

June 11, 2020

Via email

Jane Parker, Chair
Board of Directors
Fort Ord Reuse Authority

Subject: California Native Plant Society v. FORA, efforts to reach resolution

Dear Chair Parker and members of the FORA Board of Directors:

The California Native Plant Society sued FORA on June 2, and on June 3 I emailed pleadings to Messrs. Giffen and Metz. CNPS and FORA have a short remaining window of opportunity to resolve the matter directly. CNPS regrets that FORA is not trying to resolve the matter, contrary to the FORA claim that FORA's "Ongoing/Pending activities include: 1. Resolving pending legal issues:" including "c. California Native Plants Society (pending)." (June 11, 2020 Board packet, p. 9 of 132.)

FORA has made no efforts to resolve the matter. Instead, this morning at the courthouse Mr. Giffen was visibly angry. He refused to discuss a resolution or to set up a meeting to do so, and Mr. Giffen refused to make himself or the other two KAG attorneys working for FORA on these matters available to meet at any time at all. Mr. Giffen angrily made personal accusations (saying "You are ten years too late!") when in fact it was FORA that approved the South Boundary Road project in 2010, and FORA that did not reach out to CNPS until 2019, and FORA that walked away from the table.

Mr. Giffen also refused to discuss FORA's unimplemented CEQA mitigations for the two FORA road projects – the North-South Road/Highway 218 project approved in 1999, and the General Jim Moore intersection with South Boundary Road approved in 2005. Mr. Giffen's response was that an MOA with Del Rey Oaks has been adopted. That fact is not a reason to discuss resolution of the remaining unmet obligations by FORA. The MOA does not stand in the way of FORA's meeting its mandatory CEQA obligations and ensuring that a successor in interest implements the obligations.

We note that FORA has a mediation scheduled with a different legal claimant, REI, on June 12. (June 11, 2020 Board packet, p. 9.) For months FORA has refused to mediate with CNPS and meet despite repeated offers by CNPS. CNPS again offers to mediate and meet with FORA. There is time to resolve this if FORA acts quickly.

Very truly yours,

STAMP | ERICKSON

/s/ Molly Erickson

Molly Erickson

cc: Kate McKenna, Executive Officer, LAFCO



OFFICE OF THE CITY ATTORNEY

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Seaside, CA 93955
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Telephone 831-899-6890
Facsimile 831-718-8602

June 10, 2020

Fort Ord Reuse Authority
920 2nd Avenue, Suite A
Marina CA 93933

RE: Claim of REI v. FORA
Surplus II building removal contract

Dear FORA Board:

It is Seaside's understanding that the above-referenced matter is currently in mediation and that FORA has received government claim similar to a claim received by the City of Seaside and others. It is the City's position that the building removal performed pursuant to the contract was a base wide obligation and therefore FORA's debt alone. Seaside is not a successor or assign to the contractual obligations as between FORA and the contractor. Accordingly, we encourage both the Plaintiff and FORA Board to resolve this matter prior to June 30, 2020. Both the FOR A Act and the Health and Safety Code have a process for addressing FORA's debt. As you are aware, only FORA debts arising prior to June 30, 2020 will be eligible for repayment pursuant to Health and Safety Code section 33492.71 to the extent there are any unencumbered revenues. Any FORA debts arising after June 30, 2020 will be ineligible for payment as provided by Health and Safety Code section 33492.71.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheri L. Damon".

Sheri L. Damon
City Attorney
City of Seaside

Enc.

Cc: Joshua Metz, Executive Officer
Jon Giffen, Authority Counsel

FELDMAN & ASSOCIATES, INC.

ATTORNEYS AT LAW

11030 SANTA MONICA BOULEVARD
SUITE 109

LOS ANGELES, CALIFORNIA 90025

(310) 312-5401

FACSIMILE (310) 312-5409

May 27, 2020

VIA E-MAIL AND MAIL

Board Secretary or Clerk
City of Seaside
440 Harcourt Avenue
Seaside, CA 93955

RE: Resource Environmental, Inc./ Fort Ord Reuse Authority ("FORA")
Our Client: Resource Environmental, Inc.
Project: Hazardous Material and Building Removal at Surplus II
Project No.: S201

Dear Board Secretary or Clerk:

This office represents Resource Environmental, Inc., ("REI") a contractor who performed work on the above referenced project. REI is seeking to collect certain sums of money from the Ford Ord Reuse Authority ("FORA") and the City of Seaside ("Seaside") that are owed to REI.

This government code claim is being directed to Seaside because FORA has an obligation to pay its debts and honor its contracts pursuant to Government Code section 67700. However, if REI is not paid before June 30, 2020, when FORA dissolves, FORA is obligated to transfer its assets and liabilities to successor agencies. It is our understanding that the real property that was improved by REI will be transferred to Seaside, so Seaside will be responsible for the liabilities as the successor agency. This understanding is based in part on Article 11 of the Construction Contract which specifically mentions Seaside.

It would be best if Seaside made sure that REI was paid in full prior to June 30, 2020.

The following list represents the reasons why REI is owed money by FORA and Seaside on the above mentioned project:

A. Unpaid Change Order

REI is owed approximately \$126,477 in unpaid contract funds for Change Order 2.

The brief explanation for Change Order 2 is that FORA initiated Change Order No. 2 since FORA did not provide plans showing the location of certain underground utilities. The purpose of Change Order No. 2 was to locate utilities not shown on the plans, for safety reasons, and to mark the location of the utilities by putting paint marks on the ground. Harris and Associates, the project manager for FORA, reviewed the price quotations for Change Order No. 2, found them acceptable for the scope of work found in the quotations, had the Change Order signed, and then the work was performed. This amount was already billed in payment application 10, but not paid. There is no reason this approved Change Order, which was completed, was not paid.

B. Unpaid Retention

REI is owed approximately \$150,094.96 in unpaid retention.

FORA withheld a five percent (5%) retention from nine approved (9) payment applications. The retention is still being withheld by FORA for no known reason. Therefore, REI demands it be paid the full amount of the retention. This amount was already billed in payment application 11, but not paid.

C. Unpaid RFCs (excluding number 16)

REI is owed approximately \$890,769.68 for Requests for Change (“RFCs”) 5, 6, 7, and 11-14. These RFCs are for extra work performed by REI.

However, as a result of the contractually required meet and confer process the parties were able to reach an agreement to resolve these seven outstanding RFCs. The agreement reached between the parties resolved RFCs 5 through 14 for \$640,000.00. The parties could not reach an agreement as to RFC 16 mentioned below. If FORA wants to deny that the meet and confer process resulted in the resolution of these RFCs then REI is owed \$890,769.68. However if FORA chooses to honor the agreement that was reached as a result of the contractual meet and confer process, then REI is owed the amount of \$640,000.00 to resolve RFCs 5 through 14.

D. Unpaid RFC 16

REI is owed \$1,120,254.45 for RFC 16.

RFC 16 is a claim for the extra work and costs associated with the high-density concrete that REI encountered throughout the Project. This high strength concrete was not disclosed to REI in the plans or specifications.

Based on many prior experiences at the project site (approximately 40-60 other building demolitions), and decades of experience in demolition/construction, it was proper for REI to assume that the concrete poured was required to be 2,500 psi concrete, in-line with all the other

buildings that our client demolished. If it was high strength concrete, which this turned out to be, FORA was required to disclose this to all bidders pursuant to Public Contract Code section 1104.

E. Interest, Penalties, and Attorneys' Fees

REI seeks interest for the unpaid Change Order and RFCs, penalties for the unpaid retention, and attorneys' fees as allowed by the contract and the law.

This correspondence is REI's formal presentation of claims for additional compensation under Government Code section 910, et seq. The total of REI's claims exceeds \$2,287,596.09 plus interest, penalties and attorneys' fees.

Pursuant to California Government Code Section 910, REI is also providing you with the following information:

1. The name and post office address of the claimant:

Resource Environmental, Inc.
6634 Schilling Avenue
Long Beach, CA 90805

2. The address to which REI desires notices be sent:

Mark A. Feldman, Esq.
Tait Viskovich, Esq.
Feldman & Associates, Inc.
11030 Santa Monica Boulevard, Suite 109
Los Angeles, CA 90025

3. The date, place and other circumstances of the occurrence or transaction which gave rise to the claims asserted:

The damages, interest and attorneys' fees for which REI seeks reimbursement relates to work performed through approximately June of 2019. The place and other circumstances which gave rise to the claim are more fully described above.

4. A general description of the indebtedness:

The indebtedness is more fully described above but exceeds \$2,287,596.09 plus interest, penalties, and attorneys' fees.

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Seaside
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5. The name(s) of the public employee(s) causing the damages:

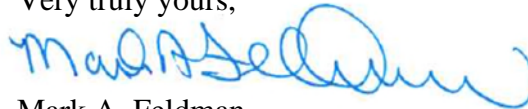
Peter Said, Mario Rebholz, Frank Lopez, and others unknown to REI at this time.

6. If the dollar amount of the claim exceeds \$10,000.00, the claim shall indicate jurisdiction of this matter:

Monterey County Superior Court

We expect that you will promptly resolve this matter and provide REI with a cashier's check for the full amount of the claim, including interest and penalties.

Very truly yours,



Mark A. Feldman
for FELDMAN & ASSOCIATES, INC.

cc: Tait J. Viskovich, Esq.;
Resource Environmental, Inc.