

**Memorandum of Agreement
By and Between
The Fort Ord Reuse Authority
And
The City of Seaside Regarding Property Ownership and Responsibilities During
the Period of Environmental Services to Remove Munitions and Explosives of
Concern**

This Agreement is made by and between the Fort Ord Reuse Authority ("FORA") and the City of Seaside ("Seaside") to establish the terms for holding and managing (ownership and responsibilities) property during remedial work performed under an Environmental Services Cooperative Agreement ("ESCA") between the U.S. Army ("Army") and FORA. This Agreement is dated for reference on September 20, 2007.

I. RECITALS

1.1 The Army will transfer certain real property to FORA ("ESCA properties") under a Finding of Suitability for Early Transfer ("FOSET"). That real property is described in the attached FOSET document; and

1.2 The FOSET refers to certain Covenants Restricting Use of Property (CRUP). The CRUP restricts the use of the ESCA properties until Munitions and Explosives of Concern ("MEC") have been removed to a standards set by the US Environmental Protection Agency and California Department of Toxic Substance Control; and

1.3 The FORA Board appointed a FORA Negotiating Team consisting of voting Board members to negotiate a contract with the Army for FORA to perform MEC remediation services under an ESCA grant; and

1.4 Seaside is a member of the FORA Board of Directors and participated in negotiations that resulted in an ESCA grant award from the Army; and

1.5 FORA and Seaside acknowledge that the ESCA is both an essential contract and a timely benefit for the Monterey Peninsula Region, where the Army provides FORA \$100 million in grant funding to remove MEC from approximately 3,500 acres of the former Fort Ord on the behalf of Seaside and the other Jurisdictions, which will result in Seaside acquiring this property sooner than if the Army continued MEC removal process; and

1.6 The parties to this agreement acknowledge that rapid MEC cleanup is in the best interest of the general public;

1.7 The ESCA grant award has been funded and the MEC cleanup activities will occur once the Army transfers the ESCA properties to FORA; and

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1.8. The ESCA Grant pays for insurance coverage for FORA and its MEC removal contractor, LFR, Inc. (hereinafter referred to as "LFR") during the ESCA MEC remedial period; and

1.9. Seaside and FORA acknowledge that this agreement is necessary to describe the terms under which FORA will retain ownership of Seaside lands during the ESCA MEC removal period; and

1.10. The ESCA properties that pertain to Seaside consist of Army Corps of Engineers parcel numbers E18.1.1, E18.1.3, E18.4, E20c.2, E23.1, E23.2, E24, and E34; and

1.11. The Implementation Agreement between FORA and Seaside specifies that, "Concurrently with FORA's acquisition of Jurisdiction Property from the Army (or at such other times as the Parties may agree in writing), FORA shall transfer such property to the Jurisdiction, and the Jurisdiction shall accept such property."; and

1.12. The parties acknowledge the mutual advantages of FORA retaining ownership during the ESCA MEC remedial period; and

1.13. The FORA Act (CA Government Code Section 67650) states that FORA "shall become inoperative June 30, 2014," which limits FORA's term of operation; and

1.14. The FORA Act (CA Government Code Section 67650) did not provide FORA with police powers or emergency response capabilities, which was to be Jurisdiction responsibilities under agreement between FORA and the Jurisdictions.

II. AGREEMENT

Now, Therefore, Be It Resolved that FORA and Seaside agree as follows:

2.1. FORA retains ownership for the ESCA/FOSET properties during the MEC Remedial Period. FORA agrees to promptly transfer title to the property to Seaside, and Seaside agrees to accept title, upon Notice of Completion and regulatory approval of completed remediation.

2.2. Seaside will provide public safety response as needed for police, fire, and other emergency needs upon FORA taking ownership of the ESCA properties.

2.3. LFR will have primary responsibility for controlling access to the ESCA properties during the MEC Remedial Period and will coordinate with the Jurisdictions for Jurisdiction approved activities that are not related to MEC removal.

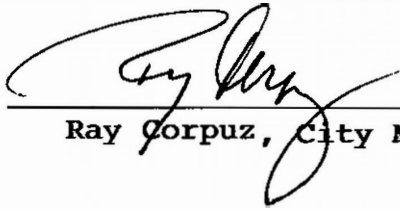
2.4. Access to the ESCA properties will be governed by restrictions included in the CRUP accompanying the transfer of the property as defined by federal and State regulatory agencies. Those restrictions are attached hereto.

2.5. This Memorandum of Agreement shall become inoperative on the earlier of the following two dates:

a. when the FORA Board determines that 80 percent of the territory of Fort Ord that is designated for development or reuse in the 1997 Fort Ord Base Reuse Plan ("Plan") has been reused, or

b. June 30, 2014.

City of Seaside

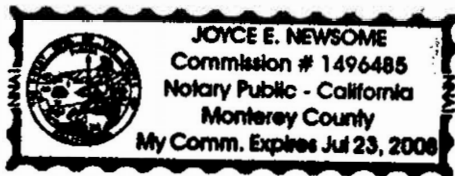
BY: 
Ray Corpuz, City Manager

STATE OF CALIFORNIA)
) ss
COUNTY OF MONTEREY)

On October 17, 2007
before me,

Joyce E. Newsome, a Notary Public in and for said
State, California
personally appeared Ray Corpuz (personally)
known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)
whose name(s) (s) are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity (ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Joyce E. Newsome
Notary Public, State of California

RESOLUTION NO. 07-45

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEASIDE APPROVING THE MEMORANDUM OF AGREEMENT BY AND BETWEEN THE FORT ORD REUSE AUTHORITY AND THE CITY OF SEASIDE REGARDING PROPERTY OWNERSHIP AND RESPONSIBILITIES DURING THE PERIOD OF ENVIRONMENTAL SERVICES TO REMOVE MUNITIONS AND EXPLOSIVES OF CONCERN

WHEREAS, The U.S. Army will transfer eight parcels (Army Corps of Engineers parcel numbers E18.1.1, E18.1.3, E18.4, E20c.2, E23.1, E23.2, E24, and E34) to FORA under a Finding of Suitability for Early Transfer (FOSET); and

WHEREAS, These properties, which are referred to as ESCA properties, will eventually be transferred to the City of Seaside; and

WHEREAS, all Munitions and Explosives of Concern (MEC) must be removed before the properties can be transferred to the City; and

WHEREAS, the remedial work is being done under an Environmental Services Cooperative Agreement (ESCA) between the U.S. Army and FORA under a \$100 million in grant funding to remove MEC from approximately 3,500 acres of the former Fort Ord on the behalf of Seaside and the other jurisdictions; and

WHEREAS, this arrangement will allow Seaside to acquire this property sooner than if the U.S. Army continued the MEC removal process; and

WHEREAS, the proposed MOA is necessary to describe the terms under which FORA will retain ownership of Seaside lands during the ESCA MEC removal period; and

WHEREAS, on September 4, 2007, an agreement was drafted by FORA in order to establish terms for holding and managing property during remedial work performed by FORA for the removal of munitions and explosives on these properties; and

WHEREAS, Specifically, the proposed Memorandum of Agreement states that:

- FORA retains ownership for the properties during the MEC Remedial Period and FORA agrees to promptly transfer title to the property to Seaside, and Seaside agrees to accept title
- Seaside will provide public safety response as needed for police, fire, and other emergency needs upon FORA taking ownership of the ESCA properties
- The Munitions Removal contractor will have primary responsibility for controlling access to the ESCA properties during the MEC Remedial Period


Resolution No. 07-45

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NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Seaside approves the Memorandum of Agreement by and between the City of Seaside and the Fort Ord Reuse Authority (FORA) regarding property ownership and responsibilities during the period of environmental services to remove munitions and explosives of concern.

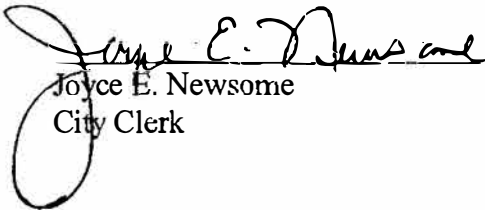
PASSED AND ADOPTED at a regular meeting of the City Council of the City of Seaside duly held on the 20th day of September 2007 by the following vote:

AYES: COUNCIL MEMBERS: Alexander, Jordan, Rubio
NOES: COUNCIL MEMBERS: None
ABSENT: COUNCIL MEMBERS: Bloomer, Mancini
ABSTAIN: COUNCIL MEMBERS: None



Ralph Rubio, Mayor
City of Seaside

ATTEST:



Joyce E. Newsome
City Clerk

**CITY OF SEASIDE
STAFF REPORT**

TO: Honorable Mayor and City Council

FROM: Ray Corpuz, City Manager

BY: Diana Ingersoll, Deputy City Manager – Resource Management Services
Tim O’Halloran, City Engineer/Public Works Services Manager

DATE: September 20, 2007

**SUBJECT: MEMORANDUM OF AGREEMENT GOVERNING THE
REMOVAL OF MUNITIONS AND EXPLOSIVES OF CONCERN**

PURPOSE

This item is presented so that the City Council can consider approval of the Memorandum of Agreement (MOA) by and between the City of Seaside and the Fort Ord Reuse Authority (FORA) regarding property ownership and responsibilities during the period of environmental services to remove munitions and explosives of concern.

RECOMMENDATION

It is recommended that the City Council approve the MOA with FORA governing the removal of munitions and explosives of concern (MEC).

BACKGROUND

The proposed MOA is between the Fort Ord Reuse Authority and the City of Seaside in order to establish terms for holding and managing property during remedial work performed by FORA for the removal of munitions and explosives on these properties. Eight parcels on the former Fort Ord (Army Corps of Engineers parcel numbers E18.1.1, E18.1.3, E18.4, E20c.2, E23.1, E23.2, E24, and E34), which are located to the east of General Jim Moore Boulevard, are included in this agreement.

The Army will transfer these parcels (referred to as ESCA properties) to FORA under a Finding of Suitability for Early Transfer (FOSET). However, all Munitions and Explosives of Concern (MEC) must be removed before the properties can be transferred the City of Seaside. The remedial work is being done under an Environmental Services Cooperative Agreement (ESCA) between the U.S. Army and FORA. The Army has provided FORA with \$100 million in grant funding to remove MEC from approximately 3,500 acres of the former Fort Ord on the behalf of Seaside and the other jurisdictions. This arrangement will allow Seaside to acquire this property sooner than if the Army continued the MEC removal process on its own.

The proposed MOA is necessary to describe the terms under which FORA will retain ownership of Seaside lands during the ESCA MEC removal period. Specifically, the proposed Memorandum of Agreement states that:

- FOR A retains ownership of the properties during the MEC Remedial Period. FORA agrees to promptly transfer title to the property to Seaside, and Seaside agrees to accept title, and
- Seaside will provide public safety response as needed for police, fire, and other emergency needs upon FORA taking ownership of the ESCA properties, and
- The munitions removal contractor will have primary responsibility for controlling access to the ESCA properties during the MEC remedial period.

Staff recommends that City Council approve the Memorandum of Agreement by and between the City of Seaside and FORA regarding property ownership and responsibilities during the period of environmental services to remove munitions and explosives of concern.

COORDINATION

This item has been coordinated with the City Attorney

FISCAL IMPACT

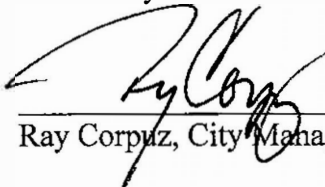
No fiscal impact at this time. Costs will be incurred if public safety response is required during the period of environmental services.

ATTACHMENTS

The following items are attached to the staff report:

1. Resolution approving the Memorandum of Agreement between the City of Seaside and the Fort Ord Reuse Authority regarding property ownership and responsibilities during the period of environmental services to remove munitions and explosives of concern
2. Draft Memorandum of Agreement (MOA) by and between the City of Seaside and the Fort Ord Reuse Authority (FORA) regarding property ownership and responsibilities during the period of environmental services to remove munitions and explosives of concern.
3. Munitions and Explosives of Concern (MEC) Removal Site Map.

Reviewed for Submission to the City Council by:


Ray Corpuz, City Manager