Agreement sets forth the terms of the annexation of the Fort Ord property into the Monterey County Water Resources Agency's ("MCWRA") Salinas Valley Groundwater Special Benefit Zones 2 and 2A. The MCWRA Annexation Agreement limits groundwater withdrawals from the Salinas Basin for the purpose of serving Fort Ord uses to 6,600 AFY. Under the agreement, this limitation must remain in place until a project to provide future water supplies to former Fort Ord that do not rely on groundwater is implemented. The MCWRA Annexation Agreement also anticipates developing future supplies cooperatively, with another water agency, such as MCWD, developing future water supplies through the implementation of a smaller scale project, such as the 2,400 AFY Augmentation Project.

In 1996, MCWRA, MCWD, the Monterey Regional Water Pollution Control Agency ("MRWPCA"), the City, the owners of the Armstrong Ranch and the owners of the Lonestar property (the "Lonestar Property") entered into the *Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands* (the "MCWD Annexation Agreement"). Pursuant to Section 4 of the MCWD Annexation Agreement, the Armstrong Ranch, Lonestar Property and the MCWD service area were annexed into MCWRA's Salinas Valley Groundwater Special Benefit Zones 2 and 2A. Section 5.1 of the MCWD Agreement limits MCWD's authority to withdrawal potable groundwater from the Salinas Basin to 3,020 AFY until MCWD develops augmented water supplies, such as those supplies to be developed under the Augmentation Project. Sections 5.1, 5.5 and 6.10 of the MCWD Annexation Agreement requires the parties to prepare a plan, such as the Augmentation Project, for the development of a long-term water supply to MCWD's service area, including Fort Ord.

In June 1997, the final *Fort Ord Reuse Plan* (the "Reuse Plan") was adopted by FORA. The heart of the Reuse Plan is a set of goals, objectives, policies and programs to be implemented by FORA and each of the three land use jurisdictions initially taking title and/or approving development within the Fort Ord property. Pursuant to section 3.11.5.4(d) of the Reuse Plan, development beyond the limits defined in the Reuse Plan's Residential Development Program will be allowed only upon the augmentation of existing water supplies. To formulate the necessary water supply augmentation, the Reuse Plan requires FORA to continue to actively participate in and support the development of reclaimed water supply sources by MCWD and the MRWPCA to ensure adequate water supplies for the Fort Ord property. The Reuse Plan also

authorizes FORA to investigate and provide appropriate augmentation of the potable water supplies to assure the long-range water supplies for the planned uses on the Fort Ord property.

On June 20, 2000, the United States Army and FORA entered into an economic development conveyance agreement (the "EDC Agreement") pursuant to which the Fort Ord property's water rights were transferred from the Army to FORA, pursuant to the federal Base Closure Act, and which authorizes FORA to transfer portions of the Fort Ord property to its member jurisdictions. The EDC Agreement contains several provisions relative to water supplies and systems for the Fort Ord property. Pursuant to section 5.03 of the EDC Agreement, FORA -- and its successors and assigns -- are required to cooperate with MCWD, MCWRA and grantees of the Fort Ord property "to establish and apply a fair process to ensure that all grantees of the former Fort Ord property will be provided an equitable supply of the water at the former Fort Ord."

In 2002, a multi-tiered alternatives analysis was conducted by MCWD that considered twenty-nine potential alternative water supply alternatives to meet the objectives of the Augmentation Project. Through that analysis, MCWD and a Technical Advisory Committee comprised of representatives of the MRWPCA, FORA, the Monterey Peninsula Water Management District, the Carmel Area Wastewater District, MCWRA and the U.S. Army evaluated the 29 potential alternatives and recommended two of the most viable augmentation alternatives that could be implemented by MCWD: seawater desalination and recycled water. Both of these recommended alternatives were the subject of a detailed engineering feasibility study conducted by MCWD. On October 27, 2004, MCWD certified the Augmentation Project EIR, which document evaluates the environmental impacts associated with the seawater desalination project, recycled water project and hybrid project future water supply alternatives.

The seawater desalination alternative contemplates construction of a new 3,000 AFY desalination facility in the area currently occupied by MCWD's existing desalination plant. The proposed desalination project would replace MCWD's existing desalination plant and produce at least 2,400 AFY of water. In addition to a new or expanded desalination plant, this alternative would require the construction of two radial-arm collection wells, two disposal wells, seawater intake and brine disposal pumps and associated pipelines.

The recycled water alternative provides 3,000 AFY of recycled water which would be used by MCWD for the irrigation of landscaping and open space within its service area, thus freeing up proportional amounts of groundwater for potable uses. The recycled water alternative requires the construction of a 63-acre recycled water storage reservoir, a distribution system consisting of approximately 200,000 linear feet of 6- to 24-inch diameter main and lateral pipelines, operational storage tanks and associated pumps and a connection to the Salina Valley Reclamation Project facility. MCWD is also considering implementing a hybrid alternative which would combine aspects of the recycled water alternative and seawater desalination alternative while maintaining the Augmentation Project goal of producing at least 2,400 AFY of augmentation supplies to serve buildout of former Fort Ord under the FORA Reuse Plan.

On May 25, 2005 the MCWD board adopted Resolution No. 2005-27 which, among other things, approved the Regional Water Augmentation Project Plan, consisting of the Augmentation Project, the Engineering Feasibility Report and the Final EIR for the Augmentation Project.

While no particular alternative was adopted, the MCWD approved a course of action that will result in one of the three alternatives being adopted and implemented.

MCWD currently has identified a budget requirement for fiscal year 03/04 through fiscal year 07/08 of approximately \$60 million to assure that reliable and high quality water is delivered to its Fort Ord customers. A capital fund collected by FORA as part of its development fee program is estimated to generate approximately \$19 million by 2015, which funds will be available to support implementation of the Augmentation Project. The Project will be included in this fee program.

City's Reliance on the Augmentation Project Water

Pursuant to Water Code section 10911(a), if, as a result of its assessment, MCWD concludes, as it did in the University Villages WSA, that its water supplies are, or will be, insufficient, MCWD must provide to the City its plans for acquiring additional water supplies. This information is contained in Section 4.0 of the University Villages WSA, which indicates that MCWD expects the Augmentation Project will be on-line within six to ten years. If, as here, a water supply assessment concludes that *available* supplies are insufficient to serve the project, in addition to other planned uses, Water Code section 10911(a) requires the water supply assessment to include "plans for acquiring additional water supplies, setting forth the measures that are being undertaken to acquire and develop such future supplies." Such plans may include, but are not limited to, (i) the estimated cost and proposed financing methods related to the acquisition and development of additional supplies, (ii) a description of the federal, state and local permits necessary for acquiring and developing additional supplies, and (iii) estimated timeframes for the acquisition of additional supplies.

A lead agency's reliance on planned, but unconfirmed, future water supplies was recently determined to comply with the requirements of CEQA by the California Court of Appeal. In *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (*Vineyard Area Citizens*) 2005 Cal. App. LEXIS 349, the Court upheld an EIR prepared for the proposed Sunridge Specific Plan, covering a 6,015-acre mixed-use project located in the Sunrise Douglas and Sunridge areas of unincorporated Sacramento County (and now within the City of Rancho Cordova).

As is the case with the University Villages EIR, the EIR for the 22,500 unit Sunridge Specific Plan project included a detailed analysis of the regional water demand and the supplies available to serve that demand. The proposed long-term water supply for the planning area included a mix of existing groundwater entitlements and unconfirmed, but planned, future surface water deliveries. Much of the Sunridge Specific Plan EIR's analysis of proposed future surface water supplies was based on the multi-jurisdictional *Water Forum Plan*, a significant water policy project that evaluates water resources and future water supply needs of the Sacramento metropolitan region and the environmental impacts associated with developing future water supplies.

The *Vineyard Area Citizens* court held that an EIR provides an adequate analysis of water supply issues if the EIR identifies and analyzes potential water supply sources even though the final

availability of those water sources is not yet confirmed. Citing a similar ruling in *Napa Citizens for Honest Government v. Napa County Board of Supervisors*, the court stated that “[s]uch an approach makes sense as a practical matter. To hold otherwise would require each project covered by the *Water Forum Plan* to revisit all of the issues addressed in that massive collaborative effort each time a new project was proposed. ... Such an approach would be wasteful and even possibly counterproductive.”

Like the future *Water Forum Plan* supplies relied upon by the lead agency in the *Vineyard Area Citizen's* case, the Augmentation Project is a multi-jurisdictional water supply project that, over the course of several years, has been subject to numerous studies, public meetings, and a full environmental analysis, as documented in the certified Augmentation Project EIR. The Augmentation Project has been budgeted by MCWD and development fees are being collected by FORA to help fund the Augmentation Project facilities. The Project will be included in this fee program. Further, as noted above, the MCWD approved the Regional Water Augmentation Project Plan, thus approving the implementation of one of the three alternatives discussed above. In light of the various contractual commitments to developing a viable augmentation supply, the detailed planning and analysis already conducted for the Augmentation Project, the multi-jurisdictional need and support for the Augmentation Project, the MCWD's recent approval of the plan, and the participating jurisdictions' efforts to ensure funding for the Augmentation Project, and in light of relevant case law and statutory mandates, the City hereby determines that it is appropriate to consider the future Augmentation Project water supplies when making its determination whether there will be sufficient projected water supplies to serve the Project, in addition to planned and future uses, as required by Water Code section 10911(c).

Water Supply Reliability Assessment Assuming the Augmentation Project

As noted above, pursuant to section 5.03 of the EDC Agreement, FORA - and its successors and assigns - are required to cooperate with MCWD, MCWRA and grantees of the Fort Ord property “to establish and apply a fair process to ensure that all grantees of the former Fort Ord property will be provided an equitable supply of the water at the former Fort Ord.” Based on the facts that (1) that the Augmentation Project will produce at least 2,400 AFY of potable and/or reclaimed water to serve the Fort Ord property as provided in MCWD's own approvals, and (2) that FORA will likely allocate Augmentation Project water in accordance with the allocation percentages historically used by FORA to allocate the 6,600 of Salinas Basin groundwater among the various member jurisdictions participating in the Fort Ord Reuse Plan (as adjusted to account for those member jurisdictions that likely would not receive future allocations),¹ then it is estimated that the City will be allocated approximately 39 percent of the 2,400 AFY of Augmentation Project water (i.e., 936 AFY) for use on the City's portion of the Fort Ord property. Table 3 below compares total currently available supply and future supplies reasonably anticipated to accrue to the City from the Augmentation Project against total projected water demands of

¹ The following jurisdictions were previously allocated water from the Salinas Basin groundwater supply and are projected to have a surplus of water in the future: Monterey County, and the State Parks. As a result, it is reasonably likely that these jurisdictions may not need or require augmented water supply. Further, the US Army and the FORA Reserves may not need or require augmented water supply based on projected future demand.

existing, planned and future uses on the City's portion of the former Fort Ord property, based on demand factors as set forth in the RBF Report.²

Total Available Supply Plus City Share of Augmentation Water Supply	2,261 AFY
Less Total Demand of Existing Development on Fort Ord Within City	(253 AFY)
Less Total Demand of Approved Marina Heights Project	(292 AFY)
Less Total Demand of MCP Development	(593 AFY)
Less Total Demand of Cypress Knolls Project	(148 AFY)
Less Demand of Other UV Specific Plan Development	(108 AFY)
Less Total Demand of Airport Business Park Project	(155 AFY)
Less Total Demand of Airport Area Golf Course	(420 AFY)
Less Total Demand of Other Planned Development (see Exhibit B-1)	(229 AFY)
Net Existing and Future Water Supply Surplus	63 AFY

As shown in Table 3, above, when the City's estimated share of the Augmentation Supply is considered in addition to currently available existing supplies, there is a sufficient potable water supply to serve the Project, in addition to planned and existing uses.

Additional Documentation

In addition to the information contained or referenced in the University Villages WSA and University Villages EIR, the City has reviewed and considered the following documents as part of its water supply sufficiency determination made pursuant to Water Code section 10911(c):

- Marina Coast Water District 2001 Urban Water Management Plan, December 12, 2001;
- Marina Coast Water District Deep Aquifer Study, May 2003;

² MCWD owns and operates a seawater desalination plant located at its former wastewater treatment plant site on Reservation Road between Dunes Drive and Monterey Bay. The plant has a production capacity of approximately 300 AFY, assuming an on-line factor of 90 percent. The desalination plant is part of MCWD's distribution system for its Marina service area, which is interconnected with the Fort Ord water distribution system. The existing desalination plant is currently off-line, but can be rehabilitated and made operational at fairly minimal costs. If the Augmentation Project is delayed for any reason, then future development (including the Project) could finance the repair and operation of the desalination plant in order to serve development on the City's portion of the former Fort Ord. On May 25, 2005 the MCWD board directed staff to consider selling or transferring water rights from the immobilized desalination plant to the City. As a result, this water source may be available to provide augmented water to the City.

³ Water Code section 10910 and Government Code section 66473.7 require a description of the water provider's supply reliability and vulnerability to shortage for an average water year, a single dry year and multiple dry years. Such an analysis is most clearly relevant to systems that are supplies by surface water. Since the supply discussed herein is either desalinated water, recycled water or groundwater, short and medium-term hydrologic conditions over a period of less than five years usually have little bearing on water availability.

- Marina Coast Water District Regional Urban Water Augmentation Project Alternatives Analysis, March 31, 2003;
- MCWD Regional Urban Water Augmentation Project FORA Board Meeting Presentation, April 11, 2003;
- Marina Coast Water District Regional Urban Water Augmentation Project Engineering Feasibility Study Report; August 2003;
- Marina Coast Water District Notice of Preparation of EIR for the Regional Urban Water Augmentation project, August 21, 2003;
- Marina Coast Water District Public Scoping Meeting presentation on the Regional Urban Water Augmentation Project, September 8, 2003;
- Marina Coast Water District Groundwater Inventory and Status Report; March 18, 2004;
- Marina Coast Water District Groundwater Inventory and Status Report Presentation to the MCWD Board; March 24, 2004;
- Marina Coast Water District Regional Water Augmentation Project Final Environmental Impact Report (SCH# 2003081142), certified October 27, 2004;
- Marina Coast Water District Resolution No. 2005-27, entitled "Resolution of the Board of Directors Approving a Plan for the MCWD Regional Water Augmentation Project and the Notice of Determination for the Regional Water Augmentation Project," approved on May 25, 2005.
- Information Sources and Procedures Used In The Preparation of Water Demand Estimates for the University Villages Project, on or about April 2004 as updated, prepared by RBF Consulting ;
- Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands by and between the City of Marina, Marina Coast Water District, Monterey County Water Resources Agency, J.G. Armstrong et. all and RMC Lonestar, August 7, 1996;
- Memorandum of Agreement between the United States Army and the Monterey County Water Resources Agency;
- Annexation Assembly and Evaluation Report for the Annexation of Fort Ord by the Monterey County Water Resources Agency, September 9, 1993;
- 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, September 21, 1993;
- Settlement Agreement and General Release by and between the Sierra Club and the Fort Ord Reuse Authority, November 30, 1998;
- A Resolution of the Fort Ord Reuse Authority, Amending Section 1.01.050 and Adding Chapter 8 to the Fort Ord Reuse Authority Master Resolution, Relating to Base Reuse Planning and Consistency Determinations;
- Implementation Agreement by and between the Fort Ord Reuse Authority and the City of Marina, May 1, 2001;
- Memorandum of Agreement Between the United States of America, Acting By and Through The Secretary of the Army, United States Department of the Army and The Fort Ord Reuse Authority for the Sale of Portions of the Former Fort Ord Located in Monterey County, California, June 20, 2000.
- Fort Ord Reuse Plan; June 13, 1997;

- Fort Ord Reuse Plan Final Environmental Impact Report (SCH# 96013022), certified June 13, 1997;
- Salina Valley Water Project Final Environmental Impact Report.
- American Water Works Association Manual of Water Supply Practices, M22, Sizing Water Service Lines and Meters;
- American Water Works Association Research Foundation Residential Water Use Summary, AAWARF Residential End Uses of Water Study, 1999;
- Water Demand Forecasts Methodology for California Water Planning Areas - Work Plan and Model Review Final Prepared for the Cal-Fed bay Delta Program, July 29, 2003;
- Residential Indoor Water Conservation Study: Evaluation of High Efficiency Indoor Plumbing Fixture Retrofits In Single-family Homes in the East Bay Municipal Utility District Service Area, July 2003;
- Water Use Classification of Landscape Species: A Guide to the Water Needs of Landscape Plants, L. Costello and K. Jones, University of California Cooperative Extension, April 1, 1994
- Marina Coast Water District 2002-05 Board Meeting Agendas and Minutes

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Recycled Water Demand	
Year	Factor Based
2005	1.31
2006	3.71
2007	32.63
2008	65.20
2009	113.69
2010	569.52
2011	574.27
2012	575.50
2013	576.77
2014	578.02
2015	604.66

Factor Based	
2005	1.31
2006	3.40
2007	28.92
2008	32.57
2009	44.99
2010	455.85
2011	474
2012	425
2013	425
2014	425
2015	28.64
Total	601.18

Marine Heights				
Year	Common Area	Units	Recycled Demand	14.63
2007		172	16%	2.40
2008		215	20%	2.89
2009		241	23%	3.38
2010		244	23%	3.40
2011		178	17%	2.45
2012		0	0%	0.00
2013		0	0%	0.00
Total		1050	100%	14.63

University Village					
Year	Common Area	Commercial Exterior	Units	Recycled Demand	
				25.87	
				63.22	
				89.09	
2007			360	29%	25.83
2008			387	31%	27.87
2009			383	31%	27.58
2010			107	8%	7.71
2011			0	0%	0.00
2012			0	0%	0.00
2013			0	0%	0.00
Total			1237	100%	63.09

Other IAV SPD Demands				
Year	All Exterior	Percentage	Recycled Demand	Total
2005		5%	1.31	18.72
2006		0%	0.00	18.72
2007		0%	0.00	18.72
2008		5%	1.34	18.72
2009		40%	10.51	18.72
2010		25%	6.58	18.72
2011		0%	0.00	18.72
2012		0%	0.00	18.72
2013		0%	0.00	18.72
Total		75%	18.72	18.72

Airport Area Civil Courts		
Year	Hotel Exterior	Recycled Demand
2010		3.90
Total		3.90

Airport Business Park		
Year	Commercial Exterior	Recycled Demand
2010		6.28
2011		1.25
2012		1.25
2013		1.25
2014		1.25
2015		1.25
Total		6

Cypress Woods		
Year	Commercial Exterior	Recycled Demand
2010		3.45

Other Developments		
Year	Facilities	Recycled Demand
2007		49.00
2008		6.89
2009		26.64
2010		6.59
2011		17.47
2012		107.58
2013		0.00
2014		0.00
2015		0.00
Total		26.64
Total		107.58

Training and Community - All Residential Sites
No Recycled Water Uses Identified

UNIVERSITY VILLAGES

Total Project Demands
 (Header)
 400
 (Footer)
 130

Product Type	Area/Volume	Density	Lot Area		Lot Area	Lot Area	Lot Area	Lot Area	Lot Area	Lot Area	Lot Area	Lot Area	Lot Area	Lot Area	Lot Area	Lot Area	Lot Area	Lot Area	Lot Area	Lot Area	Lot Area
			Area	Volume																	
UNIVERSITY VILLAGES	15.0	24	1.16	AC	0.460 ac	1.5	0.116	3.70	16%	25%	75%	0.510	0.020	0.540	0.144	3.9	1.2	2.1	10.1		
Apartment	3.0	100	3.0	AC	0.500 ac	2.0	0.500	11.47	10%	25%	75%	0.601	0.002	0.603	0.167	17.5	5.2	10.7	27.4		
Sub-Total	14.0	137																		10.7	
RESIDENTIAL																					
UNIVERSITY VILLAGES	15.0	24	1.16	AC	0.460 ac	1.5	0.116	3.70	16%	25%	75%	0.510	0.020	0.540	0.144	3.9	1.2	2.1	10.1		
Lot Area	14.0	137																		10.7	
Sub-Total	14.0	137																		10.7	
COMMON AREAS																					
Lot Area	14.0	137																		10.7	
Sub-Total	14.0	137																		10.7	

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COMMERCIAL

Category	Sub-Category	Area	Unit	Rate	Total	Cost	Percentage	Notes
Retail / Services	Food / Beverage	12.8	sq ft	0.19	2.43	187.1	7.6%	
	Food / Beverage	12.8	sq ft	0.19	2.43	187.1	7.6%	
	Food / Beverage	12.8	sq ft	0.19	2.43	187.1	7.6%	
	Food / Beverage	12.8	sq ft	0.19	2.43	187.1	7.6%	
	Food / Beverage	12.8	sq ft	0.19	2.43	187.1	7.6%	
	Food / Beverage	12.8	sq ft	0.19	2.43	187.1	7.6%	
	Food / Beverage	12.8	sq ft	0.19	2.43	187.1	7.6%	
	Food / Beverage	12.8	sq ft	0.19	2.43	187.1	7.6%	
	Food / Beverage	12.8	sq ft	0.19	2.43	187.1	7.6%	
	Food / Beverage	12.8	sq ft	0.19	2.43	187.1	7.6%	
	Food / Beverage	12.8	sq ft	0.19	2.43	187.1	7.6%	
	Food / Beverage	12.8	sq ft	0.19	2.43	187.1	7.6%	
	Food / Beverage	12.8	sq ft	0.19	2.43	187.1	7.6%	
	Food / Beverage	12.8	sq ft	0.19	2.43	187.1	7.6%	
	Food / Beverage	12.8	sq ft	0.19	2.43	187.1	7.6%	
	Food / Beverage	12.8	sq ft	0.19	2.43	187.1	7.6%	
	Food / Beverage	12.8	sq ft	0.19	2.43	187.1	7.6%	
	Food / Beverage	12.8	sq ft	0.19	2.43	187.1	7.6%	

CONSTRUCTION PHASING

Year	Phase 1	Phase 2	Phase 3	Total
2007	200	0	0	200
2008	214	0	0	214
2009	218	0	0	218
2010	218	0	0	218
2011	218	0	0	218
2012	218	0	0	218
2013	218	0	0	218
TOTAL	1,386	0	0	1,386

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Other University Villages Specific Plan Demands

Total Project Demands: 108 AFY

Interior 89 Exterior 20

Development Name	Across		Interior		Exterior		Project Demands (per University Villages WSA, January 13, 2004)		Construction Phasing	
	Interior	Exterior	Interior	Exterior	Interior	Exterior	2010	2010	2009	2012
Monterey-Salinas Transit	4.3	2.61	2.61	1.61	4.42	13.57	2010			
Transportation Agency of Mc. Co.	13.2	8.62	8.62	4.95	13.57	47.43	2010			
USACOE	11.3	36.92	10.51	0	15.16	9.15	2009			
MCWD Site	17.4	15.16	0	0	15.16	2.19	2005			
City of Marina PBC Parcel (8th SL)*	3	9.15	0	0	16.43		2008			
City of Marina PBC Parcel (3rd SL)*										
Goodwill Industries	1.5	0.88	1.31	1.34	16.43					
Young Ndk Church										
Co. of Monterey	3.3	15.09	1.34	1.34						
City of Marina Fire Station										

*University Villages WSA includes an allotment for exterior use on the City PBC parcels. Totals in this budget have been revised to reflect the use of artificial turf and assumes no exterior irrigation.

TOTAL 89.63 19.72 108.35

Construction Phasing

Year	Interior	Exterior
2005	0.88	1.31
2006	15.16	0
2007	15.09	1.34
2008	36.92	10.51
2009	11.43	6.56
2010	9.15	0
2011		
2012		
2013		
2014		
2015		
2016		
TOTAL	88.63	19.72

108.35

CYPRESS KNOLLS

Total Project Demands: 149 AFY

Instructor 821

Exerciser 27

RESIDENTIAL

Product Type	Address	Units	Sq. Ft. Area	Density	Lot Size	FAR	Floor Area	A/R	YTD Demands			Total Demand	Total Units	Total Demand	Total Units			
									Approved	Underway	Completed					Approved	Underway	Completed
SINGLE-FAMILY									0.64	2.00	70%	0.023	0.043	0.162	11.40	2.70	8.70	
Single-Family					0.14 ac		0.139	1.8	0.139	0.64	30%	0.023	0.043	0.162	11.40	2.70	8.70	
Residential (50x100)				7.3	0.000 SF													
Residential (50x100)		30.77	315	7.8	6,500 SF		1.8	0.159	0.64	11.50	30%	0.021	0.019	0.170	66.10	12.37	49.82	
Single-Family					0.13 ac													
Residential (50x100)		10.28	168	8.7	6,000 SF		1.8	0.139	0.63	6.78	30%	0.018	0.017	0.175	29.37	0.00	28.37	
Single-Family					0.11 ac													
MULTI-FAMILY									0.02	2.78	15%	0.007	0.014	0.021	0.200	23.92	2.40	21.51
Apartment		4.25	110	27.1	4500 SF		2.4	0.185	0.02	2.78	15%	0.007	0.014	0.021	0.200	23.92	2.40	21.51
Townhome		0.09	60	8.0			1.8	0.139	0.03	1.55	15%	0.009	0.000	0.140	7.38	0.43	8.00	
					0.10 ac													
TOTAL		77.81	712						10.442						128.31	33.88	104.42	

COMMERCIAL

Product Type	Address	Units	Sq. Ft. Area	Density	Lot Size	FAR	Floor Area	A/R	YTD Demands			Total Demand	Total Units	Total Demand	Total Units		
									Approved	Underway	Completed					Approved	Underway
Community Center		2.3	27,178	46.66					0.59	1.0	50%	0.027	0.041	0.027	1.00	0.20	0.70
Support Services			0.300	100													
Recycling Center		4.5	20,075	100													
Assisted Living (60 beds)		119.5	54,410						2.0	2.0	60%	0.030	0.028	0.036	14.70	10.92	35.62
TOTAL		126.6	106,663						2.59	3.0		0.084	0.097	0.089	15.70	21.12	36.82

CONSTRUCTION PHASING

Year	Units	Sq. Ft.	Commercial			Residential			Total Demand	Total Units	Total Demand	Total Units
			Approved	Underway	Completed	Approved	Underway	Completed				
2000	189	40	20	81	180	32	1	30	32.41	0.84	33.25	
2001	115	30	20	21	115	17	4	21	16.12	5.38	21.50	
2002	114	13	0	35	114	10	0	35	18.98	4.40	23.38	
2010	172	17	75	45	172	23	4	30	25.66	3.06	28.72	
2011	0	-	-	-	0	-	-	0	14.70	2.22	16.92	
2012	0	-	-	-	0	-	-	0	(1.27)	-	-	
2013	0	-	-	-	0	-	-	0	-	-	-	
2014	0	-	-	-	0	-	-	0	-	-	-	
2015	0	-	-	-	0	-	-	0	-	-	-	
2016	0	-	-	-	0	-	-	0	-	-	-	
TOTAL	712	110	188	50	110	107	16	124	118.43	17.44	135.87	

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GOLF COURSE

Total Demands: 420 AFY
 Interior 58
 Exterior 364

OTHER

Product Type	CIMIS Factor	Area	Irrigable Area	% Turf	Ornamental Requirement	Turf Requirement	Total Projected Demand
Golf Course	2.5	180	100%	100%	0.0	360.0	360.0
TOTAL							

COMMERCIAL

Land Use	Building Size (sq.ft.)	Rooms	Demand Factor (MCR/D)	Total Projected Demand	FAR	Unbuilt Area	Irrigable Area	% Turf	% Ornamental	Turf Requirement	Ornamental Requirement	Total Exterior Demand	Total Interior Demand
Hotel	10.0	327,250	0.17000	58.5	0.28	7.3	2.9	50%	50%	2.86	1.22	3.90	55.60
TOTAL													

CONSTRUCTION PHASING

Year	Hotel	Golf Course	Annual Demand	Interior Demand	Exterior Demand
2010	180	360.00	0.00	0.00	360.00
2011	350	59.50	419.50	55.60	3.90

AIRPORT BUSINESS PARK

Total Demands 155 AFY

Exterior 6 Interior 148

COMMERCIAL

Land Use	Parcel Size (acres)	Building Size (sq ft)	Demand Factor (MCVD)	Total Projected Demand	FAR	Unbuilt Area (acres)	Impervious Area (acres)	% Turf	% Ornamental	Turf Requirement	Ornamental Requirement	Total Exterior Demand	Total Interior Demand	Total Projected Demand
Office, and Retail Commercial	20.0	1,290,100 sq ft	0.00005 AFY/sq ft	64.51	0.425	11.5	4.6	10%	90%	0.85	3.48	4.33	60.19	64.51
Industrial/Institutional	20.0	750,000 sq ft	0.00072 AFY/sq ft	90.00	0.425	11.5	2.3	0%	100%	-	1.83	1.83	86.07	80.00
TOTAL	40.0			154.51						10.85	5.41	6.26	146.25	154.51

CONSTRUCTION PHASING

Year	Annual Demand	Interior Demand	Exterior Demand
2010	30.80	28.65	1.25
2011	30.80	28.65	1.25
2012	30.80	28.65	1.25
2013	30.80	28.65	1.25
2014	30.80	28.65	1.25
2015	154.51	146.25	6.26

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Location	Existing Demand	APY	Other Existing Demand	Total Demand
Preston Park	100	20	20	140
Arlene	100	20	20	140
Central Coast High School	100	20	20	140
Median High School	100	20	20	140
Madison High School	100	20	20	140

Location	Existing Demand	APY	Other Existing Demand	Total Demand
Madison High School	100	20	20	140
Central Coast High School	100	20	20	140
Arlene	100	20	20	140
Preston Park	100	20	20	140

Location	Existing Demand	APY	Other Existing Demand	Total Demand
Madison High School	100	20	20	140
Central Coast High School	100	20	20	140
Arlene	100	20	20	140
Preston Park	100	20	20	140

EXISTING ORD COMMUNITY DEVELOPMENTS

Location	Existing Demand	APY	Other Existing Demand	Total Demand
Preston Park	100	20	20	140
Arlene	100	20	20	140
Central Coast High School	100	20	20	140
Median High School	100	20	20	140
Madison High School	100	20	20	140

2002 Demand Report for Arlene and Preston Park prepared by D. Young, City of San Jose, 2002. Demand for other locations is based on the 2002 Demand Report for Arlene and Preston Park.

Location	Existing Demand	APY	Other Existing Demand	Total Demand
Madison High School	100	20	20	140
Central Coast High School	100	20	20	140
Arlene	100	20	20	140
Preston Park	100	20	20	140

Other Existing Use Estimation:
 USACE 1 APY
 FEMA 1 APY
 US Fish & Wildlife 1 APY
 County 1 APY
 TOTAL 6 APY

No information from on these existing uses, amount of future use, or any other information made for estimation purposes. All other uses are based on the future.

EXCERPT
FROM AGREEMENT FOR PURCHASE

REVIEW DRAFT #1

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=

**AGREEMENT FOR PURCHASE, SALE AND DEVELOPMENT OF
REAL PROPERTY AND ESCROW INSTRUCTIONS**

[SUBJECT TO CLARIFYING REVISIONS AND CONFORMING CHANGES PRIOR TO
EXECUTION]

This AGREEMENT FOR PURCHASE, SALE AND DEVELOPMENT OF REAL PROPERTY AND ESCROW INSTRUCTIONS (this "**Agreement**") is made and entered into as of _____, 2012 (the "**Effective Date**"), by and between MARINA COMMUNITY PARTNERS, LLC, a Delaware limited liability company ("**Seller**") and SOUTH COUNTY HOUSING CORPORATION, a California nonprofit public benefit corporation (collectively, the "**Parties**").

RECITALS

A. Seller is the owner of certain real property located in the City of Marina ("**City**"), County of Monterey ("**County**"), State of California, described as Lot 36, as shown on that certain map entitled "Parcel Map Being a Resubdivision of Lot 15, 16, and 17 of Tract No. 1472, Volume 23 Cities and Towns, page 36, City of Marina, County of Monterey, and recorded on _____, 2012 in the Official Records of the County of Monterey as Document No. _____ as generally shown in **Exhibit A** attached hereto and incorporated herein by this reference (the "**Property**").

B. The Property is a portion of an area in the City generally known as The Dunes on Monterey Bay (formerly known as University Villages) which has been or will be conveyed by the Marina Redevelopment Agency (the "**Agency**"), for development in phases, to Seller in accordance with that certain Disposition and Development Agreement by and between the Agency and Marina Community Partners, LLC, dated as of May 31, 2005, and recorded by memorandum in the Official Records of Monterey County Recorder on August 5, 2005, as Document No. 2005080654 (the "**Original DDA**"), as modified by that certain Implementation Agreement Regarding University Village by and between Agency and Seller dated September 6, 2006 (the "**First Implementation Agreement**"), that certain University Villages Settlement Agreement between Seller, the City and Save Our Peninsula Committee and that certain Order of the Court of Appeal dismissing appeal filed September 29, 2006 (collectively the "**Settlement Agreement**"), and that certain Second Implementation Agreement by and between Agency and Seller dated August 5, 2008 (the "**Second Implementation Agreement**") The Original DDA, the First Implementation Agreement, the Settlement Agreement and the Second Implementation Agreement are collectively referred to herein as the "**DDA**."

C. The Property and remainder of The Dunes on Monterey Bay is part of the former Fort Ord Army Base, and was conveyed by the U.S. Army (the "**Army**") by quitclaim deed (the "**Army Deed**") to the Fort Ord Reuse Authority ("**FORA**") and from FORA by quitclaim deed (the "**FORA Deed**") to the Agency, subject to certain easements, rights, conditions, disclosures, warranties and restrictions in the Army Deed and FORA Deed pertaining to the condition of the area transferred, including a Finding of Suitability to Transfer ("**FOST**") adopted by the Army and appended to the Army Deed and incorporated in the FORA Deed. Subject to the provisions of the Army Deed and FORA Deed applicable to the property being conveyed, the Agency

conveyed to Seller by a quitclaim deed recorded September 22, 2006, as Document No. 2060833659 (the "**Agency Deed**"), a portion of The Dunes on Monterey Bay which is described in the DDA as Phase 1, which includes the Property.

D. In connection with Seller's development of the Dunes on Monterey Bay as a mixed use project consisting of housing, commercial, office, and other related uses (the "**Master Project**"), Seller desires to ensure that certain affordable housing requirements are met in accordance with, among other things, the Redevelopment Plan for the former Fort Ord Redevelopment Project No. 3 (the "**Redevelopment Plan**"), the University Villages Specific Plan and related development entitlements approved by the City on May 31, 2005 (collectively, the "**Specific Plan**"), that certain Development Agreement by and between the City and Marina Community Partners, LLC, dated as of July 8, 2005, and recorded in the Official Records of the Monterey County Recorder on August 5, 2005, as Document No. 2005080655 (the "**DA**"), and the DDA. Accordingly, Seller desires to ensure, as part of Phase 1 of the Project, the development of 107 residential rental units affordable to Very Low and Low Income Households (the "**Affordable Rental Units**"), plus one on-site manager unit, all on the Property.

E. In accordance with the requirements of the DDA for the Affordable Rental Units, Seller and Agency have entered into a Below Market Rate Housing Implementation Agreement No. 1 (Affordable Rental Housing) dated as of March 31, 2006 (the "**Affordable Rental Housing Implementation Agreement**"), and in accordance with the terms of the Rental Housing Implementation Agreement and certain City and Agency housing policies referenced therein, Seller and Buyer have entered into an Option Agreement for the Affordable Housing Units in the Dunes on Monterey Bay, dated as of August 1, 2010 (the "**Option Agreement**"), which superseded and terminated an earlier Memorandum of Agreement between Seller and Buyer dated as of March 31, 2006), and Seller and Buyer have entered into that certain Memorandum of Understanding for Conditions to Exercise of Option, dated as of August 31, 2012 (the "**MOA**") (all of the above, collectively, the "**Affordable Rental Requirements**").

F. In accordance with the terms of the Option Agreement, as modified by the MOA, Buyer has exercised its option to purchase and develop the Property in accordance with the Affordable Housing Requirements and the Parties have agreed upon the terms of this Agreement. It is contemplated that Buyer will form a limited partnership in which Buyer or a wholly controlled affiliate of Buyer will be one sole general partner ("**Buyer's Affiliate Partnership**") to develop and own the Affordable Rental Units in compliance with the terms of this Agreement.

G. . As of February 1, 2012, the Agency was dissolved pursuant to State Law (Assembly Bill 1x26) enacted June 28, 2011, and upheld by the California Supreme Court on December 29, 2011, in California Redevelopment Association, et al. v. Matosantos. Prior to the dissolution of the Agency the City assumed as Successor Agency pursuant to AB 1x26 all of the Agency's rights and obligations with respect to its redevelopment activities, including but not limited to, the DDA (referenced in Recital B) and the Affordable Rental Requirements (referenced in Recital E). Wherever the Agency is referenced in those documents or this Agreement, as to actions taken or authorized on or after February 1, 2012, the term "Agency" shall mean the City as Successor Agency which is deemed a separate public entity from the City.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

ARTICLE 1

PURCHASE AND SALE

1.1 Agreement to Buy and Sale. Subject to the terms and conditions set forth herein, Seller agrees to sell and Quitclaim to Buyer or Buyer's Affiliate Partnership, and Buyer hereby agrees to acquire and purchase from Seller, or cause Buyer's Affiliate Partnership to acquire and purchase, the Property.

1.2 Property Conveyed. As used herein, the term "Property" shall include the Property and all of Seller's right, title and interest in and to all entitlements, easements, rights, air rights, development rights and privileges appurtenant thereto, excluding mineral rights reserved to the Federal Government and other conditions contained in the Army Deed.. Notwithstanding the foregoing, the term "Property" excludes, in any event, any reimbursement, payment, credit or refund of any deposits, fees, tax increments, and other payments actually paid by Seller in connection with the development of the Property ("**Fee Credits**"). All Fee Credits shall be and remain the property of Seller..

1.2.1 Purchase Price. The purchase price for the Property shall be ONE DOLLAR (\$1.00) (the "**Purchase Price**").

1.2.2 Fee Credits Payment. If Buyer receives any credits against development or impact fees charged Buyer which are based on infrastructure, improvements or mitigation measures installed or paid for by Seller ("Fee Credits"), whether prior to or after the Close of Escrow, Buyer shall immediately notify Seller of such receipt and shall hold the amount of such Fee Credit in trust for the benefit of Seller. Buyer shall pay to Seller the amount of any such Fee Credits in immediately available funds as soon as reasonably possible, but in no event later than three business days after Buyer's receipt. The provisions of this Section 1.3 shall survive the Close of Escrow.

ARTICLE 2

PROPERTY REPORTS

2.1 On or before the Effective Date, Buyer shall have received copies of documents that to Seller's actual knowledge relate to the Property and are in Seller's actual possession and control as listed in Exhibit B attached hereto (the "**Property Reports**"), without any representation or warranty whatsoever as to the accuracy or completeness of such Property Reports except that, to Seller's actual knowledge, the Property Reports provided are true and complete copies of the Property Reports. If this Agreement is terminated for any reason other than Seller's default, Buyer shall promptly return to Seller all Property Reports received by Buyer.

Draft 1-26-05

(MCWD Board
adopted Resolution 2005-04
on 1-26-05 approving this
WSA)

EXCERPT
from
WSA

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(for use in
Exhibit A)
10-26-12

Water Supply Assessment and Written Verification of Supply

Proposed University Villages Specific Plan Development and Marina Community Partners Project

**Prepared by the Marina Coast Water District
and**



Byron Buck & Associates
Water Resources and Environmental Consulting

January 26, 2005

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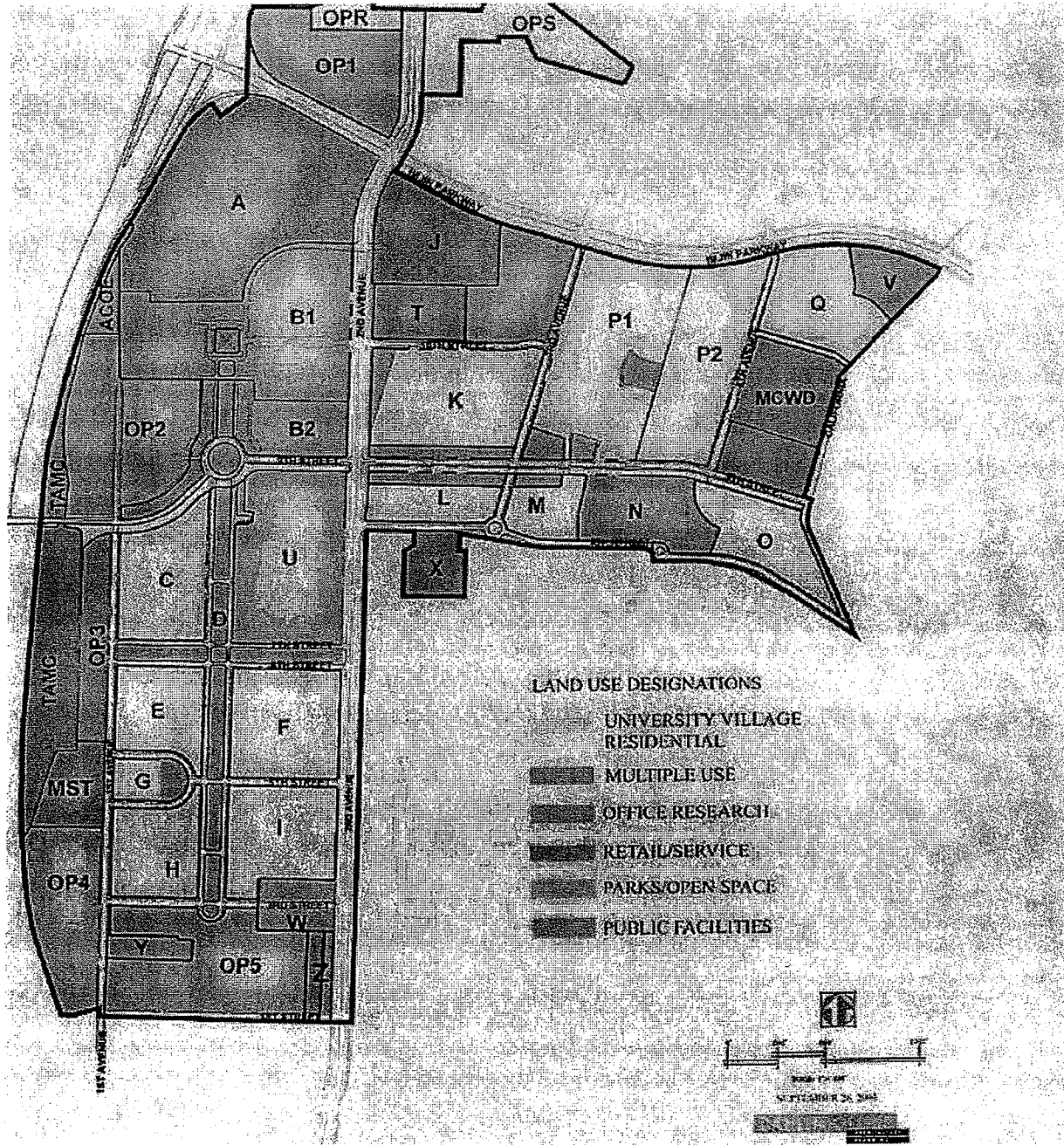
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**Figure 1-2
University Villages Specific Plan Land Uses**



Source: University Villages Specific Plan

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found a shortfall in supply to meet all of Marina's then-projected demands through 2020. Additionally, recent information relative to the state of the groundwater supply relied upon by the District has been updated as noted in section 3.0.

2.0 Project Water Demands

2.1 Water Demands and Project Conservation Features

Tables 2-1 and 2-2 depict projected average annual water demands utilizing water use factors that are based upon local climate and geography for land uses proposed in the Specific Plan. The sources for water use factors are noted in the table. The analysis recognizes that plumbing fixtures in new development will comply with current plumbing code standards, requiring low flow plumbing devices. Actual water demands will vary depending upon the ultimate mix of specific uses within broadly described non-residential use classes, water use behavior of the residents and property managers, and the ultimate landscape development and maintenance practices. These estimates are based on long-term averages. In any given year, consumption is expected to vary year-to-year by as much as 7 percent, depending on weather and precipitation, with the greater use in drier years. During the first few years after any given phase of development occurs, expected water use would likely be higher for landscape uses as new landscape plantings require additional water to become established. Because the District's water source is groundwater from the Salinas River Groundwater Basin that has a large storage volume buffering yearly hydrologic variation, the District's supplies do not vary significantly due to annual hydrology, with the District's total demands forming less than 2% of annual Basin yield. As such normal, single dry, and multiple dry years are considered similar for planning purposes.

The proposed MCP project includes water conservation features beyond those required under current plumbing code and MCWD's policies and procedures, that

will further reduce demands on water. For example, the project will utilize evapotranspiration-based irrigation controllers, also known as SMART or ET based controllers, for all new common area, commercial and residential landscapes. Provided irrigation delivery systems are properly designed and maintained, these irrigation controllers account for the exact amount of water necessary for irrigation by utilizing either pre-programmed irrigation schedules set to local irrigation demands or by obtaining real-time irrigation needs based on local California Irrigation Management Information Stations (CIMIS).⁴ The controllers may also be equipped with precipitation sensors that will shut off systems during rain events. Systems utilized for larger landscapes will be able to sense system malfunctions and shut down broken irrigation systems, further saving water, which could have been wasted as a result of broken sprinkler heads, water lines and the like. Irrigation savings of 13 percent over standard controller-based systems are expected based on local sampling where these controllers are in operation and experience in other applications. The MCP project will also provide all new housing units with high-efficiency washing machines that use about one-third less water per laundry load than conventional machines (10-22 gallons per day depending on type of housing unit). The development will also plumb new residential units with either hot water recirculation devices or tankless hot water heaters, which may reduce overall water use by 2 percent or more.

2.2 Forecasting Methodology

Legal requirements for water supply assessments do not specify particular method to project usage nor are specific water use factors mandated for given land uses. Because water demand forecasts are estimates, not guarantees, with them come varying degrees of uncertainty. For example, at the specific plan level, many specific non-residential land uses may be allowable under local zoning codes under the general land use designations of retail/services, multiple use, or office/research. Detailed knowledge of specific uses at a tentative map

level of detail at this stage of planning typically is unavailable and as such, actual use will vary depending upon the actual development that takes place. For residential uses the MCP Project includes a plot plan level detail for each of the housing units. Therefore, it is possible to define with higher accuracy the expected water use for landscaping for each type of housing. In addition, for both non-residential and residential land uses throughout the Specific Plan, sufficient detail exists in the proposed plan to make credible estimates based on disaggregating indoor from outdoor uses, rather than using gross factors based only on units of development which typically include an estimate of both indoor and outdoor uses.

The District will track actual usage of new developments and may adjust water use factors as necessary to reflect actual use and to calculate account balances for land use jurisdictions' share of future water allocated to the redevelopment of Fort Ord, as discussed in Section 3.3, Groundwater Management.

2.3 Forecast Comparisons

As noted in Section 2.2, applicable law establishes no prescribed methodology for forecasting water demands, and considerable discretion must be exercised in converting generalized land use forecasts into water demand forecasts for purposes of water supply assessments. It is therefore useful to evaluate the primary forecast in Tables 2-1 and 2-2 in comparison with other, more general forecast methodologies for the purpose of comparing results and gaining perspective on the primary forecast.

Two methods are used here for comparison purposes. The first method utilizes a per capita consumption factor based on population. The second estimates total use based upon a single factor for total water use for newly urbanized areas that includes a mix of uses on a per-acre basis.

Under the first comparative approach, Marina's current per capita demand, which is about 0.12 acre-feet per year is employed based upon 2003 population and

University Villages Specific Plan Residential and Common Area Water Demand Projection													
University Villages Development	No. Units	Lot Size Sq. Ft.	Lot Size Ac.	Person/ Unit	Interior Demand Gallons per Day	% Irrigable Area	Turf %	Ornamental %	Water Demands in AFY			Notes	
									Total				
									Interior	Exterior	Total		
Residential Uses													
Single Family													
Live-Work Townhome	130	1740	0.04	1.5	98.2	30%	0%	100%	0.11	0.02	17.78	In. demand @125% reflecting livework	
Duet	352	2250	0.05	1.5	78.5	40%	40%	60%	0.08	0.04	43.82		
Small Lot Alley	242	3088	0.07	2	104.7	40%	30%	70%	0.12	0.05	39.91		
Small Lot Standard	131	3800	0.09	3	157.1	40%	50%	50%	0.18	0.06	31.29		
Cottage	126	4750	0.11	3	157.1	40%	60%	40%	0.18	0.08	32.39		
Standard Lot	115	5750	0.13	3	157.1	60%	60%	40%	0.18	0.12	34.35		
Multi Family													
Mixed Use Townhome	24		11	1.5	78.5	10%	25%	75%	0.08	1.82	3.93		
Apartments	108		3	2	104.7	10%	25%	75%	0.12	0.50	13.16		
	1129												
									Total Residential Demands			216.42	
Common Areas													
Parks and Open Spaces						acres					23.8	Per landscape mulched open space	
University Villages Project (UCP)											9.0	sunways	
Other Specific Plan Parcels											32.8		
									Total Open Space			65.6	

A3
9

Table 2-2: University Villages Specific Plan Development - Non Residential Demand Projection
 Marina Community Partners Development

Planning Area	Land Use	Parcel Size	Bldg. Size	Interior Sq. Ft.	Interior Demand	Irrigable Area	Turf	Ornamental	Demand	Total Demand	Total Demand	Factors and Notes
A	Total Planning Area	30.6										
	Retail	385,000		0.00004	1546							1546
	Restaurant	20,000		0.00167	2833							2833
	Fast Food Restaurant	18,000		0.00044	4389							4389
J	Total Planning Area	8.8										
	Gas Station/store	3,000		0.00004	0.75							0.75
	Grocery Store	55,000		0.00034	21.45							21.45
	Service	17,000		0.00004	0.88							0.88
B1	Total Planning Area	227.7										
	Retail	174,000		0.00004	4183							4183
	Restaurant	15,000		0.02494	7650							7650
	Fast Food Restaurant	10,000		0.00004	2833							2833
V	Total Planning Area	3.8										
	Retail	12,000		0.00004	0.48							0.48
	Restaurant	5,000		0.02944	5.93							5.93
	Fast Food Restaurant	2,000		0.00004	5.32							5.32
OP1	Total Planning Area	11.0										
	Retail	350,000		0.00004	6950							6950
	Restaurant	1,000		0.00004	0.94							0.94
	Fast Food Restaurant	12,725		0.02664	14.85							14.85
T	Total Planning Area	4.8										
	Hotel	150 rooms		0.17000	26.50							26.50
	Office/Bank/Ind.	157		0.00012	50.38							50.38
	Office/Cultural	67		0.00012	8.84							8.84
OP3	Total Planning Area	1.53										
	Office/Bank/Ind.	103		0.00012	20.40							20.40
	Office/Bank/Ind.	153		0.00012	29.40							29.40
	Office/Bank/Ind.	2.1		0.00012	0.34							0.34
Z	Total Planning Area	2.1										
	Retail	8,500		0.00004	0.34							0.34
	Service	6,000		0.00034	1.72							1.72
	Restaurant	5,000		0.02664	6.83							6.83
Totals	Total Planning Area	31.2										
	Other Specific Plan Development (new uses only)											
	Hotel				26.50							26.50
	Office/Bank/Ind.				50.38							50.38
Other Specific Plan Development (new uses only)	Total Planning Area	31.2										
	Hotel				26.50							26.50
	Office/Bank/Ind.				50.38							50.38
	Office/Cultural				8.84							8.84

water demands.⁵ The proposed Specific Plan is expected to provide housing for 2,739 residents as well as provide permanent employment for 3,700-4,700 people per year.⁶ Utilizing current per capita demands for residential populations in the City of Marina, the range of expected employment, and assuming a rate of half the per capita rate for employment population, results in water demands from about 670-740 acre-feet per year for the Specific Plan project.

By way of comparison, a detailed study of water use factors by Montgomery Watson Harza analyzed mixed urban land use in the newly developing City of Roseville (near Sacramento) utilizing consumption rates of water per acre of development. That study shows an average use of 3.61 acre-feet per acre for housing densities similar to this Specific Plan; 2.67 acre-feet per acre for multiple use properties; and 2.91 acre-feet per acre for office uses, and 1.99 acre-feet annually for public facilities. Based on the Specific Plan project about 369 acres of new development, less backbone roadways, will be developed. Using the specific demand factors developed by Montgomery Watson Harza, and adjusting for data that shows Sacramento's irrigation demands are 54 percent higher than on the coast near Marina, projected water use for the Specific Plan project would consume about 864 acre-feet.⁷

The results of the three types of forecast are shown in Table 2-3.

**Table 2-3
Comparison of Water Demand Forecasts in AF/Y Specific Plan Project**

Primary Forecast	Per Capita Forecast	Single Factor Forecast
856	670-740	864

Based upon the above, the forecasted demand of 856 acre-feet per year of expected demand for the Specific Plan appears conservative and reasonable.

⁵ City of Marina Service Area

⁶ Marina Villages Specific Plan

⁷ Irrigation demand differences based upon California Irrigation Management System annual average irrigation demands and estimates of irrigated areas.

EXHIBIT B

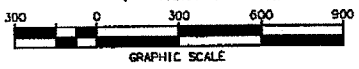
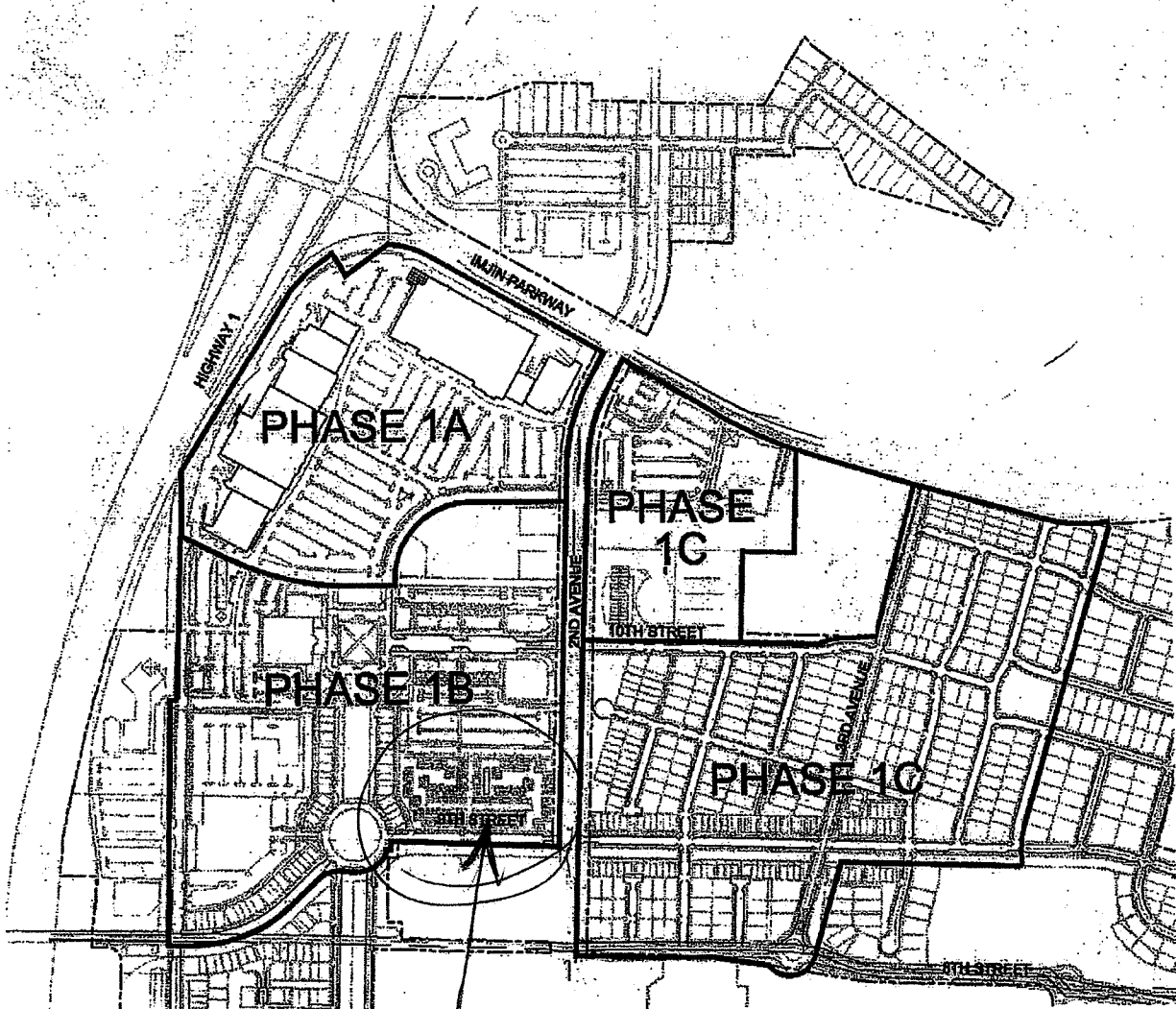
LEGAL DESCRIPTION

Parcel 36 of Parcel Map, being a Subdivision of Lots 16 and 17 and a portion of Lot 15 of Tract 1472, Volume 23 Cities and Towns, Page 36 City of Marina, County of Monterey. Prepared by Carlson Barbee & Gibson, Inc.

EXHIBIT C

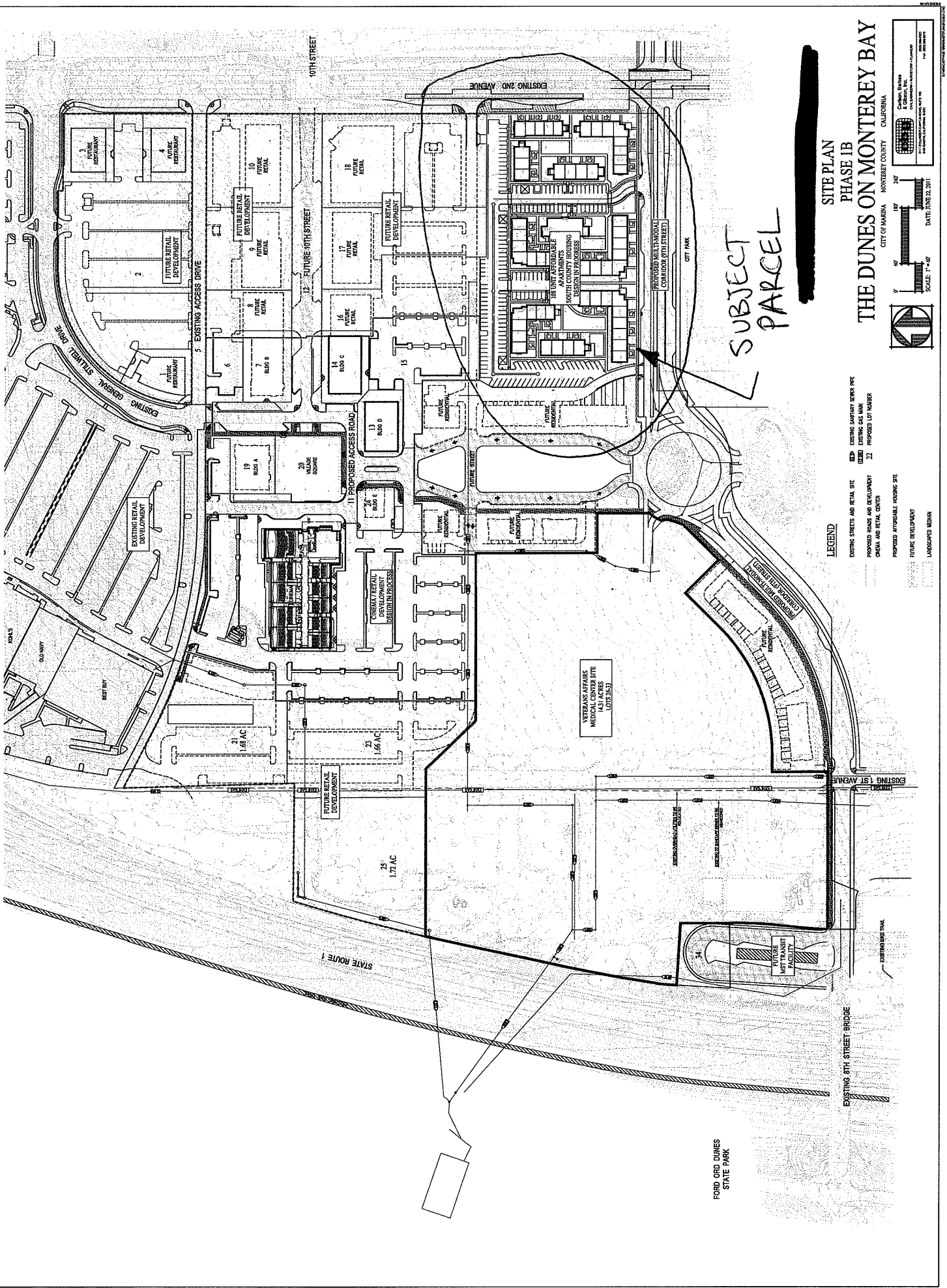
MAP OF DEVELOPMENT





———— PHASE BOUNDARY

SUBJECT
PARCEL



**SITE PLAN
PHASE 1B
THE DUNES ON MONTEREY BAY**

CITY OF MARINA MONTEREY COUNTY CALIFORNIA

DATE: MAY 12, 2011

SCALE: 1"=40'

34

TRANSIT FACILITY

33

APARTMENTS

29

APARTMENTS

28

APARTMENTS

27

APARTMENTS

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APARTMENTS

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APARTMENTS

24

APARTMENTS

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APARTMENTS

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APARTMENTS

2

APARTMENTS

1

APARTMENTS

- LEGEND**
- EXISTING STREET
 - EXISTING SITE
 - PROPOSED SITE
 - PAVING AND PARKING
 - FUTURE DEVELOPMENT
 - LANDSCAPED MEDIAN

SUBJECT PARCEL

FORD ORD DUNES STATE PARK

EXISTING 8TH STREET BRIDGE

EXISTING 1ST AVENUE

EXISTING 10TH AVENUE

EXISTING 8TH STREET

EXISTING 7TH STREET

EXISTING 6TH STREET

EXISTING 5TH STREET

EXISTING 4TH STREET

EXISTING 3RD STREET

EXISTING 2ND STREET

EXISTING 1ST STREET

EXISTING 10TH AVENUE

EXISTING 9TH AVENUE

EXISTING 8TH AVENUE

EXISTING 7TH AVENUE

EXISTING 6TH AVENUE

EXISTING 5TH AVENUE

EXISTING 4TH AVENUE

EXISTING 3RD AVENUE

EXISTING 2ND AVENUE

EXISTING 1ST AVENUE

EXISTING 10TH STREET

EXISTING 9TH STREET

EXISTING 8TH STREET

EXISTING 7TH STREET

EXISTING 6TH STREET

EXISTING 5TH STREET

EXISTING 4TH STREET

EXISTING 3RD STREET

EXISTING 2ND STREET

EXISTING 1ST STREET

EXISTING 10TH STREET

EXISTING 9TH STREET

EXISTING 8TH STREET

EXISTING 7TH STREET

EXISTING 6TH STREET

EXISTING 5TH STREET

EXISTING 4TH STREET

EXISTING 3RD STREET

EXISTING 2ND STREET

EXISTING 1ST STREET

EXHIBIT D

INDEMNIFICATION AND INSURANCE REQUIREMENTS

DEVELOPER and their CONSTRUCTION CONTRACTORS

Workers' Compensation Insurance – The Developer shall require their Construction Contractor (Contractor) to certify that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing the performance of the work of the Developer's contract.

Indemnification - To the fullest extent permitted by law, the Developer will require the Contractor to indemnify and hold harmless and defend District, its directors, officers, employees, or authorized volunteers, and each of them from and against:

- a. Any and all claims, demands, causes of action, damages, costs, expenses, losses or liabilities, in law or in equity, of every kind and nature whatsoever for, but not limited to, injury to or death of any person including District and/or Contractor, or any directors, officers, employees, or authorized volunteers of District or Contractor, and damages to or destruction of property of any person, including but not limited to, District and/or Contractor or their directors, officers, employees, or authorized volunteers, arising out of or in any manner directly or indirectly connected with the work to be performed under this agreement, however caused, regardless of any negligence of District or its directors, officers, employees, or authorized volunteers, except the sole negligence or willful misconduct or active negligence of District or its directors, officers, employees, or authorized volunteers;
- b. Any and all actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Contractor;
- c. Any and all losses, expenses, damages (including damages to the work itself), attorneys' fees, and other costs, including all costs of defense, which any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the work and all of the Contractor's obligations under the contract. Such costs, expenses, and damages shall include all costs, including attorneys' fees, incurred by the indemnified parties in any lawsuit to which they are a party.
- d. Contractor acknowledges and understands that the area in and around which the work will be performed has been identified as a possible location of munitions and explosives of concern ("MEC"). All indemnification obligations of Contractor under this Agreement shall specifically include claims and demands involving, arising out of or related to MEC.

The Developer will require their Contractor to defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against District or District's directors, officers, employees, or authorized volunteers.

The Developer will require their Contractor to pay and satisfy any judgment, award or decree that may be rendered against District or its directors, officers, employees, or authorized volunteers, in any such suit, action or other legal proceeding.

The Developer will require their Contractor to reimburse District or its directors, officers, employees, or authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

The Developer will require their Contractor to agree to carry insurance for this purpose as set out in the specifications. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the District, or its directors, officers, employees or authorized volunteers.

Commercial General Liability and Automobile Liability Insurance - The Developer will require their Contractor to provide and maintain the following commercial general liability and automobile liability insurance:

Coverage - Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:

1. Insurance Services Office Commercial **General Liability** Coverage (Occurrence Form CG 0001)
2. Insurance Services Office **Automobile Liability** Coverage (Form CA 0001), covering Symbol 1 (any auto) (owned, non-owned and hired automobiles)

Limits - The Consultant shall maintain limits no less than the following:

1. **General Liability** - Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit or products-completed operations aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to the District) or the general aggregate limit and products-completed operations aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability** - One million dollars (\$1,000,000) for bodily injury and property damage each accident limit.

Required Provisions - The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

1. The District, its directors, officers, employees, or authorized volunteers are to be given insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of the Contractors; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the District, its directors, officers, employees, or authorized volunteers.
2. For any claims related to this project, the Contractor's insurance shall be primary insurance as respects the District, its directors, officers, employees, or authorized volunteers. Any insurance, self-insurance, or other coverage maintained by the District, its directors, officers, employees, or authorized volunteers shall not contribute to it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the District, its directors, officers, employees, or authorized volunteers.
4. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall state or be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days (10 days for non-payment of premium) prior written notice by U.S. mail has been given to the District.

Such liability insurance shall indemnify the Contractor and his/her sub-contractors against loss from liability imposed by law upon, or assumed under contract by, the Contractor or his/her sub-contractors for damages on account of such bodily injury (including death), property damage, personal injury and completed operations and products liability.

The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, underground excavation and removal of lateral support.

The automobile liability policy shall cover all owned, non-owned, and hired automobiles.

All of the insurance shall be provided on policy forms and through companies satisfactory to the District.

Deductibles and Self-Insured Retentions - Any deductible or self-insured retention must be

declared to and approved by the District. At the option of the District, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.

Acceptability of Insurers - Insurance is to be placed with insurers having a current A.M. Best rating of no less than A:VII or equivalent or as otherwise approved by the District.

MEC Coverage: The Developer will require their Contractor to maintain insurance that includes coverage for services and work in or around MEC, or claims, damage or injury related in any way to this Agreement which arise from MEC. The Marina Coast Water District, its officers, directors and employees and any of its authorized representatives and volunteers shall be named as additional insureds under all insurance maintained by Contractor related in any way to work performed by it on behalf of the Marina Coast Water District.

Workers' Compensation and Employer's Liability Insurance - The Developer will require their Contractor and all sub-contractors to insure (or be a qualified self-insured) under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the construction site, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof. The Contractor shall provide employer's liability insurance in the amount of at least \$1,000,000 per accident for bodily injury and disease.

Responsibility for Work - Until the completion and final acceptance by the District of all the work under and implied by this Agreement, the Developer will require the work to be under the Contractor's responsible care and charge. The Contractor shall rebuild, repair, restore and make good all injuries, damages, re-erections, and repairs occasioned or rendered necessary by causes of any nature whatsoever.

The Developer or the Developer's Contractor will provide and maintain builder's risk insurance (or installation floater) covering all risks of direct physical loss, damage or destruction to the work in the amount specified in the General Conditions, to insure against such losses until final acceptance of the work by the District. Such insurance shall include¹ explosion, collapse, underground excavation and removal of lateral support. The District shall be a named insured on any such policy. The making of progress payments to the Contractor by the Developer shall not be construed as creating an insurable interest by or for the District or be construed as relieving the Contractor or his/her subcontractors of responsibility for loss from any direct physical loss, damage or destruction occurring prior to final acceptance of the work by the District.

The Developer will require their Contractor's insurer to waive all rights of subrogation against the District, its directors, officers, employees, or authorized volunteers.

Evidences of Insurance - Prior to the commencement of construction activities subject to this Agreement, the Developer will require their Contractor to file with the District a certificate of insurance (Acord Form 25-S or equivalent) signed by the insurer's representative. Such evidence shall include an original copy of the additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include Required Provisions 1-5.

The Developer will require their Contractor, upon demand of the District, to deliver to the District such policy or policies of insurance and the receipts for payment of premiums thereon.

All insurance correspondence, certificates, binders, etc., shall be mailed to:

Marina Coast Water District
11 Reservation Road
Marina, CA 93933
Attn: Management Services Administrator

Sub-Contractors - In the event that the Contractor employs other contractors (sub-contractors) as part of the work covered by this agreement, it shall be the Developer's responsibility to require and confirm that the Contractor requires each sub-contractor to meet the minimum insurance requirements specified above.

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EXHIBIT E

NOTICE TO TENANTS OF WATER AND SEWER SURCHARGE PAYMENTS

The Developer hereby agrees that the Notice to Tenants informing them of the Water and Sewer surcharge adopted by the District shall be contained in each and every lease. The Developer agrees to provide this notice to each prospective tenant prior to execution of any lease in the Development. The Developer will submit the text and format of this Notice to the General Manager of the District for review and approval prior to signing any leases with tenants.

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