

**BOARD OF DIRECTORS OF THE
EAST GARRISON PUBLIC FINANCING AUTHORITY
COUNTY OF MONTEREY**

MEETING: March 27, 2012 - Consent	AGENDA NO.:
SUBJECT: Acting as the Board of Directors of the East Garrison Public Financing Authority, approve and authorize the Chair to sign a <i>Construction and Transfer of Water, Sewer, and Recycled Water Infrastructure Agreement</i> among the East Garrison Public Financing Authority, the Marina Coast Water District and UCP East Garrison LLC for the financing, construction, and transfer of water, sewer, and recycled water infrastructure related to the East Garrison development project on the former Fort Ord.	
DEPARTMENT: Economic Development	

RECOMMENDATION:

It is recommended that the Board of Supervisors, acting as the Board of Directors of the East Garrison Public Financing Authority, approve and authorize the Chair to sign a *Construction and Transfer of Water, Sewer, and Recycled Water Infrastructure Agreement* among the East Garrison Public Financing Authority, the Marina Coast Water District and UCP East Garrison LLC for the financing, construction, and transfer of water, sewer, and recycled water infrastructure related to the East Garrison development project on the former Fort Ord.

SUMMARY:

The purpose of this Agreement is to delineate the specific responsibilities of the East Garrison Developer, the Marina Coast Water District (MCWD), and the East Garrison Public Financing Authority (EGPFA) relative to the implementation and payment of costs for public water, sewer, and recycled water infrastructure improvements required for the EG development. The recommended action will formalize the transfer of the subject Agreement from the original developer of the East Garrison project to the current property owner and developer.

The Agreement states that these improvements, including pipelines, pumps, storage tanks, etc. to deliver potable water, sewer, and recycled water services to the development, will be designed and constructed by the developer, and when completed will be owned and operated by MCWD. The Agreement refers to prior agreements between the Developer and the County wherein the County agreed to facilitate the reimbursement of a portion of the Developer's cost for these infrastructure improvements subject to the compliance with the County's adopted policies regarding Mello Roos bond financing. The Agreement does not require the County to issue Mello-Roos bonds to reimburse infrastructure costs for the East Garrison development project, but makes the water and sewer infrastructure improvement eligible for such reimbursement if all other County policies and requirements are met.

DISCUSSION:

On October 4, 2005 the County, the Redevelopment Agency of the County of Monterey (Agency) and East Garrison Partners I LLC (the Developer) entered into a Disposition and Development Agreement (DDA), wherein it was agreed that the County and Agency would consider forming a Community Facilities District, consistent with County CFD policy, to fund a portion of the Developer's cost (not to exceed \$20 million net) to construct public infrastructure required for development of the East Garrison development project. On October 10, 2005 the

Local Agency Formation Commission of Monterey County (LAFCO) approved the formation of the East Garrison Community Services District (EGCSD). On March 28, 2006, the County and the EGCSD approved the establishment of the East Garrison Public Financing Authority (EGPFA) and approved a *Joint Exercise of Powers Agreement* to issue Mello-Roos bonds and levy special taxes consistent with state law and County CFD policy to pay for all or a portion of the cost to construct public infrastructure (not to exceed \$20 million net) and provide ongoing services to support the East Garrison development project.

On May 16, 2006 the Board of Directors of the EGPFA approved a *Construction and Transfer of Water, Sewer, and Recycled Water Infrastructure Agreement* among the EGPFA, MCWD, and East Garrison Partners I LLC for financing and construction of water, sewer, and recycled water improvements related to the East Garrison development. That Agreement:

- Confirmed the water and sewer capacity allocation for the entire East Garrison development;
- Provided that the developer would construct all off-site water and sewer improvements required to serve the development project in accordance with MCWD engineering standards at the developer's sole cost;
- Provided that the developer would reimburse MCWD for all costs incurred by MCWD related to the design and construction of the improvements;
- Provided that the completed improvements would become the property of MCWD;
- Provided that MCWD would provide water and sewer service to the development; and
- Provided that EGPFA, *subject to satisfaction of the adopted local goals and policies of the EGPFA*, would *use its best efforts* to reimburse to the Developer those eligible costs for construction of the off-site water and sewer infrastructure related to the development.

On June 28, 2011 the Board of Supervisors approved a *First Implementation Agreement to the Disposition and Development Agreement* among the Redevelopment Agency of the County of Monterey and UCP East Garrison LLC (UCP) transferring all development rights and entitlements for the East Garrison project, including those under the EGPFA, to UCP. MCWD thereby required that a new *Infrastructure Agreement* be approved to formalize technical and financial aspects of the water, sewer, and recycled water infrastructure components of this transfer. UCP has executed the new Agreement. The MCWD Board of Directors approved the new Agreement on September 13, 2011.

In comparing the newly-approved *Infrastructure Agreement* with the one approved in 2006, the following key changes appear to have been made:

- The original Agreement covered the entirety of the proposed East Garrison development (Phases 1, 2, and 3). The new Agreement applies only to Phases 1 and 2 of the development. This is because when the Agreement was initially approved in 2006 the parties anticipated the work for all phases would be completed within the two-year term of that Agreement. Given the current Developer's anticipated long-term schedule for project build-out, MCWD and the Developer concur this is the best way to handle the issue of "term".
- The original Agreement established the water and sewer capacity charges at MCWD's then-current \$2,800 and \$1,000 per dwelling unit respectively. The new Agreement establishes these charges at MCWD's now-current \$5,750 and \$2,150 per unit. All parties agree this is appropriate.
- The new Agreement contains a different process for dispute resolution, requiring UCP to agree to an arbitration process and waive its rights to trial. The Agreement does not discuss EGPFA's rights in this process, primarily because EGPFA's obligation under the Agreement

is limited to complying with a separate agreement concerning funding of the East Garrison Community Facilities District. MCWD requires this process, and the issue is non-negotiable. The Developer does not object. MCWD and the Developer are of the opinion that the EGPFPA has no obligations or requirements under the proposed Agreement, and is only a signatory to make the Developers costs for these public improvements eligible for reimbursement by the CFD.

- The new Agreement deletes a prior provision addressing notice to EGPFPA. MCWD and the Developer concur that this was just an oversight, and can be addressed in any future or updated agreements between the EGPFPA and the Developer by requiring the Developer to forward any notice from MCWD to the EGPFPA. In the meantime, both MCWD and the Developer have indicated their intent to provide notices to EGPFPA. As such, it is recommended the current process for approval of the Agreement proceed.

OTHER AGENCY INVOLVEMENT:

County Counsel has approved the recommended Agreement as to form. The MCWD Board of Directors approved the Agreement on September 13, 2011.

FINANCING:

The activities of the EGPFPA will have no impact on the County General Fund or Successor Agency funds, including the associated operational costs of the EGCSO.

The developer will “cash-flow” the costs of infrastructure improvements, and may be reimbursed all or a portion of this cost from Mello-Roos assessments insofar as the development’s financial capacity and the County’s Mello-Roos financing policies will permit.

The issuance of Mello Roos bonds for the East Garrison Project is subject to adopted policies of the Board of Supervisors. To ensure that the proposed debt financing conforms with existing requirements, the County has retained Keyser Marston and Associates to re-calculate the anticipated cost of public services, maximum debt capacity, and phasing of related infrastructure at the East Garrison project. Recommendations for the issuance of Mello Roos bonds for the project will be presented to the Board of Supervisors following completion of the analysis and prior to moving forward with this portion of the project.

Prepared by:

Recommended by:

Nick Nichols, 755-5386
Civil Engineer

Jim Cook, 755-5390
Director of Economic Development

Date: _____

Date: _____

Attachments: Construction and Transfer of Water, Sewer, and Recycled Water Infrastructure Agreement