

**MEMORANDUM OF AGREEMENT
REGARDING FUNDING FROM FORA TO COUNTY OF MONTEREY
FOR OAK WOODLANDS CONSERVATION PLANNING**

This Memorandum of Agreement (“MOA”) is made and entered into effective as of June 16, 2020, by and between the Fort Ord Reuse Authority (“FORA”), a California public agency, and the County of Monterey (the “County”), a political subdivision of the state of California. FORA and the County are sometimes referred to herein in the singular as a “Party” and collectively as the “Parties.”

Recitals

A. On May 13, 2016, the Board of Directors of the Fort Ord Reuse Authority (FORA) approved a contract (“Contract”) with Denise Duffy & Associates, Inc. (“DDA”) to study and prepare a draft Oak Woodland Management and Monitoring Plan (OW MMP) and draft Oak Woodland Conservation Map covering certain lands in the City of Seaside and the unincorporated portion of the County of Monterey on the former Fort Ord, among other specified services (the “Services”). These Services were intended to assist the County and City of Seaside in planning for oak woodland conservation in their respective jurisdictions in the former Fort Ord.

B. On or about July 27, 2017, FORA and DDA entered into that certain limited purpose “Agreement for Professional Services - Amendment #2” (believed to be the only amendment to the Contract notwithstanding its title) which restated the term of the Contract to be from May 31, 2016 to June 30, 2018 or until the maximum amount of compensation is reached. The Contract, as amended, remains in force because the maximum amount of compensation has not been reached.

C. DDA has done a significant amount of the work under the Contract, but DDA’s work under the Contract has not yet been completed. The tasks that remain to be completed are set forth in Exhibit A, attached hereto and incorporated herein by reference.

D. FORA’s general funds budget for fiscal year 2019/2020 includes the Services under the Contract. The Board has recently approved and committed to reserving the amount of Eighteen Thousand Seven Hundred Thirteen Dollars (\$18,713) to cover payment for completion of the tasks and reporting outlined in the Contract.

E. FORA is scheduled to terminate in accordance with state law on June 30, 2020 (FORA’s Termination Date”).

F. FORA does not have sufficient time or management resources to manage completion of the Services by FORA’s Termination Date.

G. The County and FORA desire for DDA to complete the Services under the Contract, as DDA has done a considerable amount of work under the Contract, and allowing DDA to complete its Services will continue to advance oak woodland conservation planning on the former Fort Ord.

H. Concurrently herewith, FORA, DDA, and the County are considering entering an *Agreement for Assignment and Assumption of Rights and Obligations under Contract, Consent Thereto, and Suspension of Application of Assignment Prohibition* (the "Agreement for Assignment, Assumption, Consent, and Suspension") to authorize FORA to assign the Contract to the County. Pursuant to the terms of the Agreement for Assignment, Assumption, Consent, and Suspension, it is intended that the Agreement for Assignment, Assumption, Consent, and Suspension will not take effect unless this MOA is approved and executed prior to FORA's Termination Date.

I. Accordingly, the Parties now wish to enter into this MOA to provide for the amount of Eighteen Thousand Seven Hundred Thirteen Dollars (\$18,713) ("Funds") to be transferred to the County so that DDA may complete the Services under the Contract, with the remaining tasks described in Exhibit A attached hereto and incorporated herein by reference. The term "Services" as used in this MOA includes the tasks as set forth in Exhibit A.

J. The tasks as set forth in Exhibit A include minor updates to the scope of Services under the Contract to reflect the currently intended deliverables and County assumption of Contract management. Although County will assume the role of managing the Contract, the tasks anticipate continued coordination among DDA, County, and the City of Seaside. As described in Exhibit A, DDA's performance of the remaining tasks will provide deliverables to the City of Seaside as well as to the County and provide information for the region.

K. Upon the full execution of this MOA and transfer of the Funds, it is the intent of the Parties that the County will utilize the Funds to pay DDA for due completion of the tasks set forth in Exhibit A.

Agreement

In consideration of the mutual terms, covenants and conditions contained herein the Parties agree as follows:

1. **Recitals.** The Recitals set forth above are true and correct and are incorporated into this MOA by this reference.
2. **Effective Date.** The Effective Date of this MOA shall be the date this MOA is fully executed by both Parties.

3. **FORA's Obligations.** Within seven (7) calendar days of the Effective Date, FORA will transfer and pay to the order of the County, and the County agrees to accept from FORA, the amount of Eighteen Thousand Seven Hundred Thirteen Dollars (\$18,713) in full satisfaction of any obligation of FORA to provide funding for completion of Services under the Contract.
4. **County's Obligations.** The County will use the Funds received from FORA to pay DDA for due completion of the tasks set forth in Exhibit A.
5. **Environmental Review.** The Services, as set forth in Exhibit A, precede and do not include environmental review under the California Environmental Quality Act, and the Services do not commit the County to adoption of the draft plans and regulations prepared under the Contract. The County will determine and conduct environmental review as appropriate if and when the County were to consider adoption of the final draft plans and regulations prepared under the Contract.
6. **Obligations.** FORA shall have no obligation to transfer the Funds under this MOA and the County shall have no obligation to pay DDA for Services under the Contract unless DDA, FORA, and the County approve and execute the Agreement for Assignment, Assumption, Consent, and Suspension and unless FORA transfers the Funds to the County.
7. **Term.** The term of this MOA shall begin on the Effective Date and continue until FORA's Termination Date, unless terminated earlier as provided herein; provided, however, that the County's obligations under this MOA shall remain in full force and effect until the Funds have been expended in accordance with the terms of this MOA.
8. **Accounting and Records.** FORA (until FORA's Termination Date) and the County shall each maintain and account for the funds related to the Contract. Promptly following the execution of this MOA, FORA will exercise good faith and commercially reasonable efforts to provide the County with copies of available and appropriate documents and records pertaining to the Contract.
9. **Parties' Representatives.** This MOA shall be coordinated between the Parties through the County's Resource Management Agency Director or his designee and FORA's Executive Officer.
10. **Indemnification.** Each party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying party or its agents, employees, contractors, subcontractors, or invitees.
11. **Termination.** If through any cause either Party fails to fulfill in a timely and proper manner its obligations under this MOA, or violates any of the terms or conditions of this MOA or applicable Federal or State laws and regulations, the non-breaching Party may terminate this MOA upon seven (7) calendar days written notice to the breaching Party. In the event that

County has not expended all of the Funds for Services under the Contract within ten (10) years after the Effective Date of this MOA, then any Funds remaining unexpended as of that date shall be distributed as follows: Twenty percent (20%) may be retained by the County and twenty percent (20%) shall be distributed to each of the Cities of Del Rey Oaks, Marina, Monterey, and Seaside.

12. **Applicable Law.** This MOA shall be construed and interpreted under the laws of the State of California.

13. **Severability.** In the event any part of this MOA is declared by a court of competent jurisdiction to be invalid, void or unenforceable, such part shall be deemed severed from the remainder of the MOA and the remaining provisions shall continue in full force without being impaired or invalidated in any way.

14. **Assignment.** Neither Party may assign this MOA or any part hereof, without written consent and prior approval of the other Party and any assignment without said consent shall be void and unenforceable.

15. **Amendment.** No amendment, modification, alteration, or variation of the terms of this MOA shall be valid unless made in writing and signed by authorized representatives for the Parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the Parties thereto.

16. **Time of the Essence.** Time is of the essence for each and every provision of this MOA.

17. **Notices.** Any notice required or permitted under this MOA, shall be in writing and shall be deemed served on the date personally delivered or three (3) business days after being sent by certified mail, return receipt requested, or other delivery service which provides for receipt of confirmation, addressed as follows, unless otherwise notified in writing of a change of address:

To the County: Director, Resource Management Agency
 County of Monterey
 1441 Schilling Place, 2d Floor
 Salinas, CA 93901

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

18. **Authority.** Each Party represents and warrants to the other Party that it is authorized to execute, deliver and perform this MOA, and the terms and conditions hereof are valid and binding obligations of the Party making this representation.

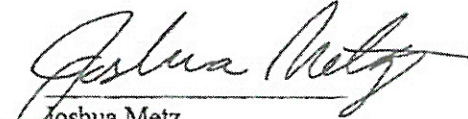
19. **Compliance with Laws.** The Parties agree to comply with all applicable local, state and federal laws and regulations.

20. **Venue.** Both Parties hereby agree and consent to the exclusive jurisdiction of the courts of the State of California and that the venue of any action brought thereunder shall be Monterey County, California.
21. **Survival.** All rights and obligations hereunder that by their nature are to be performed after any expiration or termination of this MOA shall survive any such expiration or termination.
22. **Relationship of the Parties.** It is understood that this MOA is entered into by and between two public entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or any other similar association.
23. **Third-Party Beneficiaries.** In order to provide a mechanism for enforcement of the County's obligations under this MOA after FORA's Termination Date (including without limitation the obligation to distribute unexpended funds in the event that the Project is not timely completed), the Cities of Del Rey Oaks, Marina, Monterey and Seaside are each hereby made an intended third-party beneficiary of this MOA.
24. **Interpretation.** This MOA, as well as its individual provisions, shall be deemed to have been prepared equally by both of the Parties hereto, and shall not be construed or interpreted more favorably for one Party on the basis that the other Party prepared it.
25. **Counterparts.** This MOA may be signed in counterparts, each of which shall constitute an original, but all of which shall constitute one and the same agreement. The signature page of this MOA or any Amendment may be executed by way of a manual or authorized signature. Delivery of an executed counterpart of a signature page to this MOA or an Amendment by electronic transmission scanned pages shall be deemed effective as a delivery of a manually or digitally executed counterpart to this MOA or any Amendment.
26. **Entire Agreement.** This MOA contains the entire understanding between the Parties and supersedes any prior written or oral understandings and agreements regarding the subject matter of this MOA. There are no representations, agreements, arrangements or understandings, or written, between the Parties relating to the subject matter of this MOA which are not fully expressed herein.

[signatures appear on following page(s)]

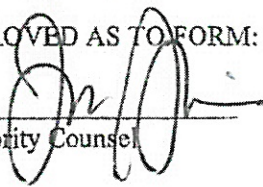
The Parties have executed this MOA on the date(s) written below:

FORT ORD REUSE AUTHORITY

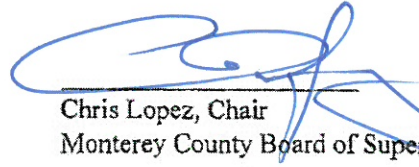

Joshua Metz
Executive Officer

Date: 6/16/20

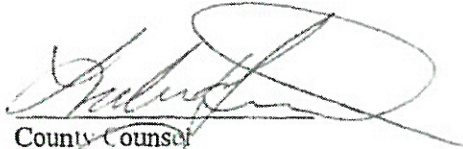
APPROVED AS TO FORM:


Authority Counsel

COUNTY OF MONTEREY


Chris Lopez, Chair
Monterey County Board of Supervisors

Date: Jun 30, 2020


County Counsel

The Parties have executed this MOA on the date(s) written below:

FORT ORD REUSE AUTHORITY

COUNTY OF MONTEREY

Joshua Metz
Executive Officer



Chris Lopez, Chair
Monterey County Board of Supervisors

Date: _____

Date: Jun 30, 2020

APPROVED AS TO FORM:

Authority Counsel



County Counsel

EXHIBIT A

**Fort Ord Oak Woodland Conservation Plan Project
Remaining Tasks and Budget as of June 30, 2020**

| Task # | Task Description | Budget Remaining |
|----------------------|---|-------------------------|
| 2c | Public Workshop Meeting | \$1,340.70 |
| | <i>DD&A and County (and Seaside if Seaside chooses to participate) will hold one, 2-hour combined (hosted by County and, as applicable, Seaside) public workshop to present the Final Review Draft Oak Woodland Management and Monitoring Program ("OW MMP"), Final Review Draft Tree Ordinances, and Final Review Draft Tree Protection Program (the deliverables from Task 9a). This scope of work assumes that DD&A will organize and facilitate the meeting, including preparing the agenda, meeting notes, PowerPoint presentation, and confirming meeting date and location. DD&A will submit the meeting materials to Seaside and County for review and comment. This scope of work assumes one round of comments on the meeting materials and fees will be waived for the meeting venue. If this meeting is held via teleconference due to the COVID-19 emergency and Health Officer Orders, an equivalent public workshop shall be held via teleconference.</i> | |
| 2d | Open-House Meeting | \$2,234.50 |
| | <i>DD&A and County (and Seaside if Seaside chooses to participate) will hold one, 2-hour combined (hosted by Seaside and County) open house to present the Final Draft OW MMP, Final – Draft Tree Ordinances, and Final – Draft Tree Protection Program (the deliverables from Task 10a). This scope of work assumes DD&A will organize and facilitate the meeting, including preparing necessary meeting materials and confirming meeting date and location. DD&A will submit the meeting materials to Seaside and County for review and comment. This scope of work assumes one round of comments on the meeting materials and fees will be waived for the meeting venue. This meeting will be held in an open house format so it is anticipated that a fact sheet, comment cards, poster boards, and documents will be prepared/available for participants, but no presentation will be provided. If this meeting is held via teleconference due to the COVID-19 emergency and Health Officer Orders, an equivalent "open house" shall be held via teleconference.</i> | |
| 4 (a & b) | City of Marina Participation Process | \$4,424.63 |
| | <i>a) This task includes one meeting to present and discuss the Final Review Draft OW MMP, Final Review Draft Tree Ordinances, and Final Review Draft Tree Protection Program (the deliverables from Task 9a) with representatives of the City of Marina, as determined by the City of Marina. It</i> | |

| Task # | Task Description | Budget Remaining |
|--------|--|-------------------|
| | <p><i>is assumed that these documents will be presented and discussed for the purpose of soliciting feedback. This scope of work assumes DD&A will organize and facilitate the meeting, including preparing the agenda, meeting notes, and confirming meeting date and location. This scope of work assumes one round of comments on the meeting materials. If this meeting is held via teleconference due to the COVID-19 emergency and Health Officer Orders, an equivalent meeting shall be held via teleconference.</i></p> <p>b) <i>This task includes attendance at one Marina City Council meeting to present Final – Draft OW MMP, Final – Draft Tree Ordinances, and Final – Draft Tree Protection Program (deliverables from Task 10a). This task is intended to occur after the County Board of Supervisors and Seaside City Council provide final recommendations on the deliverables from Task 9a. It is assumed that these documents would be presented and discussed for the purpose of soliciting feedback. This scope of work assumes the City of Marina will be responsible for facilitating the Council meeting. DD&A will prepare a PowerPoint presentation and submit to Seaside, County, and Marina, for review and comment. This scope of work assumes one round of comments on the presentation.</i></p> | |
| 7b | CRMP Presentation | \$1,220.54 |
| | <p><i>This task includes one meeting to present and discuss the Final Review Draft OW MMP, Final Review Draft Tree Ordinances, and Final Review Draft Tree Protection Program (the deliverables from Task 9a) with representatives of CRMP. It is assumed that these documents will be presented and discussed for the purpose of soliciting feedback. This scope of work assumes BLM will organize and facilitate the meeting, including preparing the agenda, meeting notes, and confirming meeting date and location. DD&A will prepare a PowerPoint presentation and submit to Seaside and County for review and comment. This scope of work assumes one round of comments on the presentation.</i></p> | |
| 9a | Revised Draft Oak Woodland MMP | \$1,049.98 |
| | <p><i>This task includes revising the Draft OW MMP, Draft Tree Ordinances, and Draft Tree Protection Program upon receipt of comments from the County and Seaside, and produce the Final Review Draft OW MMP, Final Review Draft Tree Ordinances, and Final Review Draft Tree Protection Program. These documents will be presented and discussed during the meetings</i></p> | |

| Task # | Task Description | Budget Remaining |
|-------------------------------|--|-------------------------|
| | <p><i>identified in Tasks 2c, 4a, and 7b. Feedback received during these meetings will be documented and considered by DD&A, Seaside, and the County for inclusion in the final deliverables.</i></p> <p><i>After completion of the meetings in Tasks 2c, 4a, and 7b, it is the intent that DD&A, with Seaside, and County staff as appropriate, will present the Final Review Draft OW MMP, Final Review Draft Tree Ordinances, and Final Review Draft Tree Protection Program to the Seaside City Council and County Board of Supervisors along with the feedback received from the public, City of Marina, and CRMP, and request consideration and recommendations for revising the documents.</i></p> | |
| 10a | Final - Draft Oak Woodland Area MMP | \$7,904.50 |
| | <p><i>Based on all of the recommendations, DD&A will prepare the Final – Draft OW MMP, Final – Draft Tree Ordinances, and Final – Draft Tree Protection Program. DD&A will submit these documents to Seaside and County staff for review and comment and make any necessary revisions. This scope assumes one round of comments. DD&A will submit the documents to Seaside and County electronically for their records. The documents shall be in final form, such that they are ready to be presented to the Board of Supervisors and Seaside City Council for their governing bodies to consider adoption (County will determine and conduct environmental review as appropriate prior to presenting the documents to the Board of Supervisors for adoption. Environmental review is not part of the scope of DDA services set forth herein, and if County were to request DDA to conduct environmental review, such request would require an augmentation to the scope of services and contract dollar amount.)</i></p> | |
| 10b | Production Expenses | \$537.50 |
| | <p><i>Expenses to produce meeting materials, including but not limited to, poster boards, handouts, etc.</i></p> | |
| TOTAL BUDGET REMAINING | | \$18,712.34 |

