

## **Attachment 5**

### **Environmental Services Cooperative Agreement Discussion**

#### **Discussion:**

FORA and the Army entered into an Environmental Services Cooperation Agreement (ESCA), whereby FORA took responsibility for the removal of munitions and remediation of lands destined to be used for development and other economic purposes. The Army funded the work through a grant to FORA, in the approximate amount of \$99 Million. The remediation portion of the work has been completed, but the transfer process is still underway for certain parcels. Monitoring, reporting, and managing regulatory requirements for the development of these parcels will also be required, through the year 2028. FORA received additional funds, in the approximate amount of \$6.8 million from the Army to pay for the additional effort required.

The Cooperative Agreement Award between the Army and FORA (March 30, 2007) envisioned the eventual dissolution of FORA and stipulated that the responsibilities under the ESCA agreements would be transferred to a successor entity. The Award states that LAFCO “shall designate a successor.” (Award, sec. 5.2.2.) Furthermore, the parties agreed “that the designated successor shall be a municipal entity that should be able to meet the financial and technical obligations and responsibilities required under this Agreement and AOC [the Administrative Order of Consent].” The Award further requires that the successor in interest “be limited to one of the following municipal entities:

1. Monterey County
2. Seaside
3. Marina
4. A Joint Powers Agency if created under California law for the purpose of succeeding FORA’s obligations, liabilities, and duties.”

The Army’s approval of the successor to the ESCA agreement is required. Additionally, FORA is required to “exercise best efforts to secure acceptance by USEPA of the LAFCO designation of the successor.” (Award, sec. 5.2.2.).

#### **Options**

- Extend FORA to June 30, 2028 to manage the ESCA. FORA would not need to perform all or any of the other duties it currently performs.
- Allow FORA to sunset on June 30, 2020, or later, and create a JPA to complete the responsibilities under the ESCA.
- Allow FORA to sunset on June 30, 2020, or later, and agree that the County will take over the responsibilities under the ESCA.

#### **Suggested approach:**

FORA’s staff assigned to manage the ESCA have the knowledge to perform the work required. It may not make sense to extend FORA for this activity only, because there are more efficient options to provide the required oversight of staff assigned to do the work. However, if FORA is extended for other purposes, this could be one of its functions.

## **Attachment 5**

### **Environmental Services Cooperative Agreement Discussion**

If FORA sunsets, the County could provide the administrative oversight and could incorporate the FORA staff into the County work force, whether a JPA is formed or not. It does not make sense to create a separate organization to accomplish the required work; however, assumption of such responsibilities by the County would most certainly involve additional staffing and resources. Discussion and analysis with FORA on the anticipated effort and costs of this effort should be conducted to determine what financial resources are necessary to the County or JPA successor to perform this function. It would also be advisable that discussions should be had with the FORA staff assigned to this task about their willingness to transfer to County employment. This is a specialized skill that may be hard to find in the market place.

Prior to making any final decision, the County should conduct a thorough review of any liabilities that may attach to the ESCA and its amendment. The ESCA provides that the successor assumes all liabilities, obligations, and responsibilities under the ESCA. There is an insurance liability policy, purchased by FORA, which should be evaluated regarding coverage for work performed in the remediation. Discoveries of previously unknown hazards should be covered by the Army. Also, the County should ascertain that the resources allocated by the Army to complete are enough. If not, the County could seek additional resources or assurances from the Army during the take-over negotiations.

If the County is willing to accept the assignment of the ESCA, or if a JPA is proposed to be formed, discussions with the Army regarding the process should be initiated as soon as practicable. Under either the County or the JPA option, it may be advisable to keep the responsibility with FORA for as long as it is in existence.

#### **Fiscal Impact**

If the available resources to complete the work are deemed sufficient and that additional legal liability is not identified by the County, the assumption of the ESCA responsibilities should not be a fiscal impact on the County. However, it will represent increased work burden to whatever division is chosen to oversee the work, and may carry administrative oversight costs that may not be covered by the allocated funds.