

**MARINA COAST WATER DISTRICT**

**Water, Sewer and Recycled Water  
Infrastructure Agreement**

**for**

**The Dunes - Phase 1B Retail**

# WATER, SEWER AND RECYCLED WATER INFRASTRUCTURE AGREEMENT

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## **EXHIBITS**

**EXHIBIT A – WATER ALLOCATION DOCUMENTATION**

**EXHIBIT B -- LEGAL DESCRIPTION**

**EXHIBIT C -- MAP OF DEVELOPMENT**

**EXHIBIT D -- INDEMINIFCATION AND INSURANCE REQUIREMENTS**



**DRAFT**

# WATER, SEWER AND RECYCLED WATER

## INFRASTRUCTURE AGREEMENT

This Agreement made and entered into this \_\_\_\_\_ Day of August, 2014 ("Effective Date"), between **Marina Coast Water District**, 11 Reservation Road, Marina, CA, 93933, hereinafter called "District", and **Marina Community Partners LLC, a Delaware limited liability company, with its principal offices at 2630 Shea Center Drive, Livermore, California 94551**, hereinafter called the "Developer" (collectively, the "parties") The name of the Developer's development that is the subject of this Agreement, is **The Dunes – Phase 1B Retail**.

### 1. Definitions; District's Role; Term of this Agreement.

1.1 Definitions, whenever used in this Agreement, the following terms shall have the following respective meanings:

a. "Agreement" means this Water, Sewer and Recycled Water Infrastructure Agreement as it may be amended from time to time in accordance with the terms and conditions hereof.

b. "City" means the City of Marina and/or the appropriate Agency of Land Use Jurisdiction.

c. "Contractor" means any contractor with which the Developer has a direct contractual relationship to perform any work under this Agreement.

d. "Development" means that certain property generally located at 2<sup>nd</sup> Avenue and General Stillwell Drive and legally described in Exhibit "B" and shown on the map at Exhibit "C."

e. "Facilities" shall mean those certain infrastructure improvements and system provided for in this Agreement and as approved by District as part of its review of the Development plans, Facilities shall include, but not be limited to, pipes, pumps, electrical and instrumentation and controls.

f. "Procedures" means the District's *Procedure Guidelines and Design Requirements*.

g. "Standards" means the District's *Standard Plans and Specifications for Construction of Domestic Water, Sewer, and Recycled Water Facilities*.

h. "Water Allocation" means the total water allocated by the City/Land Use Jurisdiction for the Development as documented in Exhibit "A" and described in Exhibits "B" and "C".

i. "FORA" means Fort Ord Reuse Authority.

1.2 Allocation of Water Capacity for the Development. The parties hereto expressly agree

that as a condition precedent for the performance of the District's obligations hereunder, Developer must provide proof to the satisfaction of the District that the City has approved the allocation of water capacity for the Development from the water and recycled water capacity allocated to the City by the Fort Ord Reuse Authority (FORA). As documented in Exhibit A, the Development area proposed for coverage under this Agreement has a water allocation of 61.7-AFY (approximately). Notwithstanding the foregoing, neither the City nor the District may approve water allocations that exceed the allocations set by FORA or other appropriate agency of land use jurisdiction.

1.3 Sewer Capacity. The District provides sewer collection from customers and conveyance of those sewer flows to the Monterey Regional Water Pollution Control Agency's (MRWPCA) Regional Interceptor System which discharges to the MRWPCA Wastewater Treatment Plant (WWTP). Capacity within the WWTP for the Development must be coordinated with MRWPCA. To the extent possible, the District will allocate its existing pre-paid WWTP Capacity to the Development. If additional WWTP Capacity is required for the Development, the Developer shall purchase the capacity from the MRWPCA at the Developer's sole expense, and shall provide proof of payment for that capacity right to the District at the time the sewer infrastructure is conveyed. Furthermore, the Developer understands and agrees that nothing herein shall be construed as a representation of future sewer capacity by either City or District other than as currently established by the type and density of development as included in the FORA Consistency Determinations or other appropriate agency of land use jurisdiction.

1.4 District's Role. The District's role in the Development is to approve the plans for facilities, inspect the construction of the facilities, accept the transfer of the title to the facilities, 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.

1.5 Term. This Agreement commences upon the above Effective Date and shall expire upon completion by the Developer and acceptance by the District of all facilities required by this Agreement and the required warranty period, unless terminated sooner as provided in section 17 of this Agreement.

## 2. Design and Construction Requirements

2.1 The facilities shall be designed, constructed and be operable in strict accordance with the District's requirements in effect on the date of the District's approval of Developer's plans or any approved amendment to Developer's plans, which shall be a condition of the District's acceptance of the system facilities under this Agreement; provided, however, that if Developer has not commenced construction of the facilities within ninety (90) days following the District's approval of Developer's plans, then Developer shall modify any plans and specifications to comply with any new requirements adopted by the District after such initial approval. The District's requirements include, but are not limited to the following:

2.1.1 Developer shall design and construct the facilities in strict accordance with the District's most recent Procedures and Standards (contained in updated Procedures) and any other applicable State Regulatory Agency requirements in effect at the time Developer's plans are approved, whichever are most stringent. Any conflict in

Development requirements shall be addressed during the plan review process or at such other times as any such conflict is discovered, and the resolution of any such conflict shall be shown on the approved Developer's plans. Once approved, the

construction plans shall govern in the event of any conflict between (i) the District's Procedures and Standards and any other applicable State Regulatory Agency requirements and (ii) the approved Developer's plans. A licensed civil engineer registered in the State of California shall prepare all plans and specifications for the Developer.

2.1.2 The Developer shall comply with the District's then-most recent Procedures and the District's then-most recent Standards [ ] when submitting project plans and specifications to the District for review and consideration for approval. District's review shall commence after the District determines compliance with District's Procedures regarding the submittals and any other applicable State Regulatory Agency requirements, whichever are most stringent. District review of the Development's plans and specifications shall commence promptly 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 the then-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 assist MCWD to obtain all required permits for the on-site use of recycled water. This shall include but is not limited to, complying with the California Department of Health Services, the State of California Regional Water Quality Control Board and other regulatory agency requirements prior to constructing any recycled water facilities.

2.1.4 The District shall have the right to inspect the construction of the facilities and verify that construction conforms to the Development plans and specifications. District's right to inspect extends to five (5) feet from the building exterior at the point where the utility enters the structure. The District shall also have the right to inspect special fixtures including zero water use urinals, hot water recirculation systems, etc. The District's right to inspect does not in any way eliminate or supersede any inspection obligations by the City. If the District elects to exercise its inspection rights under this Paragraph 2.1.4, the District will inform the Developer of required field changes promptly following the completion of any inspection conducted by the District hereunder. If the District does not inform the Developer of any required field changes within ninety (90) days following the Developer's delivery of notice to the District that construction of the facilities is complete, then the District shall be deemed to have determined that the construction of the facilities conforms to the Development plans and specifications. The Developer shall be responsible for obtaining all 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 to the Developer any easements not required to serve the Development and not required by the District.

2.1.5 All facilities shall be tested to meet District requirements. No facilities or portion thereof will be accepted without meeting all 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, on a phased basis, agrees to pay all fees and charges, including additional plan check fees and construction inspection fees as required by the District for the Development. These fees will be determined by the District at the time the fees are assessed. The District may also require a reasonable 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 reasonably 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 promptly returned to the Developer, or at Developer's request, held by the District and used to pay subsequent fees, e.g., construction inspection fees.

2.1.7 Construction Inspection Fees. On a phased basis, the District shall require the construction inspection fee before undertaking a construction inspection review of the proposed facilities. As a condition precedent to the District's obligation to undertake a construction inspection review of the proposed 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 facilities construction costs, pursuant to Developer's Engineer's estimate. (See *Procedures* section 200.3.2) Any surplus inspection fees shall be promptly returned to Developer.

### 3. Existing Water and Sewer Infrastructure

3.1 The Developer will comply with the District's *In-Tract Policy* regarding any existing District-owned water, recycled 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 infrastructures within the Development boundaries that will be removed or abandoned by Developer. Abandonment-in-place requires written approval by the District. The Developer shall be solely responsible for repair, replacement and maintenance of existing water and sewer facilities to remain within the Development boundaries during the construction of the Development, regardless of whether the facilities are for the benefit of the Development.

### 4. District to Serve Development

4.1 District will deliver water, recycled water and provide sewer service to the Development after final Board Acceptance of the conveyance of the facilities and final Board Acceptance of the facilities (see *Procedures* section 300.25). Thereafter, the District will bill and serve the end-user(s) directly. The Developer shall pay the prepayment of applicable meter fees and Capacity Charges, cross connection charges, and all other applicable fees and charges for service on the former Fort Ord (or City, as the case may be). Once the applicable fees and charges are determined and paid in full, the District will immediately begin water service with the installation of the water meter(s). The District shall provide sewer service upon installation of water meters and payment of all applicable fees. 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. Notwithstanding the foregoing, any new discretionary District measure, rule, regulation, policy, ordinance, or restriction which was not in force as of the date of this Agreement and whose effect would be to preclude any inspections, or the issuance of any building or other permits, or limit the provision of water or recycled water to less than the total allocated by the City, and/or sewer service to the Development shall not be applicable and/or binding upon the Developer and/or the Development; provided, however, that any measure, rule, regulation, policy, ordinance, or restriction that the State of California or any governmental agency or regulatory body (other than the District) requires to be imposed by the District which impacts the Developer shall not be deemed to be discretionary on the District's part.

### 5. Capacity Charge

5.1 The current capacity charges, as of July 5, 2014 for water and sewer services are \$8,010 per EDU and \$3,322 per EDU, respectively. These charges are due prior the installation of water meters. 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. Developer agrees to pay the capacity charge in effect at the time of providing services.

### 6. Provision for Non-Potable Water Use

6.1 Based upon existing studies, the District does not have sufficient existing firm water supplies to meet the water demands of projected developments within the District's service area. The District has investigated a recycled water project, a desalination project, and a combination of those projects to meet future water demands within the District. 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.

6.2 Developer, and its successors or assignees (such as an owners association), agrees to take recycled water for non-potable use if and when it becomes available **to the extent needed for a particular parcel**. The District shall establish a **reasonable** 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 **reasonable** District-established cost will be paid by the recycled water customers.

## 7. Licensed Contractor

7.1 The Developer, or his authorized representative (contractor, or subcontractors as the case may be) performing the work, shall be licensed under the provisions of the Business and Professions Code of the State of California to perform the specified work required for the Development. District reserves the right to waive this requirement at its sole discretion where permitted under state statute.

7.2 The Developer, or its contractor, shall be skilled and regularly engaged in the installation of water, recycled and sewer systems. The District may request **reasonable** evidence that the constructing party has satisfactorily installed other projects of like magnitude or comparable difficulty. Upon request, contractors must furnish **reasonable** evidence of their qualifications to do the work in a form **reasonably** suitable to the District prior to the commencement of any work on the facilities.

## 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 (excluding easements within existing public rights of way) necessary for ingress and egress to and from the facilities for the purpose of installation, operation, maintenance, replacement and removal of said facilities and for the location of the 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 approved by the District and it shall be the Developer's responsibility to have the approved easements recorded. Developer shall provide proof of recordation of the easements, in a form satisfactory to the District, prior to the District's obligation to provide any of the services contemplated by this Agreement.

## 9. Final Inspection and Reimbursement of District Costs

9.1 The District's Engineer must inspect completed facilities, or portion thereof. The District will not accept any 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 facilities, subject to the limitations set forth in Paragraph 2 *Design and Construction Requirements*. Developer shall reimburse District for **the actual costs reasonably incurred (including, without limitation, reasonable charges for staff time)** to correct any damages to facilities related to the construction of the Development caused by the Developer or any authorized representative (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 facilities to the District, payment of all costs due and unpaid under this Agreement over and above deposits previously paid to the District. If there are surplus deposit funds or any refunds due Developer, then District shall promptly return to Developer the amount of such surplus or refunds upon acceptance by the District of all facilities required to be constructed under this Agreement.

## 10. District's Non-responsibility for Acts or Omissions of Developer, etc.; Developer Responsible for Verifying Underground Utility Lines and Surface Obstructions

10.1 The District is not responsible for, and does not assume any responsibility or liability whatsoever for, acts and omissions of the Developer, Developer's contractors or any contractor's subcontractors or suppliers at any tier during the design and construction of the 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 facilities, provide to the District in accordance with Section 400.13 of the *Procedures* the following:

11.1.1 One set each of Mylar drawing prints and AutoCAD digitized files of the improvement plans, which show all of the facilities, and one hardcopy and one electronic copy of the specifications, and one hardcopy and one electronic copy of any contract documents used for the construction of the water, sewer and recycled water system facilities. Scanned and signed copies in Adobe Acrobat format are also required.

11.1.2 One hardcopy and one electronic copy of 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 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 Indemnity and Insurance - The Developer agrees to have every Contractor performing work on the Facilities fully comply with the all of the requirements in Exhibit D. To the extent that any third party claim brought against the District exceeds the policy limits of the insurance required to be maintained by such Contractor pursuant to Exhibit D, then Developer agrees that it (or its insurance) shall be responsible for such deficit; provided, however, in no event shall the foregoing be deemed to require Developer to pay any amount resulting from claims excluded from the coverage afforded by the policies required to be maintained under Exhibit D. Coverages required by Exhibit D shall be maintained throughout the term of this Agreement. Every Contractor shall file with the District prior to the commencement of any work

under this Agreement, and as policy renewals occur, Certificates of Insurance evidencing that the insurance coverages required herein have been obtained and are currently in full force and effect.

12.2 Performance and Payment Surety - Developer or its Contractor, as the case may be, shall furnish the District with a surety to secure the completion of and payment for the facilities. The amount of the performance surety shall not be less than 100% of the District's estimate of the total cost to construct all of the facilities required under this Agreement. The amount of the payment surety shall not be less than 100% of the District's estimate of the total cost to construct all of the facilities required under this Agreement. The surety instrument shall be in a form **reasonably** satisfactory to the District such as a performance and payment bond, irrevocable letter of credit, cash deposit, or irrevocable 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. Each surety must be authorized in the State of California to issue the surety instrument provided. All surety instruments signed by an agent must be accompanied by a certified copy of the agent's authority to act.

12.3 Developer shall furnish the District with a Warranty bond or other surety instrument **reasonably** satisfactory to the District in the amount equal to twenty percent (20%) of the actual construction costs to secure the Developer's performance under Section 15, Warranties, **during the Warranty Period specified in Section 15. Promptly following the expiration of the Warranty Period, the Warranty bond or other surety instrument specified in this Paragraph 12.3 shall be released to Developer.**

12.4 Submittal of Insurance Certificates and Surety - The required insurance certificates shall be delivered prior to commencement of construction. The required performance and payment surety shall be delivered to the District prior to District approval of plans and specifications. No work may be commenced under this Agreement unless and until all required insurance certificates and performance and payment sureties are submitted to and approved by the District. The Warranty surety shall be provided prior to the District's acceptance of the facilities, and shall remain in effect for the duration **of the Warranty Period** specified in Section 15.1.

12.5 The performance surety shall remain in effect until final acceptance of the facilities by the District in accordance with Section 13.1. The payment surety shall remain in effect until the last of the following occur: (i) the statutory time has expired to commence a legal action on the payment surety and no legal action was filed, (ii) satisfaction of all judgments against the payment surety, and (iii) as otherwise provided by law. The warranty surety shall remain in effect until **the expiration of the Warranty Period specified in Section 15.1.**

### 13. Transfer of System Facilities to District after Completion

13.1 Developer shall execute and obtain all signatures of all other parties having any interest (including any Deed of Trust), and deliver a conveyance **reasonably** satisfactory in form and content to District. This conveyance shall transfer unencumbered ownership of all facilities required by this Agreement to the District together with all real property, interests 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, **if any**, 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 **reasonable** opinion of the District for the ownership and operation of the facilities. Provided all conditions set forth in this Agreement are satisfied, the District shall **promptly**

accept the conveyance. All costs of construction of the facilities, for which the Developer is responsible, shall have been paid for by Developer, the time for release of the payment surety under Section 12.5 shall have expired (or Developer shall provide other security acceptable to the District), and the title to all of the 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 any 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 facilities and, subject to the rights of third parties, to expand or improve, or interconnect the facilities with other adjacent facilities, as the District deems appropriate in its sole discretion. Except as provided in Section 15 (Warranties), from and after such acceptance, the District shall be solely responsible for the repair and/or replacement of all improvements (including, without limitation, streets, curbs and landscaping) damaged by the District in the exercise of its rights hereunder; provided, however, that the District shall have no obligation to repair and/or replace any improvements that were not permitted to be located in the area pursuant to a grant of easement or a public utility easements for the facilities identified on a duly recorded Final Map, such as trees or structures, where such damage occurs. The District's obligations under this Section 13 shall expressly survive the expiration or earlier termination of this Agreement.

#### 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 facilities.

#### 15. Warranties

15.1 Developer hereby warrants that, to its actual knowledge, as of the time of the District's acceptance of the conveyance of the facilities (or when Developer thereafter completes the installation of any works or components subsequently installed, repaired, or replaced) the facilities and all components thereof, will be in satisfactory working order and quality and free of any material defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier; and that the facilities and all components thereof have been constructed and installed in material compliance with all approved specifications and as-built plans being provided to the District, and in accordance with applicable requirements of the District and any other governmental agency having jurisdiction. Developer also warrants that as of the time of the District's acceptance of the conveyance of the facilities (or when Developer thereafter completes the installation of any works or components subsequently installed, repaired, or replaced) the facilities will operate in good and sufficient manner for the purposes intended for (a) one (1) year after the latter of (i) the date of acceptance, (ii) the expiration of all lien enforcement periods, or (iii) proof of conveyance of facilities, or (b) 180-days from the date new facilities are subsequently re-installed, repaired, or replaced and inspected and accepted by the District (hereafter *replacement facilities*), whichever of (a) or (b) occurs last (the "Warranty Period"). If, during the Warranty Period, it is determined that any of the facilities do not satisfy the foregoing requirements, then Developer, as District's sole and

exclusive remedy (except as expressly set forth below in this Section 15.1), shall perform such work or take such other action as may be necessary to place the facilities in the condition required hereunder; provided, however, that if District does not give Developer written notice of any deficiency of any of the water, sewer or recycled system within the Warranty Period, then Developer shall not be responsible for correcting such condition. Developer's warranty hereunder does not cover the cost of normal repair, maintenance or replacement. Notwithstanding the foregoing, if Developer fails to commence such corrective action within a commercially reasonable period of time after receipt of written notice (except in the event of an emergency when no notice shall be required) and thereafter diligently prosecute such corrective work to completion, then District shall have the right, but not the obligation, to perform such item of work, maintenance, or repair or service on behalf of Developer at Developer's expense. In the event District performs any of such obligations of Developer, then Developer will reimburse District within 30 days after receipt of District's demand therefore (which demand shall be accompanied by reasonable supporting documentation for such costs), failing which (and only in such instance), as District's sole and exclusive remedy, District may proceed against the Warranty Bond or security described in Paragraph 12.3.

15.2 With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Agreement, the Contractor shall:

- (1) Obtain all warranties that would be given in normal commercial practice;
- (2) Require all warranties to be executed, in writing, for the benefit of the District, if directed by the District; and
- (3) Enforce all warranties for the benefit of the District, if directed by the District.

In the event any warranty under this section has expired, the District may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty, if any is still in effect.

15.3 This Section 15 shall not limit the District's rights under the law with respect to latent defects, gross mistakes, or fraud.

## 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 facilities without the express written consent of the District. Such consent may not be unreasonably withheld. District may impose reasonable conditions or restrictions upon any consent to such prior service, such as posting a surety bond. District recognizes that the Development, and hence the facilities, may be built, accepted and transferred in multiple phases. Notwithstanding any of the foregoing, Developer may use the 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 facilities and, transfer the same to the District in accordance with the terms of this Agreement and the District agrees to promptly accept the same in accordance herewith. If construction of the facilities have not been completed

and accepted by District within twenty four (24) months from the date of execution of this Agreement (such date may be extended for delays beyond Developer's control and without the fault or negligence of the Developer or any Contractor [redacted], but in no event shall such delay exceed twelve (12) additional months), the District shall have the option to terminate this Agreement. If construction on any phase is not complete within twenty-four months or as extended as provided above, then an Amendment to this Agreement will be necessary to address each such phase, which shall incorporate the policies, fees and charges of the District then in effect as of the effective date of said Amendment. Subsequent phases also may at District's discretion be addressed by Amendment(s) to this Agreement.

17.2 Responsibility for Work - Until the completion and final acceptance by the District of all the work under [redacted] this Agreement, the Developer will require the work to be under the Contractor's responsible care and charge. [redacted] Developer shall cause the Contractor to rebuild, repair, restore and make good all injuries, damages re-erections, and repairs occasioned or rendered necessary by causes of any nature whatsoever, other than ordinary wear and tear and damages caused by the District.

## 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. Notwithstanding the foregoing, without the prior consent of the District, Developer shall have the right to assign this Agreement (in whole or in part) to (a) any of Developer's constituent members (i.e., Shea Properties, Shea Homes, Pulte Homes, Centex Homes) or their affiliated companies or, (b) to another reputable national or regional developer who has the financial wherewithal to replace the security provided by Developer in Sections 12.2 and 12.3, above and the technical and managerial experience (whether itself or through retained consultants); provided, however, that (i) any assignment agreement pursuant to subclause (b) shall include an express representation and warranty from such assignee that it satisfies the requirements thereof, and (ii) any assignment, whether pursuant to subclause (a) or (b), shall not be deemed to have occurred unless and until District receives written notice thereof.

18.2 Provisions of water delivery, recycled water delivery, and sewer service will be deemed assigned to each property owner upon acquisition of his/her commercial and/or residential unit in the Development. Upon assignment, the Developer's responsibilities relating to recycled water facilities, use and approvals will become the assignee's responsibility and Developer shall be released from all future liability hereunder with respect to such unit. 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 provided in this section.

19.2 Prevention of Disputes/Meet and confer - 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 (3) 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. As a contract dispute, the matter shall be considered by the District Board of Directors in closed session under the Brown Act without the Developer or Contractor in attendance. If any disagreement remains unresolved for ten (10) days after consideration by the District Board of Directors, the parties agree to submit it to mediation as provided in Section 19.3 below.

19.3 Mediation - 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 19.2. 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 19.4.

Mediation shall be submitted first to a mediator with at least ten years' experience with the issues in dispute. 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.

19.4 Arbitration - 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 (30) 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.

MCWD s' INITIALS\_\_\_\_\_

MCP'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: General Manager**  
11 Reservation Road  
Marina, California 93933

**To Developer:** Marina Community Partners  
2630 Shea Center Drive  
Livermore, CA 94551  
**Attn: Don Hofer**

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 term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement. Stricken provisions shall not affect the

legality, enforceability, or validity of the remainder of this Agreement so long as the stricken provision is replaced with a legal, enforceable and valid provision that conforms with the allocation of benefits and burdens to the respective parties and intent of the parties as expressed herein.

## 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.

## 33. Acceptances, Approvals, Consents and Verifications.

In every instance in which either party’s acceptance, approval, consent or verification is required pursuant to this Agreement, unless expressly stated otherwise in this Agreement, such party shall not unreasonably withhold, condition or delay its acceptance, approval, consent or verification.

Signature Page

**By: DEVELOPER,**  
**MARINA COMMUNITY PARTNERS, LLC,**  
**a Delaware limited liability company**

**By: Shea Homes Limited Partnership,**  
**a California limited partnership**

**Its: Manager**

**By: \_\_\_\_\_**

**Name: \_\_\_\_\_**

**Its: \_\_\_\_\_**

**By: \_\_\_\_\_**

**Name: \_\_\_\_\_**

**Its: \_\_\_\_\_**

**By: MARINA COAST WATER DISTRICT**

\_\_\_\_\_  
General Manager  
Marina Coast Water District

## **EXHIBIT A**

### **WATER ALLOCATION DOCUMENTATION**

- Resolution No. 2005-129 (City of Marina)  
And  
Exhibit B of Resolution No. 2005-129
- Excerpts from MCWD's Water Supply Assessment

**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

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

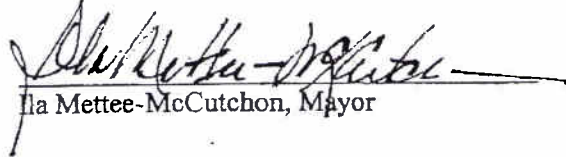
**WHEREAS** the University Villages WSA has been considered by the City, along with those documents included in the administrative record and listed on the attached Exhibit B, and a true and correct copy thereof included in the University Villages Specific Plan Environmental Impact Report, in accordance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

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

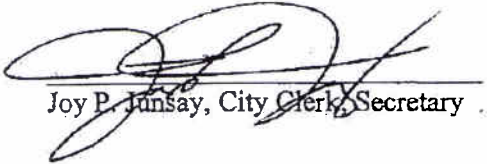
1. That the above recitations are true and correct, incorporated herein by this reference, and constitute findings of the City Council in this matter;
2. That, in accordance with California Water Code section 10911(c) and in light of those considerations set forth in the attached Exhibit B and Exhibit 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-McCutcheon  
NOES, COUNCIL MEMBERS: None  
ABSENT, COUNCIL MEMBERS: None

  
Ila Mettee-McCutcheon, 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.

<b>Table 1</b> <b>Summary of Currently Available Water Supply vs. Projected Demands of the MCP Development, Existing Uses and Approved Uses Based on Demand Factors Set Forth in the RBF Report</b>	
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.

<b>Table 2</b> <b>Summary of Net Surplus Available Supply vs. Projected Demands of the Other UV Specific Plan Development and Planned Future Uses Within City's Portion of Former Fort Ord Based on Demand Factors Set Forth in the RBF Report</b>	
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),<sup>1</sup> 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

---

<sup>1</sup> 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.<sup>2</sup>

<b>Table 3</b> <b>Summary of Currently Available Water Supply and Augmentation Supply vs. Projected</b> <b>Demands of Existing, Planned and Future Use on City's Portion of Former Fort Ord,</b> <b>Based on Demand Factors Set Forth in the RBF Report<sup>3</sup></b>	
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;

<sup>2</sup> 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.

<sup>3</sup> 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. al 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

Draft 1-26-05

# **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**

# Draft 1-26-05

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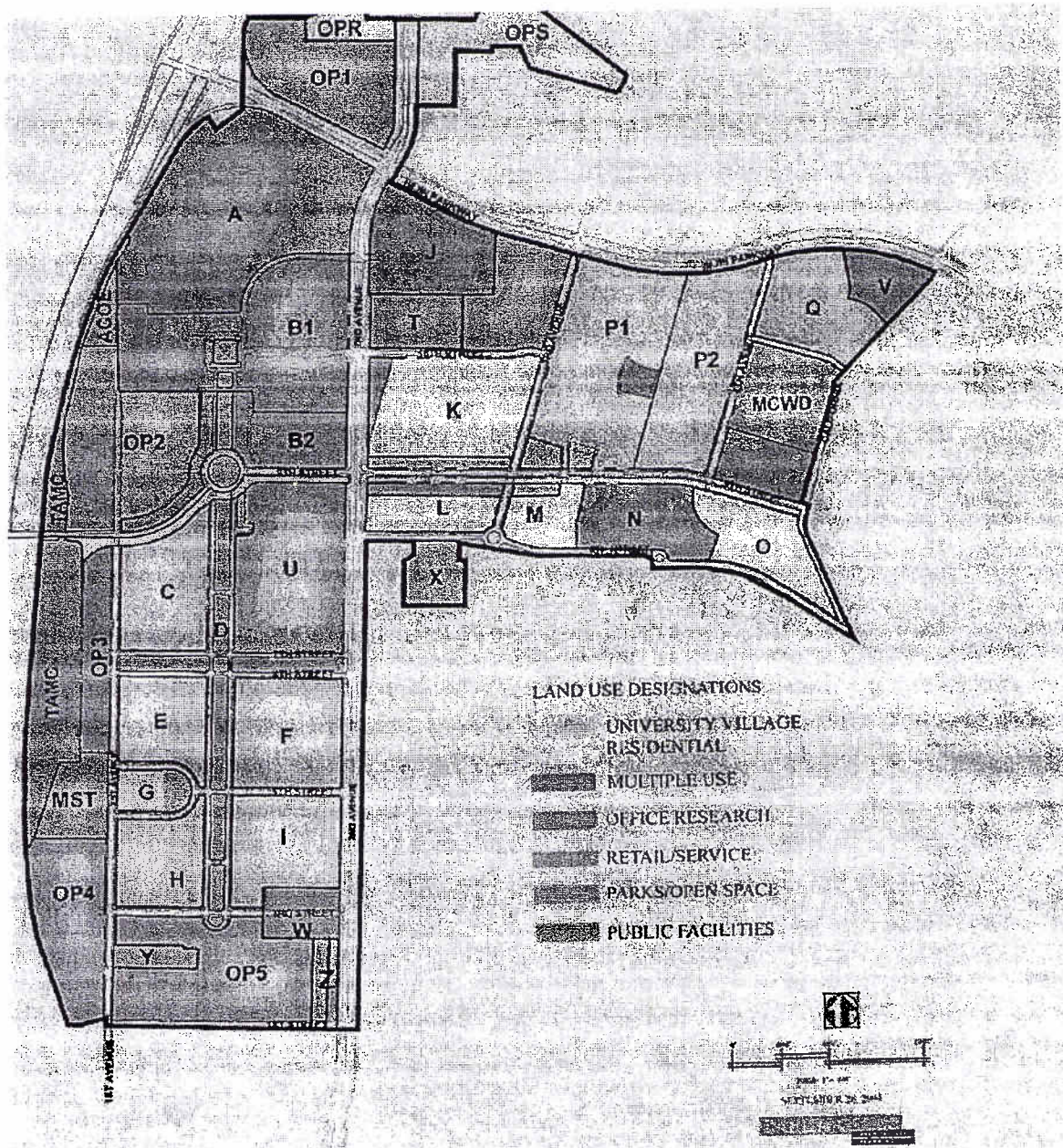
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Figure 1-2  
University Villages Specific Plan Land Uses



Source: University Villages Specific Plan

Table 2-1 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 Demand in AFY			Notes
									Total Interior unit demands	Total Exterior	Total Demand	Ornamental @ 1.5 effco turf at 2.1 effco
Residential Uses												
Single Family	139	1740	0.04	1.5	98.2	30%	0%	100%	0.11	0.02	17.78	Int. demand @ 125% including landscape
Live-Work Townhome	352	2250	0.05	1.5	78.6	40%	40%	80%	0.08	0.04	43.62	
Duel	242	3088	0.07	2	104.7	40%	30%	70%	0.12	0.05	39.81	
Small Lot Alley	131	3800	0.08	3	157.1	40%	50%	50%	0.18	0.06	31.28	
Small Lot Standard	126	4750	0.11	3	157.1	40%	60%	40%	0.18	0.08	32.39	
Garage	115	5750	0.13	3	157.1	50%	60%	40%	0.18	0.12	34.35	
Standard Lot												
Multi Family									Total demand			
Mixed Use Townhome	24		11	1.5	78.6	10%	25%	75%	0.09	1.82	3.93	
Apartment	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												
University Villages Project (MCP)											23.6	Per landscape architect open space
Other Specific Plan Parcels											9.0	see file
									Total Open Spaces		32.6	

Table 2-2 University Villages Specific Plan Development - Non Residential Demand Projection

Planning Area	Land Use	Parcel Size In a/c	Bldg. Size In sq. ft.	Interior SF			Irrigable Area	Percent			Turf Demand	Ornamental Demand	Total Demand	Total Demand In ACRY	Factors and Notes
				Demand	Area	Per Sq. Ft.		Area	Area	Area					
A	Office Building	100.6	335,000	0.00004	13.35	0.00004	13.35	15.3	20%	80%	6.426	13.98	24.79	24.79	24.79
	Restaurant		20,000	0.00163	3.26	0.00163	3.26								1640 MCWD Actual Average
	Fast Food Restaurant		216,500	0.0034	7.43	0.0034	7.43								23.53 MPWMD factor
															4388 MPWMD factor
J	Total Planning Area	8.6						4.8	50%	60%	5.04	3.6	8.64		8.64
	Gas Station/Grocery		3,000	0.00004	0.12	0.00004	0.12								0.642, 1.5 to turf, 1.5 Ornamental
	Grocery Store		55,000	0.00039	21.45	0.00039	21.45								0.76 Store plus 0.1051/acre pump & pump
	Service		8,000	0.00034	2.96	0.00034	2.96								21.46 MCWD factor
B1	Total Planning Area	22.7						11.35	20%	80%	9.26	13.92	25.21		25.21
	Restaurant		14,000	0.00004	0.56	0.00004	0.56								0.68 MCWD Actual Average
	Fast Food Restaurant		10,000	0.00012	0.24	0.00012	0.24								18.38 2.1 to turf, 1.6 Ornamental
	Service		28,000	0.00034	9.52	0.00034	9.52								14.58 MCWD Actual Average
V	Total Planning Area	3.6						1.8	20%	80%	0.756	2.16	2.92		2.92
	Retail		12,000	0.00004	0.48	0.00004	0.48								0.48 MCWD Actual Average
	Restaurant		5,000	0.00012	0.60	0.00012	0.60								5.83 MPWMD factor
	Fast Food Restaurant		2,000	0.00012	0.24	0.00012	0.24								6.32 MPWMD factor
OP1	Total Planning Area	83.115						41.56	20%	80%	33.175	41.03	74.70		74.70
	Hotel		350,000	0.00012	42.00	0.00012	42.00								1.89 Ave. of MCWD factor
	Restaurant		1,000	0.00004	0.04	0.00004	0.04								9.60 2.1 to turf, 1.5 Ornamental
	Fast Food Restaurant		12,725	0.00012	1.53	0.00012	1.53								14.35 MPWMD factor
T	Total Planning Area	4.9						2.5	60%	50%	2.625	1.875	4.50		4.50
	Hotel		150,000	0.00012	18.00	0.00012	18.00								25.60 MCWD factor
	Restaurant		723,000	0.00012	86.76	0.00012	86.76								43.46 MCWD factor
	Fast Food Restaurant		82,000	0.00012	9.84	0.00012	9.84								14.05 MCWD factor
OP2	Total Planning Area	15.2						7.6	20%	80%	6.16	8.64	14.80		14.80
	Hotel		62,000	0.00012	7.44	0.00012	7.44								9.60 2.1 to turf, 1.5 Ornamental
	Restaurant		10,500	0.00012	1.26	0.00012	1.26								14.35 MPWMD factor
	Fast Food Restaurant		170,000	0.00012	20.40	0.00012	20.40								25.60 MCWD factor
OP3	Total Planning Area	15.3						7.6	20%	80%	6.16	8.64	14.80		14.80
	Hotel		62,000	0.00012	7.44	0.00012	7.44								9.60 2.1 to turf, 1.5 Ornamental
	Restaurant		10,500	0.00012	1.26	0.00012	1.26								14.35 MPWMD factor
	Fast Food Restaurant		170,000	0.00012	20.40	0.00012	20.40								25.60 MCWD factor
Z	Total Planning Area	2.1						1.1	20%	80%	0.482	1.32	1.78		1.78
	Hotel		8,600	0.00004	0.34	0.00004	0.34								0.34 MCWD Actual Average
	Restaurant		6,000	0.00034	1.72	0.00034	1.72								1.72 Ave. of MCWD factors
	Fast Food Restaurant		5,000	0.00012	0.60	0.00012	0.60								5.83 MPWMD factor
Totals		131.2						583.4			35.7	73.3	109.0		492.4

Other Specific Plan Development (new uses only)

Planning Area	Land Use	Parcel Size In a/c	Bldg. Size In sq. ft.	Interior SF			Irrigable Area	Percent			Turf Demand	Ornamental Demand	Total Demand	Total Demand In ACRY	Factors and Notes
				Demand	Area	Per Sq. Ft.		Area	Area	Area					
Monteville-Selinas Transit (MST)	Transit	4.3	15%	0.0001	2.81	0.0001	2.81	1.075	0%	100%	0	1.61	1.61		4.42 BBA (bus transit related)
	Transit	13.2	15%	0.0001	8.82	0.0001	8.82	3.3	0%	100%	0	4.95	4.95		13.57 BBA (undefined transit related)
	Transit	11.3	26%	0.0003	36.82	0.0003	36.82	6.66	60%	40%	7.12	3.36	10.51		47.43 MCWD (as elementary school)
	US Army Corps of Engineers (ACOE)	2.0	n/a												No change in existing use
City Marina PBC Parcel 8th St.	City Marina PBC Parcel 8th St.	17.4	10%	0.0002	15.16	0.0002	15.16	8.7	16%	20%	2.74	2.81	5.55		20.51 MCWD (public rec. play field)
	City Marina PBC Parcel 3rd St.	3.0	35%	0.0002	9.15	0.0002	9.15	0.76	20%	80%	0.32	0.90	1.22		10.36 MCWD (public rec. center)
	Goodwill Industries	6.0	n/a												No change in existing use
	Young Nix Church	1.5	14%	0.0001	0.88	0.0001	0.88	0.725	60%	60%	0.76	0.54	1.31		2.16 MCWD (proposal in process)
City of Marina - fire station site	City of Marina - fire station site	3.3	35%	0.0003	15.08	0.0003	15.08	0.825	20%			0.66	1.34		16.43 MCWD (fire station)
	Total Out Parcels	63.7						88.64					28.28		114.9

\*90% irrigable area assumed turf

## **EXHIBIT B**

### **LEGAL DESCRIPTION**

- Exhibit B
- Exhibit B-1 Map

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## **EXHIBIT B**

All of that real property situate in the City of Marina, County of Monterey, State of California described as follows:

All of Lots 6, 7, 11, 13-15, 19-20, 22, 24, a portion of lot 23 and a portion of the remainder parcel of a Tract Map, filed in Volume 23 of Maps, at Page 27, Monterey County Records, as shown on Exhibit B-1

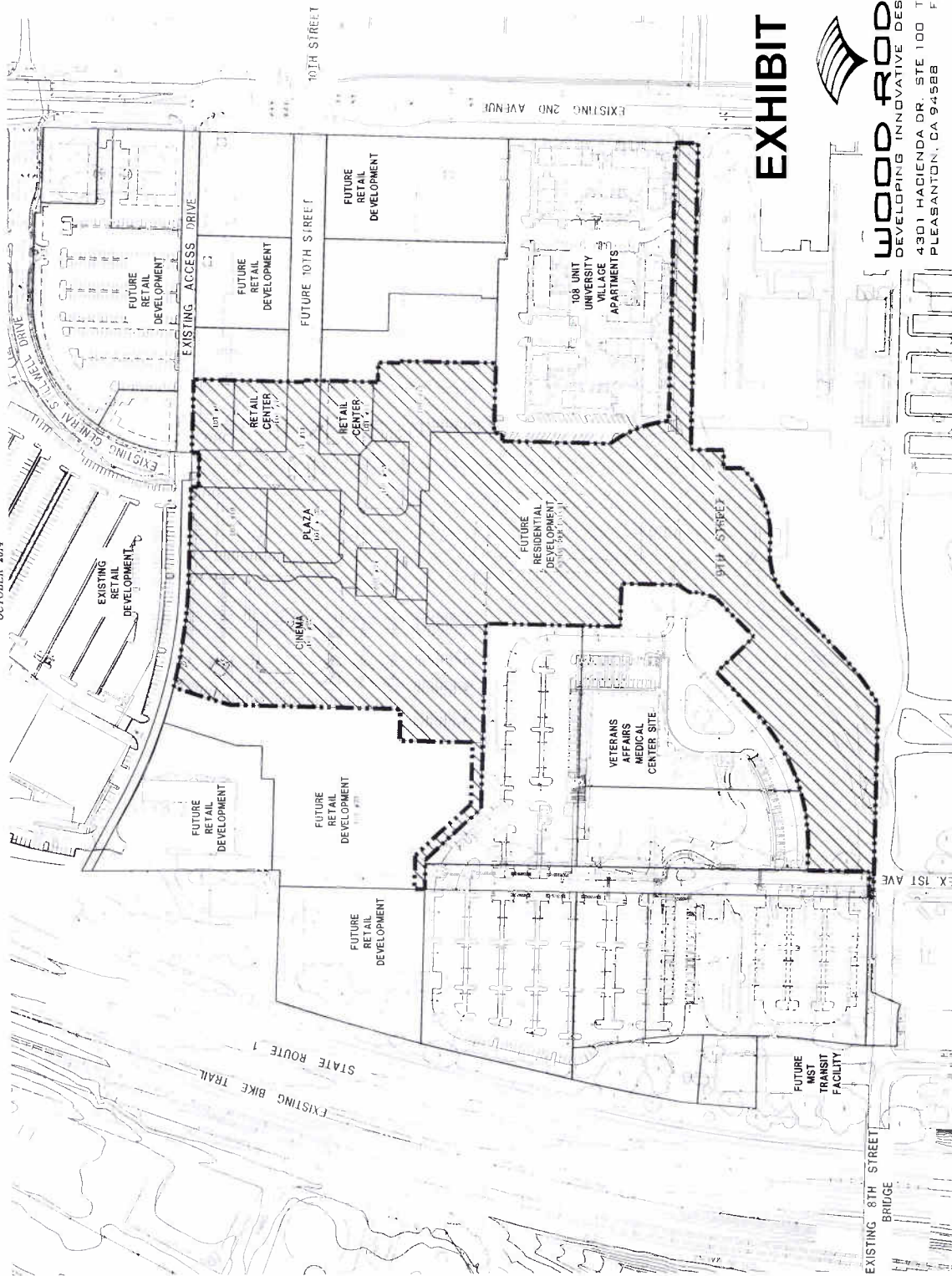
(Note: Lots 22 and 23 were adjusted by lot line adjustment filed on July 3, 2014 under recorder's series number 2014-030966, Official Records of Monterey County.)

PREPARED BY WOOD RODGERS, INC.  
PLEASANTON, CALIFORNIA

## THE DUNES ON MONTEREY BAY

**MARINA COMMUNITY PARTNERS**  
**MARINA CALIFORNIA**

OCTOBER 2014



# EXHIBIT B-1



**WOOD ROODERS**  
DEVELOPING INNOVATIVE DESIGN SOLUTIONS  
4301 HACIENDA DR. STE 100 TEL 925.847.1556  
PLEASANTON, CA 94588 FAX 925.847.1557

## **EXHIBIT C**

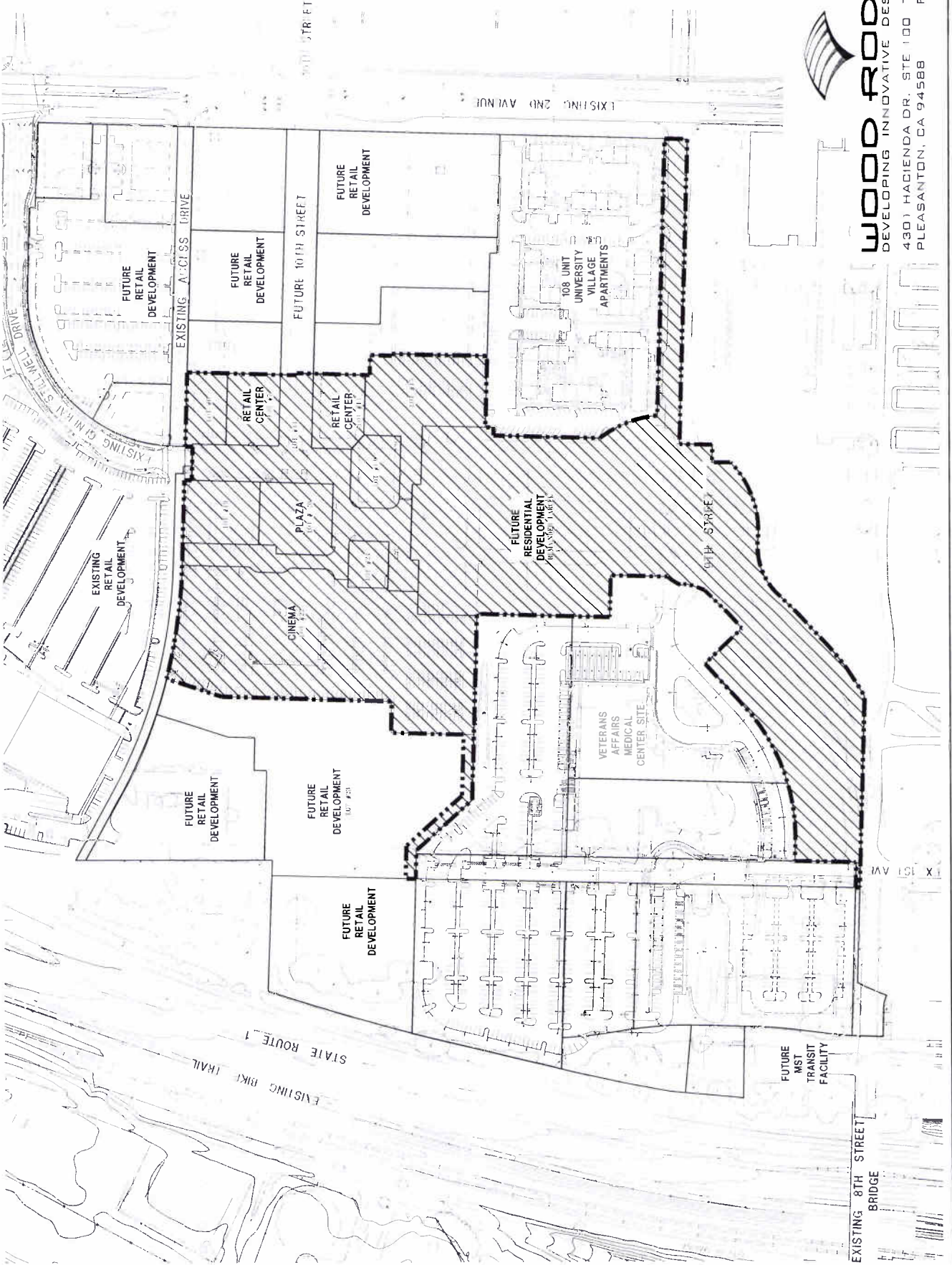
### **MAP OF DEVELOPMENT**

- Map

DRAFT

# THE DUNES ON MONTEREY BAY PHASE 1B - MCWD INFRASTRUCTURE AGREEMENT MARINA COMMUNITY PARTNERS MARINA CALIFORNIA

OCTOBER 2014



**WOOD RODGERS**  
 DEVELOPING INNOVATIVE DESIGN SOLUTIONS  
 4301 HACIENDA DR., STE 100 TEL 925.847.1556  
 PLEASANTON, CA 94588 FAX 925.847.1557

## EXHIBIT D

# **INDEMNIFICATION AND INSURANCE REQUIREMENTS for Infrastructure Agreements**

### **1. Workers' Compensation and Employer's Liability Insurance –**

- a. The Developer shall require every Contractor to certify that it and all of its subcontractors are 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 any work under this Agreement.
- b. The Developer shall require every 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.
- c. The Contractor shall provide employer's liability insurance in the amount of at least \$1,000,000 per accident for bodily injury and disease.

### **2. Definitions –** For purposes of this Exhibit, the following terms shall have the following respective meanings:

**“Claim”** - shall be used collectively to refer to and include any and all claims, demands, causes of action, damages, costs, attorneys' fees, expert fees, court costs, expenses, penalties, losses or liabilities, in law or in equity, of every kind and nature whatsoever.

### **3. Indemnification** - To the fullest extent permitted by law, the Developer will require every Contractor to indemnify, hold harmless, and defend District, its directors, officers, employees, representatives, and authorized volunteers (collectively, the “indemnitees”), and each of them from and against:

- a. Any claim, including, 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 to the extent caused by the sole negligence or willful misconduct or active negligence of District or its directors, officers, employees, or authorized volunteers;
- b. Any claim arising out of, resulting from, or on account of a violation of any governmental law or regulation, compliance with which is the responsibility of the

Contractor;

- c. Any claims (including damages to the work itself), attorneys' fees, and other costs, including all costs of defense, which any indemnitee may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the work and all of the Contractor's obligations to the Developer for work to be performed under this Agreement. Such costs, expenses, and damages shall include all costs, including attorneys' fees, expert fees, and court costs, incurred by an indemnitee in any lawsuit to which the indemnitee is 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 any claim involving, arising out of or related to MEC.

The Developer will use commercially reasonable efforts to 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, relating to any claim.

The Developer will use commercially reasonable efforts to 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.

Contractor's indemnification obligation shall not be limited to the proceeds, if any, received by the District, or its directors, officers, employees or authorized volunteers from any insurance required to be provided under this Agreement.

**4. 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.

**5. Deductibles and Self-Insured Retentions** - Any deductible or self-insured retention must be disclosed in writing to and approved by the District.

**6. 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.

**7. Munitions and Explosives Coverage (MEC)** - 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.

**8. Builder's Risk Insurance** - 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 by the District, to insure against such losses until final acceptance of the work by the District. Such insurance shall include<sup>1</sup> 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.

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

**10. Evidences of Insurance** - Prior to the commencement of construction activities under 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

**11. Sub-Contractors' Required Insurance Requirements** - In the event that the Contractor employs sub-contractors as part of the work to be performed under this Agreement, it shall be the Developer's responsibility to require and confirm that every Contractor requires each of its sub-contractor to meet the same minimum insurance requirements specified in this Exhibit for every Contractor.



# **MARINA COAST WATER DISTRICT**

## **Water, Sewer and Recycled Water Infrastructure Agreement**

**for**

**[Name of Development]**

DRAFT

# WATER, SEWER AND RECYCLED WATER INFRASTRUCTURE AGREEMENT

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## **Exhibits**

**EXHIBIT A – WATER ALLOCATION DOCUMENTATION**

**EXHIBIT B -- LEGAL DESCRIPTION**

**EXHIBIT C -- MAP OF DEVELOPMENT**

**EXHIBIT D -- INDEMINIFCATION AND INSURANCE REQUIREMENTS**

**EXHIBIT E -- WATER AND SEWER SURCHARGE NOTICE (FOR ORD COMMUNITY ONLY)**

**DRAFT**

# WATER, SEWER AND RECYCLED WATER INFRASTRUCTURE AGREEMENT

This Agreement made and entered into this \_\_\_\_\_ Day of \_\_\_\_\_ 20\_\_ (“Effective Date”), between **Marina Coast Water District**, 11 Reservation Road, Marina, CA, 93933, hereinafter called "District", and [1], a [2], with its principal offices at [3], hereinafter called the "Developer" (collectively, the “parties”) The name of the Developer’s development that is the subject of this Agreement, is [4 – Name given to the Development].

## 1. Definitions; District’s Role; Term of this Agreement.

1.1 Definitions, whenever used in this Agreement, the following terms shall have the following respective meanings:

- a. “Agreement” means this Water, Sewer and Recycled Water Infrastructure Agreement as it may be amended from time to time in accordance with the terms and conditions hereof.
- b. “City” means the City of [5]/ and/or the appropriate Agency of Land Use Jurisdiction.
- c. “Contractor” means any contractor with which the Developer has a direct contractual relationship to perform any work under this Agreement.
- d. “Development” means that certain property located at [6] and legally described in Exhibit “B” and shown on the map at Exhibit “C.”
- e. “Facilities” shall mean those certain infrastructure improvements and system provided for in this Agreement and as approved by District as part of its review of the Development plans, Facilities shall include, but not be limited to, pipes, pumps, electrical and instrumentation and controls.
- f. “Procedures” means the District’s *Procedure Guidelines and Design Requirements*.
- g. “Standards” means the District’s *Standard Plans and Specifications for Construction of Domestic Water, Sewer, and Recycled Water Facilities*.
- h. “Water Allocation” means the total water allocated by the City/Land Use Jurisdiction for the Development as documented in Exhibit “A” and described in Exhibits “B” and “C”.
- i. “FORA” means Fort Ord Reuse Authority.

1.2 Allocation of Water Capacity for the Development. The parties hereto expressly agree that as a condition precedent for the performance of the District’s obligations hereunder, Developer must provide proof to the satisfaction of the District that the City has approved the

allocation of water capacity for the Development from the water and recycled water capacity allocated to the City by the Fort Ord Reuse Authority (FORA). Notwithstanding, neither the City nor the District may approve water allocations that exceed the allocations set by FORA or other appropriate agency of land use jurisdiction.

1.3 Sewer Capacity. The District provides sewer collection from customers and conveyance of those sewer flows to the Monterey Regional Water Pollution Control Agency's (MRWPCA) Regional Interceptor System which discharges to the MRWPCA Wastewater Treatment Plant (WWTP). Capacity within the WWTP for the Development must be coordinated with MRWPCA. To the extent possible, the District will allocate its existing pre-paid WWTP Capacity to the Development. If additional WWTP Capacity is required for the Development, the Developer shall purchase the capacity from the MRWPCA at the Developer's sole expense, and shall provide proof of payment for that capacity right to the District at the time the sewer infrastructure is conveyed. Furthermore, the Developer understands and agrees that nothing herein shall be construed as a representation of future sewer capacity by either City or District other than as currently established by the type and density of development as included in the FORA Consistency Determinations or other appropriate agency of land use jurisdiction.

1.4 District's Role. The District's role in the Development is to approve the plans for facilities, inspect the construction of the facilities, accept the transfer of the title to the facilities, 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.

1.5 Term. This Agreement commences upon the above Effective Date and shall expire (a) two (2) years thereafter or (b) upon completion by the Developer and acceptance by the District of all facilities required by this Agreement and the required warranty period, whichever occurs first, unless terminated sooner as provided in section 17 of this Agreement.

## 2. Design and Construction Requirements

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

2.1.1 Developer shall design and construct the facilities in strict accordance with the District's most recent Procedures and Standards in effect at the time of construction, (contained in updated Procedures) and any other applicable State Regulatory Agency requirements, whichever are most stringent. Any conflict in Development requirements shall be addressed during the plan review process or at such other times as any such conflict is discovered. A licensed civil engineer registered in the State of California shall prepare all plans and specifications for the Developer.

2.1.2 The Developer shall comply with the District's most recent Procedures and the District's most recent Standards in effect at the time of construction when submitting project plans and specifications to the District for review and consideration for approval. District's review shall commence after the District determines compliance with District's

Procedures regarding the submittals and any other applicable State Regulatory Agency requirements, whichever are most stringent. District review of the Development's 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 in effect at the time of construction 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 assist MCWD to obtain all required permits for the on-site use of recycled water. This shall include but is not limited to, complying with the California Department of Health Services, the State of California Regional Water Quality Control Board and other regulatory agency requirements prior to constructing any recycled water facilities.

2.1.4 The District shall have the right to inspect the construction of the facilities and verify that construction conforms to the Development plans and specifications. District's right to inspect extends to five (5) feet from the building exterior at the point where the utility enters the structure. The District shall also have the right to inspect special fixtures including, zero water use urinals, hot water recirculation systems, etc. The District's right to inspect does not in any way eliminate or supersede any inspection obligations by the City. The District will inform the Developer of required field changes. The Developer shall be responsible for obtaining all 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 facilities shall be tested to meet District requirements. No facilities or portion thereof will be accepted without meeting all 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, on a phased basis, agrees to pay all fees and charges, including additional plan check fees and construction inspection fees as required by the District for the Development. These fees will be determined by the District at the time the fees are due and payable. 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, held by the District and used to pay subsequent fees, e.g., construction inspection fees.

2.1.7 Construction Inspection Fees. On a phased basis, the District shall require the construction inspection fee before undertaking a construction inspection review of the proposed facilities. As a condition precedent to the District's obligation to undertake a construction inspection review of the proposed 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 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, recycled 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 infrastructures within the Development boundaries that will be removed or abandoned by Developer. Abandonment-in-place requires written approval by the District. The Developer shall be solely responsible for repair, replacement and maintenance of existing water and sewer facilities to remain within the Development boundaries during the construction of the Development, regardless of whether the facilities are for the benefit of the Development.

### 4. District to Serve Development

4.1 District will deliver water, recycled water and provide sewer service to the Development after final Board Acceptance of the conveyance of the facilities and final Board Acceptance of the facilities (see *Procedures* section 300.25). Thereafter, the District will bill and serve the end-user(s) directly. The Developer shall pay the prepayment of applicable meter fees and Capacity Charges, cross connection charges, and all other applicable fees and charges for service on the former Fort Ord (or City, as the case may be). Once the applicable fees and charges are determined and paid in full, the District will immediately begin water service with the installation of the water meter(s). The District shall provide sewer service upon installation of water meters and payment of all applicable fees. 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, as of / / 201 for water and sewer services are \$5,XXX per EDU and \$X,XXX per EDU, respectively. These charges are due prior the installation of water meters. 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. Developer agrees to pay the capacity charge in effect at the time of providing services.

## 6. Provision for Non-Potable Water Use

6.1 Based upon existing studies, the District does not have sufficient existing firm water supplies to meet the water demands of projected developments within the District's service area. The District has investigated a recycled water project, a desalination project, and a combination of those projects to meet future water demands within the District. 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.

6.2 Developer, and its successors or assignees (such as an owners association), agrees to take recycled water for non-potable use if and when 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 his authorized representative (contractor, or subcontractors as the case may be) performing the work, shall be licensed under the provisions of the Business and Professions Code of the State of California to perform the specified work required for the Development. District reserves the right to waive this requirement at its sole discretion where permitted under state statute.

7.2 The Developer, or its contractor, shall be skilled and regularly engaged in the installation of water, recycled and sewer systems. The District may request evidence that the constructing party has satisfactorily installed other projects of like magnitude or comparable difficulty. Upon request, contractors must furnish evidence of their qualifications to do the work in a form suitable to the District prior to the commencement of any work on the facilities.

## 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 (excluding easements within existing public rights of way) necessary for ingress and egress to and from the facilities for the purpose of installation, operation, maintenance, replacement and removal of said facilities and for the location of the 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 approved by the District and it shall be the Developer's responsibility to have the approved easements recorded. Developer shall provide proof of recordation of the easements, in a form satisfactory to the District, prior to the District's obligation to provide any of the services contemplated by this Agreement.

## 9. Final Inspection and Reimbursement of District Costs

9.1 The District's Engineer must inspect completed facilities, or portion thereof. The District will not accept any 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 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 (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 facilities to the District, payment of all costs due and unpaid under this Agreement over and above deposits previously paid to the District. If there are surplus deposit funds or any refunds due Developer, then District shall return to Developer the amount of such surplus or refunds upon acceptance by the District of all facilities required to be constructed under this Agreement.

## 10. District's Non-responsibility for Acts or Omissions of Developer, etc.; Developer Responsible for Verifying Underground Utility Lines and Surface Obstructions

10.1 The District is not responsible for, and does not assume any responsibility or liability whatsoever for, acts and omissions of the Developer, Developer's contractors or any contractor's subcontractors or suppliers at any tier during the design and construction of the 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 facilities, provide to the District in accordance with Section 400.13 of the *Procedures* the following:

11.1.1 One set each of Mylar drawing prints and AutoCAD digitized files of the improvement plans, which show all of the facilities, and one hardcopy and one electronic copy of the specifications, and one hardcopy and one electronic copy of any contract documents used for the construction of the water, sewer and recycled water system facilities. Scanned and signed copies in Adobe Acrobat format are also required.

11.1.2 One hardcopy and one electronic copy of 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 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 Indemnity and Insurance - The Developer agrees to have every Contractor performing work on the Facilities fully comply with the all of the requirements in Exhibit D. To the extent that any indemnity or insurance coverage provided by any such Contractor does not fully indemnify the District for any and all claims as defined in Exhibit D, Developer agrees to

indemnify, hold harmless, and defend the District, its directors, officers, employees, representatives, and authorized volunteers. Coverages required by Exhibit D shall be maintained throughout the term of this Agreement. Every Contractor shall file with the District prior to the commencement of any work under this Agreement, and as policy renewals occur, Certificates of Insurance evidencing that the insurance coverages required herein have been obtained and are currently in full force and effect.

12.2 Performance and Payment Surety - Developer or its Contractor, as the case may be, shall furnish the District with a surety to secure the completion of and payment for the facilities. The amount of the performance surety shall not be less than 100% of the District's estimate of the total cost to construct all of the facilities required under this Agreement. The amount of the payment surety shall not be less than 100% of the District's estimate of the total cost to construct all of the facilities required under this Agreement. The surety instrument shall be in a form satisfactory to the District such as a performance and payment bond, irrevocable letter of credit, cash deposit, or irrevocable 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. Each surety must be authorized in the State of California to issue the surety instrument provided. All surety instruments signed by an agent must be accompanied by a certified copy of the agent's authority to act.

12.3 Developer shall furnish the District with a Warranty bond or other surety instrument satisfactory to the District in the amount equal to twenty percent (20%) of the actual construction costs to secure the Developer's performance under Section 15, Warranties.

12.4 Submittal of Insurance Certificates and Surety - The required insurance certificates shall be delivered prior to commencement of construction. The required performance and payment surety shall be delivered to the District prior to District approval of plans and specifications. No work may be commenced under this Agreement unless and until all required insurance certificates and performance and payment sureties are submitted to and approved by the District. The Warranty surety shall be provided prior to the District's acceptance of the facilities, and shall remain in effect for the duration specified in Section 15.1.

12.5 The performance surety shall remain in effect until final acceptance of the facilities by the District in accordance with Section 13.1. The payment surety shall remain in effect until the last of the following occur: (i) the statutory time has expired to commence a legal action on the payment surety and no legal action was filed, (ii) satisfaction of all judgments against the payment surety, and (iii) as otherwise provided by law. The warranty surety shall remain in effect until all warranties under this Agreement have expired.

### 13. Transfer of System Facilities to District after Completion

13.1 Developer shall execute and obtain all signatures of all 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 all facilities required by this Agreement to the District together with all real property, interests 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 facilities. Provided all conditions set forth in this Agreement are satisfied, the District shall accept the conveyance. All costs of construction of the facilities, for which the Developer is responsible, shall have been paid for by Developer, the time for release of the payment surety under Section 12.5 shall have expired (or Developer shall provide other security acceptable to the District), and the title to all of the 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 any 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 facilities and to expand or improve, or interconnect the facilities with other adjacent facilities, as the District deems appropriate in its sole discretion.

#### 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 facilities.

#### 15. Warranties

15.1 Developer hereby warrants that as of the time of the District's acceptance of the conveyance of the facilities (or when Developer thereafter completes the installation of any works or components subsequently installed, repaired, or replaced) the facilities and all components thereof, will be in satisfactory working order and quality and free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier; and that the facilities and all components thereof have been constructed and installed in compliance with all approved specifications and as-built plans being provided to the District, and in accordance with applicable requirements of the District and any other governmental agency having jurisdiction. Developer also warrants that as of the time of the District's acceptance of the conveyance of the facilities (or when Developer thereafter completes the installation of any works or components subsequently installed, repaired, or replaced) the facilities will operate in good and sufficient manner for the purposes intended for (a) one (1) year after the latter of (i) the date of acceptance, (ii) the expiration of all lien enforcement periods, or (iii) proof of conveyance of facilities, or (b) 180-days from the date new facilities are subsequently re-installed, repaired, or replaced and inspected and accepted by the District (hereafter *replacement facilities*), whichever of (a) or (b) occurs last. The Developer shall remedy at the Developer's expense any failure to conform with any applicable requirement of the District, by any Contractor or any subcontractor or supplier at any tier, or any defect. If the Developer fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice by the District or any other person or entity, the District shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Developer's expense and the Developer shall indemnify District for all such costs (including District's own labor costs) incurred.

15.2 With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Agreement, the Contractor shall:

- (1) Obtain all warranties that would be given in normal commercial practice;
- (2) Require all warranties to be executed, in writing, for the benefit of the District, if directed by the District; and
- (3) Enforce all warranties for the benefit of the District, if directed by the District.

In the event any warranty under this section has expired, the District may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

15.3 This Section 15 shall not limit the District's rights under the law with respect to latent defects, gross mistakes, or fraud.

## 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 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. District recognizes that the Development, and hence the facilities, may be built, accepted and transferred in multiple phases. Notwithstanding any of the foregoing, Developer may use the 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 facilities and, transfer the same to the District in accordance with the terms of this Agreement. If construction of the facilities have not been completed and accepted by District within twenty four (24) months from the date of execution of this Agreement (such date may be extended for delays beyond Developer's control and without the fault or negligence of the Developer or any Contractor or subcontractor or supplier at any tier, but in no event shall such delay exceed twelve (12) additional months), the District shall have the option to terminate this Agreement. If construction on any phase is not complete within twenty-four months or as extended as provided above, then an Amendment to this Agreement will be necessary to address each such phase, which shall incorporate the policies, fees and charges of the District then in effect as of the effective date of said Amendment. Subsequent phases also may at District's discretion be addressed by Amendment(s) to this Agreement.

17.2 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.

## 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.

18.2 Provisions of water delivery, recycled water delivery, and sewer service will be deemed assigned to each property owner upon acquisition of his/her commercial and/or residential 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 provided in this section.

19.2 Prevention of Disputes/Meet and confer - 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 (3) 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. As a contract dispute, the matter shall be considered by the District Board of Directors in closed session under the Brown Act without the Developer or Contractor in attendance. If any disagreement remains unresolved for ten (10) days after consideration by the District Board of Directors, the parties agree to submit it to mediation as provided in Section 19.3 below.

19.3 Mediation - 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 19.2. 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 19.4.

Mediation shall be submitted first to a mediator with at least ten years experience with the issues in dispute. 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.

19.4 Arbitration - 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 (30) 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.**

MCWD 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: General Manager**  
11 Reservation Road  
Marina, California 93933

**To Developer:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement. Stricken provisions shall not affect the legality, enforceability, or validity of the remainder of this Agreement so long as the stricken provision is replaced with a legal, enforceable and valid provision that conforms with the allocation of benefits and burdens to the respective parties and intent of the parties as expressed herein.

## 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.

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Signature Page

**By: DEVELOPER,**

\_\_\_\_\_  
XXXXXXX, President and CEO

**By MARINA COAST WATER DISTRICT**

\_\_\_\_\_  
General Manager  
Marina Coast Water District

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EXHIBIT A

WATER ALLOCATION DOCUMENTATION

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**EXHIBIT B**

**LEGAL DESCRIPTION**

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**EXHIBIT C**

**MAP OF DEVELOPMENT**

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## EXHIBIT D

### **INDEMNIFICATION AND INSURANCE REQUIREMENTS for Infrastructure Agreements**

#### **1. Workers' Compensation and Employer's Liability Insurance –**

- a. The Developer shall require every Contractor to certify that it and all of its subcontractors are 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 any work under this Agreement.
- b. The Developer shall require every 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.
- c. The Contractor shall provide employer's liability insurance in the amount of at least \$1,000,000 per accident for bodily injury and disease.

#### **2. Definitions –** For purposes of this Exhibit, the following terms shall have the following respective meanings:

**“Claim”** - shall be used collectively to refer to and include any and all claims, demands, causes of action, damages, costs, attorneys' fees, expert fees, court costs, expenses, penalties, losses or liabilities, in law or in equity, of every kind and nature whatsoever.

#### **3. Indemnification -** To the fullest extent permitted by law, the Developer will require every Contractor to indemnify, hold harmless, and defend District, its directors, officers, employees, representatives, and authorized volunteers (collectively, the “indemnitees”), and each of them from and against:

- a. Any claim, including, 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 to the extent caused by the sole negligence or willful misconduct or active negligence of District or its directors, officers, employees, or authorized volunteers;
- b. Any claim arising out of, resulting from, or relating in any way to a violation of any

governmental law or regulation, compliance with which is the responsibility of the Contractor;

- c. Any claims (including damages to the work itself), attorneys' fees, and other costs, including all costs of defense, which any indemnitee may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the work and all of the Contractor's obligations to the Developer for work to be performed under this Agreement. Such costs, expenses, and damages shall include all costs, including attorneys' fees, expert fees, and court costs, incurred by an indemnitee in any lawsuit to which the indemnitee is 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 any claim involving, arising out of or related to MEC.

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, relating to any claim.

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.

Contractor's indemnification obligation shall not be limited to the proceeds, if any, received by the District, or its directors, officers, employees or authorized volunteers from any insurance required to be provided under this Agreement.

**4. 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.

**5. Deductibles and Self-Insured Retentions** - Any deductible or self-insured retention must be disclosed in writing to and approved by the District.

**6. 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.

**7. Munitions and Explosives Coverage (MEC)** - 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.

**8. Builder's Risk Insurance** - 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 by the District, to insure against such losses until final acceptance of the work by the District. Such insurance shall include<sup>1</sup> 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.

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

**10. Evidences of Insurance** - Prior to the commencement of construction activities under 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

**11. Sub-Contractors' Required Insurance Requirements** - In the event that the Contractor employs sub-contractors as part of the work to be performed under this Agreement, it shall be the Developer's responsibility to require and confirm that every Contractor requires each of its sub-contractor to meet the same minimum insurance requirements specified in this Exhibit for every Contractor.

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**EXHIBIT E**

**NOTICE TO BUYERS**

**OF**

**WATER & SEWER SURCHARGE PAYMENTS**

(Applies only for the Ord Community)

The Developer will submit the text and format of this Notice to the General Manager of the Marina Coast Water District for review and approval prior to inclusion in the Real estate Public Report or in a letter from the Developer to each prospective property buyer.