

ATTACHMENT C

This form of agreement is distributed by:



Consultant Initials	Subconsultant Initials
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AGREEMENT BETWEEN CONSULTANT AND SUBCONSULTANT

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Project No. 2146.00

Agreement entered into at Monterey, CA on this date of _____,
 by and between: _____

Consultant:	Whitson Engineers	Subconsultant:	
Name:	Richard Weber	Name:	
Address:	6 Harris Court	Address:	
City, St, Zip:	Monterey, CA 93940	City, St, Zip:	
Phone:	831-649-5225	Phone:	
Fax:	831-373-5065	Fax:	
Email:	rweber@whitsonengineers.com	Email:	
License No:	C-55219	License No:	

Consultant and Subconsultant agree as follows:

- A. Consultant retains Subconsultant to perform services for:
 hereinafter called "project."
 Eastside Parkway EIS / EIR

- B. Subconsultant agrees to perform the following scope of services:
 See Attachment A - Scope of Services
 Note that Agreement may be Amended or modified upon mutual agreement of all parties. Change orders and modifications to the agreement are subject to a review and approval process by the FORA Program Manager. Changes increasing the FORA-Whitson Engineers Contract by \$24,999.99 or more per fiscal year must be approved by the FORA Board.
- C. Consultant agrees to compensate Subconsultant for such services as follows:
 Payment for services rendered shall be on a time and materials basis in accordance with the SUBCONSULTANT's Compensation Summary included as Attachment B and the Hourly Rate Schedule included as Attachment C. The not-to-exceed cost limit for the SUBCONSULTANT's services shall be _____ unless amended by a subsequent task order.
- D. This agreement is subject to the General Terms of Agreement for Subconsulting Services contained in paragraphs 1 through 13, and the provisions of the exhibits attached hereto and made a part hereof. (List exhibits below.)
 Attachment A - Scope of Services
 Attachment B - Subconsultant Compensation Summary
 Attachment C - Hourly Rate Schedule
 Attachment D - FORA General Provisions (in instances of conflict, the FORA Provisions shall govern)

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GENERAL TERMS OF AGREEMENT FOR SUBCONSULTING SERVICES

Consultant and Subconsultant agree that the following provisions shall be part of this agreement:

1. This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of Consultant and Subconsultant.
2. This agreement shall not be assigned by either Consultant or Subconsultant without the prior written consent of the other. Neither Consultant nor Subconsultant shall assign claims arising from the agreement without the prior written consent of the other.
3. This agreement contains the entire agreement between Consultant and Subconsultant relating to the project and the provision of services to the project. Any prior agreements, promises, negotiations or representations not expressly set forth in this agreement are of no force or effect. Subsequent modifications to this agreement shall be in writing and signed by both Consultant and Subconsultant.
4. This agreement shall be governed by and construed in accordance with the laws of the State of California.
5. Consultant and Subconsultant agree to cooperate with each other in order to fulfill their responsibilities and obligations under this agreement. Both Consultant and Subconsultant shall endeavor to maintain good working relationships among members of the project team.
6. Subconsultant shall perform services as an independent contractor and shall perform the services provided for in this agreement in accordance with generally accepted standards of professional practice in effect at the time of performance.
7. Unless provided otherwise by the provisions of paragraph C, Subconsultant shall submit monthly invoices to Consultant. Subconsultant recognizes that his or her invoices will be presented by Consultant to the project client and that Consultant will pay Subconsultant the amount due for services rendered and expenses incurred within fourteen (14) calendar days after Consultant is paid by the project client. Nothing contained in this paragraph shall constitute a waiver or release of Subconsultant's mechanic lien rights.
8. Before any services are provided under this agreement, Subconsultant shall procure and maintain in effect insurance coverage in amounts not less than set forth below.
 - (a) Workers' Compensation and Employer's Liability: as required by the laws of the State of California.
 - (b) General Liability: commercial general liability insurance for personal and bodily injury, including death and property damage, on an occurrence basis, in the amount of \$ 1,000,000 combined single limit each occurrence and in aggregate.
 - (c) Automobile Liability: automobile liability for personal and bodily injury, including death and property damage, in the amount of \$ 300,000 for each accident.
 - (d) Professional Liability: professional liability insurance for damages incurred by reason of any actual or alleged negligent act, error or omission by Subconsultant in the amount of \$ 1M / 2M each claim and annual aggregate.
 - (e) Certificates: Subconsultant shall provide certificates of insurance evidencing coverage required above. Each certificate shall provide that the coverage afforded shall not be cancelled or ordered reduced by the Subconsultant, except with at least thirty (30) days' prior written notice to the Consultant. Should this occur, Subconsultant shall procure and furnish to Consultant prior to such effective date new certificates conforming to the above coverage requirements. Subconsultant shall not have the right to receive any payment under this agreement until all insurance certificates are received by Consultant.
9. Consultant and Subconsultants agree, to the extent permitted by law, to indemnify and hold harmless each other, their officers, directors and employees from and against all claims, losses, demands, damages or costs, including

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attorneys fees that are ultimately determined by a court to be caused by and only the extent of, the actual negligent acts, errors or omissions of either Consultant or Subconsultant or anyone else for whom Consultant or Subconsultant is liable, arising out of the performance of this agreement.

- 10. Consultant may terminate Subconsultant’s performance under this agreement, with or without cause, upon written notice. Consultant shall compensate Subconsultant for performance of services through the period prior to termination, plus reasonable termination expenses, provided Subconsultant is not in default.
- 11. In the event of any litigation arising from or related to the services provided under this agreement, the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys’ fees, experts’ fees and other related expenses.
- 12. If any provision of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall remain in full force and effect and are binding on Consultant and Subconsultant.
- 13. In an effort to resolve any conflicts between Consultant and Subconsultant arising out of or relating to the performance of this agreement, Consultant and Subconsultant agree that all disputes between them arising out of or relating to this agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise. This dispute resolution provision shall not preclude either party from filing a legal action in small claims court if the amount in dispute is within the jurisdiction of the small claims court, nor does it preclude or limit the right to perfect or enforce applicable mechanic’s lien or stop notice remedies.

IN WITNESS WHEREOF, the parties hereby execute this agreement upon the terms and conditions stated above.

Consultant: _____ Subconsultant: _____

By: _____ By: _____

Name: Richard Weber _____ Name: _____

Title: _____ Title: _____

Date Signed: _____ Date Signed: _____

Subconsultant should mail completed contract to the address shown for Consultant.

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.
 - a. 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. 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 anytime 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 it's 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.

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 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 is to 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.