



# FORT ORD REUSE AUTHORITY

## SPECIAL MEETING

### FORT ORD REUSE AUTHORITY (FORA) BOARD OF DIRECTORS

Friday, February 21, 2020 at 1:00 p.m. | 910 2<sup>nd</sup> Avenue, Marina, CA 93933 (Carpenters Union Hall)

## AGENDA

### 1. CALL TO ORDER

Participating via Teleconference, Mary Adams & John Phillips, City of Gonzales – Council Chambers  
117 4<sup>th</sup> Street, Gonzales, CA 93926

### 2. PLEDGE OF ALLEGIANCE *(If able, please stand)*

### 3. CLOSED SESSION

- a. Conference with Legal Counsel - Gov. Code §54956.9(a), (d)(1): Fort Ord Reuse Authority v. All Persons Interested in the Matter of the Issuance and Sale of Bonds by the Fort Ord Reuse Authority and the Tax Increment Revenue Pledged To, and to be Used for, the Repayment of Such Bonds. Monterey County Superior Court Case No.: 20CV000381, Pending Litigation.
- b. Conference with Legal Counsel – Gov. Code §54956.9(d)(2): Anticipated Litigation, Significant Exposure to Litigation, one potential case.

### 4. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

### 5. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

### 6. ROLL CALL

*FORA is governed by 13 voting members: (a) 1 member appointed by the City of Carmel; (b) 1 member appointed by the City of Del Rey Oaks; (c) 2 members appointed by the City of Marina; (d) 1 member appointed by Sand City; (e) 1 member appointed by the City of Monterey; (f) 1 member appointed by the City of Pacific Grove; (g) 1 member appointed by the City of Salinas; (h) 2 members appointed by the City of Seaside; and (i) 3 members appointed by Monterey County. The Board also includes 12 ex-officio non-voting members.*

### 7. BUSINESS ITEMS

### INFORMATION/ACTION

*BUSINESS ITEMS are for Board discussion, debate, direction to staff, and/or action. Comments from the public are **not to exceed 3 minutes** or as otherwise determined by the Chair.*

- a. **2nd Vote** - Nomination of City of Seaside as FORA Successor to Environmental Services Cooperative Agreement (“ESCA”) and Local Redevelopment Authority (“LRA”)/Economic Development Conveyance (“EDC”) Agreement with US Army ([p. 1](#))  
**Recommendation:**
  - i. Receive report on refinements to the ESCA-LRA/EDC Successor Implementing Agreement.
  - ii. Authorize Executive Officer to execute ESCA-LRA/EDC Successor Implementing Agreement.
- b. Habitat Conservation Plan (“HCP”) / Environmental Impact Report (“EIR”) Options ([p.23](#))  
**Recommendation:**
  - i. Receive a report on factors affecting Board HCP/EIR considerations.
  - ii. Provide direction to the Executive Officer on HCP/EIR next steps.

### 8. PUBLIC COMMENT PERIOD

### INFORMATION

*Members of the public wishing to address the Board on matters within its jurisdiction, but **not on this agenda**, may do so for up to 3 minutes or as otherwise determined by the Chair and will not receive Board action. Whenever*

*possible, written correspondence should be submitted to the Board in advance of the meeting, to provide adequate time for its consideration.*

**9. ITEMS FROM MEMBERS**

**INFORMATION**

*Receive communication from Board members as it pertains to future agenda items.*

**10. ADJOURNMENT**

**NEXT MEETING: Thursday, March 12, 2020 AT 2:00 P.M**

# FORT ORD REUSE AUTHORITY BOARD REPORT

## BUSINESS ITEMS

<b>Subject:</b>	Nomination of City of Seaside as FORA Successor to Environmental Services Cooperatative Agreement ("ESCA") and Local Redevelopment Authority ("LRA")/Economic Development Converyance ("EDC") Agreement with US Army – <b>2<sup>nd</sup> Vote</b>	
<b>Meeting Date:</b>	February 21, 2020	<b>INFORMATION/ACTION</b>
<b>Agenda Number:</b>	7a	

### RECOMMENDATION(S):

1. Receive report on refinements to the ESCA-LRA/EDC Successor Implementing Agreement.
2. Authorize Executive Officer to execute ESCA-LRA/EDC Successor Implementing Agreement.

### BACKGROUND/DISCUSSION:

Staff and FORA's legal team were directed by the Board at its January 10, 2020 meeting to provide clarifying language for its review to the proposed FORA and City of Seaside Environmental Services Cooperative Agreement ("ESCA") and Local Redevelopment Authority ("LRA") / EDC Agreement - Successor Implementing Agreement (hereinafter "the Agreement"). The Executive Officer, FORA's legal team, and RGS consultant staff met with representatives from member agencies to identify key areas of concern and develop language to address them in conjunction with the Kutak-Rock legal team.

The Agreement was then vetted at the FORA Administrative Committee at its regular meeting on February 5, 2020 and a continuation of that meeting at 10:30am, February 6, 2020, at which time they recommended Board approval of the Agreement with following modifications:

- 1) Global change to the document title from "Economic Development Agreement" to "Economic Development Conveyance (EDC Agreement)";
- 2) Global change from "Memorandum of Agreement ("MOA") to "EDC Agreement";
- 3) Changes to paragraph 2.0 and throughout the document to "nominate" Seaside as the successor the EDC and LRA.
- 4) Section 3.0 Insurance Policies. FORA will request the transfer of its two pollution legal liability insurance policies and limits to Seaside. FORA shall also transfer any self-insured retention funds to Seaside to be used exclusively for ESCA and claims-related obligations. Seaside acknowledges that these insurance policies will expire in 2022 and 2024, respectively, and that Seaside's designation will be subject to approval by the insurers. Seaside's successful designation through December 31, 2024 is a condition precedent to becoming FORA's ESCA successor. Pollution legal liability insurance will be required by the ESCA from 1 January 2025 through no earlier than 30 June 2028, a requirement to be funded by the Army.

- 5) Section 8.4 No Obligation of Other Entities. Monterey Peninsula Community College District, the Board of Trustees of the California State University (on behalf of the Monterey Bay campus), the County of Monterey, the Cities of Del Rey Oaks, Marina and Monterey, the Marina Coast Water District (hereinafter collectively "Grantees"), will not be a party to the ESCA, and will not bear any financial liability as a result of the ESCA.
- 6) Section 9.0 establishes the following:
- i. Water Rights Allocations. Until such time as such allocations may be amended by agreements, Seaside agrees to honor and abide by the water rights' allocations set forth in Exhibit A attached hereto, for Government Water Rights as defined in Subsection 5.02 of the EDC Agreement, that may be released by the Government in the future, subject to compliance with all applicable laws.
  - ii. Wastewater Discharge Rights. Until such time as such allocations may be amended by future agreements, Seaside agrees to establish and apply, in consultation with Grantees, pursuant to Section 5.04 of the EDC Agreement, a fair process to ensure that all Grantees will enjoy equitable utilization of Wastewater Discharge Rights that may be released by the Government in the future, subject to compliance with all applicable laws.
  - iii. Creates No Land-Use Authority. Nothing in this Agreement, nor Seaside's designation as the local redevelopment authority or as FORA's successor under the ESCA or EDC Agreement creates in Seaside any land-use decision-making authority with respect to any land not within Seaside's City limits. Further, Seaside shall not require that any land-use decisions of other entities be in compliance with the Fort Ord Base Reuse Plan.
  - iv. Seaside shall not require payment of any sale or lease proceeds or revenues (or the equivalent use of property such as licenses, permits, concession agreements etc.), from other entities for the transfer of property, water rights, or wastewater discharge rights received from the Army pursuant to the EDC Agreement.
- 7) Section 22. Third-Party Rights. The Grantees are intended to be third-party beneficiaries of this Agreement as it relates to future transfers of property, water rights, and wastewater discharge rights pursuant to the EDC Agreement, and shall have the right to enforce the provisions hereof as if they were direct parties hereto. Nothing in this Agreement is intended to confer upon any individual or entity, other than the Parties and the above-identified third-party beneficiaries, any rights or remedies whatsoever.

**FISCAL IMPACT:**

None.

**COORDINATION:**

Authority Counsel, Administrative Committee, Executive Committee, FORA Board, FORA Special Counsel

**ATTACHMENTS:**

- A. DRAFT Fort Ord Reuse Authority and City of Seaside Environmental Services Cooperative Agreement (ESCA) and Local Redevelopment Authority (LRA)/Economic Development Conveyance Agreement (EDC Agreement) Successor Implementing Agreement v.8 (*Updated as of February 13, 2020*).
- B. Redline Version - DRAFT Fort Ord Reuse Authority and City of Seaside Environmental Services Cooperative Agreement (ESCA) and Local Redevelopment Authority (LRA)/Economic Development Conveyance Agreement (EDC Agreement) Successor Implementing Agreement v.8 (*Updated as of February 13, 2020*).

Prepared by and Approved by:

  
Joshua Metz

1                   **FORT ORD REUSE AUTHORITY AND CITY OF SEASIDE**  
2                   **ENVIRONMENTAL SERVICES COOPERATIVE AGREEMENT (ESCA) AND**  
3                   **LOCAL REDEVELOPMENT AUTHORITY (LRA)/ECONOMIC DEVELOPMENT**  
4                   **CONVEYANCE AGREEMENT (EDC AGREEMENT)**  
5                   **SUCCESSOR IMPLEMENTING AGREEMENT**

6  
7                   **RECITALS,**  
8

9                   **WHEREAS**, the Fort Ord Reuse Authority (“FORA”) is a regional agency and a  
10 Corporation of the State of California established under California State Law Government  
11 Code Sections 67650, et seq., to plan, facilitate and manage the transfer of former Fort  
12 Ord property and is acknowledged as the federally recognized local reuse authority for  
13 property transfers from the Army, to the governing local jurisdictions or their designees.  
14

15                   **WHEREAS**, the City of Seaside, California (“Seaside”), is a general law Municipal  
16 Corporation of the State of California.  
17

18                   **WHEREAS**, FORA and Seaside are each a “Party”, and together the “Parties” to  
19 this Agreement.  
20

21                   **WHEREAS**, Fort Ord, California was placed on the National Priorities List  
22 (Superfund) in 1990 due to leaking underground storage tanks, contaminated  
23 groundwater and a 150-acre landfill.  
24

25                   **WHEREAS**, in 1990, the Army executed a Federal Facility Agreement (“FFA”)   
26 under CERCLA Section 120 outlining the Army’s Comprehensive Environmental  
27 Response, Compensation, and Liability Act (“CERCLA”) clean up responsibilities with  
28 respect to the former Fort Ord. The Army remains responsible for certain actions under  
29 that FFA. The FFA was amended on or about July 26, 2007, the effect of which  
30 suspends the FFA for FORA’s ESCA obligations so long as FORA or its successors are  
31 in compliance with the AOC.  
32

33                   **WHEREAS**, the former Fort Ord was closed on September 30, 1994 pursuant to  
34 and in accordance with the Defense Base Closure and Realignment Act of 1990, as  
35 amended (Public Law 101-510; hereinafter referred to as the “Base Closure Act”).  
36

37                   **WHEREAS**, in accordance with Section 2905(b)(4) of the Base Closure Act, as  
38 amended by Section 2821 of the Defense Authorization Act for Fiscal Year 2000, Pub. L.  
39 No. 106-65 (1999), and the implementing regulations of the Department of Defense (32  
40 CFR Parts 90 and 91), FORA executed an economic development conveyance  
41 agreement and acquired portions of the former Fort Ord consisting of approximately five  
42 thousand two hundred (5,200) acres of land, including all buildings, personal property,  
43 appurtenances, rights-of-way, and drainage areas upon and subject to the terms and  
44 conditions of a June 23, 2000 Memorandum of Agreement with the United States of  
45 America (“EDC Agreement”).  
46

47                   **WHEREAS**, the EDC Agreement provided for transfers of property in accordance

1 with the Army’s clean-up schedule. Subsequent to the EDC Agreement execution, FORA  
2 and the local communities decided to pursue an early transfer process pursuant to Title 42  
3 United States Code, section 9620(h)(3)(C) in order to expedite the property transfers and  
4 ultimate reuse and economic recovery for the communities affected by the Fort Ord  
5 closure.

6  
7 **WHEREAS**, in furtherance of the early transfer process, the Army, with the  
8 approval of the EPA Administrator and the concurrence of the Governor of California,  
9 transferred title of 3,337 acres of munitions impacted Fort Ord property by quitclaim deed  
10 to FORA before all action to protect human health and the environment had been  
11 completed. Concurrent with this transfer without the otherwise required CERCLA  
12 covenant mandated by Title 42 United States Code, section 9620 (h)(3), FORA accepted  
13 title and agreed to perform the Army’s environmental remediation with funding from the  
14 Army. Excluded from FORA’s performance obligation are matters related to the  
15 groundwater at the former Fort Ord, as well as other Army responsibilities enumerated in  
16 the ESCA and elsewhere.

17  
18 **WHEREAS**, in 2007 an “Administrative Order on Consent (“AOC”) [Docket No. R9-  
19 2007-003] [was] entered into voluntarily by the United States Environmental Protection  
20 Agency (“EPA”), the California Department of Toxic Substances Control (“DTSC”), and  
21 the Fort Ord Reuse Authority. The AOC concerns the preparation and performance of  
22 potential removal actions, one or more remedial investigations and feasibility studies  
23 (“RI/FS”) and one or more remedial designs and remedial actions (“RD/RA”) for  
24 contaminants present on portions of the former Fort Ord located at Monterey, California  
25 (“Site”) and the reimbursement for future response costs incurred by EPA and DTSC in  
26 connection with such CERCLA response actions.”

27  
28 **WHEREAS**, in 2007 the Army executed an amendment to the Federal Facilities  
29 Agreement.

30  
31 **WHEREAS**, in 2007 the Army and FORA executed an Environmental Services  
32 Cooperative Agreement W9128F 07 2-0162 (“ESCA”) under the authority of Title 10 United  
33 States Code, Section 2701(d) - Environmental Restoration Program (10 U.S.C. 2701)  
34 whereby FORA would perform the Army’s environmental responsibilities as the Army  
35 Response Action Contractor pursuant to Title 42 United States Code, section 9619, with  
36 the Army providing funding to perform these services.

37  
38 **WHEREAS**, the ESCA has been amended several times, the ESCA Mod 9  
39 amendment in 2017 which provided approximately \$6.8 million for Regulatory Oversight  
40 Through 31 December 2019, FORA ESCA Administrative costs during the EPA/DTSC  
41 remedial-completion documentation, property transfer process through 30 June 2020 and  
42 to perform the required long-term land management tasks, including Munitions and  
43 Explosives of Concern (“MEC”) Find Assessments, inspections, enforcement, monitoring  
44 and reporting through June 30, 2028.

45

ESCA Mod.	ESCA Contract Line Item Number (CLIN) and Description	Expiration Date	Amount
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Number			
MOD 09	CLIN 02 – Department of Toxic Substance Control (DTSC) and United States EPA Technical Oversight Services	31 Dec. 2019	\$745,913
	CLIN 03 – FORA ESCA Administrative Funds	30 June 2020	\$1,865,848
	CLIN 04 – Post-Closure MEC Find Assessments	30 June 2028	\$528,651
	CLIN 05 – Long Term/LUCs Management	30 June 2028	\$3,705,792
		<b>Totals</b>	<b>\$6,846,204</b>

1  
2       **WHEREAS**, due to changes and delays in the transfer of properties, modifications  
3 were made to the ESCA grant leaving post-June 30, 2020 funds available are ESCA CLIN  
4 0004 Post Closure MEC Find Assessments \$528,651 and ESCA CLIN 0005 for Long-  
5 Term Management and Land Use Control (LUC) management are \$3,705,792 (Totaling  
6 \$4,234,443 available from June 30, 2020 through June 30, 2028):  
7

ESCA Mod. Number	ESCA Contract Line Item Number (CLIN) and Description	Expiration Date	Amount
MOD 09	CLIN 04 – Post-Closure MEC Find Assessments	30 June 2028	\$528,651
	CLIN 05 – Long Term/LUCs Management	30 June 2028	\$3,705,792
		<b>Totals</b>	<b>\$4,234,443</b>

8  
9       **WHEREAS**, in 2018 FORA adopted a Transition Plan as required by State Law  
10 that specifies that FORA engage the Successor-in-Interest (“Successor”) provisions of the  
11 ESCA contract.  
12

13       **WHEREAS**, the Successor assumes responsibility and will be tasked with  
14 performing the remaining LTOs under the ESCA, including the recent amendment. It is  
15 assumed that all work under the previous \$98,000,000 contract will have been  
16 accomplished prior to FORA’s dissolution as evidenced by the 2019 EPA Remedial Action  
17 Completion letters, per AOC Section XVII, Certification of Completion, housed in the Army  
18 Administrative Record located at: [http://fortordcleanup.com/documents/administrative-  
19 record/](http://fortordcleanup.com/documents/administrative-record/).  
20

21       **WHEREAS**, the City of Seaside is prepared, subject to funding, to assume ESCA  
22 responsibility and attendant local reuse authority status, including the execution of the  
23 AOC in order to complete the ESCA obligations and any property-related transfer actions  
24 required after June 30, 2020.  
25

26 \*\*\*\*\*

27 **NOW, THEREFORE**, the Parties agree as follows:  
28

29       1. Incorporation of Recitals. The above recitals are hereby incorporated herein by  
30 reference.  
31

1           2. Acknowledgement. FORA agrees to acknowledge Seaside as the ESCA  
2 Successor-In-Interest under the 2018 Transition Plan, and nominate Seaside to the  
3 Department of Defense as the LRA Successor.  
4

5           3. Insurance Policies. FORA will request the transfer of its two pollution legal  
6 liability insurance policies and limits to Seaside. FORA shall also transfer any self-insured  
7 retention funds to Seaside to be used exclusively for ESCA and claims-related obligations.  
8 Seaside acknowledges that these insurance policies will expire in 2022 and 2024,  
9 respectively, and that Seaside’s designation will be subject to approval by the insurers.  
10 Seaside’s successful designation through December 31, 2024 is a condition precedent to  
11 becoming FORA’s ESCA successor. Pollution legal liability insurance will be required by  
12 the ESCA from 1 January 2025 through no earlier than 30 June 2028, a requirement to be  
13 funded by the Army.  
14

15           4. ESCA LTO Program Evidence of Fiduciary and Technical Capability. FORA  
16 agrees to provide technical and/or financial assistance to Seaside to meet the terms  
17 required by the Army, EPA, and DTSC that the Successor be a single entity and  
18 demonstrate technical and financial competence to complete the work.  
19

20           5. ESCA records and contracts funds. FORA and Seaside shall establish a  
21 mechanism for transfer of all ESCA records, back-up documents, computer files and  
22 accounting records, and contract funds to Seaside for meeting FORA’s ESCA obligations.  
23

24           6. Technical Assistance. FORA agrees to request the Army extend the funding  
25 expiration date on any remaining ESCA funds (not dedicated to Post-Closure MEC Find  
26 Assessments and Long Term/LUCs Management) for Seaside to provide technical  
27 assistance and funding to complete the ESCA transfer process through June 30, 2020,  
28 including specialized legal, drafting and other staff or contract support. FORA agrees to  
29 establish and fund a pool of monies to support Seaside’s assumption of responsibilities  
30 and obligations of the EDC Agreement.  
31

32           7. Obligations. FORA agrees to nominate and Seaside agrees to assume the  
33 Federal local redevelopment authority “LRA” designation and the remaining reporting,  
34 monitoring, and stewardship or other identified responsibilities associated with (i) the  
35 FORA-Army 2007 ESCA, as FORA’s Successor through the end of the ESCA Contract  
36 June 30, 2028 in order to complete property transfers and the ESCA to the extent that  
37 ESCA performance does not obligate or put at risk Seaside’s municipal non-ESCA funds,  
38 and (ii) the EDC Agreement, as FORA's successor. Exhaustion or unavailability of ESCA  
39 funds with which to compensate Seaside for the performance of ESCA obligations will  
40 constitute a force majeure under the ESCA and the AOC, thereby relieving Seaside of its  
41 responsibility to perform FORA’s surviving ESCA obligations.  
42

43           8. ESCA LTO Program Evidence of Fiduciary and Technical Capability. Seaside  
44 agrees to provide evidence of its fiduciary and technical capability to comply with the  
45 terms of the ESCA and manage the contract financial assets with associated invoicing  
46 and reporting responsibilities, to assure the Army, EPA and DTSC of continued ESCA  
47 fiduciary capability.

1  
2 Seaside agrees to assume FORA's ESCA Long Term Obligations Management  
3 Program, as approved by the US Army, EPA and DTSC, and:  
4

- 5 i. Personnel. Hire (2) full-time qualified staff to manage ESCA as required under  
6 the contract provisions as currently amended through 2028, but with allowances  
7 for indirect administrative overhead to assure the Army, EPA and DTSC of  
8 continued ESCA technical capacity.  
9
- 10 ii. ESCA Long-Term Obligation Support Services Contract. Enter into Support  
11 Services Contracts through 2028 with specialists Arcadis, Weston Solutions,  
12 Inc. and Westcliffe Engineers, Inc. (or other qualified vendors), including  
13 allowances for indirect administrative overhead to assure the Army, EPA and  
14 DTSC of continued ESCA technical capacity.  
15
- 16 iii. Representation. Contract with Counsel reasonably qualified on environmental  
17 issues with experience in working with state and federal entities (Army, EPA  
18 and DTSC) for review and compliance as noted in the ESCA and the AOC.  
19
- 20 iv. No Obligation of Other Entities. Monterey Peninsula Community College  
21 District, the Board of Trustees of the California State University (on behalf of the  
22 Monterey Bay campus), the County of Monterey, the Cities of Del Rey Oaks,  
23 Marina and Monterey, the Marina Coast Water District (hereinafter collectively  
24 "Grantees"), will not be a party to the ESCA, and will not bear any financial  
25 liability as a result of the ESCA.  
26

27 9. Coordination with other Entities. Seaside agrees to enter into agreements with  
28 the Grantees for the property transfers and other necessary property-related rights to  
29 effectuate the reuse and the oversight, reporting, response, and other long-term  
30 stewardship obligations listed in and consistent with (a) the ESCA through 2028 on behalf  
31 of the Army, and (b) the EDC Agreement.  
32

- 33 i. Water Rights Allocations. Until such time as such allocations may be amended  
34 by agreements, Seaside agrees to honor and abide by the water rights'  
35 allocations set forth in Exhibit A attached hereto, for Government Water Rights  
36 as defined in Subsection 5.02 of the EDC Agreement, that may be released by  
37 the Government in the future, subject to compliance with all applicable laws.  
38
- 39 ii. Wastewater Discharge Rights. Until such time as such allocations may be  
40 amended by future agreements, Seaside agrees to establish and apply, in  
41 consultation with Grantees, pursuant to Section 5.04 of the EDC Agreement, a  
42 fair process to ensure that all Grantees will enjoy equitable utilization of  
43 Wastewater Discharge Rights that may be released by the Government in the  
44 future, subject to compliance with all applicable laws.  
45
- 46 iii. Creates No Land-Use Authority. Nothing in this Agreement, nor Seaside's  
47 designation as the local redevelopment authority or as FORA's successor under

1 the ESCA or EDC Agreement creates in Seaside any land-use decision-making  
2 authority with respect to any land not within Seaside's City limits. Further,  
3 Seaside shall not require that any land-use decisions of other entities be in  
4 compliance with the Fort Ord Base Reuse Plan.

5  
6 iv. Seaside shall not require payment of any sale or lease proceeds or revenues  
7 (or the equivalent use of property such as licenses, permits, concession  
8 agreements etc.), from other entities for the transfer of property, water rights, or  
9 wastewater discharge rights received from the Army pursuant to the EDC  
10 Agreement.

11  
12 10. ESCA Amendment. The parties agree to work cooperatively to successfully  
13 receive Army, EPA and DTSC concurrence that Seaside is the formal ESCA Successor  
14 and execute the ESCA upon review and approval of terms and conditions. Seaside  
15 agrees to execute an ESCA Agreement and to comply to comply with the U.S. Army  
16 Corps of Engineers ("USACE") oversight and grant management requirements for funding  
17 to Seaside under the ESCA terms, provided however, that the Successor activities are  
18 fully funded, including without limitation provision for PLL insurance coverage, funding  
19 shall be provided from January 1, 2024 through June 30, 2028 or the completion of the  
20 ESCA obligations. Seaside will not pay for Regulatory Oversight unless it is a  
21 reimbursement funded by the Army through the end of the ESCA obligations.

22  
23 11. Administrative Order on Consent. The parties agree to work cooperatively  
24 to successfully receive EPA and DTSC approval that Seaside is the formal Successor to  
25 execute an AOC upon review of terms and conditions.

26  
27 12. Amendment. This Agreement or any provision hereof may be changed,  
28 waived, or terminated only by a statement in writing signed by the Party against which  
29 such change, waiver or termination is sought to be enforced.

30  
31 13. No Waiver. No delay in enforcing or failing to enforce any right under this  
32 Agreement will constitute a waiver of such right. No waiver of any default under this  
33 Agreement will operate as a waiver of any other default or of the same default on a future  
34 occasion.

35  
36 14. Partial Invalidity. If any one or more of the terms, provisions, covenants or  
37 conditions of this Agreement are to any extent declared invalid, unenforceable, void or  
38 voidable for any reason whatsoever by a court of competent jurisdiction, the finding or  
39 order or decree of which becomes final, the Parties agree to amend the terms in a  
40 reasonable manner to achieve the intention of the Parties without invalidity. If the terms  
41 cannot be amended, the invalidity of one or several terms will not affect the validity of the  
42 Agreement as a whole, unless the invalid terms are of such essential importance to this  
43 Agreement that it can be reasonably assumed that the Parties would not have contracted  
44 this Agreement without the invalid terms. In such case, the Party affected may terminate  
45 this Agreement by written notice to the other Party without prejudice to the affected Party's  
46 rights in law or equity.

1           15. Entire Agreement. This Agreement is intended by the Parties as a final  
2 expression of their agreement and is intended as a complete and exclusive statement of  
3 the terms and conditions thereof. Acceptance of or acquiescence in a course of  
4 performance rendered under this Agreement shall not be relevant to determine the  
5 meaning of this Agreement even though the accepting or acquiescing Party had  
6 knowledge of the nature of the performance and opportunity for objection.  
7

8           16. Choice of Law. This Agreement will be construed in accordance with the  
9 laws of the State of California.  
10

11           17. Further Assurances. Each Party agrees to execute and deliver all further  
12 instruments and documents and take all further action that may be reasonably necessary  
13 to complete performance of its obligations hereunder and otherwise to effectuate the  
14 purposes and intent of this Agreement.  
15

16           18. Headings. The headings of the sections hereof are inserted for convenience  
17 only and shall not be deemed a part of this Agreement.  
18

19           19. Notices. Any notice, demand, offer, or other written instrument required or  
20 permitted to be given pursuant to this Agreement shall be acknowledged by the Party  
21 giving such notice, and shall to the extent reasonably practicable be sent by hand  
22 delivery, and if not reasonably practicable to send by hand delivery, then by telecopy,  
23 overnight courier, electronic mail, or registered mail, in each case to the other Party at the  
24 address for such Party set forth below (Note: A Party may change its place of notice by a  
25 notice sent to all other Parties in compliance with this section):  
26

27           City of Seaside  
28           Attn: City Manager  
29           440 Harcourt Avenue  
30           Seaside, CA 93955  
31

              Fort Ord Reuse Authority  
              Attn: Executive Officer  
              920 2nd Avenue, Suite A  
              Marina, CA 93933

32           w/ an email copy to [cityattorney@ci.seaside.ca.us](mailto:cityattorney@ci.seaside.ca.us)  
33

34           20. Term of Agreement: This Agreement shall be effective on the Effective Date  
35 specified at the beginning of the Agreement and shall remain in effect unless and until  
36 terminated by mutual agreement of the Parties or upon the legal dissolution of the Fort  
37 Ord Reuse Authority, provided, however, that this Agreement shall survive as to the  
38 Grantees who are third party beneficiaries of this Agreement as set forth in paragraph 22,  
39 for so long as Seaside remains the successor LRA.  
40

41           21. Authorization. Each party affirms that it is fully authorized to enter into this  
42 Agreement. The Seaside City Manager is designated on behalf of Seaside, subject to  
43 review and approval of documents by the Seaside City Attorney, to enter into the terms  
44 and conditions of this Agreement, the AOC and the ESCA and sign related ESCA and  
45 AOC reporting and financial documents.  
46

1           22. Third-Party Rights. The Grantees are intended to be third-party  
2 beneficiaries of this Agreement as it relates to future transfers of property, water rights,  
3 and wastewater discharge rights pursuant to the EDC Agreement, and shall have the right  
4 to enforce the provisions hereof as if they were direct parties hereto. Nothing in this  
5 Agreement is intended to confer upon any individual or entity, other than the Parties and  
6 the above-identified third-party beneficiaries, any rights or remedies whatsoever.  
7  
8

9           **IN WITNESS WHEREOF**, each Party has executed the Agreement with the  
10 approval of its governing body as of the date first written above.  
11

12  
13 **CITY OF SEASIDE:**

14  
15  
16 \_\_\_\_\_  
17 Craig Malin  
18 City Manager

Date: \_\_\_\_\_

19  
20 APPROVED AS TO FORM:  
21

22  
23 \_\_\_\_\_  
24 CITY ATTORNEY

25  
26  
27 **FORT ORD REUSE AUTHORITY:**

28  
29  
30 \_\_\_\_\_  
31 Joshua Metz Executive Officer

Date: \_\_\_\_\_

32  
33 APPROVED AS TO FORM:  
34

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36 \_\_\_\_\_  
37 AUTHORITY COUNSEL  
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EXHIBIT A

Current Water Allocations & Percentage-based Allocations of Future Army Water\*

	Current Water Allocations in Acre Feet	Allocation of Future Army Water Based on Percentage of Current Water Allocation
City of Marina	1340	<b>29%</b>
City of Monterey	65	<b>1%</b>
City of Seaside	1012.5	<b>22%</b>
County of Monterey	720	<b>15%</b>
CSUMB	1035	<b>22%</b>
City of Del Rey Oaks	242.5	<b>5%</b>
CA State Parks	44.5	<b>1%</b>
UCMBEST	230	<b>5%</b>

9 \*In the unlikely event of availability of additional water from the US Army it would be  
10 distributed following the percentage-based allocation provided above. These allocations  
11 reflect previously agreed upon water distribution as per FORA Board Resolution No. 07-1  
12 (potable water), and are consistent with the Marina Coast Water District Urban Water  
13 Management Plan (2105). They also incorporate the Memorandum of Understanding  
14 between the County of Monterey, the City of Seaside, and the FORA allocating 10 acre-  
15 feet (af) to the Central Coast Veterans Cemetery (2009), and includes the transference of  
16 15 af to the City of Marina for Veterans Transition Center housing (effective Nov 20,  
17 2017).

1                   **FORT ORD REUSE AUTHORITY AND CITY OF SEASIDE**  
2                   **ENVIRONMENTAL SERVICES COOPERATIVE AGREEMENT (ESCA) AND**  
3                   **LOCAL REDEVELOPMENT AUTHORITY (LRA)/ECONOMIC DEVELOPMENT**  
4                   **CONVEYANCE AGREEMENT (EDC AGREEMENT)**  
5                   **SUCCESSOR IMPLEMENTING AGREEMENT**

6  
7                   **RECITALS,**  
8

9                   **WHEREAS,** the Fort Ord Reuse Authority (“FORA”) is a regional agency and a  
10                  Corporation of the State of California established under California State Law Government  
11                  Code Sections 67650, et seq., to plan, facilitate and manage the transfer of former Fort  
12                  Ord property and is acknowledged as the federally recognized local reuse authority for  
13                  property transfers from the Army, to the governing local jurisdictions or their designees.  
14

15                  **WHEREAS,** the City of Seaside, California (“Seaside”), is a general law Municipal  
16                  Corporation of the State of California.  
17

18                  **WHEREAS,** FORA and Seaside are each a “Party”, and together the “Parties” to  
19                  this Agreement.  
20

21                  **WHEREAS,** Fort Ord, California was placed on the National Priorities List  
22                  (Superfund) in 1990 due to leaking underground storage tanks, contaminated  
23                  groundwater and a 150-acre landfill.  
24

25                  **WHEREAS,** in 1990, the Army executed a Federal Facility Agreement (“FFA”)   
26                  under CERCLA Section 120 outlining the Army’s Comprehensive Environmental  
27                  Response, Compensation, and Liability Act (“CERCLA”) clean up responsibilities with  
28                  respect to the former Fort Ord. The Army remains responsible for certain actions under  
29                  that FFA. The FFA was amended on or about July 26, 2007, the effect of which  
30                  suspends the FFA for FORA’s ESCA obligations so long as FORA or its successors are  
31                  in compliance with the AOC.  
32

33                  **WHEREAS,** the former Fort Ord was closed on September 30, 1994 pursuant to  
34                  and in accordance with the Defense Base Closure and Realignment Act of 1990, as  
35                  amended (Public Law 101-510; hereinafter referred to as the “Base Closure Act”).  
36

37                  **WHEREAS,** in accordance with Section 2905(b)(4) of the Base Closure Act, as  
38                  amended by Section 2821 of the Defense Authorization Act for Fiscal Year 2000, Pub. L.  
39                  No. 106-65 (1999), and the implementing regulations of the Department of Defense (32  
40                  CFR Parts 90 and 91), FORA executed an economic development conveyance  
41                  agreement and acquired portions of the former Fort Ord consisting of approximately five  
42                  thousand two hundred (5,200) acres of land, including all buildings, personal property,  
43                  appurtenances, rights-of-way, and drainage areas upon and subject to the terms and  
44                  conditions of a June 23, 2000 Memorandum of Agreement with the United States of  
45                  America (“EDC Agreement”).  
46

47                  **WHEREAS,** the EDC Agreement provided for transfers of property in accordance

1 with the Army’s clean-up schedule. Subsequent to the EDC Agreement execution, FORA  
2 and the local communities decided to pursue an early transfer process pursuant to Title 42  
3 United States Code, section 9620(h)(3)(C) in order to expedite the property transfers and  
4 ultimate reuse and economic recovery for the communities affected by the Fort Ord  
5 closure.

6  
7 **WHEREAS**, in furtherance of the early transfer process, the Army, with the  
8 approval of the EPA Administrator and the concurrence of the Governor of California,  
9 transferred title of 3,337 acres of munitions impacted Fort Ord property by quitclaim deed  
10 to FORA before all action to protect human health and the environment had been  
11 completed. Concurrent with this transfer without the otherwise required CERCLA  
12 covenant mandated by Title 42 United States Code, section 9620 (h)(3), FORA accepted  
13 title and agreed to perform the Army’s environmental remediation with funding from the  
14 Army. Excluded from FORA’s performance obligation are matters related to the  
15 groundwater at the former Fort Ord, as well as other Army responsibilities enumerated in  
16 the ESCA and elsewhere.

17  
18 **WHEREAS**, in 2007 an “Administrative Order on Consent (“AOC”) [Docket No. R9-  
19 2007-003] [was] entered into voluntarily by the United States Environmental Protection  
20 Agency (“EPA”), the California Department of Toxic Substances Control (“DTSC”), and  
21 the Fort Ord Reuse Authority. The AOC concerns the preparation and performance of  
22 potential removal actions, one or more remedial investigations and feasibility studies  
23 (“RI/FS”) and one or more remedial designs and remedial actions (“RD/RA”) for  
24 contaminants present on portions of the former Fort Ord located at Monterey, California  
25 (“Site”) and the reimbursement for future response costs incurred by EPA and DTSC in  
26 connection with such CERCLA response actions.”

27  
28 **WHEREAS**, in 2007 the Army executed an amendment to the Federal Facilities  
29 Agreement.

30  
31 **WHEREAS**, in 2007 the Army and FORA executed an Environmental Services  
32 Cooperative Agreement W9128F 07 2-0162 (“ESCA”) under the authority of Title 10 United  
33 States Code, Section 2701(d) - Environmental Restoration Program (10 U.S.C. 2701)  
34 whereby FORA would perform the Army’s environmental responsibilities as the Army  
35 Response Action Contractor pursuant to Title 42 United States Code, section 9619, with  
36 the Army providing funding to perform these services.

37  
38 **WHEREAS**, the ESCA has been amended several times, the ESCA Mod 9  
39 amendment in 2017 which provided approximately \$6.8 million for Regulatory Oversight  
40 Through 31 December 2019, FORA ESCA Administrative costs during the EPA/DTSC  
41 remedial-completion documentation, property transfer process through 30 June 2020 and  
42 to perform the required long-term land management tasks, including Munitions and  
43 Explosives of Concern (“MEC”) Find Assessments, inspections, enforcement, monitoring  
44 and reporting through June 30, 2028.

45

ESCA Mod.	ESCA Contract Line Item Number (CLIN) and Description	Expiration Date	Amount
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Number			
MOD 09	CLIN 02 – Department of Toxic Substance Control (DTSC) and United States EPA Technical Oversight Services	31 Dec. 2019	\$745,913
	CLIN 03 – FORA ESCA Administrative Funds	30 June 2020	\$1,865,848
	CLIN 04 – Post-Closure MEC Find Assessments	30 June 2028	\$528,651
	CLIN 05 – Long Term/LUCs Management	30 June 2028	\$3,705,792
		<b>Totals</b>	<b>\$6,846,204</b>

1  
2       **WHEREAS**, due to changes and delays in the transfer of properties, modifications  
3 were made to the ESCA grant leaving post-June 30, 2020 funds available are ESCA CLIN  
4 0004 Post Closure MEC Find Assessments \$528,651 and ESCA CLIN 0005 for Long-  
5 Term Management and Land Use Control (LUC) management are \$3,705,792 (Totaling  
6 \$4,234,443 available from June 30, 2020 through June 30, 2028):  
7

ESCA Mod. Number	ESCA Contract Line Item Number (CLIN) and Description	Expiration Date	Amount
MOD 09	CLIN 04 – Post-Closure MEC Find Assessments	30 June 2028	\$528,651
	CLIN 05 – Long Term/LUCs Management	30 June 2028	\$3,705,792
		<b>Totals</b>	<b>\$4,234,443</b>

8  
9       **WHEREAS**, in 2018 FORA adopted a Transition Plan as required by State Law  
10 that specifies that FORA engage the Successor-in-Interest (“Successor”) provisions of the  
11 ESCA contract.  
12

13       **WHEREAS**, the Successor assumes responsibility and will be tasked with  
14 performing the remaining LTOs under the ESCA, including the recent amendment. It is  
15 assumed that all work under the previous \$98,000,000 contract will have been  
16 accomplished prior to FORA’s dissolution as evidenced by the 2019 EPA Remedial Action  
17 Completion letters, per AOC Section XVII, Certification of Completion, housed in the Army  
18 Administrative Record located at: [http://fortordcleanup.com/documents/administrative-  
19 record/](http://fortordcleanup.com/documents/administrative-record/).  
20

21       **WHEREAS**, the City of Seaside is prepared, subject to funding, to assume ESCA  
22 responsibility and attendant local reuse authority status, including the execution of the  
23 AOC in order to complete the ESCA obligations and any property-related transfer actions  
24 required after June 30, 2020.  
25

26 \*\*\*\*\*

27 **NOW, THEREFORE**, the Parties agree as follows:  
28

29       1. Incorporation of Recitals. The above recitals are hereby incorporated herein by  
30 reference.  
31

1           2. Acknowledgement. FORA agrees to acknowledge Seaside as the ESCA  
2 Successor-In-Interest under the 2018 Transition Plan, and nominate Seaside to the  
3 Department of Defense as the LRA Successor.  
4

5           3. Insurance Policies. FORA will request the transfer of its two pollution legal  
6 liability insurance policies and limits to Seaside. FORA shall also transfer any self-insured  
7 retention funds to Seaside to be used exclusively for ESCA and claims-related obligations.  
8 Seaside acknowledges that these insurance policies will expire in 2022 and 2024,  
9 respectively, and that Seaside's designation will be subject to approval by the insurers.  
10 Seaside's successful designation through December 31, 2024 is a condition precedent to  
11 becoming FORA's ESCA successor. Pollution legal liability insurance will be required by  
12 the ESCA from 1 January 2025 through no earlier than 30 June 2028, a requirement to be  
13 funded by the Army.  
14

15           4. ESCA LTO Program Evidence of Fiduciary and Technical Capability. FORA  
16 agrees to provide technical and/or financial assistance to Seaside to meet the terms  
17 required by the Army, EPA, and DTSC that the Successor be a single entity and  
18 demonstrate technical and financial competence to complete the work.  
19

20           5. ESCA records and contracts funds. FORA and Seaside shall establish a  
21 mechanism for transfer of all ESCA records, back-up documents, computer files and  
22 accounting records, and contract funds to Seaside for meeting FORA's ESCA obligations.  
23

24           6. Technical Assistance. FORA agrees to request the Army extend the funding  
25 expiration date on any remaining ESCA funds (not dedicated to Post-Closure MEC Find  
26 Assessments and Long Term/LUCs Management) for Seaside to provide technical  
27 assistance and funding to complete the ESCA transfer process through June 30, 2020,  
28 including specialized legal, drafting and other staff or contract support. FORA agrees to  
29 establish and fund a pool of monies to support Seaside's assumption of responsibilities  
30 and obligations of the EDC Agreement.  
31

32           7. Obligations. FORA agrees to nominate and Seaside agrees to assume the  
33 Federal local redevelopment authority "LRA" designation and the remaining reporting,  
34 monitoring, and stewardship or other identified responsibilities associated with (i) the  
35 FORA-Army 2007 ESCA, as FORA's Successor through the end of the ESCA Contract  
36 June 30, 2028 in order to complete property transfers and the ESCA to the extent that  
37 ESCA performance does not obligate or put at risk Seaside's municipal non-ESCA funds,  
38 and (ii) the EDC Agreement, as FORA's successor. Exhaustion or unavailability of ESCA  
39 funds with which to compensate Seaside for the performance of ESCA obligations will  
40 constitute a force majeure under the ESCA and the AOC, thereby relieving Seaside of its  
41 responsibility to perform FORA's surviving ESCA obligations.  
42

43           8. ESCA LTO Program Evidence of Fiduciary and Technical Capability. Seaside  
44 agrees to provide evidence of its fiduciary and technical capability to comply with the  
45 terms of the ESCA and manage the contract financial assets with associated invoicing  
46 and reporting responsibilities, to assure the Army, EPA and DTSC of continued ESCA  
47 fiduciary capability.

1  
2 Seaside agrees to assume FORA's ESCA Long Term Obligations Management  
3 Program, as approved by the US Army, EPA and DTSC, and:  
4

- 5 i. Personnel. Hire (2) full-time qualified staff to manage ESCA as required under  
6 the contract provisions as currently amended through 2028, but with allowances  
7 for indirect administrative overhead to assure the Army, EPA and DTSC of  
8 continued ESCA technical capacity.  
9
- 10 ii. ESCA Long-Term Obligation Support Services Contract. Enter into Support  
11 Services Contracts through 2028 with specialists Arcadis, Weston Solutions,  
12 Inc. and Westcliffe Engineers, Inc. (or other qualified vendors), including  
13 allowances for indirect administrative overhead to assure the Army, EPA and  
14 DTSC of continued ESCA technical capacity.  
15
- 16 iii. Representation. Contract with Counsel reasonably qualified on environmental  
17 issues with experience in working with state and federal entities (Army, EPA  
18 and DTSC) for review and compliance as noted in the ESCA and the AOC.  
19
- 20 iv. No Obligation of Other Entities. Monterey Peninsula Community College  
21 District, the Board of Trustees of the California State University (on behalf of the  
22 Monterey Bay campus), the County of Monterey, the Cities of Del Rey Oaks,  
23 Marina and Monterey, the Marina Coast Water District (hereinafter collectively  
24 "Grantees"), will not be a party to the ESCA, and will not bear any financial  
25 liability as a result of the ESCA.  
26

27 9. Coordination with other Entities. Seaside agrees to enter into agreements with  
28 the Grantees for the property transfers and other necessary property-related rights to  
29 effectuate the reuse and the oversight, reporting, response, and other long-term  
30 stewardship obligations listed in and consistent with (a) the ESCA through 2028 on behalf  
31 of the Army, and (b) the EDC Agreement.  
32

- 33 i. Water Rights Allocations. Until such time as such allocations may be amended  
34 by agreements, Seaside agrees to honor and abide by the water rights'  
35 allocations set forth in Exhibit A attached hereto, for Government Water Rights  
36 as defined in Subsection 5.02 of the EDC Agreement, that may be released by  
37 the Government in the future, subject to compliance with all applicable laws.  
38
- 39 ii. Wastewater Discharge Rights. Until such time as such allocations may be  
40 amended by future agreements, Seaside agrees to establish and apply, in  
41 consultation with Grantees, pursuant to Section 5.04 of the EDC Agreement, a  
42 fair process to ensure that all Grantees will enjoy equitable utilization of  
43 Wastewater Discharge Rights that may be released by the Government in the  
44 future, subject to compliance with all applicable laws.  
45
- 46 iii. Creates No Land-Use Authority. Nothing in this Agreement, nor Seaside's  
47 designation as the local redevelopment authority or as FORA's successor under

1 the ESCA or EDC Agreement creates in Seaside any land-use decision-making  
2 authority with respect to any land not within Seaside's City limits. Further,  
3 Seaside shall not require that any land-use decisions of other entities be in  
4 compliance with the Fort Ord Base Reuse Plan.

5  
6 iv. Seaside shall not require payment of any sale or lease proceeds or revenues  
7 (or the equivalent use of property such as licenses, permits, concession  
8 agreements etc.), from other entities for the transfer of property, water rights, or  
9 wastewater discharge rights received from the Army pursuant to the EDC  
10 Agreement.

11  
12 10. ESCA Amendment. The parties agree to work cooperatively to successfully  
13 receive Army, EPA and DTSC concurrence that Seaside is the formal ESCA Successor  
14 and execute the ESCA upon review and approval of terms and conditions. Seaside  
15 agrees to execute an ESCA Agreement and to comply to comply with the U.S. Army  
16 Corps of Engineers ("USACE") oversight and grant management requirements for funding  
17 to Seaside under the ESCA terms, provided however, that the Successor activities are  
18 fully funded, including without limitation provision for PLL insurance coverage, funding  
19 shall be provided from January 1, 2024 through June 30, 2028 or the completion of the  
20 ESCA obligations. Seaside will not pay for Regulatory Oversight unless it is a  
21 reimbursement funded by the Army through the end of the ESCA obligations.

22  
23 11. Administrative Order on Consent. The parties agree to work cooperatively  
24 to successfully receive EPA and DTSC approval that Seaside is the formal Successor to  
25 execute an AOC upon review of terms and conditions.

26  
27 12. Amendment. This Agreement or any provision hereof may be changed,  
28 waived, or terminated only by a statement in writing signed by the Party against which  
29 such change, waiver or termination is sought to be enforced.

30  
31 13. No Waiver. No delay in enforcing or failing to enforce any right under this  
32 Agreement will constitute a waiver of such right. No waiver of any default under this  
33 Agreement will operate as a waiver of any other default or of the same default on a future  
34 occasion.

35  
36 14. Partial Invalidity. If any one or more of the terms, provisions, covenants or  
37 conditions of this Agreement are to any extent declared invalid, unenforceable, void or  
38 voidable for any reason whatsoever by a court of competent jurisdiction, the finding or  
39 order or decree of which becomes final, the Parties agree to amend the terms in a  
40 reasonable manner to achieve the intention of the Parties without invalidity. If the terms  
41 cannot be amended, the invalidity of one or several terms will not affect the validity of the  
42 Agreement as a whole, unless the invalid terms are of such essential importance to this  
43 Agreement that it can be reasonably assumed that the Parties would not have contracted  
44 this Agreement without the invalid terms. In such case, the Party affected may terminate  
45 this Agreement by written notice to the other Party without prejudice to the affected Party's  
46 rights in law or equity.

1           15. Entire Agreement. This Agreement is intended by the Parties as a final  
2 expression of their agreement and is intended as a complete and exclusive statement of  
3 the terms and conditions thereof. Acceptance of or acquiescence in a course of  
4 performance rendered under this Agreement shall not be relevant to determine the  
5 meaning of this Agreement even though the accepting or acquiescing Party had  
6 knowledge of the nature of the performance and opportunity for objection.  
7

8           16. Choice of Law. This Agreement will be construed in accordance with the  
9 laws of the State of California.  
10

11           17. Further Assurances. Each Party agrees to execute and deliver all further  
12 instruments and documents and take all further action that may be reasonably necessary  
13 to complete performance of its obligations hereunder and otherwise to effectuate the  
14 purposes and intent of this Agreement.  
15

16           18. Headings. The headings of the sections hereof are inserted for convenience  
17 only and shall not be deemed a part of this Agreement.  
18

19           19. Notices. Any notice, demand, offer, or other written instrument required or  
20 permitted to be given pursuant to this Agreement shall be acknowledged by the Party  
21 giving such notice, and shall to the extent reasonably practicable be sent by hand  
22 delivery, and if not reasonably practicable to send by hand delivery, then by telecopy,  
23 overnight courier, electronic mail, or registered mail, in each case to the other Party at the  
24 address for such Party set forth below (Note: A Party may change its place of notice by a  
25 notice sent to all other Parties in compliance with this section):  
26

27           City of Seaside  
28           Attn: City Manager  
29           440 Harcourt Avenue  
30           Seaside, CA 93955  
31

              Fort Ord Reuse Authority  
              Attn: Executive Officer  
              920 2nd Avenue, Suite A  
              Marina, CA 93933

32           w/ an email copy to [cityattorney@ci.seaside.ca.us](mailto:cityattorney@ci.seaside.ca.us)  
33

34           20. Term of Agreement: This Agreement shall be effective on the Effective Date  
35 specified at the beginning of the Agreement and shall remain in effect unless and until  
36 terminated by mutual agreement of the Parties or upon the legal dissolution of the Fort  
37 Ord Reuse Authority, [provided, however, that this Agreement shall survive as to the](#)  
38 [Grantees who are third party beneficiaries of this Agreement as set forth in paragraph 22,](#)  
39 [for so long as Seaside remains the successor LRA.](#)  
40

41           21. Authorization. Each party affirms that it is fully authorized to enter into this  
42 Agreement. The Seaside City Manager is designated on behalf of Seaside, subject to  
43 review and approval of documents by the Seaside City Attorney, to enter into the terms  
44 and conditions of this Agreement, the AOC and the ESCA and sign related ESCA and  
45 AOC reporting and financial documents.  
46

1           22. Third-Party Rights. The Grantees are intended to be third-party  
2 beneficiaries of this Agreement as it relates to future transfers of property, water rights,  
3 and wastewater discharge rights pursuant to the EDC Agreement, and shall have the right  
4 to enforce the provisions hereof as if they were direct parties hereto. Nothing in this  
5 Agreement is intended to confer upon any individual or entity, other than the Parties and  
6 the above-identified third-party beneficiaries, any rights or remedies whatsoever.  
7

8  
9           **IN WITNESS WHEREOF**, each Party has executed the Agreement with the  
10 approval of its governing body as of the date first written above.  
11

12  
13 **CITY OF SEASIDE:**

14  
15  
16 \_\_\_\_\_  
17 Craig Malin  
18 City Manager

Date: \_\_\_\_\_

19  
20 APPROVED AS TO FORM:  
21

22  
23 \_\_\_\_\_  
24 CITY ATTORNEY

25  
26  
27 **FORT ORD REUSE AUTHORITY:**

28  
29  
30 \_\_\_\_\_  
31 Joshua Metz Executive Officer

Date: \_\_\_\_\_

32  
33 APPROVED AS TO FORM:  
34

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36 \_\_\_\_\_  
37 AUTHORITY COUNSEL  
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13 Management Plan (2105). They also incorporate the Memorandum of Understanding  
14 between the County of Monterey, the City of Seaside, and the FORA allocating 10 acre-  
15 feet (af) to the Central Coast Veterans Cemetery (2009), and includes the transference of  
16 15 af to the City of Marina for Veterans Transition Center housing (effective Nov 20,  
17 2017).  
18



Document comparison by Workshare 9.5 on Thursday, February 13, 2020  
 1:54:00 PM

Input:	
Document 1 ID	netdocuments://4824-8093-6884/1
Description	FORA DRAFT ESCA LRA Implementing Agreement
Document 2 ID	netdocuments://4824-8093-6884/2
Description	FORA DRAFT ESCA LRA Implementing Agreement
Rendering set	Kutak Option 1

Legend:	
<a href="#">Insertion</a>	
<del>Deletion</del>	
<del>Moved from</del>	
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Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	4
Deletions	3
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	7

## FORT ORD REUSE AUTHORITY BOARD REPORT

### BUSINESS ITEMS

<b>Subject:</b>	Habitat Conservation Plan (“HCP”) / Environmental Impact Report (“EIR”) Options	
<b>Meeting Date:</b>	February 21, 2020	<b>INFORMATION/ACTION</b>
<b>Agenda Number:</b>	7b	

### **RECOMMENDATION(S):**

- i. Receive a report on factors affecting Board HCP/EIR considerations.
- ii. Provide direction to the Executive Officer on HCP/EIR next steps.

### **BACKGROUND/DISCUSSION:**

A joint Environmental Impact Statement/Environmental Impact Report (“EIS/EIR”) was been prepared on behalf of the Fort Ord Reuse Authority (“FORA”) to analyze the effects of the Proposed Action, which is the issuance of Federal and State incidental take permits (ITPs) by the U.S. Fish and Wildlife Service (“USFWS”) under Section 10(a)(1)(B) of the Federal Endangered Species Act (“ESA”), and by the California Department of Fish and Wildlife (“CDFW”) under Section 2081 of the California Fish and Game Code in compliance with the California Endangered Species Act (“CESA”). The Draft EIS/EIR analyzes the potential environmental effects of the adoption and implementation of the Draft Fort Ord Multi-Species Habitat Conservation Plan (“HCP”) and the issuance of Federal and State ITPs. The Draft HCP provides measures to mitigate and avoid/minimize impacts to eight Federal and State listed species within a 28,000-acre Plan Area under a reasonable range of alternatives. This is a comprehensive, base-wide plan that would provide conservation and management of sensitive species and their habitat. The Draft HCP was prepared to support the application for the Federal ITP. FORA is requesting a permit term of 50 years to authorize take of covered species associated with the covered activities described in the Draft HCP.

A total of three alternatives were considered in the environmental analysis:

#### **1. Alternative 1: Redevelopment of Existing Developed Areas and Habitat Management Area (“HMA”) Management Activities**

This alternative would limit development activities to redevelopment of existing developed areas within the designated development areas and HMAs and include implementation of required Habitat Management Plan (“HMP”) habitat management in HMAs (see Draft HCP Chapter 3, Covered Activities, for a description of the locations of these activities). This alternative would result in a decrease in the extent of HCP covered activities, as it assumes no take would occur in existing developed areas within the designated development areas and HMAs associated with redevelopment activities, and very little take in HMAs as a result of HMA management activities and conservation strategy implementation. This alternative would reduce direct impacts to HCP species habitat by 93–99% on non-Federal lands.

## 2. **Alternative 2: Prohibit Development in HMAs and Increase Development Density in Designated Development Areas**

This alternative would restrict development to existing developed areas within HMAs (i.e., where no HCP species habitat occurs) and within designated development areas (i.e., existing developed areas and natural lands areas designated for development) and allow for take in HMAs only where and when it results from HMA management. Direct impacts would be limited to HCP species that have habitat in designated development parcels, and those impacts expected from HMA management activity implementation.

## 3. **Alternative 3: No Action**

Under this alternative, the Permittees would not form the HCP JPA, not receive base-wide permits for take, and not implement the HCP. Underlying agreements and land use plans would move ahead at a modified level during the 50 years of the proposed HCP term. Project-by-project development activities, habitat management activities, and mitigation strategies are anticipated.

The 45-day public review period began on November 1, 2019 and ended on December 16, 2019. A total of 32 comment letters were received.

Since that time the FORA Board formed the Habitat Working Group (“HWG”) as an ad-hoc committee comprised of Board representatives from the FORA land use jurisdictions and potential HCP permittees. The HWG and the Administrative Committee have been holding jointly noticed weekly meetings to discuss and address questions and concerns regarding long-term habitat management options on the former Fort Ord. These Committees have made considerable progress on understanding and evaluating options and are continuing to work towards a consensus Board recommendation. Key steps towards that recommendation include:

- Considering and providing 15-, 25- and 50-years development projections/phasing scenarios to the HCP consultant team as potential refinements/revisions to the Draft HCP;
- Considering and drafting a Joint Powers Authority (“JPA”) agreement structure as a mechanism to continue HMP, HCP, and/or other options for environmental compliance discussions as a group post-FORA;
- Evaluating costs associated with these proposed actions and developing a funding request to the FORA Board; and
- Obtaining a CEQA Attorney opinion on risks and rewards of HCP approval and EIR certification options.

Table 1 summarizes EIR/HCP certification and adoption considerations for the Board. Staff will bring other items from the HWG noted above for Board consideration at later dates.

**Table 1. EIR/HCP Certification & Adoption Considerations**

	<b>Lead Agency</b>	<b>Benefit</b>	<b>Challenges</b>
1. Prepare and Certify EIR/ Adopt HCP	<b>FORA</b>	Certified EIR.  Adopted HCP which may be amended at a later date by permittees subject to State and Federal approval.	Significant exposure to litigation based on incompatibility of the current HCP and revised development projections.  Approximately \$200,000+ additional consultant costs.
2. Prepare and Certify EIR w/ No Project Alternative/ Do not adopt HCP	<b>FORA</b>	Certified EIR based on “no build” scenario.	Reduced exposure to litigation based on incompatibility of the current HCP and revised development projections from agencies circa 2020.  Approximately \$200,000+ additional consultant costs.
3. Prepare and Certify EIR w/ Revised Project Alternative(s) Based on Phased Development/ Do not adopt HCP	<b>FORA</b>	More closely aligns EIR with current development projections circa 2020.	Lack of opportunity for public review of proposed alternative, which, although not a requirement under CEQA, may result in potential litigation exposure.
4. Do not complete EIR/ Provide Funds to JPA to Explore Options for Phasing the HCP	<b>FORA</b>	Limited legal exposure to FORA	JPA would require funding
5. Determine Viability of Phased HCP Implementation and Determine Value of Completing EIR and/or Revising and Recirculating the Document	<b>JPA</b>	Ability to align HCP with agency development projections, assess specific cost/benefit by agency for HCP vs HMP.  Provides time for revision and/or amendment and recirculation of EIR.  Leaves decision for adoption to JPA.	Would Incur additional cost for HCP refinement and financial models.  May require substantial funds for revisions and completion of EIR.

**FISCAL IMPACT:**

Reviewed by FORA Controller 

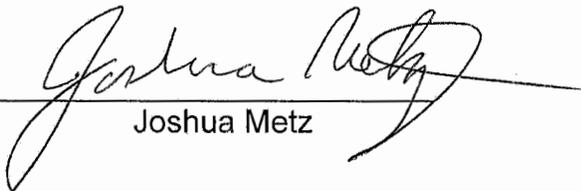
Approve \$130,942 for Dennis Duffy & Associates and \$68,470 for ICF Jones & Stokes for a total of \$199,412 to complete the Final Environmental Impact Report;

or

Consider a possible future budget allocation for work by the proposed JPA should it be formed prior to FORA sunset.

**COORDINATION:**

Executive Officer

Prepared by   
Joshua Metz