



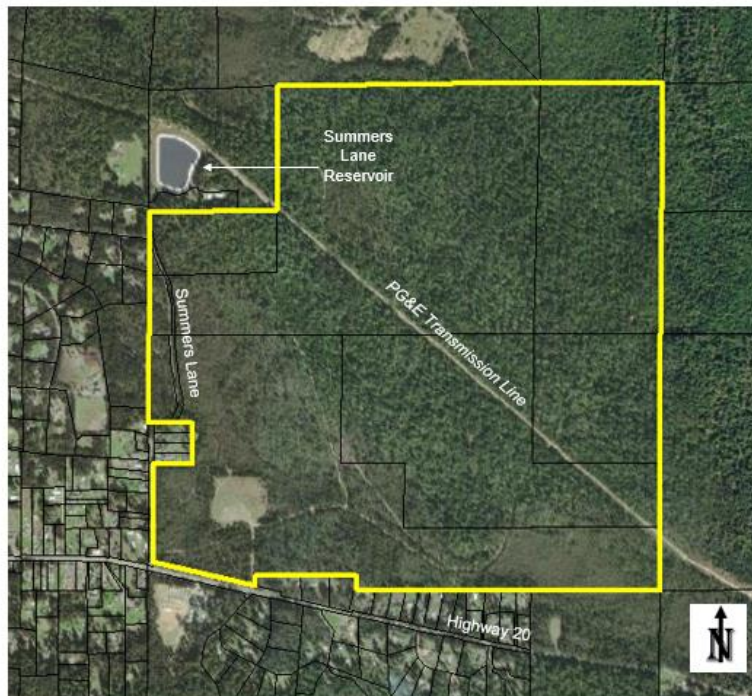
## **CITY OF FORT BRAGG**

### **REQUEST FOR PROPOSALS FOR RESERVOIR DESIGN AND ASSOCIATED ENVIRONMENTAL STUDIES**

30900 HIGHWAY 20 (APN's 019-070-07, 10, 11, 019-080-14, 23)

The City of Fort Bragg (City) is seeking proposals from qualified consultants interested in contracting with the City to design 3 (three) 45-acre-foot reservoirs within a fenced compound (Project) and to prepare construction drawings, environmental documentation, and contract documents supporting their construction. The reservoirs will occupy approximately 30 acres of land within a forested area purchased by the City which is comprised of 6 parcels and totals 582 acres. These parcels are located adjacent to the City's Summers Lane Reservoir, which is an existing 45-acre-foot reservoir. (Figure 1). The proposed reservoir compound shall also include a care-taker unit and a storage building. There will also be a care-taker unit to be constructed in the disturbed area within the northwest portion of the property, and a fenced parking lot and pit toilets to be constructed in the highly disturbed area off of Highway 20.

**Figure 1**



Not to Scale

This project is critical to ensure the reliable supply of water to residents during periods of drought. The reservoirs will be filled during the winter months with water pumped up from the Noyo River or via gravity flow from the Waterfall Gulch source when flows are high. Water will be drawn from the reservoirs during summer months when flows in the channels are low, reducing the impact to aquatic species. The water will flow primarily by gravity to the City's Water Treatment Plant.

The new reservoirs shall be similar to the existing Summers Lane Reservoir, which has a depth of up to 18-ft, fill heights of up to 16-ft, with 2:1 external and 3:1 internal side slopes. Construction of new piping to and from the reservoirs and conveyance piping to existing infrastructure will be needed. The project's proposed dam heights and storage capacities shall be such that the project does not fall within the jurisdiction of the California Division of Safety of Dams.

It is assumed that the reservoirs will need to be lined with HDPE due to high groundwater, and that floating covers will be required to reduce evaporation and algae growth. The design shall consider the future installation of floating solar panels on at least one of the proposed reservoirs. At least one of the reservoirs shall be accessible for a helicopter to draw water from for fire suppression.

The site includes the endemic and rare sensitive natural habitat of the Mendocino Cypress Woodland, as mapped by California Department of Fish and Wildlife, as well as the more traditional redwood forest associations. Preliminary biologic studies are underway to optimize reservoir siting and minimize impacts to special status species. The project is anticipated to include mitigation measures for impacts due to project construction, and it is the intention of the City to use the majority of the property to create a community forest. It will be important to the project to clearly define areas to be used for development, for conservation, and for mitigation sufficiently early in the process in order to develop appropriate environmental evaluation and documentation strategy.

## **A. SCOPE OF WORK**

The City intends to retain a qualified and committed professional engineering consultant. The successful consultant shall demonstrate the availability of qualified personnel to perform required engineering services. Consultants shall develop an appropriate work plan for design services and will utilize that work plan to successfully develop construction documents that provide sufficient information to contractors to adequately prepare and submit accurate bid proposals while minimizing construction change orders.

For all work products, the engineering consultant shall perform all work necessary to define the Project and produce all necessary documents required to obtain approval of the design from the City. In addition, the engineering consultant shall be responsible for the preparation, submittal, and approval of any possible permits required for construction activities.

Listed below is a general description of the scope of services/task that are anticipated to comprise this Project. Proposing consultants are encouraged to expand upon this outline and

recommend additional value-based services as part of the approach while also being cognizant of costs.

### **Task 1 – Meetings and Project Management**

1. Project Administration.
2. Project Quality Assurance/Quality Control Program.
3. Progress Meetings and Reporting. Project progress meetings and reporting will include virtual meetings through Zoom or mutually agreed upon location between City staff and the consultant. Meetings shall be held as often as deemed necessary and at a minimum the consultant shall report monthly on work accomplished in the previous month and the status of the project progress, project schedule, project budget, and any modifications. Project Team meetings with other project stakeholders will be held as needed. Minutes of all the meetings will also be prepared by the Consultant and furnished to attendees and concerned parties within five working days of the meeting.
4. Jurisdictional Agency Coordination, as needed.
5. Design Review Workshops/Public Outreach. Up to 2 meetings to be held either virtually or in person.
6. Preparation of Presentations and participation at Meetings.

### **Task 2 – Preliminary Engineering Report**

Develop and submit a preliminary design report (PER) with sufficient information to complete environmental documentation and initiate detailed design. At a minimum, the PER shall:

1. Recommend a preferred site layout, with emphasis on biological and preliminary geotechnical evaluations. Designate proposed areas for development, conservation and mitigation.
2. Provide reservoir site plan, and profile – complete with site access, parking, utilities, fencing, and drainage information.
3. Provide project description sufficient to support to project environmental documentation for CEQA. NEPA may be necessary depending on grant funding.
4. Summarize primary design elements.
5. Summarize permits required for the Project and include a workflow and schedule to obtain the permits.
6. Prepare construction cost estimate for the proposed reservoirs and site layout and develop innovative solutions to minimize cost impacts.
7. Identify construction access and potential equipment and material lay-down areas
8. Present anticipated schedule for construction.
9. Completed construction documents that are designed and organized in such a way as to make updating them convenient and yet maintain internal consistency.

### **Task 3 – Survey**

Following approval of the Preliminary Engineering Report by the City, a survey of the proposed reservoir compound area, secondary caretaker unit area, and recommended conveyance piping alignment shall be completed. The survey work shall cover all areas of proposed disturbance and include the following:

1. One-foot contours

2. 50-ft survey corridor along the proposed pipe centerline
3. Tree size and type
4. Identify all affected easements, facilities, and property boundaries
5. Identification of all visible above-grade features and obstructions to the proposed piping, as well as any marked, below-grade utilities
6. Survey limits to include sufficient data for environmental compliance (CEQA)
7. Deliverables:
  - a. Survey data: Raw data points and processed data
  - b. Topographic/existing conditions maps, PDF and digital format

#### **Task 4 – Geotechnical**

Geotechnical investigation for the Project shall be designed to collect data that is sufficient to ensure optimum project design for the site conditions. Deliverable will be a geotechnical report.

#### **Task 5 – Environmental/CEQA Compliance**

Provide environmental services required to identify any environmental issues and primary tasks required to comply with CEQA.

1. Perform detailed studies required to assess the environmental setting and determine appropriate CEQA determination for the project (ie: Mitigated Negative Declaration, EIR, etc.). This may include but not be limited to Cultural Resources, Traffic, Hydrology, Geology and Biology. Preliminary biologic study for reservoir siting is underway under separate contract. An EIR was prepared for the site to be developed as golf course in 2005, and is available for review for this project.
2. Prepare any figures required for environmental compliance.
3. Obtain any construction permits required on behalf of City of Fort Bragg.
4. Prepare the required CEQA documentation on behalf of City of Fort Bragg.

#### **Task 6 – Design**

The design team will be responsible for the complete design phase culminating with design documents, plans and specifications suitable for public bidding and construction of the work. The design shall assume that construction will be required to be Buy American compliant. All construction documents shall be fully compliant with all of the requirements of any funding source. Consultant is responsible for thoroughly reviewing and understanding the design and construction requirements imposed by funding sources, and to ensure they are fully incorporated into the construction documents. Consultant shall work with City staff to ensure that the contract documents reflect all the funding source requirements.

1. Design issues to be addressed:
  - a. avoidance of special status species
  - b. Earthwork balance
  - c. Intake design
  - d. Conveyance piping
  - e. Site access, security, and drainage
  - f. Environmental SWPPP and BMPs
  - g. Construction cost containment

- h. Maintenance Issues
- 2. Design deliverables: Complete detailed construction drawings and specifications to facilitate permitting and bidding of the Project. Submit for City review at 30%, 60%, 90% and 100%. City shall have 2 weeks to review. Completed construction documents shall be designed and organized in such a way as to make updating them convenient and yet maintain internal consistency
  - a. 60% design shall include drawings, outline of specifications, and preliminary cost estimate (3 sets of paper copies).
  - b. 90% design shall include drawings, specifications, and cost estimate (3 sets of paper copies).
  - c. Bid set (100%) shall include wet-signed drawings, wet-signed specifications, and cost estimate (1 set of paper copies plus digital).
  - d. Electronic copies of plans, specifications and estimates at each submittal stage.
  - e. Drawings shall include:
    - 1. Civil design including reservoir compound, secondary caretaker unit, and access road
    - 2. Structural design
    - 3. Mechanical piping design
    - 4. Cathodic protection design
    - 5. Electrical and instrumentation design
    - 6. Landscape and irrigation design
    - 7. Fencing
    - 8. Sedimentation control and site drainage improvements design
- 3. Preparation of Timber Harvest Plan: Construction will require removal of trees which will most likely require a Timber Harvest Plan (THP).
- 4. Quality control strategies.

#### **Task 7 - Project Schedule**

Design schedule shall be updated to accurately reflect current Project status and shall include coordination with the County of Mendocino.

- 1. Construction schedule shall include post construction activities.
- 2. Coordinate with the County of Mendocino and other agencies as required to obtain all permits necessary for the project on behalf of the City.

#### **Task 8 – Bidding Assistance**

- 1. Attend a pre-bid meeting hosted by the City for prospective bidders and/or contractors and be available to answer questions.
- 2. Review and prepare written responses addressing technical questions submitted by the prospective bidders during the bid phase for inclusion in bid addenda. Note that City staff will prepare and transmit the bid addenda to the prospective bidders.



## **Task 9 - Quality Control/Quality Assurance**

All submittals (plans, calculations, reports and associated documents) shall adhere to a City approved quality assurance/quality control (QA/QC) program. The selected consultant shall identify major reviews and procedures that are specific for this Project. A successful QA/QC program is one in which the consultant does not use the City as “plan checkers” for the work.

### **B. STANDARDS**

The Project must adhere to the City and County of Mendocino design standards, if applicable, regulations, policies and procedures for all work at the time of Project advertisement. All work must be performed and work products prepared in such fashion to be approved by the appropriate agency, i.e. County of Mendocino.

Additionally, the Project must adhere to the following:

1. Design shall comply with the latest City and County of Mendocino ordinances.
2. Digital formats for use in plan development, plats and record drawings shall be delivered utilizing AutoCAD/Civil3D (.dwg) 2021 release or lower.
3. All electronic text document deliverables shall be in the Microsoft Office platform (Word, Excel, PowerPoint, Project, Visio, etc.) version 2016 or newer.
4. All Geographical Information System (GIS) files shall be delivered in acceptable vector spatial data formats which are geodatabase (.gdb), personal geodatabases (.mdb) and shapefiles (.dbf, .prj, .sbn, .sbx, .shp, .xml, .shx).
5. All horizontal data (X, Y coordinates) shall be delivered using the California State Plane Coordinate System (NAD 83, Zone II, feet).
6. Specifications shall be in Construction Specification Institute (CSI) format and in conformance with City's Standard Specifications.
7. All reports should be submitted electronically and provided in Word for review, with the final version provided in Adobe PDF format with OCR and indexed.

### **C. Proposal Requirements:**

The proposal should be concise, well organized, and demonstrate the responders' qualifications and experience applicable to the Project. Responses will be evaluated based on the information submitted.

1. Proposers should send a complete digital proposal, collated into one PDF document, three (3) printed copies of the completed proposals and cost bid so that it is received no later than 2:00 PM on July 19, 2023 to:  
City of Fort Bragg  
ATTN: City Clerk  
416 N Franklin Street  
Fort Bragg, CA 95437  
[cityclerk@fortbragg.com](mailto:cityclerk@fortbragg.com)
2. Format: The proposal shall be printed on double-sided, 8.5" x 11" pages, printed on recycled and recyclable paper with removable bindings, bound in a single document and organized in sections following the order specified under Contents.

3. Contents: Proposals shall contain the following:

- a. Transmittal Letter: The proposal shall be transmitted with a cover letter describing the consultant's interest and commitment to the proposed Project. The letter shall include the name, title, address, and telephone number of the individual to whom correspondence and other contacts should be directed during the consultant selection process.
- b. Firm Description: Provide a description of your firm and list relevant information about capabilities, size, rate of services, and length of time in existence. Include same for any subconsultant proposed. Indicate roles of prime and all sub-consultants.
- c. Relevant Experience: Describe relevant experience designing reservoir and other water capital improvement projects and preparing technical specifications for public works projects for other public agencies. Indicate roles of prime and all sub-consultants
- d. Key Personnel Qualifications: Identify key personnel who would work on the project as assigned, their respective roles, and a synopsis of relevant experience. Provide resumes of the Project Manager and other key Project team members. Resumes shall include relevant experience, proposed role, education, and licenses. The resume for each individual shall not exceed two pages in length and can be included in an appendix. For the Project Manager, provide at least three references (names and current phone numbers) from recent work (previous five years) similar in size and scope to this Project. Include a brief description of each project associated with the reference, and the role and responsibility of the Project Manager. Replacement of key team members will not be permitted without prior consultation with and approval by the City. All work shall be performed under the supervision of an engineer licensed in the State of California, who has substantial experience with projects of similar size and scope
- e. References: List of public agencies or clients for whom similar work has been performed, with the name, title and phone number of a contact person. For the Project Manager, provide at least three references (names and current phone numbers) from recent work (previous five years) similar in size and scope to this Project. Include a brief description of each project associated with the reference, and the role and responsibility of the Project Manager. The City may request a copy of a similar report prepared previously by the firm for another agency.
- f. Scope of Work: Provide an explanation of tasks associated with the project, including how you propose to complete each task. Include a breakdown of recommended tasks, including tasks not identified above that could benefit the project.
  - i. Provide a narrative that clearly identifies key Project issues/challenges and describe the consultant's understanding of, and ways to mitigate and effectively address, these key Project issues/challenges in design and during construction. Include detailed descriptions of innovative or alternative ideas and approaches to the Project design and construction in a cost-efficient manner.

- ii. Discuss, if applicable, elements that have not been considered by the City (new ideas).
  - iii. Provide prioritization of tasks and permit requirements.
  - iv. Discuss consultant's approach to budget control and minimizing construction change orders or how their design (approach) considers minimizing construction change.
  - v. Summarize value engineering opportunities.
  - vi. Provide discussion of how the QA/QC program manages subconsultants' efforts to ensure technical accuracy and successful completion of the Project.
  - vii. Provide information summarizing measures that will be implemented to monitor project schedule and budget.
- g. Budget and Schedule of Charges: Provide a "Not to Exceed" amount and a list of Personnel Rates, Equipment Charges, Travel Reimbursement Costs, and Job Descriptions for Personnel. Please be aware that prevailing wage rates apply to preconstruction work, such as inspection and land surveying, for public works projects.
- h. Work Schedule: Provide a time schedule for completion of work. This Project is a priority for the City's Capital Improvement Program. As such, it is imperative that the design of this Project is completed and ready to bid by January 5, 2025. Proposing consultants shall demonstrate they are capable of delivering the final bid documents to the City by this deadline. The proposing consultants shall provide a description of the critical path items and summarize an approach that demonstrates successful completion in an expeditious fashion.
- i. Insurance: The individual or firm receiving the contract shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, employees or subcontracts as set forth in Section 5.0 of Exhibit A which is attached hereto and incorporated by reference herein. Any requests for reduction in the insurance amount shall be included in the proposal. The cost of such insurance shall be included in the consultant's proposal.
- j. Consultant Agreement: The City's standard consultant services agreement is attached as Exhibit A. Please identify if your firm would have any issues with the provisions of the City's standard consulting services agreement. All requests for amendments to language in the agreement must be included in the proposal.

#### **D. EVALUATION CRITERIA**

Proposals will be evaluated on the basis of the following criteria:

- Understanding of the work to be completed



- Experience with similar kinds of work
- Capabilities and resources of the firm
- Qualifications and experience of project personnel
- Schedule for completion of work
- Proposed cost

The above selection criteria are provided to assist proposers and are not meant to limit other considerations that may become apparent during the course of the selection process. The Consultant awarded the contract will be chosen based on the apparent greatest benefit to the City. The City will make the final determination of the Consultant selected, as it deems appropriate, in its sole discretion, and in the best interests of the services provided.

Proposals will be reviewed and evaluated by the City of Fort Bragg and a recommendation for award of contract will be presented to the Fort Bragg City Council.

Each Consultant will be notified in writing whether or not it has been selected as the preferred Consultant.

#### **E. SCHEDULE FOR SELECTION AND AWARD**

Advertise RFP	May 25, 2023
Last Day to Submit Written Inquiries	July 6, 2023
Proposal Due Date	July 19, 2023
Preliminary Selection	July 28, 2023
City Council Contract Award	August 14, 2023
Notice of Award	August 15, 2023
Anticipated Notice to Proceed	September 5, 2023
Ready to Bid	January 5, 2025

#### **F. OTHER CONSIDERATIONS**

The City of Fort Bragg reserves the right to reject any and all proposals. This Request for Proposals does not commit the City to award contract, pay any costs incurred in the preparation of proposals, or to procure or contract for supplies or services.

The City of Fort Bragg reserves the right to negotiate with any qualified source or to cancel, in part of or in its entirety, this Request for Proposals, if it is in the best interest of the City to do so. The City may require the selected consultant to participate in negotiations, and submit such price, technical or other revisions of the proposal that may result from negotiations.

#### **G. QUESTIONS**

Questions regarding this solicitation shall be directed in writing to Diane O'Connor at [doconnor@fortbragg.com](mailto:doconnor@fortbragg.com). All inquiries shall be received by July 6, 2023. Responses to the inquiries will be posted on the City's website at [www.city.fortbragg.com](http://www.city.fortbragg.com) on July 7, 2023.

#### **H. ATTACHMENTS**

Exhibit A – City's standard Professional Services Agreement

**CITY OF FORT BRAGG  
PROFESSIONAL SERVICES AGREEMENT  
WITH**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ [date, date & year] ("Effective Date"), by and between the CITY OF FORT BRAGG, a municipal corporation, 416 N. Franklin Street, Fort Bragg, California 95437 ("City"), and \_\_\_\_\_, a [state] [type of corporation] [address] ("Consultant").

**W I T N E S S E T H :**

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to \_\_\_\_\_, as more fully described herein; and

B. WHEREAS, Consultant represents that it is a "design professional" as that term is defined by California Civil Code Section 2782.8 and has that degree of specialized expertise contemplated within California Government Code Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

C. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit "A" (the "Project") and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, no official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

E. WHEREAS, the legislative body of the City on \_\_\_\_\_, [date] by Resolution No. \_\_\_\_\_ authorized execution of this Agreement on behalf of the City in accordance with Chapter 3.20 of the City Municipal Code and/or other applicable law;

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

**1.0. SERVICES PROVIDED BY CONSULTANT**

1.1. Scope of Work. Consultant shall provide the professional services described in the Consultant's Proposal ("Proposal"), attached hereto as **Exhibit A** and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement. Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. City officers and employees shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City as hereinafter specified. Evaluations of the work will be done by the City Manager or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

1.5. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender, sexual orientation, or disability except as permitted pursuant to Section 12940 of the Government Code. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, a notice setting forth provisions of this non-discrimination clause.

Consultant shall, in all solicitations and advertisements for employees placed by, or on behalf of Consultant, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender, sexual orientation, or disability. Consultant shall cause the paragraphs contained in this Section to be inserted in all subcontracts for any work covered by the Agreement, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written

consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense. All insurance requirements contained in this Agreement are independently applicable to any and all subcontractors that Consultant may engage during the term of this Agreement.

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

## **2.0. COMPENSATION, BILLING AND PREVAILING WAGES**

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in **Exhibit A**, for a total amount not to exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of work specified in the Consultant's Proposal or which is inconsistent with or in violation of the provisions of this Agreement unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable. Should the City request in writing additional services that increase the hereinabove described "Scope of Work," an additional fee based upon the Consultant's standard hourly rates shall be paid to the Consultant for such additional services. The City Manager may approve contract change orders not exceeding a total of 10% of the approved contract or up to the contingency amount whichever amount is less for any one project.

2.3. Method of Billing. Consultant may submit invoices to the City for approval on a progress basis, but not more often than monthly. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the date of final payment.

## **3.0. TIME OF PERFORMANCE**

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the issuance of Notice to Proceed. Said services shall be performed in strict compliance with the schedule set forth in the Scope of Work attached hereto as **Exhibit A**. Consultant will complete the services in accordance with this Agreement by \_\_\_\_\_, 20\_\_\_\_. The Time of Completion may only be

modified by a written amendment of the Agreement signed by both the City and the Consultant and in accordance with its terms.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party. If a delay beyond the control of the Consultant is encountered, a time extension may be mutually agreed upon in writing by the City and the Consultant. The Consultant shall present documentation satisfactory to the City to substantiate any request for a time extension.

#### **4.0. TERM AND TERMINATION**

4.1. Term. This Agreement shall commence on the Effective Date and expire on \_\_\_\_\_, 20\_\_\_\_, [3 months after Completion Date in 3.1] unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing at least ten (10) days prior written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City. If the City suspends, terminates or abandons a portion of this Agreement, such suspension, termination or abandonment shall not make void or invalidate the remainder of this Agreement.

If the Consultant defaults in the performance of any of the terms or conditions of this Agreement, it shall have ten (10) days after service upon it of written notice of such default in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

The City shall have the right, notwithstanding any other provisions of this Agreement, to terminate this Agreement, at its option and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement, immediately upon service of written notice of termination on the Consultant, if the latter should:

- a. Be adjudged a bankrupt;
- b. Become insolvent or have a receiver of its assets or property appointed because of insolvency;
- c. Make a general assignment for the benefit of creditors;
- d. Default in the performance of any obligation or payment of any indebtedness under this Agreement;
- e. Suffer any judgment against it to remain unsatisfied or unbonded of record for thirty (30) days or longer; or
- f. Institute or suffer to be instituted any procedures for reorganization or



rearrangement of its affairs.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination within thirty-five (35) days after service of the notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant. City shall not be liable for any claim of lost profits.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

## **5.0. INSURANCE**

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Broad-form commercial general liability, in a form at least as broad as ISO form #CG 20 01 04 13, including premises-operations, products/ completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) aggregate, combined single limits. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit. If Consultant maintains higher limits than the specified minimum limits, City requires and shall be entitled to coverage for the high limits maintained by the Consultant.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, each incident for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California and Employers Liability Insurance with a minimum limit of \$1,000,000 per accident for any employee or employees of Consultant. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officials, officers, agents, employees, and volunteers for losses arising from work performed by Consultant for

the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

Before execution of this Agreement by the City, the Consultant shall file with the City Clerk the following signed certification:

I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work.

The Consultant shall also comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect for the duration of this Agreement, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to the City Clerk before execution of this Agreement by the City. The City, its officers and employees shall not be responsible for any claims in law or equity occasioned by failure of the consultant to comply with this section.

- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than Two Million Dollars (\$2,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

Neither the City nor any of its elected or appointed officials, officers, agents, employees, or volunteers makes any representation that the types of insurance and the limits specified to be carried by Consultant under this Agreement are adequate to protect Consultant. If Consultant believes that any such insurance coverage is insufficient, Consultant shall provide, at its own expense, such additional insurance as Consultant deems adequate.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Fort Bragg and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant."
- (b) Notice: "Consultant shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, Consultant shall forthwith obtain and submit proof of substitute insurance. Should Consultant fail to immediately procure other insurance, as specified, to substitute for any canceled policy, the City may procure such insurance at Consultant's sole cost and expense."

- (c) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Fort Bragg, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Fort Bragg shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Fort Bragg, its officers, officials, agents, employees, and volunteers.
- (e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self-Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement. The certificates of insurance and endorsements shall be attached hereto as **Exhibit B** and incorporated herein by this reference.

5.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

## 6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. The Project Manager designated to work directly with Consultant in the performance of this Agreement will be [REDACTED]. It shall be the Consultant's responsibility to assure that the Project Manager is kept informed of the progress of

the performance of the services and the Consultant shall refer any decision, which must be made by City, to the Project Manager. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Project Manager.

Consultant designates [REDACTED] as its Project Manager, who shall represent it and be its agent in all consultations with City during the term of this Agreement and who shall not be changed by Consultant without the express written approval by the City. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or if mailed, shall be addressed as set forth below and placed in a sealed envelope, postage prepaid, and deposited in the United States Postal Service. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 72 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
Tel: [REDACTED]  
Fax: [REDACTED]

IF TO CITY:

City Clerk  
City of Fort Bragg  
416 N. Franklin St.  
Fort Bragg, CA 95437  
Tel: 707-961-2823  
Fax: 707-961-2802

6.5. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.6. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Mendocino County, California. Consultant agrees to submit to the personal jurisdiction of such court in the event of such action.

6.7. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.8. Indemnification and Hold Harmless.

If Consultant is not a design professional performing "design professional" services under this Agreement, as that term is defined in Civil Code Section 2782.8, Consultant agrees to defend, indemnify, hold free and harmless the City, its elected and appointed officials, officers, agents

and employees, at Consultant's sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings brought against the City, its elected and appointed officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply whenever any claim, action, complaint or suit asserts liability against the City, its elected and appointed officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

If Consultant is a design professional performing "design professional" services under this Agreement, as that term is defined in Civil Code Section 2782.8, Consultant agrees to defend, indemnify, hold free and harmless the City, its elected and appointed officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant. The defense obligation provided for hereunder shall apply whenever any claim, action, complaint or suit asserts liability against the City, its elected and appointed officials, officers, agents and employees based upon the negligence, recklessness, or willful misconduct of the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

6.9. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.10. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is



determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.11. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.12. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, preliminary notes, working documents, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City, but shall be made available to the City within ten (10) days of request or within ten (10) days of termination. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, preliminary notes and working documents, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City. Consultant or Consultant's agents shall execute such documents as may be necessary from time to time to confirm City's ownership of the copyright in such documents.

6.13. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.14. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political

Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.15. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.16. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.

6.17. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, the conflict shall be resolved by giving precedence in the following order, if applicable: This Agreement, the City's Request for Proposals, the Consultant's Proposal.

6.18. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.19. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.20. Headings. Paragraph and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.21. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.22. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.23. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of

this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.24. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.25. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.26. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

6.27. Use of Recycled Paper Products. In the performance of this Agreement, Consultant shall use paper products and printing and writing paper that meets Federal Trade Commission recyclability standards as defined in 16 CFR 260.12.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY

CONSULTANT

By: \_\_\_\_\_  
Peggy Ducey  
Its: City Manager

By: \_\_\_\_\_  
\_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
June Lemos, MMC  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Keith F. Collins  
City Attorney

## **EXHIBIT A**

### **CONSULTANT'S PROPOSAL** (Scope of Work, Fee Schedule and Time Table)

**EXHIBIT B**

**CERTIFICATES OF INSURANCE AND ENDORSEMENTS**