

AGREEMENT

CONCERNING FUNDING OF HABITAT MANAGEMENT RELATED EXPENSES

ON THE FORT ORD NATURAL RESERVE

By and Between

**THE FORT ORD REUSE AUTHORITY
and**

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

THIS AGREEMENT ("Agreement"), dated October 14, 2005 ("Effective Date"), is by and between the FORT ORD REUSE AUTHORITY ("FORA"), a California public agency, and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA ("UC"), a public California corporation, (collectively, "Parties").

RECITALS

- A. **WHEREAS**, portions of the former Fort Ord, Monterey County, California, are designated as perpetual Habitat Reserves ("Habitat Reserves") under the Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord ("HMP"), prepared by the U.S. Army in 1997 and signed by FORA in 1997, and by UC on February 22, 1999; and
- B. **WHEREAS**, the California Department of Fish and Game and the U.S. Fish and Wildlife Service have required the owners of the Habitat Reserves to provide legal assurance that they will have sufficient funding to implement all of the actions required under the HMP and Habitat Conservation Plan ("HCP") [which incorporates the HMP and other materials] with regard to their respective Habitat Reserves; and
- C. **WHEREAS**, FORA has established a developer fee program to pay for development mitigations on the entire former Fort Ord, including management of lands designated in the HMP as "Habitat Reserve" and transferred from the U.S. Army to local jurisdictions through FORA (herein referred to as "FORA Habitat Reserve Lands"); and
- D. **WHEREAS**, upon signing of the HCP IA by FORA, FORA will establish an endowment trust (the "FORA Endowment") to provide funds for habitat management and other allowable expenses on FORA Habitat Reserve Lands, and is currently funding the FORA Endowment by directing developer fee revenues received by FORA into the FORA Endowment; and
- E. **WHEREAS**, the Fort Ord Natural Reserve ("FONR") is a UC-owned Habitat Reserve that has been managed by UC since 1996 as a UC Natural Reserve System reserve, established in parallel with UC's Monterey Bay Education, Science and Technology Center ("MBEST Center"), and management of the FONR as a Habitat Reserve and as an NRS reserve is an essential component of the mitigation measures across the former Fort Ord ("basewide")

that will be required for incidental take permits necessary to enable development of the former Fort Ord; and

- F. **WHEREAS**, beginning on February 22, 1999, UC, in accordance with the HMP, has provided administration and management for the FONR sufficient to protect the reserve, establish baseline data and participate in the CRMP and HCP processes and in the process of doing so, has incurred costs; and
- G. **WHEREAS**, the Parties seek a reasonable reimbursement by FORA for a portion of expenses incurred by UC in implementing the HMP; and
- H. **WHEREAS**, the Parties intend to establish a mechanism funded by FORA to assure payment of future allowable expenses incurred by UC on the FONR in fulfilling UC's obligations under the HCP that will implement the HCP and are required for basewide Incidental Take Permits issued under Fish and Game Code §2081 and Endangered Species Act §(10)(a)(1)(B); and
- I. **WHEREAS**, the terms and requirements of the HMP are being further delineated and codified through the development of the subsequent HCP and IA and these documents together will establish the extent of the FONR's required habitat reserve management activities and the extent of related funding to support the execution of those responsibilities ("Allowable Expenses"); and
- J. **WHEREAS**, the Parties seek to establish a secure fund, referred to herein as the FONR Endowment, to cover FONR Allowable Expenses and will define in the FONR Endowment Agreement the respective rights and duties of the Parties regarding their obligations for payment of Allowable Expenses and other obligations under the HMP, HCP and IA; and
- K. **WHEREAS**, On March 28, 2005, FORA contracted with the Center for Natural Lands Management ("CNLM") to prepare a Property Analysis Report ("PAR") defining the allowable expenses associated with implementing the HCP on the FONR and on FORA-managed Habitat Reserve lands;

NOW THEREFORE, in consideration of the foregoing Recitals, and intending to be legally bound, the Parties agree as follows:

1. Definitions

- 1.1. Allowable Expenses: Expenses not including any UC indirect overhead charges necessary to implement the HCP on the FONR. These include:
 - 1.1.1. All expenses reasonably estimated as needed to execute the specific HCP requirements (as defined by the FONR PAR); and
 - 1.1.2. All expenses to be quantified in the Endowment Agreement as needed to provide staffing and infrastructure for the FONR in executing those requirements while supporting a UC/NRS natural reserve;
 - 1.1.3. Expenses up to \$20,000 per year for targeted research deemed necessary to support HCP management decisions, but not any expenses directly related to the reserve's academic program in research, teaching or public service.

1.2. CNLM: Center for Natural Lands Management— A non-profit organization with a mission to:

- 1.2.1. preserve or to assist in the preservation of natural habitat, native species and functioning ecosystems;
- 1.2.2. own and/or manage lands in an ecologically beneficial manner consistent with federal and state environmental laws;
- 1.2.3. promote the conservation values of such lands through education;
- 1.2.4. promote and facilitate uses of such lands by the public that preserve the conservation values; and
- 1.2.5. enable and assist the state and federal governments in their obligations to protect native fish, wildlife, plants and their habitats necessary for maintaining biologically sustainable populations of such species for the public benefit.

1.3. FONR: Fort Ord Natural Reserve. Habitat Reserve lands identified in the HCP and transferred or screened for transfer from the U.S. Army directly to the University of California. FONR is a part of the UC Natural Reserve System and is managed by UCSC.

1.4. FONR Endowment: A fund established for one-time start-up expenses and perpetual on-going expenses required for implementation of the HMP and HCP on the FONR.

1.5. FONR Endowment Agreement: Agreement to be entered into between UC and FORA specifying the size of the FONR Endowment, other details relating to its establishment and management, and the basis for payments to be made by FORA to UC to fund Allowable Expenses prior to the full funding of the FONR Endowment.

1.6. FONR PAR: A PAR prepared for the Fort Ord Natural Reserve, identifying the costs of implementation of the HCP requirements on FONR lands.

1.7. FORA Endowment: a fund established to pay for one-time start-up costs and perpetual on-going costs of implementing the HCP on FORA Habitat Reserve lands

1.8. FORA Habitat Reserve Lands: Habitat Reserve lands identified in the HCP and transferred by Economic Development Conveyance from the U.S. Army through FORA to local jurisdictions. These do not include FONR lands or lands conveyed to the Bureau of Land Management or the California Department of Parks and Recreation.

1.9. Habitat Reserves: Lands designated in the HCP to be perpetually protected and managed to support native habitat and HMP species and communities.

1.10. HCP: Fort Ord Multispecies Habitat Conservation Plan, currently being prepared by FORA, specifying habitat management requirements on specific lands throughout the former Fort Ord, forming the basis for the issuance of 10(a)(1)(B) Incidental Take Permits to non-federal entities for Covered Species by the U.S. Fish and Wildlife Service. The HCP is based on the HMP, but where conflicts occur between the two documents, the provisions of the HCP will govern for entities holding CDFG-issued Section 2081 Incidental Take Permits and USFWS-issued 10(a)(1)(B) Incidental Take Permits. The HCP is implemented through an Implementing Agreement (IA).

1.11. HMP: Fort Ord Multispecies Habitat Management Plan, prepared by the U.S. Army, dated April 1997, specifying habitat management requirements on specific lands throughout the former Fort Ord, forming the basis for Section 7 consultation and Biological Opinions from the U.S. Fish and Wildlife Agency that may allow take by federal agencies of Covered Species.

1.12. IA: Implementing Agreement is a formal, legally-binding agreement among the parties to the Fort Ord HCP in which those parties commit through signature to mutual covenants, obligations and other provisions required to implement the HCP as set forth in the text of the agreement.

1.13. PAR: Property Analysis Report, prepared by CNLM, indicating the costs associated with implementing the HCP on a particular piece of property.

1.14. UC NRS: University of California Natural Reserve System—A system of 35 natural reserves located throughout California operated to support the teaching and research mission of UC.

2. Financial Responsibilities

2.1 Within 45 days of the Effective Date of this Agreement, FORA shall reimburse UC a total of \$135,000 for a portion of expenses incurred between February 22, 1999 and June 30, 2005 for operation of the FONR in compliance with the HMP. The PAR being prepared by the CNLM will ensure that one-time expenses already incurred and reimbursed hereunder will not be double-counted.

2.2. Beginning July 1, 2005 and continuing until the date the requirements of the HCP are binding on UC, FORA shall provide UC a total of \$75,000 each of the next two years for continued operation of the FONR in minimum compliance with the HMP. If the HCP is not signed by June 30, 2007, the Parties may extend by mutual Agreement this annual reimbursement for annual costs until the HCP is consummated. FORA shall provide, within 45 days of the Effective Date of this agreement, payment for the 2005-06 Fiscal Year (July 1, 2005 – June 30, 2006) and shall pay for subsequent years by July 1 of each successive year.

2.3. FORA will exercise its best effort to complete the FONR PAR in a timely manner and will invite UC to review drafts of the FONR PAR. FORA will not accept the FONR PAR until UC has agreed that the FONR PAR has accurately and appropriately captured required activities and realistic expenses, which agreement shall not be unreasonably withheld.

2.4. Within 180 days of completing the updated PAR, the Parties will execute a separate written agreement (“FONR Endowment Agreement”), which shall include the total amount FORA shall provide to UC for:

2.4.1. The annual payments FORA will make to UC to fund the implementation of the HCP on FONR between the date the requirements of the HCP are binding on UC and the full funding of the FONR Endowment; and

2.4.2. The FONR Endowment, covering all Allowable Expenses and contingencies.

The FONR Endowment Agreement shall also address scheduling of FORA's payments (e.g., lump sum, installment, or other payment); and such other matters as the Parties may agree upon.

2.5. The FONR Endowment Agreement shall include provision for FORA to fully fund FONR Allowable Expenses until the FONR Endowment is fully funded and available to cover such expenses. Beginning on the date the requirements of the HCP are binding on UC and ending on the date the FONR Endowment is fully funded, by August 1 of each year UC shall provide FORA an accounting of expenses for the previous fiscal year. With each subsequent forward funding for one year's operation, FORA will adjust the payment up or down to compensate for Allowable Expenses either exceeding or not meeting the previous year's forward funding.

2.6. To provide assurance that adequate revenues will be available to UC to pay FONR's Allowable Expenses in perpetuity, FORA hereby irrevocably agrees that it shall fund the FONR Endowment, which will be held and managed by UC Office of the President on behalf of the NRS. This FONR Endowment funding will be determined in the following manner:

2.6.1. To ensure that the FONR Endowment and the FORA Endowment are fully funded in a timely manner, FORA shall direct 25 percent of all Community Facility District fees received by FORA to these endowments. Until the FONR Endowment is fully funded, FORA shall contribute no less to the FONR Endowment than it contributes to the FORA Endowment. FORA shall fully fund the FONR Endowment no later than the date on which the 1,380th new housing permit is issued on the former Fort Ord since the adoption of the Fort Ord Base Reuse Plan.

2.6.2 To ensure that the amounts determined pursuant to section 1.4. to fully fund the FONR Endowment will be paid, FORA shall, before it terminates its existence or dissolves its organization, either have fulfilled its funding obligations under the FONR Endowment Agreement, or have delegated all of its obligations under this Agreement (if it is still effective) and the FONR Endowment Agreement to another financially responsible party, to which UC has consented in writing.

3. Effect of Termination

Termination of this Agreement will have no effect on the FONR Endowment. UC may continue to use income from the FONR Endowment to fund UC's obligations under the HMP, HCP, and IA in perpetuity, in accordance with the terms of the FONR Endowment Agreement, even after this Agreement has been terminated.

4. Execution of HCP and IA

UC will not execute the HCP and IA or assume substantial and permanent financial obligations thereunder unless and until (a) this Agreement has been signed by the Parties; (b) FORA has reimbursed UC for past FONR expenses; (c) the FONR PAR has been updated; and (d) the Parties have executed the FONR Endowment Agreement

5. Habitat Management Activities on the FONR

UC will undertake or supervise all habitat management activities on the FONR, as required by and agreed to under the HMP, HCP, and IA.

6. MBEST Center Development Fees

UC will require private development on UC's MBEST Center to pay FORA's development fees as reasonably assessed by FORA.

7. Term and Termination

The Parties' obligations under this Agreement commence on the Effective Date and shall continue until this Agreement shall be terminated. The Parties may terminate this Agreement by mutual consent and in writing duly executed by both Parties after FORA has fulfilled its funding obligations to UC under Section 1, above.

8. Further Actions

Each Party agrees to execute and deliver to the other Party such documents, including the FONR Endowment Agreement, and to take such actions as may reasonably be required to give effect to the terms and conditions of this Agreement.

9. Modifications or Amendment

This Agreement is not subject to modification or amendment except in writing, agreed to and signed by all Parties.

10. Interpretations

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and has been arrived at through negotiation, has been reviewed by each Party's respective counsel, and no Party is to be deemed the Party which prepared this Agreement within the meaning of California Civil Code Section 1654.

11. Notices and Correspondence

Any notice required to be given to any Party shall be in writing and deemed given if personally delivered upon the other Party or deposited in the United States mail, and sent certified mail, return receipt requested, postage prepaid and addressed to the other Party at the address set forth below, or sent via facsimile transmission during normal business hours to the party to which notice is given at the telephone number listed for fax transmission:

If to FORA:

Executive Officer
Fort Ord Reuse Authority
100 12th Streets, Building 2880
Marina, CA 93933

Telephone: (831) 883-3672
Facsimile: (831) 883-3675

If to UCSC then concurrently to:

Chancellor, University of California, Santa Cruz
1156 High Street
Santa Cruz, CA 95064

Telephone: (831) 459-2058
Facsimile: (831) 459-2760

Director, UC/Natural Reserve System
Office of the President
1111 Franklin St., 6th Floor
Oakland, CA 94607-5200

Telephone: (510-987-0413
Facsimile: (510-643-2920

Reserve Director, FONR
UCSC Natural Reserves
c/o ENVS - Nat. Sci. II
1156 High Street
Santa Cruz, CA 95064

Telephone: (831) 459-4971
Facsimile: (831) 459-4015

Director, UC MBEST Center
3239 Imjin Road, Suite 101
Marina, CA 93933

Telephone: (831)582-1020
Facsimile: (831)582-1021

12. Indemnification

12.1 FORA shall indemnify, defend and hold harmless UC, its officers, agents, and employees from and against any claims, damages, costs, expenses, or liabilities (collectively "Claims") arising out of or in any way connected with this Agreement including, without limitation, Claims for loss or damage to any property, or for death or injury to any person or persons, but only in proportion to and to the extent that such Claims arise from the negligent or wrongful acts or omissions of FORA, its officers, agents, or employees.

12.2. UC shall indemnify, defend and hold harmless FORA, its officers, partners, agents, and employees from and against any Claims arising out of or in any way connected with this Agreement including, without limitation, Claims for loss or damage to any property or for death or injury to any person or persons, but only in proportion to and to the extent that such Claims arise from the negligent or wrongful acts or omissions of UC, its officers, agents, or employees.

13. Applicable Law

California law shall govern this Agreement.

14. Attorneys' Fees

If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing party will have the right to recover its reasonable attorneys' fees and costs of suit from the other party.

15. Severability

If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

16. Waivers

Any waiver by a Party or Parties of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by either FORA or UC to take action on any breach or default of Parties or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to any of the Parties to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement.

17. Title of Parts and Sections

The titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

18. Conflict of Interest

18.1. Except for approved eligible administrative or personnel costs, no person described in section 18.2 below who exercises or has exercised any functions or responsibilities with respect to the activities contemplated by this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or Agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. Parties shall exercise due diligence to ensure that the prohibition in this section 18.1 is followed.

18.2. The conflict of interest provisions of section 18.1 above apply to any person who is an employee, agent, consultant, officer, or any immediate family member of any official of either FORA or UC, or any person related within the third (3rd) degree of such person.

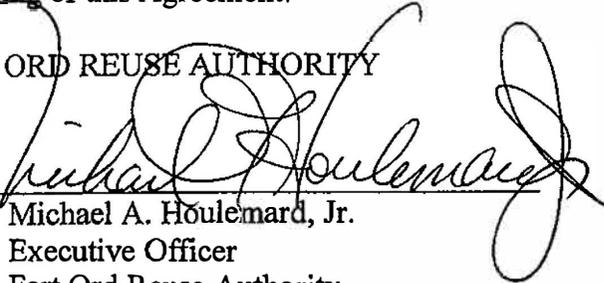
18.3. This Agreement is not intended to interfere with the academic research and teaching activities of UC, UCSC, or FONR. This agreement is not intended to cover costs specifically associated with such activities.

19. Parties Bound Notwithstanding Lack of Information Regarding Subject Properties

The Parties are entering into this Agreement with limited information. The lack or limitation of any information shall not affect in any way the liabilities or obligations of the Parties under this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth at the beginning of this Agreement.

FORT ORD REUSE AUTHORITY



Michael A. Houlemard, Jr.
Executive Officer
Fort Ord Reuse Authority

October 18, 2005
Dated



As to Form

Nov 17, 2005
Dated

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

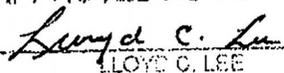


Denice D. Denton
Chancellor
University of California, Santa Cruz

11/9/05
Dated

As to Form

Dated

APPROVED AS TO FORM


LLOYD C. LEE
UNIVERSITY COUNSEL OF THE REGENTS
OF THE UNIVERSITY OF CALIFORNIA