

Fort Ord Reuse Authority

Agreement No. FC-20170909

This Agreement for Professional Services (hereinafter "Agreement") is by and between the Fort Ord Reuse Authority, a political subdivision of the State of California (hereinafter "FORA") and Harris and Associates, a California Corporation (hereinafter "Consultant"). The parties agree as follows:

1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide FORA with on-call General Engineering services as described in Exhibit "A." Such services will be at the direction of the Executive Officer of FORA as authorized by the FORA Board of Directors.
2. TERM. This Agreement shall be from September 15, 2017 extending five years, or the transition of FORA, whichever is later. The term of the Agreement may be extended upon mutual concurrence and amendment to this Agreement.
3. COMPENSATION. The overall maximum amount of compensation to Consultant over the full term of this Agreement is **not-to-exceed \$719, 975** (Seven-hundred nineteen-thousand, nine-hundred and seventy-five Dollars) including travel / out of pocket expenses.

FORA shall pay Consultant for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit "A"

4. FACILITIES AND EQUIPMENT. Consultant is not required to use FORA facilities or equipment for performing professional services. Consultant shall arrange to be physically present at FORA facilities to provide professional services at least during those days and hours that are agreed upon by the parties to deliver the services noted in the Scope of Services attached hereto in Exhibit "A."
5. GENERAL PROVISIONS. The general provisions set forth in Exhibit "B" are incorporated into this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the other term or condition shall control only insofar as it is inconsistent with the General Provisions.
6. EXHIBITS. All exhibits referred to herein are by this reference incorporated.

IN WITNESS WHEREOF, FORA and CONSULTANT execute this Agreement as follows:

FORA

CONSULTANT

By _____
Michael A. Houlemard, Jr. Date
Executive Officer

By _____
Date

Approved as to form:

Jon R. Giffen
Authority Counsel

SCOPE OF SERVICES

1. **SCOPE of SERVICES:** The services to be performed pursuant to this Agreement are general engineering services to include but not be limited to the following:
 - a. Preparation of Work Plan, Schedules and Cost Estimates for Seaside's Surplus II, Marina's Stockade, and Eucalyptus Road/General Jim Moore Boulevard water retention repair, to be used in the definition of Service Work Orders.
 - b. Preparation of Designs, Plans, Specifications, and Bid Documents for Seaside's Surplus II, Marina's Stockade, and Eucalyptus Road/General Jim Moore Boulevard water retention repair, to be further defined and agreed upon in a Service Work Order.
 - c. Construction Management Support Services for Seaside's Surplus II, Marina's Stockade, and Eucalyptus Road/General Jim Moore Boulevard water retention repair, to be further defined and agreed upon in a Service Work Order.
2. **SERVICE WORK ORDERS:** Work shall be assigned by the FORA Executive Officer on an as needed basis pursuant to a written work order which shall outline the timeline for the deliverables to the extent known and which shall be an essential term for the provision of said requested services. Invoices for work performed shall include reference to the Work Order, a deliverable, and shall be paid upon FORA's approval of the work product in conformance with Paragraph 7, of Exhibit B.
3. **COMPENSATION:** Compensation shall be based on a maximum-amount-not-to-exceed- fee for the comprehensive services as described in each Work Order. The cost of reproduction is reimbursable at cost plus 5 percent (1.05 times cost).

**GENERAL
PROVISIONS**

1. INDEPENDENT CONSULTANT. At all times during the term of this Agreement, CONSULTANT shall be an independent Consultant and shall not be an employee of FORA. FORA shall have the right to control CONSULTANT only insofar as the results of CONSULTANT'S services rendered pursuant to this Agreement.

2. TIME. CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT'S obligations pursuant to this Agreement. CONSULTANT shall adhere to the Schedule of Activities shown in Exhibit "A".

3. INSURANCE. The CONSULTANT shall provide the following minimum insurance coverage:

General Liability

| | |
|----------------------------------|-------------|
| Products | \$1 million |
| • Personal and ADV Injury | \$1 million |
| • Each Occurrence | \$2 million |
| • Property Damage per Occurrence | \$100,000 |
| • Property Damage Aggregate | \$2 million |
| • Medical Expenses | \$ 5,000 |

Professional Liability

| | |
|--------------|-------------|
| • Each Claim | \$1 million |
|--------------|-------------|

Automobile:

| | |
|-------------------------|---------------------|
| • Combined Single Limit | \$250,000/\$500,000 |
|-------------------------|---------------------|

Workers Compensation and Employer's Liability

| | |
|------------------------|------------------|
| • Worker Compensation | Statutory Limits |
| • Occupational Disease | Statutory Limits |

a. ENDORSEMENTS. All policies shall provide or be endorsed to provide that coverage shall not be canceled, except after prior written notice has been provided to FORA in accordance with policy provisions. General Liability, Automobile Liability, umbrella and excess policies shall provide or be endorsed to provide the following: 1) For any claims related to this project, CONSULTANT'S insurance coverage shall be primary and any insurance, or self-insurance maintained FORA shall be excess of the CONSULTANT'S insurance and shall not contribute with it; and, 2) FORA, its officers, agents, employees and volunteers are to be covered as additional insured on the CGL policy. General liability coverage can be provided in the form of an endorsement to CONSULTANT'S insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 2037 if a later edition is used.

4. CONSULTANT NO AGENT. Except as FORA may specify in writing, CONSULTANT shall have no authority, express or implied to act on behalf of FORA in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement, to bind FORA to any obligation whatsoever.

5. ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

6. PERSONNEL. CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that FORA, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT. CONSULTANT shall remove any such person immediately upon receiving notice from FORA of the desire for FORA for the removal of such person or person.

7. STANDARD OF PERFORMANCE. CONSULTANT shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices his profession. All products and services of whatsoever nature, which CONSULTANT delivers to FORA pursuant to this Agreement, shall be prepared in a thorough and professional manner, conforming to standards of quality normally observed by a person practicing in CONSULTANT'S profession. FORA shall be the sole judge as to whether the product or services of the CONSULTANT are satisfactory but shall not unreasonably withhold its approval.

8. CANCELLATION OF AGREEMENT. Either party may cancel this Agreement at any time for its convenience, upon written notification. CONSULTANT shall be entitled to receive full payment for all services performed and all costs incurred to the date of receipt entitled to no further compensation for work performed after the date of receipt of written notice to cease work shall become the property of FORA.

9. PRODUCTS OF CONTRACTING. All completed work products of the CONSULTANT, once accepted, shall be the property of FORA. CONSULTANT shall have the right to use the data and products for research and academic purposes. All documents, maps, plans and other materials prepared pursuant to this agreement, although they are the consultants instrument of professional service, shall be considered, by this contract, the exclusive property of FORA, and originals of all such materials shall be presented to FORA within ten (10) days after its request. CONSULTANT may retain copies of such materials. Any modifications made by FORA or any agents of FORA, to any of CONSULTANT's work products or any partial use or reuse of these work products without the express written consent of CONSULTANT will be at FORA's sole risk and without liability to CONSULTANT.

10. INDEMNIFY AND HOLD HARMLESS. CONSULTANT is to indemnify, defend, and hold harmless FORA, its officers, agents, employees and volunteers from all claims, suits, or actions brought forth on account of injuries to or death of any person or damage to property to the extent arising from or relating to the willful misconduct, negligent acts, errors or omissions, or defects in design by the CONSULTANT or any person directly or indirectly employed by or acting as agent for CONSULTANT in the performance of this Agreement, including the concurrent or successive passive negligence of FORA, its officers, agents, employees or volunteers.

It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies have been determined to be applicable to any of such damages or claims for damages.

FORA is to indemnify, defend, and hold harmless CONSULTANT, its employees and sub-consultants, from all claims, suits, or actions brought forth on account of injuries to or death of any person or damage to property to the extent arising from or relating to the willful misconduct, negligent acts, errors or omissions, or defects in design by FORA or any person directly or indirectly employed by or acting as agent for FORA in the performance of this Agreement, including the concurrent or successive passive negligence of CONSULTANT, its officers, agents, employees or volunteers.

11. PROHIBITED INTERESTS. No employee of FORA shall have any direct financial interest in this agreement. This agreement shall be voidable at the option of FORA if this provision is violated.

12. CONSULTANT- NOT PUBLIC OFFICIAL. CONSULTANT possesses no authority with respect to any FORA decision beyond the rendition of information, advice, recommendation or counsel.

13. DISPUTES. Disputes arising under this agreement shall be submitted to one non-binding mediation session upon demand of either party after a reasonable attempt to resolve any dispute. The parties shall select a mediator by mutual agreement. Failing agreement on the selection of a mediator, the mediations shall be conducted under the Judicial, Arbitration and Mediation Services ("JAMS") Rules and Procedures, but not necessarily under the auspices of JAMS. Unless the parties mutually agree otherwise, the cost of said mediation shall be divided evenly between the parties.

If the dispute is not resolved in mediation, the dispute shall be submitted for binding arbitration by a single arbitrator to the Judicial Arbitration and Mediation Services ("JAMS") in San Jose, California, with the hearing to be held in Monterey, California or at such other location(s) mutually agreed upon by the Parties. The mediator may not serve as the arbitrator. The costs of the arbitration, including all arbitration fees, and costs for the use of facilities during the hearings, shall be advanced equally by the parties to the arbitration. All such fees and costs together with attorneys' fees and costs, including expert witness costs of the Parties and attorneys' fees and costs incurred in enforcing any judgment, shall be awarded to the prevailing Party (or most prevailing Party, as decided by the arbitrator). The provisions of Sections 1282.6, 1283, and 1283.05 of the California Code of Civil Procedure shall apply to the arbitration. The arbitrator shall issue a final decision within thirty (30) days of the conclusion of testimony unless otherwise agreed to by the Parties.

7. GOVERNING LAW. The laws of the State in which the Services are provided shall govern this Agreement and the legal relations of the parties.

8. PROVISIONS REQUIRED BY LAW. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.

9. COMPLIANCE WITH LAW. CONSULTANT shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by CONSULTANT or in any way affect the performance of its service pursuant to this agreement. CONSULTANT shall use reasonable care to comply with applicable laws in effect at the time the Services are performed hereunder, which to the best of their knowledge, information and belief; apply to their respective obligations under this Agreement.

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