

**FORT ORD REUSE AUTHORITY
Resolution No. 20-09**

**A RESOLUTION OF THE GOVERNING BODY OF THE FORT ORD REUSE
AUTHORITY**

Approving and Authorizing the Execution and Delivery of Agreements for the Transfer of Environmental Services Cooperative Agreement Successor-In Interest and Department of Defense Local Redevelopment Authority Funds and Assignment of Contracts to Seaside including Approving Related Actions per the February 21, 2020 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

THIS RESOLUTION is adopted with reference to the following facts and circumstances:

- A. The existence of the Fort Ord Reuse Authority ("FORA") is scheduled to terminate in accordance with state law on June 30, 2020 ("FORA's Termination Date").
- B. It is not feasible for FORA to complete all of the FORA Environmental Services Cooperative Agreement tasks before FORA's Termination Date.
- C. FORA on February 21, 2020 executed the attached 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 agreeing to acknowledge Seaside as the ESCA Successor-In-Interest under the 2018 Transition Plan, and nominate Seaside to the Department of Defense as the LRA Successor.
- D. The Fort Ord Reuse Authority ("FORA") is a regional agency and a Corporation of the State of California established under California State Law Government Code Sections 67650, et seq., to plan, facilitate and manage the transfer of former Fort Ord property and is acknowledged as the federally recognized local reuse authority for property transfers from the Army, to the governing local jurisdictions or their designees.
- E. The City of Seaside, California ("Seaside"), is a general law Municipal Corporation of the State of California.
- F. FORA and Seaside are each a "Party", and together the "Parties" to this Agreement.
- G. Fort Ord, California was placed on the National Priorities List (Superfund) in 1990 due to leaking underground storage tanks, contaminated groundwater and a 150-acre landfill. In 1990, the Army executed a Federal Facility Agreement ("FFA") under CERCLA Section 120 outlining the Army's Comprehensive Environmental

Response, Compensation, and Liability Act ("CERCLA") clean up responsibilities with respect to the former Fort Ord. The Army remains responsible for certain actions under that FFA. The FFA was amended on or about July 26, 2007, the effect of which suspends the FFA for FORA's ESCA obligations so long as FORA or its successors are in compliance with the AOC.

- H. The former Fort Ord was closed on September 30, 1994 pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101-510; hereinafter referred to as the "Base Closure Act").
- I. In accordance with Section 2905(b)(4) of the Base Closure Act, as amended by Section 2821 of the Defense Authorization Act for Fiscal Year 2000, Pub. L. No. 106-65 (1999), and the implementing regulations of the Department of Defense (32 CFR Parts 90 and 91), FORA executed an economic development conveyance agreement and agree to acquire portions of the former Fort Ord consisting of approximately five thousand two hundred (5,200) acres of land, including all buildings, personal property, appurtenances, rights-of-way, and drainage areas upon and subject to the terms and conditions of a June 23, 2000 Memorandum of Agreement with the United States of America ("EDC Agreement").
- J. The EDC Agreement provided for transfers of property in accordance with the Army's clean-up schedule. Subsequent to the EDC Agreement execution, FORA and the local communities decided to pursue an early transfer process pursuant to Title 42 United States Code, section 9620(h)(3)(C) in order to expedite the property transfers and ultimate reuse and economic recovery for the communities affected by the Fort Ord closure.
- K. In furtherance of the early transfer process, the Army, with the approval of the EPA Administrator and the concurrence of the Governor of California, transferred title of 3,337 acres of munitions impacted Fort Ord property by quitclaim deed to FORA before all action to protect human health and the environment had been completed. Concurrent with this transfer without the otherwise required CERCLA covenant mandated by Title 42 United States Code, section 9620 (h)(3), FORA accepted title and agreed to perform the Army's environmental remediation with funding from the Army. Excluded from FORA's performance obligation are matters related to the groundwater at the former Fort Ord, as well as other Army responsibilities enumerated in the ESCA and elsewhere.
- L. In 2007 an *"Administrative Order on Consent ("AOC")* [Docket No. R9-2007-003] *[was] entered into voluntarily by the United States Environmental Protection Agency ("EPA"), the California Department of Toxic Substances Control ("DTSC"), and the Fort Ord Reuse Authority. The AOC concerns the preparation and performance of potential removal actions, one or more remedial investigations and feasibility studies ("RI/FS") and one or more remedial designs and remedial actions ("RD/RA") for contaminants present on portions of the former Fort Ord located at Monterey, California ("Site") and the reimbursement*

for future response costs incurred by EPA and DTSC in connection with such CERCLA response actions.”

- M. In 2007 the Army executed an amendment to the Federal Facilities Agreement.
- N. In 2007 the Army and FORA executed an Environmental Services Cooperative Agreement W9128F 07 2-0162 (“ESCA”) under the authority of Title 10 United States Code, Section 2701(d) - Environmental Restoration Program (10 U.S.C. 2701) whereby FORA would perform the Army’s environmental responsibilities as the Army Response Action Contractor pursuant to Title 42 United States Code, section 9619, with the Army providing funding to perform these services.
- O. The ESCA has been amended several times, the ESCA Mod 9 amendment in 2017 which provided approximately \$6.8 million for Regulatory Oversight Through 31 December 2019, FORA ESCA Administrative costs during the EPA/DTSC remedial-completion documentation, property transfer process through 30 June 2020 and to perform the required long-term land management tasks, including Munitions and Explosives of Concern (“MEC”) Find Assessments, inspections, enforcement, monitoring and reporting through June 30, 2028.

ESCA Mod. Number	ESCA Contract Line Item Number (CLIN) and Description	Expiration Date	Amount
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
	Totals		\$6,846,204

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

ESCA Mod. Number	ESCA Contract Line Item Number (CLIN) and Description	Expiration Date	Amount
MOD	CLIN 04 – Post-Closure MEC Find	30 June 2028	\$528,651

09	Assessments		
	CLIN 05 – Long Term/LUCs Management	30 June 2028	\$3,705,792
		Totals	\$4,234,443

Q In 2018 FORA adopted a Transition Plan as required by State Law that specifies that FORA engage the Successor-in-Interest (“Successor”) provisions of the ESCA contract.

R The Successor assumes responsibility and will be tasked with performing the remaining LTOs under the ESCA, including the recent amendment. It is assumed that all work under the previous \$98,000,000 contract will have been accomplished prior to FORA’s dissolution as evidenced by the 2019 EPA Remedial Action Completion letters, per AOC Section XVII, Certification of Completion, housed in the Army Administrative Record located at: <http://fortordcleanup.com/documents/administrative-record/>.

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

On February 21, 2020 FORA and Seaside agreed as follows:

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

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

3. 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.

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

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

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

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

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

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

- i. Personnel. Hire (2) full-time qualified staff to manage ESCA as required under the contract provisions as currently amended through 2028, but with allowances for indirect administrative overhead to assure the Army, EPA and DTSC of continued ESCA technical capacity.
- ii. ESCA Long-Term Obligation Support Services Contract. Enter into Support Services Contracts through 2028 with specialists Arcadis, Weston Solutions, Inc. and Westcliffe Engineers, Inc. (or other qualified vendors), including allowances for indirect administrative overhead to assure the Army, EPA and DTSC of continued ESCA technical capacity.
- iii. Representation. Contract with Counsel reasonably qualified on environmental issues with experience in working with state and federal entities (Army, EPA and DTSC) for review and compliance as noted in the ESCA and the AOC.
- iv. 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.

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

- 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.

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

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

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

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

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

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

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

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

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

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

City of Seaside

Fort Ord Reuse Authority

Attn: City Manager
440 Harcourt Avenue
Seaside, CA 93955

Attn: Executive Officer
920 2nd Avenue, Suite A
Marina, CA 93933

w/ an email copy to cityattorney@ci.seaside.ca.us

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

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

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.

NOW THEREFORE, the Board hereby resolves that:

1. The foregoing recitals are true and correct.
2. To complete the FORA/Seaside ESCA/EDC/LRA Successor transition process, additional documents need to be executed terminating FORA's obligations and/or transferring them and associated Army ESCA funds to Seaside. The FORA Board authorizes the FORA Executive Officer to execute and/or acknowledge these remaining FORA/Seaside ESCA/EDC/LRA Successor documents, in substantially the form presented to the Board, following review and approval by FORA Counsel. The documents will complete/memorialize the work described above and may include but are not limited to:
 - i. Quitclaim deeds.
 - ii. Releases, restrictions, and covenants.
 - iii. FORA/Seaside Army EDC MOA Amendments.
 - iv. FORA/Arcadis ESCA RSA Notice of Completion.
 - v. FORA/Arcadis assign ESCA RSA protective provisions to Seaside.
 - vi. FORA/Army ESCA release.
 - vii. Army ESCA Successor fund assignment.
 - viii. FORA ESCA Long-Term Obligation Management Support Service Contract assignment.

ix. Insurance policies.

3 Authorize the FORA Executive Officer to execute and deliver agreements for the transfer of ESCA/EDC/LRA Army and DoD funds and assign contracts to Seaside.

This Resolution shall take effect from and after the date of its passage and adoption.

Upon motion by Board Member Haffa, seconded by Board Member Carbone, the foregoing Resolution was passed on this 4nd day of June, 2020, by the following vote:

AYES: PARKER, PHILLIPS, ADAMS, GAGLIOTI, O'CONNELL, MORTON, HAFFA, OGLESBY, WIZARD, CARBONE, GUNTER, GARFIELD, REIMERS

NOES:

ABSTENTIONS:

ABSENT:



Jane Parker, Chair

ATTEST:


Joshua Metz, Secretary