

**AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY  
FOR  
THE ECONOMIC DEVELOPMENT CONVEYANCE  
OF  
THE PHASE 2 PARCELS  
AT  
THE FORMER FORT MONMOUTH, NEW JERSEY**

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THIS AGREEMENT ("Agreement") is made as of the 25<sup>th</sup> day of October, 2016 ("Effective Date") by and between the Department of the Army ("Army"), acting by and through the Deputy Assistant Secretary of the Army (Installations, Housing and Partnerships), and the Fort Monmouth Economic Revitalization Authority ("FMERA"), a public body corporate and politic and an instrumentality of the State of New Jersey, created pursuant to New Jersey P.L. 2010 c.51 (C.52:271-18 et seq.) and recognized by the Department of Defense, Office of Economic Adjustment, as the Local Redevelopment Authority for the former Fort Monmouth, located in the boroughs of Oceanport, Eatontown and Tinton Falls, New Jersey, (individually each a "Party" and collectively the "Parties").

#### **RECITALS:**

WHEREAS, Article 16 of the agreement between the Parties dated June 25, 2012 for the economic development conveyance ("EDC") of real property identified as the "Phase 1 Parcels" provided that the Army may convey all or portions of the real property identified as the "Phase 2 Parcels" to FMERA under its EDC authority (sec. 2905(b)(4) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. No. 101-510); 10 U.S.C. § 2687 note), as amended; and

WHEREAS, by letter dated September 26, 2016, the Army approved the application submitted by FMERA for an EDC from the Army of the Phase 2 Parcels containing approximately 562 acres of land and Related Personal Property; and

WHEREAS, the Army desires to convey the said Phase 2 Parcels and Related Personal Property to FMERA; and

WHEREAS, FMERA desires to accept the conveyance of the said Phase 2 Parcels and Related Personal Property;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the Parties hereto, intending to be legally bound, agree as follows:

#### **ARTICLE 1. DEFINITIONS**

As used in this Agreement, unless the context otherwise requires or unless otherwise expressly provided, the following terms shall have the following meanings:

"Bonds" shall mean the bonds, notes or other debt instruments issued from time to time for the benefit of FMERA, by the Monmouth County Improvement Authority, or any other governmental entity ***[details to be added as of date of initial issuance through amendment of the MOA by Exhibit 5-1]***, for the purpose of financing the consideration to be paid to the Army pursuant to Article 3.01 hereof or refunding the Bonds issued for such purpose. The proceeds of the initial issuance of the Bonds shall be used solely to pay the consideration to be paid to the Army and the costs of issuance of the Bonds. The proceeds of any Bonds issued to refund a prior issue of Bonds shall be used solely to pay the full amount of the outstanding prior Bonds and the costs of issuance of the refunding Bonds. ***[Exhibit 5 will be amended or updated on a yearly basis by FMERA to provide Exhibit 5-2 an Annual Summary of refunded or Subsequent Bonds, issued by Monmouth County Improvement Authority to document FMERA financing plan and bond series used for purpose of property consideration]***

"Bond Proceeds" shall mean proceeds received by FMERA from the issuance of the Bonds.

"Environmental Sites" shall mean the 44 individual parcels of the Phase 2 Parcels that are described in **Exhibit 1**, attached hereto and made a part hereof, containing approximately 113.21 acres in total.

"Finding of Suitability to Transfer" or "FOST" shall mean the document required by Army Regulation 200-1 evidencing the Army's determination that real property is environmentally suitable for transfer by deed under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") and Department of Defense guidance. A FOST must demonstrate that either the property is uncontaminated or that all necessary remediation has been completed or is in place and operating properly and successfully.

"Local Redevelopment Authority" shall mean the entity established by a state or local government and recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the former Fort Monmouth or for directing the implementation of such a plan.

"Phase 2 Parcels" shall mean the real property, located at the former Fort Monmouth, New Jersey, together with the improvements thereon, containing approximately 562 acres, and as further described in **Exhibit 1**, Description of Environmental Sites and **Exhibit 2**, Description of Phase 2 Parcels Less Environmental Sites both of which are attached hereto and made a part hereof.

“Reinvestment Period” shall mean the period beginning on the date of conveyance of the property described at **Exhibit 2** and continuing for a period of seven (7) years following the date of conveyance of the last parcel of the entire former Fort Monmouth to be conveyed to FMERA under an EDC.

“Related Personal Property” shall mean the personal property located on the Phase 2 Parcels at the former Fort Monmouth, New Jersey.

“Service the Bonds” shall mean and include any and all payments directly or indirectly related to the payment of principal, corpus, interest, fee, charge or premium due and owing on the Bonds, as herein defined.

## **ARTICLE 2. AGREEMENT TO ACQUIRE AND CONVEY**

2.01. The Army agrees to convey to FMERA and FMERA agrees to accept the conveyance of the Phase 2 Parcels and Related Personal Property pursuant to the terms of this Agreement.

2.02. The Army shall convey all right, title, and interest of the United States of America in and to the Phase 2 Parcels to FMERA by quitclaim deed substantially in the form designated as **Exhibit 3** attached hereto and made a part hereof, The Army shall not be obligated to convey and FMERA shall be under no obligation to accept a conveyance of any Phase 2 Parcel to FMERA until a FOST has been prepared and executed by the Army. In accordance with applicable law, said quitclaim deeds shall contain such provisions under section 120(h) of CERCLA, as amended, as the Army may determine are required in accordance with Department of Defense Instruction 4165.72 and such other environmental protection provisions as are set forth in the applicable FOST.

2.03. If FMERA fails to accept the conveyance of any Phase 2 Parcel within seventy five (75) calendar days of receipt of a deed from the Army for the conveyance of the said Phase 2 Parcel, the Army, in its sole discretion, may terminate this Agreement in accordance with Article 9 hereof or enter into an interim lease with FMERA under 10 U.S.C. § 2667. FMERA shall assume responsibility for all costs associated with the protection, operation and maintenance of the lease premises under any such lease. The term of any such lease shall be one (1) year commencing seventy-six (76) calendar days after receipt by FMERA of the deed from the Army that was intended to convey the property constituting the lease premises. The Army may, in its sole discretion, renew any such lease upon its expiration or terminate this Agreement in accordance with Article 9 hereof.

### **ARTICLE 3. CONSIDERATION**

3.01. At settlement for the property described at **Exhibit 2** together with the utility systems located on all Phase 2 Parcels, FMERA shall, as provided in Article 4 hereof, pay to the Army \$33,000,000.00 in a single electronic transfer of funds in consideration of the EDC by the Army to FMERA for all the Phase 2 Parcels and the Related Personal Property. The Army shall subsequently convey the Environmental Sites and any remaining portion of the Related Personal Property to FMERA for no additional monetary consideration after execution of a FOST for each site. As provided in Article 8.03(e) hereof, the Environmental Sites containing all eight (8) landfills located on the Phase 2 Parcels shall be conveyed to FMERA in a single deed.

3.02. As part of the consideration for the Phase 2 Parcels, FMERA shall prepare, or cause to be prepared, at its sole expense, such surveys, boundary monumentation, and legal descriptions of the Phase 2 Parcels as may be required for the Army to convey the said parcels and meet all requirements for deed recordation in the county land records.

### **ARTICLE 4. SETTLEMENT AND RECORDATION**

4.01. The Parties shall agree upon a date, time, and place for settlement of the property described at **Exhibit 2** together with the utility systems located on all Phase 2 Parcels as set forth in Article 18, below, which shall be within seventy five (75) calendar days of receipt of a deed from the Army by FMERA for the conveyance of the said property.

4.02. Remittance of funds by FMERA, as provided in Article 3 above, may require execution and acknowledgment by FMERA and delivery to the Army of the quitclaim deed for the property described at **Exhibit 2**. Within 15 days after delivery to the Army, said quitclaim deed will be executed and acknowledged by the Army with verification to FMERA and then held by the Army pending the receipt of **Bond Proceeds** by FMERA which will be used to pay the required consideration to the Army. Upon receipt of the consideration from FMERA, the Army shall simultaneously deliver to FMERA the executed and acknowledged quitclaim deed for the property described at **Exhibit 2** together with the utility systems located on all Phase 2 Parcels, and FMERA shall accept and record the quitclaim deed as provided below. In accordance with Article 3.01 above, the Army will subsequently deliver to FMERA quitclaim deed(s) for the Environmental Sites and any remaining portion of the Related Personal Property, and, within thirty (30) days of such delivery, FMERA shall accept, execute, and acknowledge said quitclaim deed(s) and return them to the Army to be executed and acknowledged by the Army and delivered to FMERA. FMERA shall then record each quitclaim deed as provided below.

4.03. FMERA shall remit \$33,000,000.00 to the Army as provided for in Article 4.02, above, by electronic transfer of funds to an account to be designated by the Army.

4.04. FMERA shall record the deeds and related affidavits required by New Jersey law for all Phase 2 Parcels in the Office of the County Clerk, Monmouth County, New Jersey, at its sole expense within fourteen (14) calendar days of their delivery to FMERA. FMERA shall provide a copy of all such recorded deeds and affidavits to the Army at no cost to the Army.

4.05. The delivery of deeds conveying the Phase 2 Parcels to FMERA shall be deemed full performance by the Army of its obligations hereunder with respect to the parcels conveyed thereby, except for any continuing obligations of the Army provided for in Article 5 of this Agreement, the deed or in any applicable statute.

4.06. FMERA shall be responsible for procuring any title insurance it may desire for the Phase 2 Parcels at its sole expense. The Army shall cooperate with FMERA or its authorized agent in any effort to undertake to determine the status of title to the Phase 2 Parcels and shall permit examination of any documents in the Army's possession relating to title to the Phase 2 Parcels. FMERA shall be responsible for real estate transfer taxes, bond fees and escrow fees, if any, associated with the conveyance of the Phase 2 Parcels.

4.07. FMERA's costs associated with any Legally Binding Agreements to provide assistance to the homeless or any other related costs incurred by FMERA are FMERA's responsibility and shall not affect the payment of consideration due to the Army set forth in Article 3.01 above. The Parties acknowledge that as a condition of sale or lease by FMERA of the Phase 2 parcels, or portions thereof, payments or designated portions of payments for the homeless accommodations shall be paid directly by the buyer or payee, at the direction of FMERA, into a trust or a separate restricted account established by FMERA in compliance with the terms of Legally Binding Agreements with homeless providers as part of the homeless accommodation approved by the Department of Housing and Urban Development.

## **ARTICLE 5. REINVESTMENT REQUIREMENTS**

5.01. Subject to Articles 5.02 and 5.03 hereof, FMERA agrees to reinvest all proceeds received by FMERA from the sale, lease, or use of the Phase 2 Parcels during the Reinvestment Period to support economic redevelopment of, or related to, the entire former Fort Monmouth. The use of such proceeds to pay for or offset the costs of public investment on or related to the former Fort Monmouth for the following purposes shall



be considered a use to support the economic redevelopment of, or related to the installation:

- a. Road construction;
- b. Transportation management facilities;
- c. Storm and sanitary sewer construction;
- d. Police and fire protection facilities and other public facilities;
- e. Utility construction;
- f. Building rehabilitation;
- g. Historic property preservation;
- h. Pollution prevention equipment or facilities;
- i. Demolition;
- j. Disposal of hazardous materials and hazardous waste generated by demolition;
- k. Landscaping, grading, and other site or public improvements; and
- l. Planning for or the marketing of the development and reuse of the former Fort Monmouth.

5.02.

(a). FMERA certifies that the Bond Proceeds from the initial issuance of Bonds shall be used solely for the payment of consideration to the Army under Article 3 hereof and for the cost of issuance of the initial Bonds.

(b). The Army acknowledges and agrees that proceeds received by FMERA from the sale, lease or use of the Phase 2 Parcels during the Reinvestment Period may be expended by FMERA during the Reinvestment Period to Service the Bonds, and may be expended by FMERA to Service the Bonds until the end of the annual bond refunding fiscal year within which the Reinvestment Period expires, if dedicated for and thereafter expended for that purpose.

(c). The reinvestment requirements contained in this Article 5 are applicable only to proceeds received by FMERA from the sale, lease, or other use of the Phase 2 Parcels during the Reinvestment Period.

(d). The Army acknowledges that FMERA has the right to grant a mortgage, mortgages or related security instruments on all or any portion of the Phase 2 Parcels to secure the Bonds. This paragraph is not intended to exclude or compromise in any way the right of FMERA to secure any other indebtedness through the grant of any mortgage, mortgages or related security instruments on all or any portion of the Phase 2 Parcels.

5.03. Other activities that are directly related to those listed above may also be considered appropriate, allowable uses of the proceeds. Directly related activities that may be considered allowable uses of proceeds must be related to those listed above and directly benefit FMERA's economic redevelopment and long-term job generation efforts for the entire former Fort Monmouth. The use of proceeds to Service the Bonds, as provided in Section 5.02(b) above, shall be considered an allowable use of proceeds hereunder. At any time, FMERA may request the opinion of the Army as to whether a proposed expenditure of proceeds, would constitute an allowable use of proceeds, and the Army shall provide such written opinion within ninety (90) days of receipt of a written request from FMERA.

5.04. Any proceeds held or controlled by FMERA upon the expiration of the Reinvestment Period and which have not been expended or dedicated by FMERA for the purposes described in Articles 5.01 and 5.02(b) above, shall be remitted to the Army within sixty (60) calendar days of the expiration of the Reinvestment Period unless otherwise agreed by the Parties. Any proceeds held or controlled by FMERA upon the expiration of the Reinvestment Period and which have been dedicated by FMERA to Service the Bonds, shall be expended by the end of the annual bond refunding fiscal year within which the Reinvestment Period expires, or shall be remitted to the Army within sixty (60) calendar days after the end of the annual bond refunding fiscal year and accounted for in the final financial statement provided to the Army.

5.05. Within ninety (90) calendar days of the end of calendar year 2016, and for each calendar year thereafter through the calendar year in which the Reinvestment Period ends, FMERA shall submit annual financial statements to the Army, certified by an independent Certified Public Accountant ("CPA") that account for the annual gross and net revenues received by FMERA from the sale, lease, or equivalent use of the Phase 2 Parcels and Related Personal Property and the reinvestment of the proceeds during the Reinvestment Period. The CPA's audit report shall express an opinion on FMERA's financial position, results of its operations, and whether the financial statements were

presented fairly in all material respects, in conformity with generally accepted accounting principles.

5.06. The annual financial statements required in Article 5.05, above, shall include in the statements or as supplemental statements a breakdown of revenues and expenditures of all proceeds from the sale, lease, or equivalent use of the Phase 2 Parcels and Related Personal Property. Expenditures shall be broken down into the twelve (12) categories of investment specified in Articles 5.01, above. In addition, FMERA shall include in the notes to the financial statements, or through supplemental schedules, explanations of the sources of revenues and expenditures, to include specific documentation of the Bonds used to finance the EDC consideration, other debt instruments used to finance economic redevelopment on or related to the installation, and the payments made to Service the Bonds or to service other debt instruments.

5.07. Annual accounting of the use of proceeds as required by this Article shall be provided to the Army in the format specified in **Exhibit 4**, attached hereto and made a part hereof. At any time during the Army's review of the financial statements submitted hereunder, FMERA shall provide the Army with any additional information related to receipts and expenditures which may be reasonably required by the Army to assist the Army in its review. The Army shall have the right to perform annual audits of the records and accounts of FMERA in order to ensure compliance with this Article 5.

5.08. FMERA agrees that the amount of any proceeds that have been expended for a purpose other than one of the twelve (12) categories of allowable investment specified in Article 5.01 or as otherwise determined allowable by the Army in accordance with Articles 5.02 and 5.03 above, shall be recouped by the Army and, upon demand, funds equal to any such amounts are required to be remitted by FMERA to the Army within ninety (90) calendar days from the date of any such demand, subject to extensions of time by the Army as may be applicable under Articles 9 or 12 hereof.

## **ARTICLE 6. MAINTENANCE AND REPAIR**

6.01. The Army shall maintain and repair the Phase 2 Parcels in accordance with the provisions of 32 C.F.R. § 174.14 at its sole expense, subject to the availability of funds, until such time as they are conveyed to FMERA.

6.02.. FMERA shall assume full responsibility for maintenance and repair of each of the Phase 2 Parcels at its sole expense upon the date the parcel is conveyed to FMERA.

## **ARTICLE 7. RISK OF LOSS**

7.01. The Army shall bear the risk of loss for any damage to or destruction of the Phase 2 Parcels and Related Personal Property by fire, flood, wind, hail, lightning, earthquake, theft, vandalism, or other cause and for all damages or injuries to persons or property occurring thereon or related thereto, except as may be caused by acts of the FMERA or its officers, employees, agents, or contractors, prior to conveying the Phase 2 Parcels to FMERA.

7.02. Notwithstanding Article 7.01, above, the Army shall have no obligation to repair, replace, demolish, or remove any portion of the Phase 2 Parcels damaged or destroyed prior to conveyance to FMERA hereunder. The Army shall take reasonable measures to ensure that the Phase 2 Parcels and Related Personal Property are protected in accordance with applicable Federal regulations prior to conveyance to FMERA.

7.03. The Parties hereby agree that any damage or destruction of a portion of the Phase 2 Parcels and Related Personal Property shall not otherwise affect the Parties' rights and responsibilities with regard to the remaining portion of the Phase 2 Parcels and Related Personal Property under this Agreement.

## **ARTICLE 8. ENVIRONMENTAL PROVISIONS**

8.01. The Army shall coordinate with FMERA on the development of environmental notices and land use controls that may be considered by the Army for inclusion in a deed conveying portions of Phase 2 Parcels to FMERA that have not already been selected as a remedy component as of the date of this Agreement. The Army's determination regarding environmental notices and/or land use controls that will be included in such deeds, or as a separate deed notice, shall be included in a FOST. In accordance with applicable law, such deeds shall contain such provisions as the Army may determine are required by section 120(h) of CERCLA and in accordance with Department of Defense Instruction 4165.72 and such other environmental protection provisions as are set forth in the applicable FOST.

8.02

(a) The Army agrees to perform such response actions in accordance with and as may be required section 120(h) of CERCLA and other applicable laws and regulations for any hazardous substances that may be present on the Phase 2 Parcels prior to their conveyance to FMERA hereunder, subject to the availability of funds appropriated for that purpose. In furtherance of the agreements in this Article 8, the Army agrees to seek funding required to perform any required response actions on the Phase 2 Parcels through the Federal budget process.

(b) Subject to the provisions of paragraph a. above, the Army agrees to conduct investigation and remediation on the Phase 2 Parcels until there is a determination of no risk after a preliminary assessment/site investigation; or there is a decision document that sets forth either a no further action determination or a remedy, and, if the latter, the remedy is in place.

### 8.03

(a) It is understood that Army has developed a Remedial Investigation/Feasibility Study (RI/FS) for the remediation of most of the eight (8) landfills on Environmental Sites, and, to the extent that NJDEP has reviewed those RI/FS documents, the NJDEP has concurred with the RI/FS, including the preferred remedy of capping the landfills. The preferred remedy for each of the eight (8) landfills includes the cutting and clearing of all vegetation, grading of the site, application, compacting, and grading of 2 feet of cover material, and planting of vegetation. Consistent with CERCLA and the National Contingency Plan (NCP), the Army will prepare a proposed plan and decision document to document the selected remedy for all eight (8) landfills.

(b) Army agrees to prepare and implement a Remedial Design/ Remedial Action (RD/RA) document for each of the 8 landfills detailing the following:

1. An engineered closure plan for each landfill, including initial preparation (e.g., cutting, grubbing, and clearing), cover material, thickness, grading, erosion control, and other engineering aspects, and estimated cost;
2. A long-term monitoring and maintenance plan for each landfill, including installation, sampling, and maintenance of monitoring wells if/as needed; routine inspection of cover and stabilization materials; maintenance of cover and stabilization materials, including along stream banks or other bodies of water; completion and submission of biennial reviews to the NJDEP; and completion of five-year reviews under CERCLA to evaluate the protectiveness of the remedy;
3. Anticipated use restrictions or institutional controls for each landfill, including use of a New Jersey deed notice;
4. A Classification Exception Area (CEA) plan for groundwater for those landfills that require a CEA, detailing the location, quantity, and depth of groundwater monitoring wells, sampling frequency, and types of laboratory analysis required, reporting mechanism of test results to NJDEP. The CEA application shall include the direction of groundwater flow, a prediction of the time it will take for each contaminant of concern to achieve compliance with its

applicable groundwater quality standard, and a prediction of how far each contaminant of concern will travel over the course of the CEA time period.

5. Removal of any “hot spots” of contamination that Army determines is necessary before application of the cover material.

(c) Army will implement the RD/RA for each landfill, and it is FMERA's understanding that NJDEP will monitor its progress. The RD will outline the long-term monitoring, operation and maintenance obligations of the Parties until such action is no longer needed.

(d) Consistent with the NCP, the Army will seek NJDEP concurrence with the remedial documents described above prior to proceeding with remedial actions. The Army will conduct five-year reviews under CERCLA and the NCP to evaluate the protectiveness of the remedy. The Army will also conduct biennial reviews of the landfills to ensure the landfill covers remain intact and land use is consistent with the institutional controls.

(e) Once the Army remedies are in place, consistent with Articles 8.03(a), (b), (c) and (d) above, and a FOST has been issued pursuant to Article 2.02 herein for each Environmental Site containing a landfill, FMERA will accept conveyance by deed of the Environmental Sites containing all eight (8) of the landfills and file the New Jersey deed notice as may be required for all 8 of the landfills in accordance with Article 4. Using the filed deed notice, it is FMERA's intention to obtain a Final Remediation Document from NJDEP for each landfill, based on Army's completion of tasks outlined above. Following conveyance of these Environmental Sites, pursuant to section 120 of CERCLA and the conveyance deed provisions, any additional remedial action found to be necessary after the date of conveyance shall be conducted by the United States with respect to any hazardous substance remaining on these Environmental Sites at the date of such conveyance.

## **ARTICLE 9. DEFAULT AND TERMINATION**

9.01. The Army may, in its sole discretion, terminate this Agreement if:

(a). FMERA fails to maintain its status as the Local Redevelopment Authority approved by the Department of Defense, Office of Economic Adjustment; or

(b). FMERA is unable or unwilling to accept the conveyance of any or all of the Phase 2 Parcels within seventy-five (75) calendar days of receipt from the Army of a deed for the conveyance of any such Phase 2 Parcel.

9.02. In the event a Party hereto fails to observe or perform any of its obligations under this Agreement, after having been provided written notice and failing to cure the default, or initiate such cure, within ninety (90) calendar days of the date of such notice, the other Party shall be entitled to terminate this Agreement and exercise any and all of the remedies for breach which are provided for herein, as well as any other remedies to which the Party is entitled at law or in equity; provided, however, that if a default occurs which cannot be remedied within said ninety (90) calendar day period, the other Party may afford such additional time as may reasonably be required to cure such default, provided the defaulting Party proceeds with reasonable diligence to cure same. The Army agrees to provide such additional time to FMERA in the event a lawsuit or other action not in FMERA's control delays the ability of FMERA to take title to the Phase 2 Parcels provided FMERA proceeds with reasonable diligence to resolve any such action and proceeds to take title to the Phase 2 Parcels as contemplated hereunder.

9.03. Any termination of this Agreement shall have no effect on the continuing obligations of the Parties as provided for in Article 4 and Article 5 of this Agreement, or contained in any deed that may have been executed and delivered by the Army to FMERA pursuant to this Agreement. In the event of a termination of this Agreement, the Army shall not be required to return any monies already paid to it by FMERA under this Agreement nor shall FMERA be required to convey the Phase 2 Parcels back to the Army.

## **ARTICLE 10. NOTICES**

10.01. Any notice, request, demand, instruction or other document required or permitted to be given or served under this Agreement shall be in writing and shall be deemed sufficiently served when delivered by hand if a receipt is obtained therefrom, or when actually received if delivered by mail or facsimile, and if delivered by mail shall be mailed registered or certified first class mail, return receipt requested, postage pre-paid, and in all cases shall be addressed as follows:

If to FMERA:           Bruce Steadman, Executive Director  
Fort Monmouth Economic Revitalization Authority  
100 Barton Avenue  
Oceanport, NJ 07757

with a copy to:       Division of Law  
Department of Law and Public Safety  
P.O. Box 106  
Trenton, NJ 08625-0106

If to the Army: U.S. Army Engineer District, New York  
ATTN: CENAN-RE-M  
26 Federal Plaza, Room 2007  
New York, NY 10278

with a copy to: Office of the Assistant Chief of Staff for Installation Management  
ATTN: James E. Briggs, DAIM-ODB  
Room 5000, Taylor Building / NC3  
2530 Crystal Drive  
Arlington, Virginia 22202

10.02. Either Party may change the address to which any notice, request, demand, instruction or other document required or permitted to be given or served under this Agreement shall be delivered by providing notice of such change in accordance with this provision to the other Party at that Party's last-identified address; provided, that such change of address shall not take effect until five (5) calendar days following the date of such notice.

10.03. Whenever under the terms of this Agreement the time for performance falls upon a Saturday, Sunday or holiday observed by the performing Party, such time for performance shall be extended to the next business day. Otherwise, all references herein to "days" shall mean "calendar days."

#### **ARTICLE 11. NON-DISCRIMINATION**

FMERA covenants that it shall not discriminate upon the basis of race, creed, color, religion, sex, disability, age, or national origin in the use, occupancy, sale, or lease of the Phase 2 Parcels, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Phase 2 Parcels and shall have the sole right to enforce this covenant in any court of competent jurisdiction. Any deed by which the Army conveys real property pursuant to this Agreement shall contain the non-discrimination clause as set forth at 41 C.F.R. § 102-75.360.



## **ARTICLE 12. DISPUTE RESOLUTION**

12.01. Any dispute arising between the Parties to this Agreement concerning the applicability, interpretation, or implementation of any provision of this Agreement shall be resolved under the following dispute resolution process:

(a). Representatives of the Parties who are responsible for implementation of this Agreement shall attempt to resolve the dispute in good faith.

(b). If no such resolution is possible, such representatives shall elevate the issue to their respective supervisors, who shall also attempt to resolve the dispute in good faith.

12.02. At all times, FMERA and the Army shall proceed diligently with performance of this Agreement pending final resolution of any dispute arising under this Agreement.

## **ARTICLE 13. SEVERABILITY**

If any term, provision, covenant, or condition of this Agreement, or the application thereof to any person or circumstance, is held by a court of competent jurisdiction to be invalid, void, or unenforceable to any extent, the remainder of this Agreement, or the application of such term, provision, covenant, or condition to persons or circumstances other than those as to which it is held invalid, void, or unenforceable, shall not be affected thereby, and shall continue in full force and effect.

## **ARTICLE 14. ANTI-DEFICIENCY ACT**

The Army's obligation to pay or reimburse any money under this Agreement is subject to the availability of appropriated funds and nothing in this Agreement shall be interpreted to require obligations or payments by the Army in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-42, 1511-19.

## **ARTICLE 15. AUTHORITY REPRESENTATIONS**

FMERA and the Army hereby represent to each other on and as of the date of this Agreement that they have the full capacity, right, power and authority to execute, deliver and perform this Agreement, and all required action and approvals therefore have been duly taken and obtained. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of FMERA and the Army shall be duly authorized to sign the same and to bind FMERA and the Army, respectively, thereto.

## **ARTICLE 16. PROTECTION OF HISTORIC PROPERTY**

The Army and the New Jersey State Historic Preservation Officer entered into a programmatic agreement in 2009 to govern the protection of historic property at the former Fort Monmouth. The Fort Monmouth Economic Revitalization Planning Authority ("FMERPA") concurred with the said programmatic agreement. Any deed by which the Army conveys Phase 2 Parcels pursuant to this Agreement, shall contain appropriate provisions for the protection of any historic properties, including archeological sites, and such other provisions as may be necessary to fulfill the Army's obligations under the said programmatic agreement, the National Historic Preservation Act of 1966 (16 U.S.C. § 470 et seq.), as amended, and implementing regulations.

## **ARTICLE 17. "AS IS" CONDITION**

17.01. FMERA acknowledges that it has inspected, or has had the opportunity to inspect, the Phase 2 Parcels and accepts the condition and state of repair of the Phase 2 Parcels. FMERA understands and agrees that the Phase 2 Parcels and related personal property are to be conveyed "AS IS" without any representation, warranty, or guaranty by the Army as to quantity, quality, title, character, condition, size, or kind, or that the same is in a suitable condition or fit to be used for the purposes intended by FMERA, and no claim for allowance or deduction upon such grounds will be considered.

17.02. No warranties, either express or implied, are given with regard to the condition of the Phase 2 Parcels including, without limitation, whether the Phase 2 Parcels do or do not contain asbestos, lead-based paint, mold, pesticides, or radon. FMERA shall be deemed to have relied solely on its own judgment in assessing the overall condition of the Phase 2 Parcels including, without limitation, any asbestos, lead-based paint, mold, pesticides, radon, or other conditions. The failure of FMERA to inspect or exercise due diligence to be fully informed as to the condition of the Phase 2 Parcels shall not constitute grounds for any claim or demand against the Army.

17.03 Nothing in this Article 17 shall be construed to modify or negate the obligations of the Army under sections 120(h)(3)(A)(ii) and (B) or section 120(h)(4)(D)(ii) of CERCLA or any other statutory obligations.

## **ARTICLE 18. UTILITIES**

The Army shall convey all right, title and interest of the United States of America in and to all utility systems located on the Phase 2 Parcels, including electrical, optical fiber, natural gas, water, industrial and sanitary sewers and treatment plants, and stormwater

systems, to FMERA, by quitclaim deed at settlement for the property as described in Exhibit 2. FMERA shall be solely responsible for the cost of all utility services on the Property as of the date of the settlement; provided, however, that FMERA shall provide at the lowest cost available, such utility services to the Army as the Army may require for the Environmental Sites until such time as the utility services are no longer needed. The Army shall be under no obligation to furnish utilities or services to the FMERA. In conjunction with the conveyance of the utility systems to FMERA hereunder, the Army shall provide FMERA a license, a copy of which is attached hereto as **Exhibit 6** and made a part hereof, at settlement allowing FMERA access to said utility systems located on the Environmental Sites.

#### **ARTICLE 19. MERGER**

This Agreement contains the entire agreement between the Parties regarding the conveyance of the Phase 2 Parcels and Related Personal Property and any agreement hereafter made shall not operate to change, modify, or discharge this Agreement in whole or in part unless that agreement is in writing and signed by the Party sought to be charged with it. All prior negotiations, any letters of intent, and the "Fort Monmouth – EDC Phase 2 Deal Points" letter of June 13, 2014 are merged in this Agreement, and there are no promises, agreements, conditions, undertakings, warranties, or representations, oral or written, expressed or implied, between the parties other than as set forth in this Agreement.

#### **ARTICLE 20. AMENDMENT**

This Agreement may not be amended or otherwise modified, unless by mutual, written consent and executed by the Parties hereto.

#### **ARTICLE 21. WAIVER**

No delay or omission by either Party to this Agreement in any one or more instances to exercise any right or power occurring upon any noncompliance or default by the other Party with respect to any of the terms or conditions of this Agreement shall impair any such right or power or be construed to be a waiver or relinquishment thereof.

#### **ARTICLE 22. COVENANT AGAINST CONTINGENT FEES**

FMERA warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies retained by FMERA for the purpose of

securing business. For breach or violation of this warranty, the Army shall have the right to annul this Agreement without liability or in its discretion to require FMERA to pay the full amount of such commission, percentage, brokerage, or contingent fee.

#### **ARTICLE 23. OFFICIALS NOT TO BENEFIT**

No member or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom. Nothing herein contained, however, shall be construed to extend to any incorporated company, if this Agreement is for the general benefit of such corporation or company.

#### **ARTICLE 24. NO PARTNERSHIP OR JOINT VENTURE**

Nothing contained in this Agreement will make or will be construed to make the Parties hereto joint venture partners with each other, it being understood and agreed that the only relationship between the Army and FMERA hereunder is that of seller and buyer. Nor should anything in this Agreement render or be construed to render either of the Parties hereto liable to the other for any third party debts or obligations due the other Party.

#### **ARTICLE 25. HEADINGS**

The brief headings or titles preceding each Article herein are merely for purposes of identification, convenience, and ease of reference and will be completely disregarded in the construction of this Agreement.

#### **ARTICLE 26. ASSIGNMENT**

FMERA may not transfer or assign its rights and interests under this Agreement without the written consent of Army. The covenants, agreements, rights, and responsibilities contained in this Agreement inure to the benefit of and are binding upon the Parties hereto, their successors, and assigns. Nothing in this Agreement otherwise shall be construed as creating any rights of enforcement against 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 27. COUNTERPARTS**

The Agreement is executed in two (2) counterparts, each of which is deemed an original of equal dignity with the other and which is deemed one and the same instrument as the other.

## **ARTICLE 28. GOVERNING LAW**

This Agreement and the relationship between the Parties shall be construed in accordance with and governed by Federal law, as applicable; otherwise the law of the State of New Jersey shall govern.

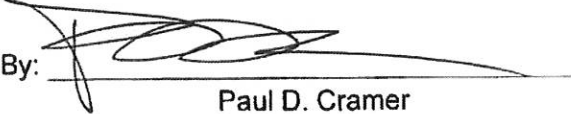
## **ARTICLE 29. RESERVATION OF RIGHTS**

The Army and FMERA reserve unto themselves all rights and remedies to which each is entitled at law or in equity. This Agreement shall be enforceable in accordance with applicable laws and regulations in a Federal Court of competent jurisdiction. FMERA reserves the right to assert that any and all claims made or to be made against FMERA under this Agreement or related documents or actions based in tort law for damages shall be governed by and subject to provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and any and all claims made or to be made against FMERA based in contract law shall be governed by and subject to the provisions of the New Jersey Contractual Liability Act N.J.S.A. 59:13-1 et seq.

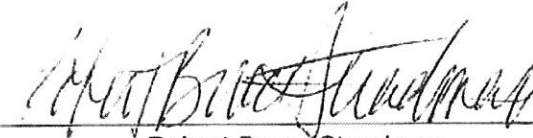
**ARTICLE 30. SURVIVAL.** Those provisions of the Agreement which, by their express terms or by their operation, are intended to survive termination of the Agreement, shall survive termination of the Agreement. Such provisions include, but are not limited to, Article 5 and Article 14.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

**DEPARTMENT OF THE ARMY**

By:   
Paul D. Cramer  
Deputy Assistant Secretary of the Army  
(Installations, Housing and Partnerships)

**FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY**

By:   
Robert Bruce Steadman  
Executive Director