AMENDED
AGENDA

CITY OF SEASIDE
CITY COUNCIL/SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY

JOINT SPECIAL MEETING
Council Chamber
440 Harcourt Avenue
Thursday, February 20, 2020
5:00 PM

1. CALL TO ORDER

2. CITY COUNCIL/SUCCESSOR AGENCY TO REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE

Ian N. Oglesby	Mayor/Chair
David R. Pacheco	Mayor Pro Tem/Vice Chair
Jason Campbell	Council/Agency Member
Jon Wizard	Council/Agency Member
Alissa Kispersky	Council/Agency Member

3. PLEDGE OF ALLEGIANCE

4. PUBLIC COMMENT

Members of the public wishing to address the City Council on matters within the jurisdiction of the City of Seaside, but not on this agenda, may do so during the Public Comment period for up to three minutes. Public Comments on specific agenda items are heard under that item. For the public record, please state your name.

5. CLOSED SESSION

A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS PURSUANT TO GOVERNMENT CODE SECTION 54956.8:

1. Disposition of Fort Ord Reuse Authority (FORA) Environmental Services Cooperative Agreement (ESCA) properties on the former Fort Ord parcels:
   031-211-001 E34, E24
   031-151-062 E23.1, E23.2, E20c.1
   031-152-007 E20c.2, E18.1.1*
   031-151-059 E20c.1.1.1
   031-151-045 L31, E20c.2.1
   031-152-002 18.1.1
   031-152-011 18.1.3, 18.1.1, 18.4, L22

   Negotiator for the City: Craig Malin. Negotiator for FORA: Barry Stienberg. Under Discussion: Price, terms of payment or both.

2. KB BAKEWELL VENTURE: Campus Town
   APNs: 031-151-029, 031, 032, 039, 040) and

"26 Acres" (APNs: 031-151-054, 055, 056) land sites.

Negotiator for the City: Craig Malin, City Manager. Under Negotiation: Price, terms of payment or both.

6. CONSENT AGENDA

A. APPROVE MINUTES FROM FEBRUARY 6 AND FEBRUARY 11, 2020

RECOMMENDATION: That the minutes be reviewed and approved.

B. APPROVE AND FILE SUCCESSOR AGENCY CHECKS

RECOMMENDATION: Approve and file the accounts payable and wired payments made during the period of January 25, 2020 through February 7, 2020 including the payroll and benefits checks, direct deposits and wired payments related to the pay period ending January 30, 2020. Total Accounts Payable and Payroll for the above referenced period is $171.56.

7. BUSINESS ITEMS

A. APPROVE THE FORT ORD REUSE AUTHORITY ENVIRONMENTAL SERVICES COOPERATIVE AGREEMENT/LOCAL REUSE AUTHORITY AGREEMENT

RECOMMENDATION: Authorize City Manager to execute the attached Fort Ord Reuse Authority and City of Seaside Environmental Services Cooperative Agreement (ESCA) and Local Redevelopment Authority (LRA) Successor Implementing Agreement and direct staff to pursue all further steps and actions to implement the agreement.

8. ADJOURNMENT

Next Regularly Scheduled Meeting:
March 5, 2020
Seaside City Hall
5:30 PM

The City of Seaside is committed to providing accessible facilities and accommodating people with disabilities in all of its services programs and activities. If special considerations are needed by any person to fully participate in this meeting, contact the City Clerk at 899-6707 no fewer than two business days prior to the meeting to allow reasonable arrangements. The City Council chamber is equipped with a portable microphone and assisted listening devices are available at all meetings. City Council Meetings that are held in the City Council Chambers are broadcast live to all Seaside residents on Comcast Channel 25 and U-verse Channel 99. Live streamed meeting videos as well as videos of past meetings are available on the City's website at: http://www.ci.seaside.ca.us/129/City-Council-Committee-Agendas

Agenda-related writings or documents provided during public meetings are available for public inspection during the meeting or from the office of the City Clerk. This agenda is posted in compliance with California Government Code Section 54954.2(a) or Section 54956.

DRAFT MINUTES

CITY OF SEASIDE	JOINT SPECIAL MEETING
CITY COUNCIL/SUCCESSOR	Council Chamber
AGENCY TO THE REDVELOPMENT	Thursday, February 6, 2020
AGENCY	5:30 PM

1. **CALL TO ORDER**

   The meeting was called to order at 5:30 p.m.

2. **CITY COUNCIL/SUCCESSOR AGENCY TO REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE**

   PRESENT: OGLESBY, PACHECO, CAMPBELL, WIZARD, KISPERSKY
   ABSENT: NONE

3. **PLEDGE OF ALLEGIANCE**

   Pledge led by Mayor Pro Tem Pacheco

4. **PUBLIC COMMENT**

   None.

5. **CONSENT AGENDA**

   On motion by Councilmember Campbell and second by Councilmember Wizard and carried by the following vote, the City Council/Successor Agency moved to approve the items on the Consent Agenda as presented. There were no comments from the public. On the question, Mayor Oglesby confirmed regarding item 5E - that the authorization for the City Manager to execute contracts with Adams Ashby Group and R.L. Hastings and Associate would only be completed if the CALHOME Grant was secured.

   AYES: OGLESBY, PACHECO, CAMPBELL, WIZARD, KISPERSKY
   NOES:
   ABSTAIN:
   ABSENT

   A. **APPROVE MINUTES FROM JANUARY 16, 2019**

      Action: Approved

   B. **APPROVE AND FILE SUCCESSOR AGENCY CHECKS**

      Action: Approved

   C. **ACCEPT AND FILE THE CASH AND INVESTMENT REPORT FOR THE CITY OF SEASIDE AND THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE FOR THE QUARTER ENDING DECEMBER 31, 2019.**

      Action: Accepted

   D. **ADOPT A RESOLUTION TO AUTHORIZE SUBMITTAL OF AN APPLICATION TO THE CALIFORNIA STATE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR FUNDING UNDER THE CALHOME PROGRAM IN THE AMOUNT OF $1,000,000.00 FOR THE DEVELOPMENT OF TEN ACCESSORY DWELLING UNITS FOR LOW-**

INCOME HOMEOWNERS.

Action: Authorized

E. **ADOPT A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACTS WITH ADAMS ASHBY GROUP AND R. L. HASTINGS AND ASSOCIATES TO SERVE AS THE ADMINISTRATIVE SUBCONTRACTORS FOR THE CALHOME GRANT AND TO AUTHORIZE THE USE OF SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY AFFORDABLE HOUSING FUNDS IN AN AMOUNT NOT TO EXCEED $50,000.00 TO COVER THESE CONTRACT AMOUNTS.**

Action: Authorized

6. STUDY SESSION

A. **STUDY SESSION TO INTRODUCE AND DISCUSS A DRAFT ORDINANCE REGARDING PLASTIC POLLUTION PREVENTION AND SOLID WASTE AS RECOMMENDED BY THE ENVIRONMENTAL COMMISSION.**

Associate Planner Beth Rocha introduced the item and provided background on the item. Ms. Rocha also introduced Environmental Committee members Lacy Raak and Kira Pani whom provided a presentation and responded to questions and comments from the Council.

Oglesby - concerned with phasing and alternative products that are not currently in the economic stream; the residents that have to pay for these alternatives - asked staff to go out in community and get more feedback about cost prohibitions for low income residents.

PUBLIC COMMENT SPEAKERS:

Dennis Volk, Business Owner (MAL's Market) - would like to be able to review the alternatives for in store display of food in containers, would like a better understanding of how alternatives can be implemented; also did not receive any notification;

Ray Rearden, Seaside resident - businesses need to know what the cost is upfront and how it will impact their business expenses which is impacting their ability to comply.

Carlos Ramos, Seaside Latino Merchants Founder - enormous concern from minority business owners and stated that they were not notified of the meetings, the ordinance was only printed in English and Spanish and should have been printed in Tagalog and/or Chinese.

Closing comments from Council/Successor Agency:

Campbell - water burden due to increased amount of service ware that needs to be cleaned; burden should be looked at the city and community as a whole and has the most affect on low income communities; does not see any reason to delay; noted the positive effects of the Styrofoam and plastic bag ban has had on the city; actual passing of ordinance would require noticing and two public hearing -- more opportunity for more input, comments and refining of the ordinance.

Wizard - asked staff to bring it back at a reasonable time for consideration

Kispersky - likes the ordinance as it is written and encouraged further outreach; asked for staff to bring the item back for consideration

Pacheco - went to 25 businesses and indicated that no recent information about the ordinance had been received; also provided information regarding the impact on local businesses in Seaside; wants an ordinance that is business and environment friendly.

Oglesby - thanked the environmental committee for their work; would have liked to hear more about how this would impact members of the community that are lower income, options about phasing it in, hearing more about alternatives

City Attorney Damon - indicated that a full legal review has not been conducted and has some concerns about some portions of the ordinance and will include in the draft ordinance that returns to the Council. The Council concurred with changes to the presented item.

7. CLOSED SESSION

City Attorney Sheri Damon read the closed session items and anticipated announcements in regard to real property negotiations at the end of the closed session.

Time entered: 6:56 p.m.
Time returned:

A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS PURSUANT TO GOVERNMENT CODE SECTION 54956.8:

8. ADJOURNMENT

The meeting was adjourned at 7:13 p.m.

Respectfully submitted,

Lesley Milton, City Clerk **Ian N. Oglesby, Mayor**

DRAFT MINUTES

CITY OF SEASIDE
CITY COUNCIL/SUCCESSOR AGENCY TO THE REDVELOPMENT AGENCY

JOINT SPECIAL MEETING
Council Chamber
Tuesday, February 11, 2020
8:00 PM

1. **CALL TO ORDER**
   The meeting was called to order at 8:00 p.m.

2. **CITY COUNCIL/SUCCESSOR AGENCY TO REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE**
   PRESENT: OGLESBY, PACHECO, CAMPBELL, WIZARD, KISPERSKY
   ABSENT: NONE

3. **PLEDGE OF ALLEGIANCE**
   The Pledge was led by Mayor Oglesby.

4. **PUBLIC COMMENT**
   There was no public comment.

5. **CLOSED SESSION**
   City Attorney Sheri Damon read the closed session items and did not anticipate any announcements. There were no public comments on the closed session items.

   A. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS PURSUANT TO GOVERNMENT CODE SECTION 54956.8:**

   B. **CONFERENCE WITH LEGAL COUNSEL SIGNIFICANT EXPOSURE TO LITIGATION PURSUANT TO PARAGRAPH (2) OR (3) OF SUBDIVISION (D) OF SECTION 54956.9 - ANTICIPATED LITIGATION: 1 CASE**

6. **ADJOURNMENT**
   The meeting was adjourned at 11:20 p.m.

Respectfully submitted,

Lesley Milton, City Clerk

Ian N. Oglesby, Mayor

CITY OF SEASIDE
STAFF REPORT

Item No.: 6.B.

TO: Successor Agency to the Redevelopment Agency of the City of Seaside

FROM: Craig Malin, City Manager

BY: Jessica Riley, Accounting Assistant
Kimberly Drabner, Finance Director

DATE: February 20, 2020

SUBJECT: **APPROVE AND FILE SUCCESSOR AGENCY CHECKS**

PURPOSE & RECOMMENDATION

Approve and file the accounts payable and wired payments made during the period of January 25, 2020 through February 7, 2020 including the payroll and benefits checks, direct deposits and wired payments related to the pay period ending January 30, 2020. Total Accounts Payable and Payroll for the above referenced period is $171.56.

BACKGROUND

In accordance with Government Code Section 37208, at each City Council meeting the Council is provided a listing of the payroll and general checks issued since the last report so that it can inspect and confirm these checks. Each purchase has been reviewed and approved by the department making the purchase at the time of procurement. The invoice has been reviewed by the Finance Department prior to payment to ensure that it conforms to the approved budget.

Therefore, in accordance with Government Code Section 37208, the above referenced, and linked list of checks conforms to the approved budget and has been paid. These checks are submitted to the City Council for inspection and confirmation.

A description of the checks and wires exceeding $10,000 are as follows:

- No checks exceeded $10,000.

The Checks report is available on the City's website here:
http://www.ci.seaside.ca.us/194/Check-Draft-Register

FISCAL IMPACT

There are no additional fiscal impacts.

ATTACHMENTS

None

CITY OF SEASIDE
STAFF REPORT

Item No.: 7.A.

TO: Successor Agency to the Redevelopment Agency of the City of Seaside

FROM: Craig Malin, City Manager

BY: Craig Malin, City Manager
Sheri Damon, City Attorney

DATE: February 20, 2020

SUBJECT: **APPROVE THE FORT ORD REUSE AUTHORITY ENVIRONMENTAL SERVICES COOPERATIVE AGREEMENT/LOCAL REUSE AUTHORITY AGREEMENT**

PURPOSE & RECOMMENDATION

Authorize City Manager to execute the attached Fort Ord Reuse Authority and City of Seaside Environmental Services Cooperative Agreement (ESCA) and Local Redevelopment Authority (LRA) Successor Implementing Agreement and direct staff to pursue all further steps and actions to implement the agreement.

BACKGROUND

The former Fort Ord was placed on the National Priorities List and declared a Superfund site in 1990 due to leaking underground storage tanks, contaminated water and a 150-acre landfill. Fort Ord was closed on September 30, 1994 and in 2000 the Fort Ord Reuse Authority (FORA) entered into a "no cost" economic conveyance development agreement with the US Army and as a part of that process, FORA agreed to perform some of the Army's clean up responsibilities with Army funding and with coordination with EPA and DTSC.

FORA has a statutory sunset date of June 30, 2020. One of the services performed by FORA is to hold title to 3,337 acres of munitions-impacted parcels and agree to perform the Army's environmental remediation with funding from the Army (the "ESCA"). Although most of the properties held by FORA have all been remediated, they are awaiting the revised CERCLA warranties which will enable FORA to make the transfers of property. There are approximately 42 parcels of land yet to transfer from FORA in this category, many of them belonging to the City of Seaside. FORA's ESCA obligations will continue until 2028 which will require among other things monitoring and reporting on the Land Use Control Implementing Plans (LUCIP) and Covenants Restricting Use (CRUPs). The work is very specialized and requires coordination with the Federal Environmental Protection Agency (EPA) and the California Department of Toxic Substance Control (DTSC) as well as ongoing Army coordination.

The termination of FORA on June 30 requires some regional entity to continue duties FORA presently undertakes under the Environmental Services Cooperative Agreement (ESCA), which performs environmental clean-up operations, funded by the Army. In addition, in the absence of a successor local government being appointed as the Local Reuse Authority (LRA) pursuant to the original Economic Development Conveyance (EDC) agreement which conveyed federal property to local jurisdictions, all regional local governments would forfeit their rights under the EDC. This could, among other negative consequences, result in the cessation of the transfer of property to local jurisdictions under the original EDC.

To continue environmental clean-up operations and reporting on the former Fort Ord, and to retain the rights of local governments under the original EDC, Seaside has volunteered to take on ESCA contract management and be appointed as the successor LRA to FORA. ESCA operations are funded by the Army, pursuant to an existing contract. ESCA operations are managed, locally, by two employees of FORA. To retain the highly specialized institutional knowledge of ESCA operations on the former Fort Ord, these employees of FORA would become Seaside employees, with the cost of their employment paid for by the Army contract.

The attached agreement was approved 10 – 3 at the February 13 FORA Board meeting. In expectation that the agreement will be finally approved at the February 21 FORA Board meeting, it is ready for Council review and approval.

FISCAL IMPACT

ESCA expenses have and will continue to be paid for by the Army. Expenses related to LRA responsibilities are expected to be funded through a future allocation from FORA.

ATTACHMENTS

1. FORA DRAFT ESCA LRA Implementing Agreement v.8

Reviewed for Submission to the
City Council by:

____
Craig Malin, City Manager

FORT ORD REUSE AUTHORITY AND CITY OF SEASIDE ENVIRONMENTAL SERVICES COOPERATIVE AGREEMENT (ESCA) AND LOCAL REDEVELOPMENT AUTHORITY (LRA)/ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT (EDC AGREEMENT) SUCCESSOR IMPLEMENTING AGREEMENT

RECITALS,

WHEREAS, the Fort Ord Reuse Authority ("FORA") is a regional agency and a Corporation of the State of California established under California State Law Government Code Sections 67650, et seq., to plan, facilitate and manage the transfer of former Fort Ord property and is acknowledged as the federally recognized local reuse authority for property transfers from the Army, to the governing local jurisdictions or their designees.

WHEREAS, the City of Seaside, California ("Seaside"), is a general law Municipal Corporation of the State of California.

WHEREAS, FORA and Seaside are each a "Party", and together the "Parties" to this Agreement.

WHEREAS, Fort Ord, California was placed on the National Priorities List (Superfund) in 1990 due to leaking underground storage tanks, contaminated groundwater and a 150-acre landfill.

WHEREAS, in 1990, the Army executed a Federal Facility Agreement ("FFA") under CERCLA Section 120 outlining the Army's Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") clean up responsibilities with respect to the former Fort Ord. The Army remains responsible for certain actions under that FFA. The FFA was amended on or about July 26, 2007, the effect of which suspends the FFA for FORA's ESCA obligations so long as FORA or its successors are in compliance with the AOC.

WHEREAS, the former Fort Ord was closed on September 30, 1994 pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101-510; hereinafter referred to as the "Base Closure Act").

WHEREAS, in accordance with Section 2905(b)(4) of the Base Closure Act, as amended by Section 2821 of the Defense Authorization Act for Fiscal Year 2000, Pub. L. No. 106-65 (1999), and the implementing regulations of the Department of Defense (32 CFR Parts 90 and 91), FORA executed an economic development conveyance agreement and acquired portions of the former Fort Ord consisting of approximately five thousand two hundred (5,200) acres of land, including all buildings, personal property, appurtenances, rights-of-way, and drainage areas upon and subject to the terms and conditions of a June 23, 2000 Memorandum of Agreement with the United States of America ("EDC Agreement").

WHEREAS, the EDC Agreement provided for transfers of property in accordance with the Army's clean-up schedule. Subsequent to the EDC Agreement execution, FORA and the local communities decided to pursue an early transfer process pursuant to Title 42 United States Code, section 9620(h)(3)(C) in order to expedite the property transfers and ultimate reuse and economic recovery for the communities affected by the Fort Ord closure.

WHEREAS, in furtherance of the early transfer process, the Army, with the approval of the EPA Administrator and the concurrence of the Governor of California, transferred title of 3,337 acres of munitions impacted Fort Ord property by quitclaim deed to FORA before all action to protect human health and the environment had been completed. Concurrent with this transfer without the otherwise required CERCLA covenant mandated by Title 42 United States Code, section 9620 (h)(3), FORA accepted title and agreed to perform the Army's environmental remediation with funding from the Army. Excluded from FORA's performance obligation are matters related to the groundwater at the former Fort Ord, as well as other Army responsibilities enumerated in the ESCA and elsewhere.

WHEREAS, in 2007 an *"Administrative Order on Consent ("AOC")* [Docket No. R9-2007-003] [was] *entered into voluntarily by the United States Environmental Protection Agency ("EPA"), the California Department of Toxic Substances Control ("DTSC"), and the Fort Ord Reuse Authority. The AOC concerns the preparation and performance of potential removal actions, one or more remedial investigations and feasibility studies ("RI/FS") and one or more remedial designs and remedial actions ("RD/RA") for contaminants present on portions of the former Fort Ord located at Monterey, California ("Site") and the reimbursement for future response costs incurred by EPA and DTSC in connection with such CERCLA response actions.".*

WHEREAS, in 2007 the Army executed an amendment to the Federal Facilities Agreement.

WHEREAS, in 2007 the Army and FORA executed an Environmental Services Cooperative Agreement W9128F 07 2-0l62 ("ESCA") under the authority of Title 10 United States Code, Section 2701(d) - Environmental Restoration Program (10 U.S.C. 2701) whereby FORA would perform the Army's environmental responsibilities as the Army Response Action Contractor pursuant to Title 42 United States Code, section 9619, with the Army providing funding to perform these services.

WHEREAS, the ESCA has been amended several times, the ESCA Mod 9 amendment in 2017 which provided approximately $6.8 million for Regulatory Oversight Through31 December 2019, FORA ESCA Administrative costs during the EPA/DTSC remedial-completion documentation, property transfer process through 30 June 2020 and to perform the required long-term land management tasks, including Munitions and Explosives of Concern ("MEC") Find Assessments, inspections, enforcement, monitoring and reporting through June 30, 2028.

ESCA Mod.	ESCA Contract Line Item Number (CLIN) and Description	Expiration Date	Amount

Number			
MOD 09	CLIN 02 – Department of Toxic Substance Control (DTSC) and United States EPA Technical Oversight Services	31 Dec. 2019	$745,913
	CLIN 03 – FORA ESCA Administrative Funds	30 June 2020	$1,865,848
	CLIN 04 – Post-Closure MEC Find Assessments	30 June 2028	$528,651
	CLIN 05 – Long Term/LUCs Management	30 June 2028	$3,705,792
		Totals	**$6,846,204**

WHEREAS, due to changes and delays in the transfer of properties, modifications were made to the ESCA grant leaving post-June 30, 2020 funds available are ESCA CLIN 0004 Post Closure MEC Find Assessments $528,651 and ESCA CLIN 0005 for Long-Term Management and Land Use Control (LUC) management are $3,705,792 (Totaling $4,234,443 available from June 30, 2020 through June 30, 2028):

ESCA Mod. Number	ESCA Contract Line Item Number (CLIN) and Description	Expiration Date	Amount
MOD 09	CLIN 04 – Post-Closure MEC Find Assessments	30 June 2028	$528,651
	CLIN 05 – Long Term/LUCs Management	30 June 2028	$3,705,792
		Totals	**$4,234,443**

WHEREAS, in 2018 FORA adopted a Transition Plan as required by State Law that specifies that FORA engage the Successor-in-Interest ("Successor") provisions of the ESCA contract.

WHEREAS, the Successor assumes responsibility and will be tasked with performing the remaining LTOs under the ESCA, including the recent amendment. It is assumed that all work under the previous $98,000,000 contract will have been accomplished prior to FORA's dissolution as evidenced by the 2019 EPA Remedial Action Completion letters, per AOC Section XVII, Certification of Completion, housed in the Army Administrative Record located at: http://fortordcleanup.com/documents/administrative-record/.

WHEREAS, the City of Seaside is prepared, subject to funding, to assume ESCA responsibility and attendant local reuse authority status, including the execution of the AOC in order to complete the ESCA obligations and any property-related transfer actions required after June 30, 2020.

****

<u>NOW, THEREFORE,</u> the Parties agree as follows:

1. <u>Incorporation of Recitals</u>. The above recitals are hereby incorporated herein by reference.

2. Acknowledgement. FORA agrees to acknowledge Seaside as the ESCA Successor-In-Interest under the 2018 Transition Plan, and nominate Seaside to the Department of Defense as the LRA Successor.

3. Insurance Policies. FORA will request the transfer of its two pollution legal liability insurance policies and limits to Seaside. FORA shall also transfer any self-insured retention funds to Seaside to be used exclusively for ESCA and claims-related obligations. Seaside acknowledges that these insurance policies will expire in 2022 and 2024, respectively, and that Seaside's designation will be subject to approval by the insurers. Seaside's successful designation through December 31, 2024 is a condition precedent to becoming FORA's ESCA successor. Pollution legal liability insurance will be required by the ESCA from 1 January 2025 through no earlier than 30 June 2028, a requirement to be funded by the Army.

4. ESCA LTO Program Evidence of Fiduciary and Technical Capability. FORA agrees to provide technical and/or financial assistance to Seaside to meet the terms required by the Army, EPA, and DTSC that the Successor be a single entity and demonstrate technical and financial competence to complete the work.

5. ESCA records and contracts funds. FORA and Seaside shall establish a mechanism for transfer of all ESCA records, back-up documents, computer files and accounting records, and contract funds to Seaside for meeting FORA's ESCA obligations.

6. Technical Assistance. FORA agrees to request the Army extend the funding expiration date on any remaining ESCA funds (not dedicated to Post-Closure MEC Find Assessments and Long Term/LUCs Management) for Seaside to provide technical assistance and funding to complete the ESCA transfer process through June 30, 2020, including specialized legal, drafting and other staff or contract support. FORA agrees to establish and fund a pool of monies to support Seaside's assumption of responsibilities and obligations of the EDC Agreement.

7. Obligations. FORA agrees to nominate and Seaside agrees to assume the Federal local redevelopment authority "LRA" designation and the remaining reporting, monitoring, and stewardship or other identified responsibilities associated with (i) the FORA-Army 2007 ESCA, as FORA's Successor through the end of the ESCA Contract June 30, 2028 in order to complete property transfers and the ESCA to the extent that ESCA performance does not obligate or put at risk Seaside's municipal non-ESCA funds, and (ii) the EDC Agreement, as FORA's successor. Exhaustion or unavailability of ESCA funds with which to compensate Seaside for the performance of ESCA obligations will constitute a force majeure under the ESCA and the AOC, thereby relieving Seaside of its responsibility to perform FORA's surviving ESCA obligations.

8. ESCA LTO Program Evidence of Fiduciary and Technical Capability. Seaside agrees to provide evidence of its fiduciary and technical capability to comply with the terms of the ESCA and manage the contract financial assets with associated invoicing and reporting responsibilities, to assure the Army, EPA and DTSC of continued ESCA fiduciary capability.

Seaside agrees to assume FORA's ESCA Long Term Obligations Management Program, as approved by the US Army, EPA and DTSC, and:

i. Personnel. Hire (2) full-time qualified staff to manage ESCA as required under the contract provisions as currently amended through 2028, but with allowances for indirect administrative overhead to assure the Army, EPA and DTSC of continued ESCA technical capacity.

ii. ESCA Long-Term Obligation Support Services Contract. Enter into Support Services Contracts through 2028 with specialists Arcadis, Weston Solutions, Inc. and Westcliffe Engineers, Inc. (or other qualified vendors), including allowances for indirect administrative overhead to assure the Army, EPA and DTSC of continued ESCA technical capacity.

iii. Representation. Contract with Counsel reasonably qualified on environmental issues with experience in working with state and federal entities (Army, EPA and DTSC) for review and compliance as noted in the ESCA and the AOC.

iv. No Obligation of Other Entities. Monterey Peninsula Community College District, the Board of Trustees of the California State University (on behalf of the Monterey Bay campus), the County of Monterey, the Cities of Del Rey Oaks, Marina and Monterey, the Marina Coast Water District (hereinafter collectively "Grantees"), will not be a party to the ESCA, and will not bear any financial liability as a result of the ESCA.

9. Coordination with other Entities. Seaside agrees to enter into agreements with the Grantees for the property transfers and other necessary property-related rights to effectuate the reuse and the oversight, reporting, response, and other long-term stewardship obligations listed in and consistent with (a) the ESCA through 2028 on behalf of the Army, and (b) the EDC Agreement.

i. Water Rights Allocations. Until such time as such allocations may be amended by agreements, Seaside agrees to honor and abide by the water rights' allocations set forth in Exhibit A attached hereto, for Government Water Rights as defined in Subsection 5.02 of the EDC Agreement, that may be released by the Government in the future, subject to compliance with all applicable laws.

ii. Wastewater Discharge Rights. Until such time as such allocations may be amended by future agreements, Seaside agrees to establish and apply, in consultation with Grantees, pursuant to Section 5.04 of the EDC Agreement, a fair process to ensure that all Grantees will enjoy equitable utilization of Wastewater Discharge Rights that may be released by the Government in the future, subject to compliance with all applicable laws.

iii. Creates No Land-Use Authority. Nothing in this Agreement, nor Seaside's designation as the local redevelopment authority or as FORA's successor under the ESCA or EDC Agreement creates in Seaside any land-use decision-making authority with respect to any land not within Seaside's City limits. Further, Seaside shall not require that any land-use decisions of other entities be in compliance with the Fort Ord Base Reuse Plan.

iv. Seaside shall not require payment of any sale or lease proceeds or revenues (or the equivalent use of property such as licenses, permits, concession agreements etc.), from other entities for the transfer of property, water rights, or wastewater discharge rights received from the Army pursuant to the EDC Agreement.

10. ESCA Amendment. The parties agree to work cooperatively to successfully receive Army, EPA and DTSC concurrence that Seaside is the formal ESCA Successor and execute the ESCA upon review and approval of terms and conditions. Seaside agrees to execute an ESCA Agreement and to comply to comply with the U.S. Army Corps of Engineers ("USACE") oversight and grant management requirements for funding to Seaside under the ESCA terms, provided however, that the Successor activities are fully funded, including without limitation provision for PLL insurance coverage, funding shall be provided from January 1, 2024 through June 30, 2028 or the completion of the ESCA obligations. Seaside will not pay for Regulatory Oversight unless it is a reimbursement funded by the Army through the end of the ESCA obligations.

11. Administrative Order on Consent. The parties agree to work cooperatively to successfully receive EPA and DTSC approval that Seaside is the formal Successor to execute an AOC upon review of terms and conditions.

12. Amendment. This Agreement or any provision hereof may be changed, waived, or terminated only by a statement in writing signed by the Party against which such change, waiver or termination is sought to be enforced.

13. No Waiver. No delay in enforcing or failing to enforce any right under this Agreement will constitute a waiver of such right. No waiver of any default under this Agreement will operate as a waiver of any other default or of the same default on a future occasion.

14. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Agreement are to any extent declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, the Parties agree to amend the terms in a reasonable manner to achieve the intention of the Parties without invalidity. If the terms cannot be amended, the invalidity of one or several terms will not affect the validity of the Agreement as a whole, unless the invalid terms are of such essential importance to this Agreement that it can be reasonably assumed that the Parties would not have contracted this Agreement without the invalid terms. In such case, the Party affected may terminate this Agreement by written notice to the other Party without prejudice to the affected Party's rights in law or equity.

15. Entire Agreement. This Agreement is intended by the Parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof. Acceptance of or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing Party had knowledge of the nature of the performance and opportunity for objection.

16. Choice of Law. This Agreement will be construed in accordance with the laws of the State of California.

17. Further Assurances. Each Party agrees to execute and deliver all further instruments and documents and take all further action that may be reasonably necessary to complete performance of its obligations hereunder and otherwise to effectuate the purposes and intent of this Agreement.

18. Headings. The headings of the sections hereof are inserted for convenience only and shall not be deemed a part of this Agreement.

19. Notices. Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to this Agreement shall be acknowledged by the Party giving such notice, and shall to the extent reasonably practicable be sent by hand delivery, and if not reasonably practicable to send by hand delivery, then by telecopy, overnight courier, electronic mail, or registered mail, in each case to the other Party at the address for such Party set forth below (Note: A Party may change its place of notice by a notice sent to all other Parties in compliance with this section):

City of Seaside
Attn: City Manager
440 Harcourt Avenue
Seaside, CA 93955

Fort Ord Reuse Authority
Attn: Executive Officer
920 2nd Avenue, Suite A
Marina, CA 93933

w/ an email copy to cityattorney@ci.seaside.ca.us

20. Term of Agreement: This Agreement shall be effective on the Effective Date specified at the beginning of the Agreement and shall remain in effect unless and until terminated by mutual agreement of the Parties or upon the legal dissolution of the Fort Ord Reuse Authority, provided, however, that this Agreement shall survive as to the Grantees who are third party beneficiaries of this Agreement as set forth in paragraph 22, for so long as Seaside remains the successor LRA.

21. Authorization. Each party affirms that it is fully authorized to enter into this Agreement. The Seaside City Manager is designated on behalf of Seaside, subject to review and approval of documents by the Seaside City Attorney, to enter into the terms and conditions of this Agreement, the AOC and the ESCA and sign related ESCA and AOC reporting and financial documents.

22. Third-Party Rights. The Grantees are intended to be third-party beneficiaries of this Agreement as it relates to future transfers of property, water rights, and wastewater discharge rights pursuant to the EDC Agreement, and shall have the right to enforce the provisions hereof as if they were direct parties hereto. Nothing in this Agreement is intended to confer upon any individual or entity, other than the Parties and the above-identified third-party beneficiaries, any rights or remedies whatsoever.

IN WITNESS WHEREOF, each Party has executed the Agreement with the approval of its governing body as of the date first written above.

CITY OF SEASIDE:

___________________________________ Date: ________________

Craig Malin
City Manager

APPROVED AS TO FORM:

____

CITY ATTORNEY

FORT ORD REUSE AUTHORITY:

___________________________________ Date: ________________

Joshua Metz Executive Officer

APPROVED AS TO FORM:

____

AUTHORITY COUNSEL

EXHIBIT A

Current Water Allocations & Percentage-based Allocations of Future Army Water*

	Current Water Allocations in Acre Feet	**Allocation of Future Army Water Based on Percentage of Current Water Allocation**
City of Marina	1340	**29%**
City of Monterey	65	**1%**
City of Seaside	1012.5	**22%**
County of Monterey	720	**15%**
CSUMB	1035	**22%**
City of Del Rey Oaks	242.5	**5%**
CA State Parks	44.5	**1%**
UCMBEST	230	**5%**

*In the unlikely event of availability of additional water from the US Army it would be distributed following the percentage-based allocation provided above. These allocations reflect previously agreed upon water distribution as per FORA Board Resolution No. 07-1 (potable water), and are consistent with the Marina Coast Water District Urban Water Management Plan (2105). They also incorporate the Memorandum of Understanding between the County of Monterey, the City of Seaside, and the FORA allocating 10 acre-feet (af) to the Central Coast Veterans Cemetery (2009), and includes the transference of 15 af to the City of Marina for Veterans Transition Center housing (effective Nov 20, 2017).