

**Memorandum of Agreement
By and Between
The Fort Ord Reuse Authority
And
Monterey Peninsula College 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 Monterey Peninsula College ("MPC") 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 February 26, 2008.

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 5 document; and

1.2 The FOSET 5 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 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 MPC is a member of the FORA Board of Directors and participated in negotiations that resulted in an ESCA grant award from the Army and will be receiving property on the former Fort Ord; and

1.5 FORA and MPC 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 MPC and the other Jurisdictions, which will result in MPC 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

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. Monterey County has directed FORA to transfer certain portions of the ESCA properties directly to MPC; and

1.10 The properties are known as the "MPC Properties" and consist of Army Corps of Engineers parcel numbers E19a.5, E21b.3, E38, E39, E40, E41, E42, L23.2, and F1.7.2 (see the attached map, Exhibit A); and

1.11. MPC shall be permitted to utilize the Military Operation on Urban Terrain ("MOUT") facility immediately after the MOUT property is transferred to FORA; and

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

1.13. The Agreement Regarding Public Safety Officer Training Facilities among the County, FORA and MPC specifies that, the County and FORA shall, at no cost (excepting reasonable and customary sharing of recordation and processing fees), transfer title to the Facility Sites to MPC within forty-five (45) days after receiving title to said properties. The Facility Sites include all of the MPC Properties; and

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

1.15. 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

1.16. 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 MPC agree as follows:

2.1 FORA retains ownership of the MPC Properties during the MEC Remedial Period. FORA agrees to promptly transfer title to the MPC Properties to MPC, and MPC agrees to accept title to the MPC Properties, upon Notice of Completion and regulatory approval of completed remediation.

2.2 FORA will lease the MOUT facility to MPC during the ESCA MEC remedial period for the cost of \$50 per month if MPC satisfies the condition in section 2.3.

2.3 MPC or the County will provide property access for the purpose of remedial work pursuant to the ESCA to LFR and LFR's contractors on property leased from FORA during the ESCA MEC remedial period.

2.4. FORA shall have no responsibility to provide public safety response as needed for police, fire, and other emergency needs to the property during the term of this memorandum of agreement.

2.5. 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.

2.6. Access to the ESCA properties will be governed by restrictions included in the Land Use Covenant accompanying the transfer of the property as defined by federal and State regulatory agencies. Those restrictions are attached hereto as the CRUP attachments to the FOSET 5 document.

2.7. This Memorandum of Agreement shall become inoperative on the earlier of the following three dates:

- a. when all of the MPC Properties transfer to Monterey Peninsula College.
- b. 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.

III. EXECUTION

FORT ORD REUSE AUTHORITY

BY:

Michael A. Houlemard, Jr.
Executive Officer

Approved as to form:

BY:

Gerald D. Bowden
Authority Counsel

STATE OF CALIFORNIA)
) ss
COUNTY OF MONTEREY)

On December 17, 2008
before me, Sharon Y. Strickland, a Notary Public in and for said
State,
personally appeared Michael A. Houlemard, Jr. personally
known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)
whose name(s) is 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.




Sharon Y. Strickland
Notary Public, State of California

Monterey Peninsula College

BY: 
Douglas R. Garrison
Superintendent/President

DATE: 12/16/08


WITNESS

Monterey Peninsula Community College District

Governing Board Agenda

February 26, 2008
Board Meeting Date

Consent Agenda Item No. _____
Old Business Agenda Item No. _____
New Business Agenda Item No. _____

President's Office
College Area

Proposal:

That the Governing Board approve the Memorandum of Agreement with the Fort Ord Reuse Authority (FORA) regarding property ownership and responsibilities during remediation of the College's parcels under FORA's Environmental Services Cooperative Agreement (ESCA) program and receive an update on the California Department of Toxic Substances Control (DTSC) agreement regarding reporting and compliance monitoring on environmental restrictions on property located on the former Fort Ord.

Background:

Fort Ord Reuse Authority (FORA) Agreement Regarding Property Ownership and Responsibilities during FORA's Environmental Services Cooperative Agreement (ESCA) Remediation Program

In early 2007, FORA entered into agreements with the Army, the Environmental Protection Agency, and DTSC to allow FORA to conduct munitions cleanup on 3,500 acres of former Fort Ord property, leading to early transfer of these parcels. FORA will receive \$100 million in ESCA grant funding to complete the cleanup. During the ESCA remediation period, the Army will transfer the property to FORA's ownership and the Army will no longer be responsible for providing public safety response for these areas. The College's parcels at Parker Flats and the MOUT facility are included in the ESCA program.

The attached memorandum of agreement provides for FORA to own and transfer property to the College and defines the responsibilities of both FORA and the College during the ESCA program. FORA will have no responsibility to provide public safety response during the ESCA period. As the College's parcels are primarily located within the County of Monterey's jurisdiction, public safety response is expected to be provided by the Monterey County Sheriff's office and Salinas Rural Fire District.

The agreement also allows for the College's use of the MOUT training facility during the ESCA remediation period under a lease arrangement with FORA at a nominal fee of \$50 a month to cover administrative costs.

District counsel, Brian Finegan, has reviewed the agreement.

California Department of Toxic Substances Control (DTSC) Reporting/Monitoring Agreement

Properties at the former Fort Ord that have been or will be transferred to the College are subject to land use restrictions for Munitions and Explosives of Concern (MEC) and groundwater contamination. DTSC will require the College to monitor and report compliance with these restrictions on an annual basis as well as provide reimbursement to DTSC for their compliance review costs. This reporting requirement will continue as long as the land use restrictions are in place.

A Memorandum of Agreement between DTSC, FORA, and jurisdictions/agencies with property at the former Fort Ord was developed to define these reporting responsibilities. The signatories included the five land use jurisdictions (the Cities of Marina, Seaside, Del Rey Oaks, Monterey, and Monterey

County); the state public universities (California State University at Monterey Bay and the University of California, Santa Cruz); and the College. The Governing Board approved the agreement in September 2007. Subsequently, DTSC made corrections to the agreement in November 2007. The Superintendent/President was briefed on the process and determined the changes were not substantive to require re-approval by the Board. These changes will be reviewed at the Board meeting.

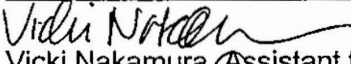
Budgetary Implications:

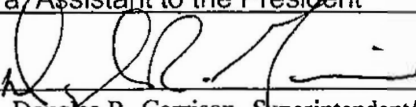
None.

Information Only

Resolution: **BE IT RESOLVED, That** the Memorandum of Agreement Between the Fort Ord Reuse Authority and Monterey Peninsula College Regarding Property Ownership and Responsibilities During the Period of Environmental Services to Remove Munitions and Explosives of Concern, be approved.

Recommended By: Douglas Garrison, Superintendent/President

Prepared By: 
Vicki Nakamura, Assistant to the President

Agenda Approval: 
Douglas R. Garrison, Superintendent/President

l:/mydoc/board/FORA public safety MOA and update on DTSC reporting MOA.doc

**MONTEREY PENINSULA COMMUNITY COLLEGE DISTRICT
GOVERNING BOARD OF TRUSTEES
REGULAR MEETING**

Monterey Peninsula College
980 Fremont Street, Monterey, California 93940

Tuesday
February 26, 2008

1:30 p.m. - Open Session - Stutzman Seminar Room, Library & Technology Center
1:35 p.m. - Closed Session -- Stutzman Seminar Room, Library & Technology Center
3:00 p.m. - Public Session - Karas Room, Library & Technology Center

MINUTES

EXCERPT

MSC Steck, Tunney

07-67

BE IT RESOLVED, That the Memorandum of Agreement between the Fort Ord Reuse Authority and Monterey Peninsula College Regarding Property Ownership and Responsibilities During the Period of Environmental Services to Remove Munitions and Explosives of Concern, be approved.

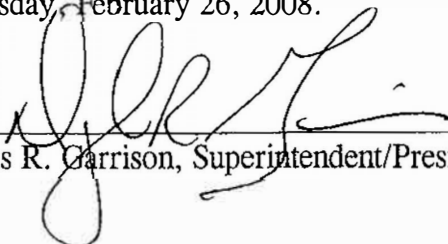
Ayes: Davis, Steck, Page, Pohlhammer, Tunney

Noes: None

Absent: None

EXCERPT

I certify that this is a true excerpt from the minutes of the regular meeting of the Governing Board on Tuesday, February 26, 2008.



Douglas R. Garrison, Superintendent/President

Date December 16, 2008