

MEDIA RELEASE

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FORA RESPONDS TO LITIGATION ALLEGATIONS

Over the past several days, media attention has been generated based on interviews and a media release issued by a party which has filed a lawsuit against the Fort Ord Reuse Authority (FORA). The litigation was filed within the context of the California Public Records Act and alleges that FORA has not properly applied or accounted for public funds being expended to complete the required munitions and explosives clean-up process at the former military base. Such publicity creates confusion for the public and obviates the important purpose of the cleanup activity --- to protect public health and safety and our environment.

Under an agreement with the U.S. Army, FORA received a \$97.7 million federal grant to clear dangerous munitions from approximately 3,340 former Fort Ord acres - and to secure regulatory approval of that cleanup. FORA subsequently entered into a guaranteed fixed-price contract with LFR (now ARCADIS) to complete the work required to obtain regulatory approval that the property would be protective of human health and the environment for its intended use, including, for some parcels, residential use. LFR, in turn, as part of the contract between FORA and LFR, secured an insurance policy from AIG (now Chartis) for which FORA paid \$82.1 million from the federal grant funds. This policy funds the cleanup activities, with Chartis overseeing the expenditures and the regulators overseeing the work performed (the U.S. Environmental Protection Agency and the California Department of Toxic Substances Control). The insurance policy covers costs for cleanup up to \$128 million to address increased remedial costs that may occur due to both known and unknown site conditions.

The reason for buying this insurance was threefold:

- (1) if the cost to complete exceeded the Army grant to FORA, there would be extra funds to assure that the scope of work was completed to the satisfaction of the regulators;
- (2) with AIG at risk for the funds above what they received, they had every incentive to assure that LFR spent the money wisely; and
- (3) LFR would not be in a position to pay itself and would have to seek the verification approval of AIG.

By assuring adequate funds would be available, the community was not subject to the annual congressional appropriations process; instead it received a guarantee of adequate funds to complete the cleanup. Most importantly, the insurance contract addressed uncertainty of the

cost to complete the project since the amount of explosive material that might be encountered was estimated based on previous studies with associated uncertainties.

What then happened to the remaining \$15.6 million difference between the Army grant and the Chartis insurance contract? 1) FORA retained approximately \$900,000 for self-insurance in the event that an unsatisfied claim was sought from FORA by injured persons or for property damage to private property. To date, no such claims have been filed. 2) Because the regulators required that they be paid for their oversight work, FORA held \$4.7 million to reimburse the regulators and to date, has paid \$1.5 million for that purpose. 3) In addition, LFR was paid approximately \$6.1 million for Surplus Lines Taxes payable to the State of California for the purchase of the environmental insurance and associated risk transfer and mobilization fees, and \$500,000 to purchase a contractor's pollution liability policy which is standard coverage in the industry for such a project. 4) FORA retained \$3.4 million to cover 7-8 years of this project's administrative costs, which are continuing. To date, AIG has paid LFR \$44.3 million for work performed on the Fort Ord project. Use of the funds described above was approved by the Army before any of the funds were transferred.

The regulators have confirmed their approval of the progress to date, the performance of all parties, and FORA's satisfaction of the obligations ensuring protection of human health and the environment. The Monterey Bay community has been actively and intimately involved in the project through an aggressive outreach program conducted under the Environmental Cooperative Services Agreement (ESCA) project and should be confident that public funds have been spent wisely and for their intended purpose.

It is unfortunate that this Public Records Act litigation and one entity's related press release results in misleading representation about fiscal responsibility. The ESCA cleanup project is highly successful and all funds are accounted for and reported on a very regular basis.