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**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**

USE AND DISCLOSURE OF DATA

The data in this proposal shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate the proposal; provided, that if a contract is awarded to this offeror as a result of or in connection with the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the contract. This restriction does not limit the Government's right to use information contained in the data if it is obtainable from another source without restriction. The data subject to this restriction are contained in Pages i-vi, 1-27, and Exhibits A-N.

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

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FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

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DESCRIPTION OF THE PROPERTY:

PARCEL 1**EXHIBIT A-1**
PARCEL X**EXHIBIT A-X**

IT IS CONTEMPLATED THAT THERE WILL BE MULTIPLE PARCELS
CONVEYED AT MULTIPLE CLOSINGS

EXAMPLE DEED**EXHIBIT B**

SAMPLE FOST (PARCEL 1)**EXHIBIT C**

REPRESENTATIONS TO BE PRESENTED AT CLOSING:

GOVERNMENT REPRESENTATIONS**EXHIBIT D-1**
AUTHORITY REPRESENTATIONS**EXHIBIT D-2**

RESERVED.....**EXHIBIT E**

PROGRAMMATIC AGREEMENT.....**EXHIBIT F**

**BILL OF SALE FOR PERSONAL PROPERTY
CONVEYED TO THE AUTHORITY**.....**EXHIBIT G**

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RESERVED.....**EXHIBIT I**

RIGHT OF ENTRY**EXHIBIT J**

CONVEYANCE SCHEDULE.....**EXHIBIT K**

ENVIRONMENTAL REMEDIATION SCHEDULE**EXHIBIT L**

ACCESS ROADS AND EASEMENTS**EXHIBIT M**

**LIST OF GOVERNMENT REMEDIATION
DECISION DOCUMENTS****EXHIBIT N**

FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

1 d. As soon as the Property, or discrete parcels thereof, may be conveyed consistent with
2 the requirements of the Comprehensive Environmental Response, Compensation and Liability Act
3 (“CERCLA”; 42 U.S.C. 9620[h]), as amended, and other legal and policy requirements, the
4 Government intends to convey to the Authority by one or more quitclaim deeds the Property or
5 parcels thereof, subject to any necessary restrictions, reservations, conditions, and exceptions at no
6 cost, as set forth below.

AGREEMENTS

11 **NOW, THEREFORE**, in consideration of the foregoing premises and the respective
12 representations, agreements, covenants and conditions herein contained, and other good and valuable
13 consideration, the receipt and sufficiency of which are hereby acknowledged, the Government and
14 the Authority agree as follows:

ARTICLE 1. DEFINITIONS:

17 When used herein, the following terms shall have the respective meanings set forth opposite
18 each such term:

19 1.01. Agreement. This Memorandum of Agreement, including the Exhibits attached hereto
20 which are incorporated herein by reference and made a part of this Agreement.

21 1.02. Adjusted Gross Proceeds. All revenues received by the Authority or the Authority
22 member jurisdictions from a sale, lease, or equivalent use of the Property (licenses, permits,
23 concession agreements, etc.) or portions of the Property to a Bona Fide Purchaser or Lessor minus
24 Direct Expenses as hereinafter defined.

25 1.03. Bona Fide Purchaser or Lessor. A non-governmental purchaser or Lessor of the
26 Property from the Authority or an Authority member jurisdiction.

27 1.04. Claims. Any and all losses, costs, liability, judgment, claims, proceedings, demands,
28 actions, fines, penalties, expenses, damages, or other fees.

29 1.05. Closing. The transactions during which portions of the Property transfer documents,
30 along with other documents, are executed and delivered by the Government and the Authority, and
31 the Government transfers a portion of the Property to the Authority. The Parties contemplate that
32 there will be multiple closings.

33 1.06. Closing Documents. Those documents required to be delivered by the Parties at
34 Closing as required herein.

FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

1
2 1.07. Deed. A recordable quitclaim deed substantially in the form of Exhibit B-1 and
3 Exhibit B-2, conveying to the Authority all rights and title held by the Government in and to the
4 Property.
5

6 1.08. Direct Expenses. Those customary and usual expenses expended directly by the
7 Authority or by Authority member jurisdictions when selling or leasing the Property or portions of
8 the Property to a Bona Fide Purchaser or Lessor, including utilities, insurance, and applicable Federal
9 State and local taxes.
10

11 1.09. Environmental Baseline Survey. The investigative report entitled Environmental
12 Baseline Survey (“EBS”) for the Property dated April 1992, prepared by the Government and any
13 supplements or amendments thereto.
14

15 1.10. FOSET. A Finding of Suitability for Early Transfer that represents a written
16 determination by the Government that a parcel of the Property containing areas of suspected
17 Hazardous Substances and contaminants may be transferred by Deed to the Authority before all
18 necessary remedial action has been taken pursuant to Section 120(h)(3)(C) of CERCLA.
19

20 1.11. FOSL. A Finding of Suitability to Lease that represents a written determination by the
21 Government that a parcel of the Property may be leased for the intended purpose to the Authority
22 in full compliance with all applicable laws and regulations.
23

24 1.12. FOST. A Finding of Suitability to Transfer that represents a written determination by
25 the Government that a parcel of the Property may be transferred by Deed to the Authority in full
26 compliance with Section 120(h)(3) or Section 120 (h)(4) of CERCLA, substantially in the form of
27 Exhibit C.
28

29 1.13. Lease. A lease instrument under which the Government agrees to lease the Property,
30 in whole or in part, to the Authority in accordance with Article 6 of this Agreement.
31

32 1.14. Lease Property. The portion of the Property, if any, which the Government agrees to
33 Lease to the Authority in accordance with Article 6 of this Agreement.
34

35 1.15. Parcel 1. The portion of the Property located on the former Fort Ord as shown on
36 Exhibit A.
37

38 1.16. Parcel X. The portion of the Property located on the former Fort Ord as shown on
39 Exhibit A.
40

FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

1 1.17. Personal Property. The related personal property to be transferred by the Government
2 to the Authority listed in the Bill of Sale for Personal Property Conveyed to the Authority
3 substantially in the form of Exhibit G.
4

5 1.18. Property. The Real Property and Personal Property.
6

7 1.19. Real Property. Approximately five-thousand one-hundred eighty-eight (5,188) acres
8 of land consisting of a number of parcels of land located in the bounds of the former Fort Ord,
9 Monterey County, California, which has been designated as surplus property, all as more particularly
10 described in Exhibits A-1 through A-X, together with:
11

12 A. All buildings, facilities, roadways, and other infrastructure, including the storm
13 drainage systems and the telephone system infrastructure, and any other improvements
14 thereon (including all replacements or additions thereto between the date of this Agreement
15 and the date of conveyance of the Property to the Authority),
16

17 B. All appurtenant easements and other rights appurtenant thereto, including
18 easements and rights appurtenant thereto, permits, licenses, privileges and not otherwise
19 excluded herein,
20

21 C. All hereditaments and tenements therein and reversions, remainders, issues,
22 profits, privileges and other rights belonging or related thereto,
23

24 D. Irrevocable non-exclusive access easements over existing roads located on
25 portions of the Property awaiting conveyance to the Authority and contiguous real property
26 owned by the Government, including but not limited to access over North-South Road,
27 Monterey Avenue, Gigling Road, etc., all as set forth in Exhibit M,
28

29 E. All Mineral Rights, if approved by the Bureau of Land Management, and
30

31 F. All subject to the following reserved rights:
32

33 1. Access from the Bureau of Land Management area out Eucalyptus Road,
34 Watkins Gate Road, and Barloy Canyon Road to Reservation Road.
35

36 2. Access to public roads from the Presidio of Monterey Annex.
37

38 3. During the term of its existing franchise agreement, currently scheduled
39 to expire on November 19, 2005, a reserved right for USA Media Group, LLC
40 (formerly Coastside Cable TV), or its successor in interest, to occupy and use parcel
41 E20c1.2 (their antenna parcel) and a portion of parcel E2d.1 where their existing
42 office trailers are located together with continued access to their cable TV lines. It

FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

1 is understood by the Parties that any relocation of USA Media Group, LLC, for
2 development purposes will be accomplished at the sole cost and expense of USA
3 Media Group LLC.
4

5 1.20. Reporting Period. A period of time beginning when the Government transfers
6 Property to the Authority by either deed or Lease in Furtherance of Conveyance and ending seven
7 (7) years thereafter. For reporting purposes, all reports required of the Authority or an Authority
8 member jurisdiction in a given year will be given once a year on or before December 31st of that
9 year.
10

11 1.21. Sale or Lease Proceeds. The Adjusted Gross Leasing Proceeds or Adjusted Gross
12 Sales Proceeds received by the Authority or Authority member jurisdiction minus the Direct Leasing
13 Expenses or Direct Selling Expenses, as the case may be.
14

15 1.22. Title Insurer. Such title insurance company as the Authority shall from time to time
16 designate.
17

18 1.23. Title Policy. An owner's title insurance policy and endorsements thereto, subject only
19 to the Permitted Title Exceptions, insuring the Authority's interest in the Real Property, which shall
20 be as fee simple owner to the Property conveyed to the Authority by the Deeds.
21

22 **ARTICLE 2. NO COST ECONOMIC DEVELOPMENT CONVEYANCE:**

23 2.01. No Cost Economic Development Conveyance.

24
25
26 A. In accordance with Section 2905(b)(4) of the Base Closure Act, as amended by Section
27 2821 of the Defense Authorization Act for Fiscal Year 2000, Pub. L. 106-65 (1999), and the
28 implementing regulations of the Department of Defense (32 CFR Parts 90 and 91), this Agreement
29 represents a contract whereby the Government agrees to convey to the Authority, and the Authority
30 agrees to acquire the Property, by means of a No Cost Economic Development Conveyance, for no
31 monetary consideration. The consideration for this Property is the Authority and the Authority
32 member jurisdictions' agreement to commit proceeds from the sale or lease of the Property toward
33 the economic development of the former Fort Ord for the benefit of the general public in accordance
34 with the terms of this Agreement.
35

36 B. Following the conveyance of the Property to the Authority, the Authority shall transfer
37 the Property, at no cost, to the Authority member jurisdiction with land use jurisdiction over such
38 portion of the Property. In lieu of transferring such portion of the Property to the Authority member
39 jurisdictions with land use jurisdiction over such portion of the Property, FORA, with the approval
40 of such Authority member jurisdiction, may transfer such portion of the Property to an entity selected
41 and designated by the Authority member jurisdiction in accordance with State and local law.
42

FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

1 C. In accordance with appropriate State of California and local redevelopment laws and
2 regulations, the Authority or Authority member jurisdiction in possession of the Property may
3 transfer, sell or lease such parcel(s) of Property to a Bona Fide Purchaser or Lessor except for the
4 parcel(s) of Property that the Authority or Authority member jurisdiction utilizes for governmental
5 purposes, consistent with California law.
6

7 D. The Authority agrees that Sale or Lease Proceeds received by the Authority or Authority
8 member jurisdiction during the Reporting Period shall be used or obligated either on-site or off-site
9 to support the economic redevelopment of, or economic development related to, the former Fort Ord,
10 California (“Economic Development Uses”). In the event Congress enacts legislation, regarding the
11 Reporting Period after the date of this Agreement, the Army will in good faith exercise the authority
12 granted to modify the terms of this Agreement consistent with the intent thereof. Economic
13 Development Uses shall include, but are not limited to:
14

- 15 1. Road construction, operation, and maintenance.
- 16 2. Transportation infrastructure and management facilities construction, operation, and
17 maintenance.
- 18 3. Storm and sanitary sewer construction, operation, and maintenance.
- 19 4. Police, fire protection, and other public facilities and equipment to include
20 construction, operation, and maintenance.
- 21 5. Utility infrastructure construction, operation, and maintenance.
- 22 6. Building rehabilitation, including maintenance pending rehabilitation.
- 23 7. Historic property preservation, construction, operation, and maintenance.
- 24 8. Pollution prevention equipment or facilities construction, operation, and maintenance.
- 25 9. Demolition including maintenance of area for safety and health purposes pending
26 demolition.
- 27 10. Disposal of hazardous materials generated by demolition or rehabilitation.
- 28 11. Landscaping, grading and other site or public improvements to include habitat
29 management and related costs.
- 30 12. Planning for, or the marketing of, the redevelopment and reuse of the former Fort
31 Ord, including planning, design, environmental assessments, surveying, related
32 professional services, and financing costs associated with eligible activities.
33

34 Other activities related to those listed above would also be considered an appropriate
35 allowable Economic Development Use. In order for investments to be considered allowable
36 Economic Development Uses, the Authority or Authority member jurisdiction must demonstrate that
37 they are related to those listed above and benefit the Authority’s economic redevelopment and long
38 term job generation efforts on the former Fort Ord.
39

40 E. Notwithstanding any other provision of this Agreement, the Government reserves the
41 right to recoup from the Authority, Sale or Lease Proceeds not utilized for Economic Development
42 Uses during the Reporting Period. The Government may challenge the use of the Sale or Lease

FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

1 Proceeds in accordance with subsection D only if such challenge is set forth in writing and delivered
2 to the Authority within one hundred and eighty (180) days after the submission to the Government
3 of the certified annual financial statement showing such Economic Development Uses (the
4 “notification”). The Authority shall have sixty (60) days from the date of the Notification to remit
5 the amount due to the Government, unless the Parties agree to other arrangements for the payment
6 of the amount due or the Authority objects to such Notification pursuant to the Contract Disputes
7 Article of this Agreement. These payments must be paid on or before they are due in order to avoid
8 sanctions imposed by the Debt Collection Act of 1982, 31 U.S.C. 371.
9

10 F. The Authority shall prepare and submit to the Government the Authority’s annual
11 statement and an annual financial statement certified by an independent Certified Public Accountant
12 that identifies the use of the Sale or Lease Proceeds (“Accounting System”). The Authority shall
13 enter into individual agreements with each Authority member jurisdiction (“Implementation
14 Agreements”) to insure that Authority member jurisdictions shall use the Accounting System and
15 otherwise comply with this Agreement for all matters related to the Property.
16

17 2.02. Conveyance in Phases. The Government will convey and the Authority will accept
18 transfer of the Property in phases, through multiple Closings, as soon as the Army is able to execute
19 a FOST or FOSET, as appropriate, and in accordance with Article 4. As parcels are conveyed, the
20 Cooperative Agreements effective as of the 1st day of July, 1999 with the Army shall be null and
21 void as to such parcels.
22

23 2.03. Environmental Remediation Level.

24

25 A. Unless a deferred covenant transfer through a FOSET is requested by the
26 Authority, the Government shall:
27

28 1. except for unexploded ordnance, environmentally remediate the Property
29 prior to its conveyance in accordance with the decision documents listed in Exhibit
30 “N” and their supportive documents to a level supportive of the uses delineated in
31 the Final FORA Base Reuse Plan dated July 1997, in accordance with the schedule
32 set forth in Exhibit L; and
33

34 2. with regard to unexploded ordnance, use all reasonable effort to remediate
35 the Property to a level supportive of the uses delineated in the Final FORA Base
36 Reuse Plan dated July 1997, in accordance with the schedule set forth in Exhibit L.
37

38 B. The Government recognizes the ongoing interest of the Authority in the
39 environmental remediation of the property, and agrees to include the Authority or its
40 designated representative in meetings of the BRAC Clean-Up Team, as appropriate, to ensure
41 the Government is informed of the Authority’s concerns prior to the Government making
42 final decisions.

FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

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ARTICLE 3. CLOSING:

3.01. Closing Schedule. The Parties agree that the Property shall be conveyed in accordance with the schedule for conveyance of the Property as set forth in Exhibit K; should an action described in this section not take place by the date or time frame identified in the appropriate subsection, all subsequent dates or time frames for all subsequent actions, with the agreement of the Parties, shall be deferred on a day-for-day basis.

3.02. Requirements for Initial Closing and for All Subsequent Closings.

A. Time and Place.

1. Initial Closing. The Parties will use their best efforts to consummate the Initial Closing no later than two (2) months after the later of:

- a. the execution of this Agreement or the completion of a FOST for Parcel 1 by the Government,
- b. such other time as the Parties may mutually agree, or
- c. the execution of the Habitat Management Plan by the Authority and all Authority member jurisdictions.

2. Subsequent Closings. Subsequent Closings shall take place within forty-five (45) days after the Government completes the FOST or FOSET for the portion of Property to be conveyed to the Authority.

3. Place. Closings shall be consummated at the offices of the Title Insurer, or such other place as the Parties may mutually agree.

B. Government Deliveries. The Government shall deliver to the Initial Closing and Subsequent Closings, as appropriate, the following documents reasonably satisfactory to the Authority and in a form previously reviewed and approved by the Authority:

1. Executed Deed(s) conveying fee ownership to the Authority to Parcel 1 and to all other Parcels for which a FOST or FOSET has been executed, substantially in the form set forth in Exhibit B.

2. Final FOST or FOSET, as appropriate, for each Parcel conveyed to the Authority at the Closing.

FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

1 3. Executed Bill of Sale for the Personal Property to be conveyed to the
2 Authority at the Closing with the Parcel conveyed to the Authority at the Closing
3 substantially in the form set forth in Exhibit G.
4

5 4. Executed Lease in Furtherance of Conveyance, if any, in a manner set
6 forth in Article 6.
7

8 5. Any permits, leases or licenses transferred or assigned relating to the
9 Parcel conveyed to the Authority at the Closing.
10

11 6. A listing of the location of copies of all existing construction drawings,
12 reports, and documents concerning as-built conditions of the facilities as well as
13 identification of the location of the repository for all environmental reports, studies,
14 tests and records relating to each parcel as provided for in Article 9.03.
15

16 7. Certificate confirming that the representations and warranties of the
17 Government set forth in this Agreement are true and correct as of the date of the
18 Closing in substantially the form set forth in Exhibit D-1.
19

20 8. Such additional documents as might be required by California law, the
21 Title Insurer, or the Authority.
22

23 C. Authority Deliveries. The Authority shall deliver to the Initial Closing and
24 Subsequent Closings, as appropriate, the following documents reasonably satisfactory to the
25 Government and in a form previously reviewed and approved by the Government:
26

27 1. Executed Lease in Furtherance of Conveyance, if any, in a manner set
28 forth in Article 6.
29

30 2. A legal opinion stating that the Authority has the legal authority to execute
31 this Agreement and accept conveyance and transfer of the Property.
32

33 3. Certificate confirming that the representations and warranties of the
34 Authority set forth in this Agreement are true and correct as of the date of the Closing
35 in substantially the form set forth in Exhibit D-2.
36

37 4. Such additional documents as might be required by California law, the
38 Title Insurer, or the Government.
39
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42

FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

1
2 **ARTICLE 4. PERSONAL PROPERTY:**
3

4 4.01. Personal Property. In addition to the conveyance of the Real Property, the Government
5 shall transfer to the Authority the Personal Property which the Parties agree is related to and
6 necessary to use the Real Property, as specified and identified in and pursuant to the terms and
7 conditions in the Bill of Sale substantially in the form set forth in Exhibit G.
8

9 **ARTICLE 5. WATER AND SEWER RIGHTS:**
10

11 5.01. Marina Coast Water District. Immediately following the execution of this Agreement,
12 the Government shall transfer to the Marina Coast Water District (the “District”) the water and
13 wastewater collection systems on the Property and the Presidio of Monterey Annex, including their
14 respective water rights and wastewater discharge rights as defined in and pursuant to a no cost Public
15 Benefit Conveyance (“PBC”) in response to the application filed by the District dated August 26,
16 1997.
17

18 5.02. Government. The Authority understands that in the assignment of the water rights to
19 the District, the Government reserves 1729 acre feet per year (“afy”) of water exclusively for
20 Government use (“Government Water Rights”). Also, the Government will retain ownership of 1.08
21 million gallons per day (“mgd”) of wastewater discharge rights (“Government Wastewater Discharge
22 Rights”). If the Authority or any other entity, at its own cost and expense, installs water conservation
23 devices on the property not transferred to the Authority, resulting in decreased Government
24 requirements for water or wastewater discharge, or the Government does not utilize all of the
25 Government Water Rights or Government Wastewater Discharge Rights, the Authority shall have
26 the right to negotiate with the Government for use of the Government Water Rights or Government
27 Wastewater Discharge Rights not utilized by the Government (collectively “Unutilized Government
28 Water/Wastewater Rights”). The Government and the Authority agree to meet and confer regarding
29 the Unutilized Government Water/Wastewater Rights two (2) years following the completion of the
30 installation of water meters at the Presidio of Monterey Annex (“POMA”). The Government shall
31 determine the amounts of unutilized Government Water/Wastewater Rights on an annual basis and
32 will consult with the Authority regarding this determination on an annual basis. In the event of a
33 proposed transfer of Government Water Rights or Government Wastewater Discharge Rights to a
34 third party, the Authority shall have the first right of refusal to any such transfer rights.
35

36 5.03. Equitable Allocation of Water. The Authority, and its successors and assigns, shall
37 cooperate with the Marina Coast Water District, Monterey County Water Resources Agency and
38 grantees of former Fort Ord Property to establish and apply a fair process to ensure that all grantees
39 of former Fort Ord property will be provided an equitable supply of the water at the former Fort Ord.
40

41 5.04. Wastewater Discharge Rights. The Authority, and its successors and assigns, shall
42 cooperate with the Marina Coast Water District, the Monterey Regional Water Pollution Control

FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

1 Agency and grantees of former Fort Ord Property to establish and apply a fair process to ensure that
2 all grantees of former Fort Ord property will enjoy equitable utilization of the existing sewage
3 treatment capacity, including existing connections to the former Fort Ord sewage collection system.
4

5 **ARTICLE 6. LEASE IN FURTHERANCE OF CONVEYANCE:**

6
7 6.01. Lease. In furtherance of and pending conveyance of the Property, at the Authority's
8 request and to the extent the Government can honor such request, the Government agrees to lease
9 the Property, in whole or in part, to the Authority, and the Authority agrees to accept such lease or
10 leases in furtherance of conveyance, pursuant to the terms, covenants, and conditions mutually
11 agreed to by the Parties as provided for in the FOSL. The Lease shall be executed by the
12 Government and the Authority as soon as the Agreement and a FOSL are executed.
13

14 **ARTICLE 7. EFFECT OF TRANSFER OF TITLE AND CONTINUING** 15 **OBLIGATIONS OF THE GOVERNMENT:**

16
17 7.01. Effects of Deeds. The delivery of the executed Deeds pursuant to this Agreement from
18 the Government to the Authority shall be deemed full performance by the Government of its
19 obligations hereunder with regard to the portions of the Property conveyed by each Deed other than
20 any obligations of the Government which are required by this Agreement or by law (including
21 without limitation any obligations under CERCLA Section 120(h) and under Section 330 of the
22 Department of Defense Authorization Act of 1993) to be performed after the delivery of each such
23 Deed.
24

25 7.02. As-is, Where-is. Except as provided herein, all of the Property conveyed or leased
26 hereunder will be in an "as-is where-is" condition and without any representation or warranty
27 whatsoever and without any obligation on the part of the United States of America except as
28 expressly provided for by law or in this Agreement.
29

30 7.03. Liabilities.

31
32 A. The Government shall remain responsible for all liabilities, claims, demands, judgments,
33 suits, litigation, amounts payable (collectively, "Pre-Closing Obligations") against the Government
34 or the Property attributable to Government activity on the Property, including activities of the
35 Government's contractors, lessees, licenses and others acting under Government authority, prior to
36 the conveyance or lease of each parcel of the Property to the Authority. The Authority shall notify
37 the Government of the existence or occurrence of any such Pre-Closing Obligations and shall
38 cooperate with the Government in the payment, settlement and disposition thereof.
39

40 B. The Authority agrees to indemnify and hold harmless the Government, its employees and
41 agents for activities conducted by the Authority, its agents, employees or contractors under the Lease
42 or any Right-of-Entry authorized and granted pursuant by the Government to the Authority.

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ARTICLE 8. TITLE:

8.01. Title. The deed for each parcel of Property (the “Deeds”) shall convey all right and title held by the United States of America in and to the Property, subject to and free from encumbrances, covenants, conditions, restrictions, limitations on use or notices except those that are imposed under this Agreement (including the Exhibits attached hereto), or which are recorded as a matter of public record in the Recorder of Deeds Office, Monterey County, California, as of the date of execution of this Agreement. The Authority reserves the right to review the title as conveyed by each Deed. Except as otherwise provided for in this Agreement, the Government agrees not to grant, after the date set forth in this section, any encumbrances, covenants, conditions, restrictions, limitations on use or notices concerning the Property without the specific consent of the Authority.

8.02. Title Evidence. Any title insurance that may be desired by the Authority will be procured at its sole cost and expense. The Government will, however, cooperate with the Authority or its authorized agent, and will permit examination and inspection of any documents relating to the title of the Property as it may have available. It is understood that the Government will not be obligated to pay for any expense incurred in connection with title matters. The Authority may, at its sole cost and expense, on or before the conveyance date order such searches as it deems appropriate confirming the absence of Additional Title Exceptions.

ARTICLE 9. GOVERNMENT’S OBLIGATIONS PRIOR TO CONVEYANCE:

9.01. Restrictions. From the Effective Date of this Agreement to the Closing, the Government shall not do, permit, or agree to do, any of the following:

A. Sell, encumber or grant any interest in the Property or any part thereof in any form or manner whatsoever or otherwise perform or permit any act which will diminish or otherwise affect the Authority’s interest under this Agreement or in or to the Property or which will prevent the Government’s full performance of its obligations hereunder, unless the Authority is first informed.

B. Remove or alter any fixtures or Personal Property from the Property listed on Exhibit G, unless the Authority is first notified and agrees to such removal or alteration.

C. Knowingly undertake any action, legal or otherwise, that may impact the Government’s ability to convey the Property to the Authority, without first notifying the Authority in a timely manner and seeking the Authority’s consultation.

9.02. Zoning, Annexation and Assessment. The Government acknowledges the Authority’s beneficial ownership interest in the Property, as outlined in this Agreement, and recognizes the Authority’s role in the economic development of the Property. The Government authorizes the

FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

1 Authority to take such land use planning activities as the Authority deems necessary to implement
2 the FORA Base Reuse Plan. The Government agrees that it will not interfere with or protest or
3 challenge any annexation, zoning petition or application or the imposition of any land-based
4 financing district over the Property.
5

6 9.03. Delivery Requirements. Upon the Authority's written request, the Government shall
7 make available to the Authority, not later than thirty (30) calendar days following the date of this
8 Agreement, or as soon thereafter as they become available, true, correct and complete copies of the
9 following, if not previously delivered to the Authority:
10

11 A. All non-proprietary information in Licenses and Contracts including all
12 amendments relating to any portion of the Property;
13

14 B. Plans and specifications for the improvements on the Property;
15

16 C. Drawings of above and below ground utilities (including gas, sewer, well, septic,
17 water, telephone and electrical service cables) located under or on the Property, wherever
18 available;
19

20 D. Essential records with respect to the Property (including any records relating to
21 transactions with taxing authorities, governmental agencies, utilities, and others with whom
22 the Authority may be dealing following its acquisition of the Property);
23

24 E. The Environmental Baseline Survey and any maps, amendments or
25 correspondence related thereto;
26

27 F. The available FOSTs and FOSETs, as appropriate, issued as to the Property; and
28

29 G. All documents required elsewhere to be delivered pursuant to this Agreement.
30

31 9.04. Notification of Changes. The Government shall notify the Authority if the
32 Government becomes aware of any transaction or occurrence prior to the Closing which would make
33 any of the representations of the Government contained in this Agreement not true in any respect.
34

35 9.05. Maintenance of the Property. The Government shall maintain or cause to be
36 maintained the Property in accordance with the Federal Property Management Act and Regulations,
37 subject to the availability of funds until such time as the Property is conveyed or leased to the
38 Authority through the full performance of its obligations under the Cooperative Agreements effective
39 as of July 1, 1999.
40

41 **ARTICLE 10. AUTHORITY'S OBLIGATIONS PRIOR TO CONVEYANCE:** 42

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1 10.01. Habitat Management Plan.
2

3 A. The Authority shall execute the Installation-Wide Multispecies Habitat Management Plan
4 (“HMP”) for the Former Fort Ord, California, dated April 1997, concurrent with the execution of
5 this Agreement.
6

7 B. The Authority member jurisdictions shall execute the HMP within ninety (90) days
8 following the execution of this Agreement.
9

10 **ARTICLE 11. GOVERNMENT REPRESENTATIONS:**
11

12 The Government hereby represents to the Authority on and as of the Effective Date of this
13 Agreement and as of the Closing as follows:
14

15 11.01. Execution of Agreement. The Government has full capacity, right, power and
16 authority to execute, deliver, and perform this Agreement and all documents to be executed by the
17 Government pursuant hereto, and all required action and approvals therefor have been duly taken
18 and obtained. This Agreement and all documents to be executed pursuant hereto by the Government
19 are and shall be binding upon and enforceable against the Government in accordance with their
20 respective terms.
21

22 11.02. Complete Information. To the best of the Government’s knowledge, information and
23 belief, the information included in the Exhibits hereto and the documents to be delivered to the
24 Authority pursuant to this Agreement or previously delivered to the Authority are true, correct and
25 complete in all material respects, and the same do not omit any material information required to
26 make the submission thereof fair and complete.
27

28 11.03. Possession. To the best of the Government’s knowledge, information and belief, the
29 information included in the Exhibits hereto and the documents to be delivered to the Authority
30 pursuant to this Agreement or previously delivered to the Authority acknowledge any leases in
31 existence or persons who have possessory rights or any claims in respect to the Property that will
32 survive Closing.
33

34 11.04. Claims. The Government will notify the Authority on or before each Closing and
35 effective at such Closing of any claims, causes of action or other litigation or proceedings pending
36 or threatened with respect to the ownership or operation of the Property or any part thereof (including
37 disputes with mortgagees, governmental authorities, utilities, contractors or adjoining land owners).
38

39 11.05. Notice. To the best of the Government’s knowledge, information and belief, the
40 Government has not received any notice of (and is not otherwise aware of) any violations of any
41 legal requirements with respect to the Property which have not been entirely corrected or are in the
42 process of being corrected.

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1
2 11.06. Environmental Baseline Survey. The Environmental Baseline Survey, and if
3 available, the appropriate FOST, FOSET, and/or FOSL reflects all information in the possession or
4 control of the Government with respect to the presence, or suspected presence, or any condition on
5 or associated with the Property that presents, or could present, a risk to human health or the
6 environment. Further, the Environmental Baseline Survey has been prepared, under the direction
7 of the Government, in full compliance with all material requirements of all applicable directives,
8 guidance documents, and other policies, and is based on thorough and comprehensive investigations
9 and analyses of the historical uses and current conditions of the Property.

10
11 11.07. Contracts, Leases or Licenses. To the best of the Government's knowledge,
12 information and belief, the information included in the Exhibits hereto and the documents to be
13 delivered to the Authority pursuant to this Agreement or previously delivered to the Authority
14 acknowledges any contracts, leases or licenses with respect to the Property that will survive Closing.

15 16 **ARTICLE 12. AUTHORITY REPRESENTATIONS:**

17
18 12.01. Representations. The Authority hereby represents to the Government on and as of
19 the date of this Agreement and on and as of the Closing, that the Authority has full capacity, right,
20 power and authority to execute, deliver and perform this Agreement and all documents to be
21 executed by the Authority pursuant hereto, and all required action and approvals therefor have been
22 duly taken and obtained. The individuals signing this Agreement and all other documents executed
23 or to be executed pursuant hereto on behalf of the Authority shall be duly authorized to sign the same
24 on the Authority's behalf and to bind the Authority thereto. This Agreement and all documents to
25 be executed pursuant hereto by the Authority are and shall be binding upon and enforceable against
26 the Authority in accordance with their respective terms.

27 28 **ARTICLE 13. SHARING OF SERVICES, UTILITIES AND ROADS:**

29
30 13.01. Sharing of Services. The Government and the Authority shall grant to the other at
31 no cost such easements or licenses as may be required (a) for the use of roads, utilities and other
32 services necessary or desirable for the enjoyment and benefit of those portions of the Property owned
33 by the other Party as shown on Exhibit M, and (b) for ingress and egress as may be necessary, as
34 shown on Exhibit M.

35 36 37 38 39 **ARTICLE 14. RIGHT OF ENTRY:**

40
41 14.01. Right of Entry. From the Effective Date of this Agreement to the Final Closing, the
42 Government agrees to issue a license, right of entry, or other appropriate document to the Authority

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1 in the form set forth as Exhibit J, for Authority representatives, agents, employees, lenders,
2 contractors, appraisers, architects and engineers designated by the Authority, access to and entry
3 upon the Property and the improvements thereon to examine, inspect, measure, conduct
4 infrastructure improvements, demolish infrastructure, hazardous and other material disposal and
5 removal, construction of infrastructure and test the Property except where such entry would conflict
6 or jeopardize personal safety or interfere with remediation activities. In exercising the right of entry
7 granted by this section, the Authority shall: 1) provide reasonable notice to the Government of the
8 date, time, and purpose of the entry; 2) obtain the Government's prior written consent to any
9 infrastructure demolition, land-disturbing testing, including the taking of core samples, and
10 hazardous and other material disposal; 3) ensure that any activities on the Property do not interfere
11 with Government operations or activities; and 4) comply with terms and conditions specified by the
12 Government (including reasonable insurance requirements), which the Government agrees it shall
13 not unreasonably impose.

14
15 A. Any work and improvements by the Authority shall be subject to terms,
16 conditions, and restrictions deemed necessary by the Government and set forth in the license,
17 Right of Entry, or other appropriate document. The cost of said improvements shall be borne
18 entirely by the Authority, and shall remain the property of the Government if the transfers
19 anticipated herein do not occur. The Authority shall indemnify and hold the Government
20 harmless from all claims, liability, loss, cost, environmental contamination, or damage that
21 may occur as a result of the undertaking by the Authority of said improvements or site
22 preparation, except where such claims, liability, loss, cost, environmental contamination, or
23 damage is the result of the gross negligence or willful misconduct of the Government or its
24 employees, agents, or contractors. It shall be the responsibility of the Authority at its expense
25 to obtain all governmental permits and clearances and complete any environmental analysis
26 or documentation required for the undertaking of said improvements or site preparation,
27 including but not limited to:

28
29 1. permits and clearances from the Army, the U.S. Environmental Protection
30 Agency, and the California Department of Toxic Substance Control ("DTSC"),
31 related to the ongoing environmental cleanup required under the Federal Facility
32 Agreement for the former Fort Ord;

33
34 2. air quality analysis and documentation; and

35
36 3. any permits, analysis, and/or documentation required by the National
37 Environmental Policy Act of 1969, the National Historic Preservation Act of 1966,
38 the Endangered Species Act, the Coastal Zone Management Act, the Clean Air Act
39 and Amendments, the Clean Water Act, and other applicable Federal, state and local
40 laws and regulations.
41

FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

1 B. The Government shall cooperate with the Authority as necessary to obtain said
2 permits, provided that the Authority shall discharge any expense or liability of the
3 Government in connection therewith.
4

5 **ARTICLE 15. ENVIRONMENTAL PROVISIONS:** 6

7 15.01. Environmental Condition of the Property. 8

9 A. For those Parcels where the Government has determined that no further
10 remediation is necessary, the Government and the Authority hereby agree to be bound by the
11 terms and conditions of the Deed, substantially in the form set forth in Exhibit B.
12

13 B. For those Parcels to be conveyed with a deferred covenant as permitted by
14 Section 120(h)(3)(C) of the CERCLA, the Government and the Authority hereby agree to be
15 bound by the terms and conditions of a Deed that shall contain, at a minimum, the following
16 (upon the mutual agreement of the Parties, the Deed(s) may be modified as necessary):
17

18 1. Government Finding of Suitability: Finding by the Government that the
19 Property is suitable for transfer for the intended use as set forth in the FOSET, and
20 that the Government believes that the requirements of CERCLA Section
21 120(h)(3)(C) have been satisfied with the supporting evidence being provided in the
22 FOSET package.
23

24 2. Property Description: A description of the Real Property to be transferred.
25 A map should also be attached.
26

27 3. Nature and Extent of Contamination: A description of the nature and extent
28 of the contamination that impacts the parcel of Property being transferred. The
29 Department of Defense Environmental Condition Category of the Property should
30 also be included. An extract from the EBS or a supplement to the EBS, which
31 accurately delineates the areas of contamination shall be attached to the FOSET
32 packet.
33

34 4. Analysis of Future Use: A description of the intended use of the Property and
35 a determination of whether the anticipated reuse is reasonably expected to result in
36 exposure to CERCLA hazardous substances. If it is determined that exposure to
37 hazardous substances is likely, the analysis must discuss restrictive measures
38 contemplated or required (i.e., institutional and other controls), to prevent exposure
39 during the remediation of the Property. These restrictions must also be included in
40 the deed for the Property.
41

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1 5. Response/Corrective Action and Remedial Action-Operations Requirements:

2 A description of any ongoing or planned remedial or corrective actions. The
3 schedule for such actions, including the dates of certain milestones (e.g., the
4 implementation of the remedy) should be included. The schedule should also contain
5 the dates for the operation and maintenance of the remedy or response action.
6

7 6. Deed Language: Environmental remediation information that will be required
8 in either the deed or contract for sale of the parcel of Property for review as follows:
9

10 (i). Notice: a copy of the notice language required by CERCLA Section
11 120(h)(1) and (3) that will be inserted in the deed identifying: the type and quantity
12 of hazardous substances on the Property; the time at which storage, release or
13 disposal took place, and a description of the remedial action taken, if any. This
14 information may be displayed in matrix form for ease of use.
15

16 (ii). Covenant: a copy of the covenant language required by CERCLA
17 Section 120(h)(3)(A)(ii)(II) stating, with respect to hazardous substances existing on
18 the Property as of the date of transfer, that: “any additional remedial action found to
19 be necessary after the date of such transfer shall be conducted by the United States.”
20

21 (iii). Right of Access: a copy of the language required by CERCLA
22 Section 120(h)(3)(A)(iii) granting the United States access to the Property if remedial
23 action or corrective action is found to be necessary after the date of Property transfer,
24 as well as providing access to the Property to perform the cleanup for which the
25 deferral is being sought.
26

27 (iv). Response Action Assurances: a copy of the response action
28 assurances required by CERCLA Section 120(h)(3)(C)(ii) (listed below) that will be
29 included in the contract for sale of the parcel of Property and the Deed. These
30 assurances are included in the contract for sale of the parcel of Property and the Deed
31 to ensure that the transfer does not delay remedial activities; the reuse does not pose
32 a risk to human health and the environment; and that the Government will request
33 adequate funds to address schedules for investigation and completion of all response
34 actions.
35

36 (a) provide for any necessary restrictions on the use of the
37 Property to ensure the protection of human health and the environment;
38

39 (b) provide that there will be restrictions on the use necessary to
40 ensure that required remedial investigations, response action, and oversight
41 activities will not be disrupted;
42

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1 (c) provide that all necessary response action will be taken and
2 identify the schedules for investigation and completion of all necessary
3 response action as approved by the appropriate regulatory agency; and
4

5 (d) provide that the transferring Federal agency responsible for
6 the Property subject to transfer will submit a budget request to the Director
7 of the Office of Management and Budget that adequately addresses schedules
8 for investigation and completion of all necessary response action, subject to
9 congressional authorizations and appropriations.
10

11 7. Attachments: To demonstrate that the Government has requested adequate
12 funding for all response activities, a schedule and associated funding profile for
13 response actions shall be attached to the FOSET. Any specific language required to
14 ensure that cleanup activities will not be disrupted, and to implement institutional or
15 other controls or impose use restrictions during the remediation period and that may
16 be required by the final remedy decision, can either be included in or attached to the
17 FOSET.
18

19 15.02. Schedule. The Government shall use its best efforts to complete the environmental
20 remediation of the Property in the time schedule set forth in Exhibit L.
21

22 15.03. Ordnance and Explosives (“OE”). The former Fort Ord is a former military
23 installation with a history of OE use and, therefore, there is a potential for OE to be present on the
24 Property. In the event the Authority, its successors and assigns, should discover any ordnance on
25 the Property, it shall not attempt to remove or destroy it, but shall immediately notify the local police
26 department and the Directorate of Law Enforcement at the Presidio of Monterey. A competent
27 Government or Government designated explosive ordnance professional will be dispatched promptly
28 to dispose of such ordnance properly at no expense to the Authority, whenever OE may be
29 discovered.
30

31 15.04. Covenants Relating to Retention of Environmental Documents. The original
32 administrative record, and all environmental documents relating thereto, concerning the
33 environmental conditions of the Property shall be maintained in an accessible repository so that such
34 records will be available for inspection, review and copying by the Authority and its successors and
35 assigns. The Authority and its successors and assigns, at their own expense, shall have the right to
36 inspect, review and copy such records with twenty-four (24) hour prior notice. The Government
37 shall use its best efforts to locate the repository at or near the Property.
38
39

40 **ARTICLE 16. LEAD-BASED PAINT (LBP):** 41

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1 16.01. Disclosure. The Lead-Based Paint (hereinafter referred to as “LBP”) Disclosure
2 required by 24 CFR Part 35 (FR March 6, 1996) is shown as an Exhibit in the Deed.
3

4 16.02. Disclosure Removal. The parties agree that the Authority, or its successors or
5 assigns, will seek approval of a procedure through the California DTSC, whereby once the LBP is
6 removed from the Property in compliance with Federal and State standards, the LBP Disclosure can
7 be removed from the Deeds. The Government agrees to cooperate with such procedure, and sign
8 amended Deeds as necessary, provided, however, that such amendments shall be at no cost to the
9 Government.
10

11 16.03. Liability. The Parties agree, that prior to occupancy for residential habitation, of any
12 existing structure, the Authority will comply with the applicable lead based paint inspection and
13 abatement provisions of 24 C.F.R. Part 35. The Government assumes no liability for remediation
14 or damages for personal injury, illness, disability, or death, to the Authority, its successors and
15 assigns, sublessees or to any other person, including members of the general public, arising out of
16 exposure to lead-based paint in connection with the Authority’s possession and/or use of any portion
17 of the Property containing lead-based paint. The Authority, its successors and assigns, further agree
18 to indemnify and hold harmless the Government, its officers, agents and employees, from and against
19 all suits, claims, demands or actions liabilities, judgments, costs and attorneys’ fees arising out of,
20 or in any manner predicated upon, personal injury, death or property damage resulting from, related
21 to, caused by or arising out of exposure to lead-based paint or lead-based paint hazards on the
22 Property after the date of the conveyance of the Property, if used for residential purposes.
23

24 **ARTICLE 17. ASBESTOS:** 25

26 17.01. Disclosure. The Authority is hereby informed by the Government and does
27 acknowledge that asbestos or asbestos-containing materials (ACM) have been found on the Property,
28 as described in the Diagnostic Environmental, Inc. (now ATC Environmental, Inc.) report, Asbestos
29 Survey Report, U.S. Army Corps of Engineers - Fort Ord Installation, Fort Ord, California, dated
30 April 26, 1993. Appropriate disclosure statements for each parcel of Property will be included in
31 each Deed.
32

33 17.02. Disclosure Removal. The parties agree that the Authority, or its successors or assigns
34 will seek approval of a procedure through the California DTSC, whereby once the ACM is removed
35 from the Property in compliance with Federal and State standards, reference to ACM can be removed
36 from the Deeds. The Government agrees to cooperate with such procedure, and sign amended Deeds
37 as necessary, provided, however, that such amendments shall be at no cost to the Government.
38

39 17.03. Liability. The Government shall be responsible for the remediation of all damaged
40 friable and accessible ACM which exists on the Property at the time of its conveyance to the
41 Authority; the Authority shall be responsible for the remediation of all damaged friable and
42 accessible ACM which becomes damaged friable and accessible ACM after the time of the

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1 conveyance of the Property to the Authority. The Authority further agrees to indemnify and hold
2 harmless the Government, its officers, agents and employees, from and against all suits, claims,
3 demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner
4 predicated upon, exposure to asbestos on any portion of the Property after this conveyance of the
5 Property to the Authority or any future remediation or abatement of asbestos or the need therefor.

6 The obligation of the Authority hereunder shall apply whenever the United States incurs costs or
7 liabilities for actions giving rise to liability under this section.
8

9 **ARTICLE 18. NOTICE OF HISTORIC PRESERVATION:**

10
11 18.01. Historic Places. In accordance with an agreement by and between the Department
12 of the Army, the Advisory Council on Historic Preservation, and the California State Historic
13 Preservation Officer (“SHPO”) regarding Fort Ord, California (“Programmatic Agreement”; Exhibit
14 F), certain areas of the Property are under consideration for eligibility for listing on the National
15 Register of Historic Places. If a site is determined to be eligible for listing on the National Register
16 of Historic Places, the Authority agrees, on behalf of itself and its successors and assigns, to consult
17 with the SHPO and maintain and preserve the Historic Site as appropriate in accordance with the
18 Programmatic Agreement.
19

20 **ARTICLE 19. GOVERNMENT CONSENT TO SUBDIVISION OF** 21 **PROPERTY/DEDICATION OF ROADS:**

22
23 19.01. Subdivision of Property. The Government, as permitted by Federal statute, shall not
24 unreasonably delay or withhold its consent to the recording by the Authority or the Authority
25 member jurisdictions, of all documents necessary to subdivide all or portions of the Property,
26 approve assessments, adopt redevelopment project areas, dedicate public roads, easements, and open
27 spaces, and record covenants, conditions and restrictions regarding the future development and use
28 of the Property, in accordance with the FORA Base Reuse Plan, or the recording of any subdivision
29 plat, dedication plat, or declaration of covenants, conditions and restrictions concerning the Property.
30 The Government agrees that it will not interfere with or protest or challenge any subdivision petition
31 or application over the Property. Additionally, the Government acknowledges the Authority’s role
32 in the economic development of the Property and, as permitted by Federal statute, authorizes the
33 Authority to vote in any election on the Property or otherwise indicate its views in such matters as
34 the owner or contract purchaser of the Property, as the Authority deems appropriate.
35
36
37
38

39 **ARTICLE 20. BROKERAGE; CONTINGENT FEES:**

40
41 20.01. Contingent Fees. The Authority warrants that it has not employed or retained any
42 party under an agreement or understanding for a commission, percentage, brokerage, or contingent

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1 fee tied to the successful conveyance of the Property from the Government to the Authority. Breach
2 of this warranty shall give the Government the right to recover from the Authority the amount of
3 such commission, percentage, brokerage or contingent fee in addition to the consideration herewith
4 set forth actually paid by the Government to any such party retained by the Authority. This warranty
5 shall not apply to commissions payable by the Authority upon the contract being secured or made
6 through bona fide established commercial agencies maintained by the Authority for the purpose of
7 doing business. A bona fide established commercial agency has been construed to include licensed
8 real estate brokers engaged in the business generally.
9

10 **ARTICLE 21. DESTRUCTION OR DAMAGE:**

11
12 21.01. Destruction or Damage. In the event of significant damage or destruction of all or
13 a portion of the Property prior to the Closing, the Authority retains the right to renegotiate the
14 consideration and terms of this Agreement with regard to such damaged portion of the Property.
15

16 **ARTICLE 22. NOTICES:**

17
18 22.01. Notices. Any notice, request, demand, instruction or other document to be given or
19 served hereunder or under any document or instrument executed pursuant hereto shall be in writing
20 and shall be delivered personally (including by messenger) or sent by United States registered or
21 certified mail, return receipt requested, postage prepaid or by courier, postage prepaid and addressed
22 to the parties at their respective addresses set forth below, and the same shall be effective upon
23 receipt if delivered personally or by messenger or two business days after deposit in the mail if
24 mailed. A party may change its address for receipt of notices by service of a notice of such change
25 in accordance herewith.
26

27 If to the Authority: Michael A. Houlemard, Jr.
28 Executive Officer
29 Fort Ord Reuse Authority
30 100 12th Street, Building 2880
31 Marina, California 93933
32 Phone: (831) 883-3672
33 Facsimile: (831) 883-3675
34
35 If to the Government: U.S. Army Corps of Engineers, Sacramento District
36 1325 J Street
37 Sacramento, California 95814
38 Attn: Keneth L. Fox, Chief,
39 Management and Disposal Branch
40 Phone: (916) 557-6870
41 Facsimile: (916) 557-7855
42

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ARTICLE 23. ENTIRE AGREEMENT, AMENDMENTS AND WAIVER:

23.01. Entire Agreement. This Agreement contains the entire agreement and understanding of the Parties in respect to the purchase and sale of the Property, and may not be amended, modified or discharged nor may any of its terms be waived except by an instrument in writing signed by the Party to be bound thereby. The Parties hereto shall not be bound by any terms, conditions, statements, warranties or representations, oral or written, not contained herein.

ARTICLE 24. CONTRACT DISPUTES:

24.01. Disputes. This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the Parties to this Agreement to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this Agreement shall be a dispute to be resolved in accordance with Federal law. The Authority and the Government shall proceed diligently with performance of this Agreement, pending final resolution of any dispute arising under the Agreement.

ARTICLE 25. SURVIVAL AND BENEFIT:

25.01. Survival and Benefit. The Authority may not transfer or assign its rights and interests under this Agreement, without the written consent of the Government. All representations, warranties, agreements, obligations and indemnities of the Parties shall, notwithstanding any investigation made by any Party hereto, survive Closing and the same shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties. Nothing in this Agreement otherwise shall be construed as creating any rights of enforcement by any person or entity that is not a Party hereto, nor any rights, interest, or third party beneficiary status for any entity or person other than the Parties hereto.

ARTICLE 26. INTERPRETATION:

26.01. The headings and captions herein are inserted for convenient reference only and the same shall not limit or construe the paragraphs or sections to which they apply or otherwise affect the interpretation hereof.

26.02. The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms shall refer to this Agreement, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of this Agreement.

26.03. Words of the masculine, feminine or neuter gender shall mean and include the correlative words of other genders, and words importing the singular number shall mean and include the plural number and vice versa.

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1 26.04. Words importing persons shall include firms, associations, partnerships (including
2 limited partnerships), trusts, corporations and other legal entities, including public bodies, as well
3 as natural persons.
4

5 26.05. The terms “include,” “including” and similar terms shall be construed as if followed
6 by the phrase “without being limited to.”
7

8 26.06. This Agreement and any document or instrument executed pursuant hereto may be
9 executed in any number of counterparts each of which shall be deemed an original, but all of which
10 together shall constitute one and the same instrument.
11

12 26.07. Whenever under the terms of this Agreement, the time for performance of a covenant
13 or condition falls upon a Saturday, Sunday or holiday observed by the performing Party, such time
14 for performance shall be extended to the next business day. Otherwise, all references herein to
15 “days” shall mean calendar days.
16

17 26.08. This Agreement shall be governed by and construed in accordance with Federal law
18 and the laws of the State of California, as applicable.
19

20 26.09. Time is of the essence of this Agreement.
21

22 26.10. If any term or provision of this Agreement or the application thereof to any person
23 or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement,
24 or the application of such term or provision to persons or circumstances other than those as to which
25 it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision
26 of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
27

28 **ARTICLE 27. OFFICIALS NOT TO BENEFIT:**

29
30 27.01. Officials Not To Benefit. The Authority acknowledges that no member of, or
31 delegate to the Congress, or resident commissioner, shall be permitted to share any part of the
32 contract of sale, or to receive any benefit that may arise therefrom. This provision shall not be
33 construed to extend to the contract of sale if made with a corporation for its general benefit.
34

35 **ARTICLE 28. NON-DISCRIMINATION:**

36
37 28.01. Non-Discrimination. With respect to activities related to the Property, the Authority
38 hereby agrees that it will comply with the requirements of Title VI of the Civil Rights Act of 1964
39 (Public Law 88-352) and all requirements imposed by or pursuant to the regulations issued under
40 that Act and now in effect, to the end that, in accordance with such Act and regulations, no person
41 in the United States shall, on the ground of race, color, national origin, sex or handicap be excluded

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1 from participation in, be denied the benefits of, or otherwise be subjected to discrimination under
2 any program or activity of the Authority, its successors and assigns.

3
4 **ARTICLE 29. FURTHER ASSURANCES:**

5
6 29.01. Further Assurances. The Government shall, upon the reasonable request of the
7 Authority, execute, cause to be executed, acknowledged or delivered any and all such further
8 instruments and documents as may be necessary or proper, in order to carry out the intent and
9 purpose of this Agreement.

10
11 **ARTICLE 30. NO RIGHT OF RESCISSION:**

12
13 30.01. No Right of Rescission. There shall be no right of rescission in the Government as
14 to the Property, or any portion thereof, once conveyed to the Authority. The foregoing shall not be
15 interpreted to limit any future exercise of the power of eminent domain by the Government.

16
17 **ARTICLE 31. ANTI-DEFICIENCY ACT:**

18
19 31.01. Anti-Deficiency Act. The Government’s obligation to pay or reimburse any money
20 under this Agreement is subject to the availability of appropriated funds, and nothing in this
21 Agreement shall be interpreted to require obligations or payments by the Government in violation
22 of the Anti-Deficiency Act, Public Law 97-258, as amended.

23
24 **ARTICLE 32. EFFECTIVE DATE:**

25
26 32.01. Effective Date. This Agreement shall be final and binding upon the Parties following
27 certification by the Authority that it has complied with the California Environmental Quality Act.
28 Such certification shall be in writing and delivered to the Government no later than sixty (60) days
29 after the execution of the Agreement by the Authority. Following execution of the Agreement by
30 the Parties, the Agreement, and all exhibits thereto, may be released to the public.

31
32 **[SIGNATURE PAGES FOLLOW]**

