

ATTACHMENT C: STANDARD FORM CONTRACT

Agreement No. FC-_____

This Agreement for Professional Services (hereinafter referred to as "Agreement") is by and between the Fort Ord Reuse Authority, a public corporation of the State of California (hereinafter referred to as "FORA") and _____ a California corporation (hereinafter referred to as "Consultant").

The parties agree as follows:

1. **SCOPE.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide FORA with the services described in the scope of work attached as Exhibit "A" to this Agreement (the "Services"). The Services will be rendered at the direction of FORA's Board of Directors and/or the Executive Officer of FORA.
2. **TERM.** Consultant shall commence work under this Agreement effective on February 17, 2017 and will diligently perform the Services under this Agreement until the work as described in Exhibit "A" is complete.
3. **PAYMENT TERMS.** FORA shall pay Consultant for the Services at the times and in the manner set forth in Exhibit "B", Exhibit "C", and Exhibit "D" to this Agreement.
4. **FACILITIES AND EQUIPMENT.** Consultant is not required to use FORA's facilities or equipment for performing the Services. Consultant shall arrange to be physically present at FORA's facilities to provide the Services at least during those days and hours that are reasonably requested by FORA.
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 attached hereto and are by this reference incorporated herein.
7. **COMPENSATION AND OUT OF POCKET EXPENSES.** The overall maximum amount of compensation to Consultant for **this Services Agreement is not-to-exceed \$800,000** including out of pocket expenses. FORA shall, from time to time, prepare service work orders it deems necessary to continue implementation of the Base Reuse Plan (BRP) Capital Improvement Program (CIP), in which specific work scopes and levels of effort shall be negotiated and detailed between FORA and CONSULTANT. FORA will issue WORK ORDERS containing the requisite scopes of services as detailed in the service work orders, which, upon endorsement by both parties, will be made part of this AGREEMENT.

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

Fort Ord Reuse Authority
920 2nd Avenue, Suite A
Marina, CA 93933
831-883-3672

By _____
Michael A. Houlemard, Jr.
Executive Officer

By _____

Date: _____

Date: _____

Approved as to form:

Jon R. Giffen, Authority Counsel

EXHIBIT A

SCOPE OF WORK

1.0 Definition & Scope

This SCOPE is for providing professional services required for the design, FORA may require permitting, environmental assessments, preparation of plans, specifications and estimates (“PS&E”) and Construction Management Support of probable costs and related activities as with respect to its obligations under the Base Reuse Plan (“BRP”) Capital Improvement Program (CIP).

2.0 Consulting Team and Project Personnel

- 2.1** The CONSULTANT shall develop an organizational chart of the proposed consulting team that demonstrates reporting and tasking relationships of the team members. The organizational chart will be part of each work order developed, and made part hereof.
- 2.2** The CONSULTANT’s Project Director (Project Manager) is required to be FORA’s primary point of contact, with all communications relevant to the services and the projects flowing to and from FORA from this team leader position.
- 2.3** The project team members proposed for the work are expected to remain team members throughout the duration of the work order/project. Should circumstances beyond the CONSULTANT’s control require replacement of team members, FORA retains approval authority for any team member replacements.
- 2.4** All of the services will be performed by the CONSULTANT and, except as expressly set forth herein, none of the work or services covered by the AGREEMENT will be subcontracted without the prior written approval of FORA. The CONSULTANT represents that he has, or will secure at his own expense, all personnel required to carry out and perform the work associated with this AGREEMENT. Such personnel will not be employees of, or have any relationship with, any of the members of FORA. Such personnel will be fully qualified and will be authorized under state and local law to perform such services.

3.0 Work Order/Project Milestones and Schedule

- 3.1** The CONSULTANT shall submit a detailed schedule of activities and requisite work tasks for each work order for review and approval by FORA. Upon approval, the schedule/tasks shall be incorporated into the work order, and made part of this AGREEMENT.

4.0 Fee Basis and Compensation for Services

- 4.1** Compensation for services will be based upon **Exhibit ‘C’** a negotiated maximum-amount-not-to-exceed-fee, agreed between FORA and CONSULTANT, itemized in accordance with the level of effort breakdown set forth in the work orders negotiated and developed by FORA and CONSULTANT for program and project elements required under the CIP and related activities.

5.0 CONSULTANT’s Scope of Services

- 5.1** CONSULTANT’s services shall consist of those services performed by the CONSULTANT, CONSULTANT’s employees and sub-consultants enumerated in work orders and subsequent AGREEMENT amendments developed under this AGREEMENT.

- 5.2 CONSULTANT will be available for the full duration of the work order programs defined in the AGREEMENT amendments to provide services as described therein.
- 5.3 CONSULTANT's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the specified work.
- 5.4 CONSULTANT shall render professional services in accordance with the Organizational Charts, maximum-amount-not-to-exceed-fee basis, Program Schedule and CONSULTANT's detailed Scope of Services as endorsed in the AGREEMENT, Work Orders, and/or amendments.
- 5.5 CONSULTANT shall render professional services such as, but not limited to, for independent estimates, bid documents, federal contract support, and document review, pre-construction planning assistance, and change control analysis, construction management and request for information.

6.0 Monthly Progress Reports

- 6.1 A brief written progress report will be prepared at the end of each month by the CONSULTANT's Project Director outlining work performed by the consulting team during that month and the work to be performed during the next month. Such progress reporting is considered to be an integral part of the progress billing requests from the CONSULTANT to FORA. Payment requests not accompanied by a progress report may be delayed until reporting is complete.
- 6.2 The CONSULTANT shall submit monthly invoices with progress reports to FORA for costs incurred on the project during the billing period. FORA shall review each billing and, upon his determination such billing reasonably reflects actual work completed to date, he shall authorize payment thereto. Payment shall then be made through FORA's normal disbursement procedure within thirty (30) days following receipt of invoice.
- 6.3 The CONSULTANT shall provide to FORA a brief written progress report of the work already accomplished with the submittal of each progress payment invoice to FORA by CONSULTANT. The purpose of these written progress reports will be in part, to determine if the project is proceeding within the intended terms specified in the AGREEMENT. If it is determined that during the course of the project, events have caused deviation from the terms of the AGREEMENT, the CONSULTANT and FORA will agree on a procedure to allow completion of the project within the terms of the AGREEMENT or will agree to negotiate modifications to the AGREEMENT to provide for completion of the project. The written progress report shall provide sufficient detail to assure FORA that progress payment requests are appropriate to progress of the work.

7.0 Additional Services

- 7.1 As requested by FORA, the CONSULTANT shall perform, furnish, or obtain from others Additional Services and shall be compensated therefore as provided in this AGREEMENT.
- 7.2 Additional Services shall be performed only after execution of a written amendment, supplement or change order to this AGREEMENT and/or its accompanying work orders, authorizing and defining such services. Additional Services may include but are not limited to the following type of services:
 - Making revisions in drawings, specifications or other documents when such revisions are inconsistent with approvals and instructions previously provided in writing by FORA. Should the revisions performed by the CONSULTANT not be in accordance with approvals and instructions provided in writing by FORA, then the additional revisions required will not be considered as Additional Services.

- Making revisions in drawings, specifications or other documents when required by the enactment or revision of codes, laws, ordinances, or regulations subsequent to the preparation of documents for the draft PS&E phase.
- Preparing drawings, specifications, and other documentation and supporting data to reflect changes in the project's scope, extent, character or requirements.
- Providing services required because of significant changes in the project including, but not limited to, size, quality, complexity, FORA's schedule, FORA's program, or other causes beyond the CONSULTANT's control.
- Providing services for preparing for and serving as a witness in connection with mediation, arbitration, or legal proceeding, except where the CONSULTANT is party thereto.
- Providing analyses of owning and operating costs.
- Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
- Providing services of consultants for other than those specified in this AGREEMENT and/or its accompanying work orders.

8.0 Compensation for Services and Method of Payment

- 8.1** FORA shall pay the CONSULTANT a maximum-amount-not-to-exceed-fee for the comprehensive services as shall be described and scheduled in work orders and their accompanying AGREEMENT amendments that shall be made part of this AGREEMENT. Monthly invoices shall be submitted based on fees quoted for work completed and the CONSULTANT's schedule for hourly rates and other services, as shall be defined in the approved AGREEMENT amendments.
- 8.2 Reimbursables.** The cost of reproduction shall be reimbursable at cost plus 10 percent (1.10 times cost). Reimbursement for reproduction shall be defined in each work order and associated AGREEMENT amendment. No other direct expenses will be reimbursed by FORA.
- 8.3 Travel.** To the extent the CONSULTANT is required to travel on Company business, the CONSULTANT shall be entitled to reimbursement for half of all actual and reasonable travel expenses, including but not limited to car mileage costs at the then-current rate published by the Internal Revenue Service, meals, standard business class hotel accommodations, and automobile rental costs properly incurred and approved in connection with the performance of the CONSULTANTS's services pursuant to this Agreement. The CONSULTANT shall submit expenses for review and approval to FORA. Any type of travel expense to be incurred by the CONSULTANT, but not explicitly described in this Subsection 8.3 must be approved in advance in writing by FORA prior to billing invoicing FORA.
- 8.4 Renegotiation.** On the conditions that FORA, through FORA's modification of the CONSULTANT's work schedule, or through delays in the progress of the work, which are beyond the control of the CONSULTANT, causes the Time of Performance schedule to be exceeded, the CONSULTANT may request renegotiation of fees for work performed in times exceeding the schedule. CONSULTANT's request shall be in writing to FORA.

8.5 Time of Performance. The services of the CONSULTANT will begin upon issuance of the first work order and its associated AGREEMENT amendment. The first work order, and all subsequent work orders, shall be specific to Time of Performance of services.

8.6 Duration of AGREEMENT. This AGREEMENT shall remain valid for a period of five (5) years from the day and year first written above, unless terminated by FORA in accordance with the provisions contained in Article 12 herein. FORA, at its sole discretion, may extend the duration of this AGREEMENT by written AGREEMENT amendment.

9.0 CONSULTANT's Responsibilities

9.1 CONSULTANT shall use its professional efforts and agrees that its services shall be performed with due diligence in accordance with generally accepted professional practices, but makes no other warranty either expressed or implied.

9.1.1 CONSULTANT understands that FORA may retain the services of other professional consultants to accomplish the requirements of its programs and projects.

9.1.2 CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to FORA for a minimum period of three years, or for any longer period required by law, from the date of final payment to CONSULTANT termination of AGREEMENT or completion of AGREEMENT, pursuant to this AGREEMENT.

9.1.3 Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit, at any time during regular business hours, upon written request by FORA's General Counsel, and no cost to FORA. Copies of such documents shall be provided for inspection. The records shall be available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.

9.1.4 Where FORA has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT's business, FORA may, by written request of the above-named officer, require that custody of the records be given to FORA, at no cost to FORA, and that the records and documents be maintained by FORA. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT's representatives, or CONSULTANT's successor-in-interests.

10.0 FORA's Responsibilities

10.1 FORA shall provide all reasonably available information including reports, preliminary plans, maps, surveys, and other related information regarding requirements for its programs and projects.

10.2 FORA shall designate a representative who shall have authority within limits of existing FORA policy and the requirements of the law to render decisions promptly and furnish information expeditiously.

EXHIBIT B

GENERAL PROVISIONS

1. INDEPENDENT CONSULTANT. At all times during the term of this Agreement, Consultant shall be an independent contractor 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.

3. INSURANCE.

a. As an additional obligation under this Agreement and as a condition precedent to Consultant's enforcement of this Agreement, Consultant shall obtain from its [Insurer] an endorsement to the [Insurance Policy] adding FORA as an additional insured under the [Insurance Policy], so that FORA is covered to the same scope and extent as Consultant. As a further condition precedent, Consultant shall furnish a copy of the endorsement to FORA prior to the inception of this Agreement.

1) **COMPREHENSIVE OR COMMERCIAL FORM GENERAL LIABILITY INSURANCE**: On an occurrence basis, covering work done or to be done by or on behalf of Consultant and providing insurance for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to the work. Limits of Liability:

Products \$1 million

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

2) **WORKER'S COMPENSATION INSURANCE**. Consultant is obligated under this Agreement and as a condition precedent to Consultant's enforcement of this Agreement, Consultant shall carry Workman's Compensation Insurance; including Employers Liability limits of \$1,000,000.00 and other limits as required under California law. As a further condition precedent, Consultant shall furnish a Declaration of coverage to FORA prior to the inception of this Agreement.

3) **MOTOR VEHICLE INSURANCE**. Consultant shall maintain insurance covering all motor vehicles (including owned and non-owned) used in providing services under this Agreement, with a combined single limit of not less than \$100,000/\$300,000.

4) **ERRORS AND OMISSIONS INSURANCE**: On an occurrence basis is preferred, covering work done or to be done by or on behalf of Consultant and providing insurance for errors and omissions in the amount of \$1,000,000.00 each occurrence. At a minimum, Consultant shall obtain and maintain errors and omissions insurance on a claims-made basis for no less than \$1,000,000.00 each claim and \$2,000,000.00 annual aggregate, and certification of coverage shall be submitted to FORA upon signing of this Agreement. If the total contract amount exceeds \$1,000,000, Consultant shall renew and keep such insurance in effect for at least five (5) years after the recordation of the notice of completion.

b. Consultant shall submit to FORA certificates of insurance and original endorsements to the policies of insurance required by the Agreement as evidence of the insurance coverage. The scope of coverage and deductible shall be shown on the certificate of insurance. The certificates of insurance and endorsements shall provide for no

cancellation of coverage without thirty (30) days written notice to FORA. Renewal certifications and endorsements shall be timely filed by Consultant for all coverage until the work is accepted as complete. FORA reserve the right to require Consultant to furnish FORA complete, certified copies of all required insurance policies. Consultant shall notify FORA in writing of any material change in insurance coverage.

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 Consultant's 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 services performed and 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.

9. PRODUCTS OF CONTRACTING. All work products of the Consultant, once accepted, shall be the property of FORA, and shall not be used by Consultant unless authorized in writing by FORA, however Consultant shall have an irrevocable, perpetual license and right to the ideas, designs, and details contained therein,. All final documents, maps, plans and other materials prepared pursuant to this AGREEMENT, although they are the CONSULTANT's 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 at no cost to FORA. CONSULTANT may retain copies of such materials. CONSULTANT shall not be held liable for reuse of any materials for purposes other than originally intended.

10. INDEMNIFY AND HOLD HARMLESS. Consultant shall indemnify, defend, and hold harmless FORA, its officers, agents, employees and volunteers from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, 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 shall indemnify, defend, and hold harmless Consultant, its employees and sub-consultants, from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, 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. PAYMENT TERMS. Consultant shall invoice FORA for Services in accordance with Consultant's standard invoicing practices. Consultant to invoice FORA for deliverables per Exhibit "C". FORA will retain 10% of the total contract or work order amount until FORA has provided written acceptance of the contract work. Invoices are due and payable within 60 days after approval thereof by FORA.

If FORA reasonably objects to any portion of an invoice, FORA shall provide written notification to Consultant of FORA's objection and the basis for such objection within thirty (30) days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. The undisputed portion shall be paid within the time period specified above. If payment of undisputed invoices by FORA is not maintained on a current basis, Consultant may, after giving seven (7) days written notice to FORA, suspend further performance until such payment is restored to a current basis.

In the event of litigation or other proceeding to enforce performance of this Agreement or any payment obligation under this Agreement, the prevailing party shall be entitled to recover from the other party attorneys' fees and costs as may be reasonably incurred by reason of the litigation.

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

15. COMPLIANCE WITH LAW. Consultant and FORA will 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.

a. LABOR CODE

The Work under this Contract is a public works project (see definition of public works, Labor Code section 1720 et seq.) and must be performed in accordance with the requirements of Labor Code sections 1720 to 1815 and Title 8 California Code of Regulations sections 16000 to 17270, which govern the payment of prevailing wage rates on public works projects. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR). Contractor and all subcontractors must comply with all applicable laws and regulations, and perform all obligations required by the DIR pursuant to such authority.

The prevailing wage rates set forth are the minimum that must be paid by the Contractor on a public works contract. Nothing herein contained shall be construed as preventing the Contractor from paying more than the minimum rates set forth. If a worker employed by a subcontractor on a public works project is not paid the general prevailing per diem wages by the subcontractor, the Contractor is liable for any penalties under section 1775(a), if the Contractor

fails to comply with the requirements of section 1775(b). Contractor shall periodically review and monitor all subcontractors' certified payroll records. If Contractor learns that any subcontractor has failed to comply with the prevailing wage requirements herein, Contractor shall take corrective action.

Contractor represents and warrants that the Contract Amount includes sufficient funds to allow Contractor and all subcontractors to comply with all applicable laws and contractual agreements. Contractor shall defend, indemnify and hold the Fort Ord Reuse Authority (FORA), its officers, employees and agents harmless from and against any and all claims, demands, losses, liabilities, and damages arising out of or relating to the failure of Contractor or any subcontractor to comply with any applicable law in this regard, including, but not limited to, Labor Code section 2810. Contractor agrees to pay any and all assessments, including wages, penalties and liquidated damages (those liquidated damages pursuant to Labor Code section 1742.1) made against FORA in relation to such failure

If applicable, the respondent must demonstrate compliance with the following FORA Prevailing Wage Requirement per FORA Master Resolution §1.01.050 and §3.03.090, as determined by the Director of the Department of Industrial Relations under Division 2, Part 7, Chapter 1 of the California Labor Code to workers performing "First Generation Construction."

No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

16. SUBJECT TO AUDIT. If the Agreement exceeds \$10,000, the contracting parties shall be subject to the examination and audit of the State Auditor of the State of California for a period of three years after final payment under the Agreement. This examination and audit shall be confined to those matters connected with the performance of this contract, including, but not limited to, the cost of administering this Agreement (Government Code Section 8546.7).

17. DRUG FREE WORKPLACE. Consultant hereby certifies compliance with Government Code Sections 8355, 8356, and 8357 in matters relating to providing a drug-free workplace. In accordance with Government Code Section 8355, Consultant shall:

- A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations;
- B. Establish a Drug-Free Awareness Program to inform employees about all of the following:
 - 1) The dangers of drug abuse in the workplace,
 - 2) Consultant's policy of maintaining a drug-free workplace,
 - 3) Any available counseling, rehabilitation, and employee assistance programs,
 - 4) Penalties that may be imposed upon employees for drug abuse violations;
- C. Require that each employee engaged in the performance of the Agreement be given a copy of the statement required by subpart A, and require that each employee, as a condition of employment on the Agreement, agree to abide by the terms of the statement.

18. DISABLED VETERANS. Responsive to direction from the State Legislature (Public Contract Code Section 10115 et seq.), FORA is seeking to increase the statewide participation of disabled veteran business enterprises in contract awards. To this end, Consultant shall inform FORA of any contractual arrangements with consultants or suppliers that are certified disabled veteran business enterprises.

19. PUBLIC BENEFITS QUALIFICATION. If Consultant is a natural person, Consultant certifies by signing this Agreement that s/he is a citizen or national of the United States or otherwise qualified to receive public benefits under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193; 110 STAT. 2105, 2268-69), State of California Governor's Executive Order W-135-96.

20. SHARHOLDER PROTECTION ACT. If Consultant is a corporation, Consultant certifies and declares by signing this Agreement that it is eligible to contract with the State of California pursuant to the California Taxpayer and Shareholder Protection Act of 2003 (Public Contract Code Section 10286 et seq.).

21. WORK ORDER. A Work Order will define each individual work engagement performed under this Agreement. Each Work Order shall be signed by both parties and will describe the services to be performed, the schedule for the performance of the services (the "Period of Performance"), any identifiable work product to be delivered by the Consultant ("Deliverables"), the travel fees and reimbursable expenses, if any, the fixed price or hourly rate for the services ("Fees"), and any other terms that apply to that specific Work Order ("Special Terms"). Each Work Order, together with the terms of this Agreement, constitutes a separate contract that will be effective upon execution of the Work Order by the consultant. Each Work Order shall be governed by the terms of this Agreement. Except for the Special Terms in the Work Order, this Agreement will take precedence in the event of a conflict between the terms of this Agreement and the Work Order.

22. 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 parties shall advance the costs of the arbitration, including all arbitration fees, and costs for the use of facilities during the hearings, equally 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.

23. MISCELLANEOUS.

a. Any deductible under any policy of insurance required by this Agreement shall be Consultant's liability. Acceptance of certificates of insurance by FORA shall not limit Consultant's liability under this Agreement. In the event Consultant does not comply with these insurance requirements, FORA may, at its option, provide insurance coverage to protect FORA. Consultant shall pay the cost of the insurance and, if prompt payment is not received by the insurance carrier from Consultant, FORA may pay for the insurance from sums otherwise due Consultant.

- b. If FORA is damaged by the failure of Consultant to provide or maintain the required insurance, Consultant shall pay FORA for all such damages.
- c. Consultant's obligations to obtain and maintain all required insurance are non-delegable duties under this Agreement.

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