

Resolution 06-16

Resolution of the Fort Ord Reuse Authority)
Board Authorizing the Chair and/or)
Executive Officer to Negotiate and Execute)
the ESCA Grant Award, the Administrative)
Order on Consent, the FORA/LFR)
Environmental Services Contract, the)
ET/ESCA Tax Letter, the Jurisdictional)
Amendments to the Implementation)
Agreement and the ESCA Cost/Pricing)
and Pollution Legal Liability Insurance)

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

WHEREAS, there remain 3,500 acres of Economic Development Conveyance property on the former Fort Ord that is suspected to be contaminated with Munitions and Explosives of Concern (“MEC”); and

WHEREAS, the Fort Ord Reuse Authority (“FORA”) requires these 3,500 acres of the former Fort Ord to complete the economic reuse of the Former Fort Ord according to the approved Fort Ord Reuse Plan; and

WHEREAS, the US Army has indicated that under the current Federal allocation process the clean up process for these 3,500 acres may take up to approximately 15 years to complete; and

WHEREAS, the safety of the Monterey Bay Region is threatened by the remnant hazardous MEC on these 3,500 acres; and

WHEREAS, a special Federal program will allow an expedited clean up of these 3,500 acres under an Early Transfer (“ET”)/ Environmental Services Cooperative Agreement (“ESCA”); and

WHEREAS, the FORA Board has determined that entering into an ET/ESCA is in the best interest of the citizens of the Monterey Bay region; and

WHEREAS, the FORA Board created the FORA ESCA Negotiating Team to negotiate an ET/ESCA with the US Army; and

WHEREAS, FORA released a Request for Qualification for a MEC Contractor to assist the FORA Negotiating Team to determine accurate costs of the MEC clean-up and perform the cleanup work over a period of approximately six years; and

WHEREAS, after receiving qualifications from and interviewing five qualified MEC removal contractors, the FORA Board selected LFR Levine Fricke (“LFR”) to assist the FORA Negotiating Team and to perform the ET/ESCA work; and

WHEREAS, Fort Ord land recipients California State University Monterey Bay and Monterey Peninsula College confirmed participation in the ET/ESCA; and

WHEREAS, the FORA Negotiating Team, FORA Special Counsel and LFR have met numerous over the past 21 months time with representatives from the US Army, US Environmental Protection Agency ("US EPA"), the California Department of Toxic Substances Control ("DTSC") and others to define the technical terms, costing and insurance requirements of an ET/ESCA; and

WHEREAS, the FORA Negotiating Team and the US Army agreed to the final ET/ESCA technical terms and costing in August of 2006; and

WHEREAS, the Board has directed staff to secure funding to complete the ESCA work and insurance to cover FORA and the member communities' risks during and after the ESCA completion; and

WHEREAS, the US Army has agreed to provide the funding to complete the ESCA work and insurance to cover FORA and the member communities' risks during and after the ESCA completion; and

WHEREAS, the Authority Staff and Counsel are currently working with LFR and insurance brokers from Marsh and AON to confirm an insurance provider for an ESCA Cost-Cap Insurance to insure that cost estimates for the ESCA work are adequate and also to secure additional Pollution Legal Liability Insurance to cover the 3,500 acres, which will supplement FORA's existing Pollution Legal Liability Insurance; and

WHEREAS, over the past 21 months, FORA staff has worked continuously to accomplish the Board's directive that the ET/ESCA documents assure that the work performed by LFR is protective of human health and the environment thereby assuring the safe transfer of the remaining Fort Ord Economic Development Conveyance Parcels and that there is no interruption in implementing the Fort Ord Base Reuse Plan in a timely manner; and

WHEREAS, to support the Board's direction, staff has also worked to insure that funding for FORA staffing requirements will support the ESCA and has contracted engineering/modeling studies to verify that the dollar amounts are adequate and that the Board's interests are protected; and

WHEREAS, the Board has particular interest in how the transfer of the former Fort Ord landfill would be handled during the ESCA; and

WHEREAS, during the ESCA technical discussions, FORA staff, working with US EPA, DTSC and US Army representatives, confirmed that the landfill will be transferred at a later time, after the regulators confirm that its remediation close-out is complete; and

WHEREAS, Authority Staff and Counsel are currently working with the US Army, LFR, DTSC, and US EPA to finalize the ET/ESCA-related documents; and

WHEREAS, on November 17, 2006, the Board authorized the Chair or Executive Officer to execute the ESCA and related documents, subject to final review as to form by Authority Counsel and Special Counsel, including the ESCA Grant Award (funding agreement from the US Army) and the Administrative Order on Consent (regulatory agreement with Statement of Work between the FORA, US EPA and DTSC) and to negotiate agreements to bind necessary cost/pricing insurance and additional PLL coverage for the ET/ESCA documents, and also authorized the Executive Officer to proceed with the following documents, including a Jurisdictional Letter

Amendment to the FORA Implementation Agreements between FORA and the Land-Use Jurisdictions receiving ESCA property, the Environmental Services Contract between FORA and LFR, Inc. and a letter regarding tax for the ET/ESCA insurance policy; and

WHEREAS, the terms and conditions included in these documents are those that the Board authorized for negotiation and meet or exceed the FORA Board's directives.

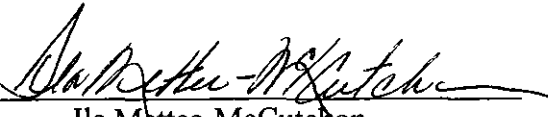
NOW, THEREFORE, BE IT RESOLVED by the FORA Board of Directors that the FORA Board of Directors authorizes either the Chair or the Executive Officer to execute the final Environmental Services Cooperative Agreement Grant Award, the Administrative Order on Consent, the Fort Ord Reuse Authority/LFR Levine Fricke Environmental Services Contract, the Early Transfer/Environmental Services Cooperative Agreement Tax Letter, the Jurisdictional Amendments to the Implementation Agreement and the Environmental Services Cooperative Agreement Cost/Pricing and Pollution Legal Liability Insurance, subject to final review as to form by Authority Counsel and Special Counsel.

Upon motion by Councilmember Morrison, seconded by Councilmember Mancini, the foregoing resolution was passed on this 8th day of December 2006, by the following vote:

AYES:	11	Directors Mettee-McCutchon, Rubio, Russell, McCloud, Morrison, Smith, Calcagno, Pendergrass, Mancini, Della Sala, and Davis
NOES:	-0-	
ABSTENTIONS:	-0-	
ABSENT:	1	Director Potter

I, Mayor Mettee-McCutchon, Chair of the Board of Directors of the Fort Ord Reuse Authority of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of the said Board of Directors duly made and entered under Item 9b on page 2 of the board meeting minutes of December 8, 2006 thereof, which are kept in the Minute Book resident in the offices of the Fort Ord Reuse Authority.

December 14, 2006

By 
Ila Mettee-McCutchon
Chair, Board of Directors
Fort Ord Reuse Authority