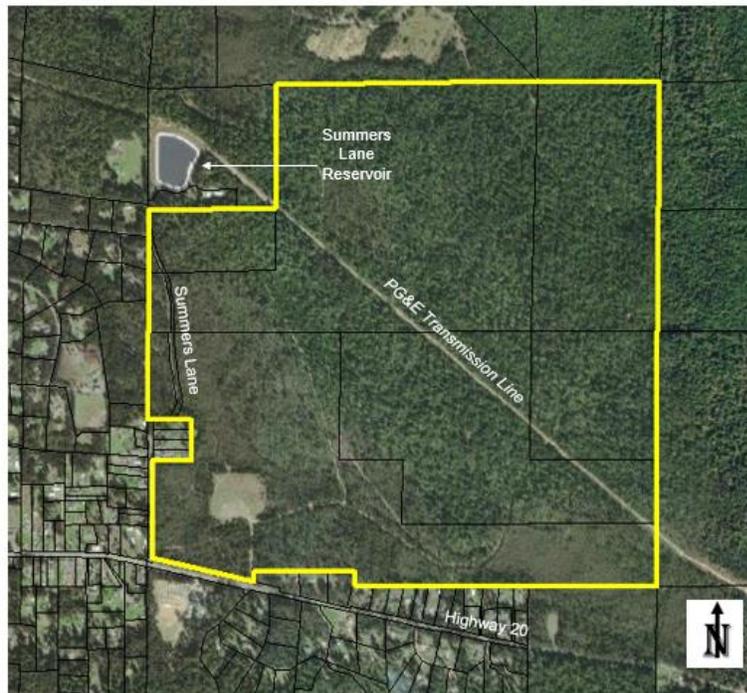




CITY OF FORT BRAGG
**REQUEST FOR PROPOSALS FOR THE PREPARATION OF AN
ENVIRONMENTAL IMPACT REPORT FOR CONSTRUCTION OF
RESERVOIRS AND COMMUNITY FOREST**
**FORT BRAGG RESERVOIR PROJECT FOR WATER STORAGE RESILIENCE
PROJECT WTR-00024
30900 HIGHWAY 20**

Figure 1



Not to Scale

The City of Fort Bragg (City) is seeking proposals from qualified consultants interested in contracting with the City to perform environmental work in compliance with California Environmental Quality Act (CEQA) regulations in support of the construction of 3 (three) 45-acre-foot reservoirs within a fenced compound and to prepare appropriate environmental documentation. 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 majority of the parcel is intended to be developed as a community forest. The proposed Project will include environmental work supporting both the reservoir project and the early stages of development of the community forest.

The site includes the endemic and rare sensitive natural habitat of the Mendocino Cypress Woodland, as mapped by the California Department of Fish and Wildlife, as well as the more traditional redwood forest associations. Preliminary biologic studies have recently been completed 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. It will be important to the Project to clearly define areas to be used for development, conservation, and mitigation sufficiently early in the process in order to develop an appropriate environmental evaluation and documentation strategy.

Project Objectives: This project is critical to ensure a 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 on aquatic species. The water will flow primarily by gravity to the City's Water Treatment Plant. The overall objectives herein include 1) the project is consistent with the regulatory requirements of the Lead Agency and the Responsible Agencies; 2) the project will result in a more reliable supply of water under drought conditions; 3) the project minimizes and reduces impacts to the environment by A) optimizing reservoir location and B) increasing summer and fall in-stream flows by filling the reservoirs in the winter; and 4) the projects protects sensitive species through the creation of conservation easements and a community forest.

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. The proposed reservoir compound shall also include a caretaker unit and a storage building, and a fenced parking lot and pit toilets are proposed to be constructed in the highly disturbed area off of Highway 20.

In addition to the reservoir construction, an important aspect of this project will be the creation of a community forest that will preserve and protect this unique and special woodland, while making it available to the community.

A. SCOPE OF WORK

The City intends to retain a qualified and committed professional environmental consultant. The successful consultant shall demonstrate the availability of qualified personnel to perform required environmental services. Consultants shall develop an appropriate work plan for services and will utilize that work plan to successfully develop documents that provide sufficient information to obtain project approval from the appropriate review agencies and comply with all CEQA requirements.

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 environmental consultant shall be responsible for the preparation, submittal, and approval of any permits required for construction activities.

Listed below is a general description of the scope of services/tasks 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.

1. **Project Planning and Management**

- a. **Document Review and Additional Information Request:** The consultant shall request and review existing documents related to the Project and project area.
- b. **Project Initiation and Scoping:** The consultant shall organize and facilitate a Project kick-off meeting with City staff and the Design Engineer to discuss the project scope, areas, design features, construction methods, and anticipated limits of disturbance, identify/confirm project purpose, needs, and objectives, discuss any areas of controversy and potential strategies; and expectations for deliverables and meetings
- c. **Meetings:** Key members of the consultant team shall participate in meetings (at minimum monthly) with City Staff and the Design Engineering Team. Meetings may take place in person or virtually. Project Team meetings with other project stakeholders will be held as needed. The consultant shall participate in up to 5 additional meetings as determined necessary by the City (several meetings specified throughout the scope of work).
 - At least four days in advance, the consultant shall prepare the agenda and update the Project schedule for distribution and review. Minutes of each meeting shall be submitted within one week for City review.
 - The Consultant is expected to work in regular coordination with the Design Engineering team, especially for the timing and phasing of deliverables.

Deliverables: Electronic copies of meeting agendas, minutes, and action items with responsible parties and due dates.

2. **Environmental Impact Report (EIR)**

- a. **Notice of Preparation (NOP):** The consultant will prepare and submit a draft NOP for the Project. The NOP shall be prepared in conformance with State CEQA Guidelines 15082 and Federal NEPA Guidelines. It will discuss the focus of the EIR and issues that are proposed to be “scoped out” and why. The consultant will incorporate comments from the City into the draft NOP and will prepare a final version for distribution.
 - The consultant, in conjunction with the City, will develop a distribution list to facilitate public and agency noticing during the review of the draft NOP. Consultant shall develop a project mailing list with the City including the adjacent landowners.

- City Staff will circulate the NOP to the State Clearinghouse, Responsible Agencies, and other interested organizations and individuals in coordination with publication in the newspaper and filing with the clearinghouse.
- A minimum of one scoping meeting will be conducted at a city-provided facility following the circulation of the Initial Study/NOP.
- The consultant will also prepare the Notice of Completion (NOC) for filing with the State Clearinghouse.
- City staff will electronically file the NOP with the State Clearinghouse along with the NOC.

Deliverables: Electronic version of draft NOP and NOC for City review, project mailing list, electronic version of final NOP and NOC.

3. **Draft Project Description:** The consultant shall prepare and submit an electronic draft of the project description to the City for review and comment. The description shall be sufficiently detailed and contain the information necessary to conduct the impact analysis to support the EIR. Description shall include a discussion of regional and local setting, project history and background, Project purpose, need, and objectives, general project design characteristics; all known discretionary actions required by the City; important project details including construction methods and maintenance activities; and any environmental protection measures that will be incorporated into project design, construction, and operation to reduce impacts to sensitive environmental resources. The project description shall provide a list of agencies expected to use the EIR, a list of permits and other approvals that will be required a list of the environmental review and consultation requirements, and a list of all decisions that are subject to CEQA.

Deliverables: Electronic version of draft Project Description.

4. **Final Project Description:** After receiving the comments from the City, the consultant shall discuss any comments with the City and agree on revisions to the draft project description accordingly. The consultant shall incorporate agreed-upon revisions and finalize the Project Description for incorporation into the draft EIR.

Deliverables: Electronic version of final Project Description.

5. **Technical Reports:** The consultant shall conduct studies and prepare reports as necessary to identify potential impacts and mitigation measures for the appropriate environmental factors as identified in the NOP and in compliance with CEQA Guidelines.

- A preliminary biologic report has been conducted over the area proposed for the construction of the reservoirs and is available on request to supplemental biologic studies necessary for the EIR.
- A geotechnical investigation will be conducted as part of the Engineering Design RFP and will be made available to the consultant, who will determine if further geotechnical work might be needed outside of the proposed reservoir area.
- The consultant shall include a description of the scope and content of the anticipated

analysis to be performed to address each resource identified in Appendix G of the CEQA Guidelines.

- Whenever appropriate, existing information shall be used from previous environmental documentation processes or other sources.
- a. **Community Forest Technical Report:** In addition to any technical reports needed for specific chapters of the EIR, the consultant shall prepare a technical report that evaluates the property and makes recommendations on areas to be set aside for mitigation, restoration, and preservation, to assist the City in establishing the community forest. The City has retained Mendocino Land Trust (MLT) under a separate contract to assist with the community forest aspects of the project, including the acquisition of any conservation easements. The Consultant shall work with MLT to assist the City with those efforts.
- The Community Forest Technical Report shall document efforts to determine which areas of the property are most suitable for various aspects of the overall development and make recommendations such as which existing access roads should be retained or improved and which should be abandoned and restored.
 - Any areas of the property deserving of special attention or proposed to be designated for special uses should be identified in this report.
 - The Consultant should plan on organizing and actively participating in at least one public meeting to elicit public input for consideration in the planning process.
 - It is important to the City that the creation of the community forest be included as part of the overall project, however, it is anticipated that not all of the potential recommendations for development that will be discussed or recommended in the Community Forest Technical Report will be included in this first phase of community forest implementation occurring concurrent with reservoir construction.

Deliverables: Electronic version of draft technical studies and reports for City review. Final technical studies and reports will be included as attachments to the Draft EIR and the results of those technical studies will be incorporated into the Draft EIR which will be posted to the City's website and filed with the State Clearinghouse by City staff.

6. **Draft EIR:** Consultant shall evaluate impacts utilizing the baseline physical conditions for a threshold of significance for each topic. The significance of Project-related impacts will then be determined for the project area. The EIR shall be prepared in compliance with CEQA/NEPA statutes and guidelines, consider the appropriate environmental factors included in the NOP, and consider comments received during the public scoping process. Direct and indirect significant effects of the Project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. Analysis of project alternatives and cumulative impacts shall be included. Consultant shall provide electronic copies of the Draft EIR for in-house review and comment by staff. Consultant will revise the draft as necessary to reflect City comments. The

resulting Draft EIR will be published and circulated for agency and public review according to the provisions of the CEQA Guidelines. City anticipates at least one public comment meeting will be scheduled during the review period of the Draft EIR.

Deliverables: Electronic versions of Draft EIR (Word and PDF) that is ready for reproduction.

a. **Public Circulation and Comment Period:** The Draft EIR shall be published and circulated for agency and public review according to the provisions of CEQA Guidelines. The Consultant shall prepare the Notice of Availability (NOA) and newspaper notice which the City will distribute. The Project mailing list shall be updated as needed and provided to the City. The city anticipates that one public comment meeting will be scheduled during the review period of the Draft EIR, and the Consultant may be required to attend one or more Public Hearings.

- The consultant is expected to prepare written responses to comments raised at hearings by members of the Public, Commissioners, or City Council members.
- Consultant shall track comments and responses using an Excel spreadsheet or similar approved form.
- Comments and responses to comments, along with any amendments or alterations to the Draft EIR made in response to those comments and the list of commenting agencies, organizations, and individuals will be published as a separate volume of the EIR, which when combined with the Draft EIR will constitute the Final EIR.

Deliverables: Electronic version NOA and newspaper notice, updated Project mailing list, electronic version of spreadsheet of comments with notes regarding approach/response, agenda and meeting notes for meetings or hearings, including public comments received, and an electronic version of any presentations or handouts.

7. **Final EIR, CEQA Findings, and Mitigation Monitoring and Reporting Program:** The consultant shall prepare a Final EIR consistent with the CEQA statutes and Guidelines for the City's public distribution and comments. The draft CEQA/NEPA findings shall be prepared and submitted to the City for review and comment, along with the Mitigation Monitoring and Reporting Program (MMRP) as required by CEQA. The Findings will consist of information required by CEQA/NEPA, including findings of fact regarding each potentially significant environmental impact, mitigation measures, significance after mitigation, disposition of alternatives, and statement of overriding considerations (if necessary). After receiving comments, the Consultant shall produce a final version of the CEQA/NEPA Findings and the MMRP. The MMRP shall be included in the Final EIR.

Deliverables: Electronic version of Final EIR that is ready for publication. The electronic version of Findings.

8. **Notice of Determination (NOD):** The consultant shall prepare the draft and final NOD for review by the City, who will upload the final version to the Clearinghouse.

Deliverables: *Electronic version of NOD.*

9. **EIR Certification Meetings:** Attendance in support of EIR at up to 2 City Council meetings.

Additional Services:

- 10. Permit Acquisition** - Provide environmental services to assist in permit acquisition. Please describe how your firm can assist with environmental permit acquisition. What would be the anticipated timeline for the process?
- 11. Preparation of a Timber Harvest Plan** – Construction is anticipated to include the removal of trees which may require a Timber Harvest Plan. Describe how your firm or sub-consultant can accomplish this task.
- 12. Supplemental work in support of the replacement or refurbishment via the lining of the Noyo River Crossing and the culvert replacements for Segment 2 of the Raw Water Line Replacement Project** – The Raw Water Line Replacement Project is replacing much of the transmission line that brings untreated water to the Water Treatment Plant (WTP) and is currently in construction. The Noyo River Crossing lies between Segments 2 and 3 of that project. The Segment 2 pipeline crosses over five (5) culverts that are in need of replacement, which requires redesign and possible upsizing. They range in size from 12” to 30”. Biologic studies that were performed in support of the Raw Water Line Replacement Project may need to be supplemented for the additional work being proposed. Those project plans and studies are available on request. Please describe what work your firm would anticipate being required to obtain the permits and approvals needed for construction.

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 a fashion to be approved by the appropriate agency.

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 the 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 a cost bid so that it is received no later than 2:00 PM on July 23, 2024, to:
City of Fort Bragg
ATTN: City Clerk
416 N Franklin Street
Fort Bragg, CA 95437
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 the same for any sub-consultant proposed. Indicate the roles of prime and all sub-consultants.
 - c. Relevant Experience: Describe relevant experience preparing Environmental Impact Reports for 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 describes 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 the consultant's approach to budget control and minimizing construction change orders or how their design (approach) considers minimizing construction change.
 - v. Summarize value-based services.
 - vi. Provide a discussion of how the QA/QC program manages sub-consultants efforts to ensure technical accuracy and successful completion of the Project.
 - vii. Provide information summarizing measures that will be implemented to monitor the 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, 2026. 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 a 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 and qualifications key 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 the award of the contract will be presented to the Fort Bragg City Council.

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

E. SCHEDULE FOR SELECTION AND AWARD

Advertise RFP	June 11, 2024
Last Day to Submit Written Inquiries	July 12, 2024
Proposal Due Date	July 23, 2024
City Council Contract Award	August 12, 2024
Ready for Construction	January 5, 2026

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 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. All inquiries shall be received by July 12, 2024. Responses to the inquiries will be posted on the City's website at www.city.fortbragg.com on July 16, 2025.

H. ATTACHMENTS

Exhibit A – City's Standard Professional Services Agreement

EXHIBIT A

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”).

WITNESSETH:

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 **[Delete if not design professional and renumber paragraphs]**

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;

[Delete whichever Paragraph E doesn't apply]

E. WHEREAS, the City Manager is authorized by Fort Bragg Municipal Code Section 3.20.040 to negotiate contracts in an amount not to exceed \$25,000.

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's total compensation shall not exceed _____ Dollars (\$ _____.00).

[Delete whichever paragraph 2.1 does not apply.]

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.

[Delete this section if it does not apply.]

2.5 Prevailing Wage Requirements In accordance with California Labor Code Section 1720, this project is subject to prevailing wage compliance monitoring and enforcement by the Department of Industrial Regulation. The Consultant and subcontractors engaged in performance of the Work must comply with Labor Code Section 1771.1.

(a) Payment of Prevailing Wages: In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the Work is to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the Public Works Department and shall be made available on request. The Consultant and subcontractors engaged in the performance of the Work shall pay no less than these rates to all persons engaged in performance of the Work.

(b) Legal Working Days: In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the Work is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.

(c) Payroll Records: Pursuant to Labor Code Section 1776, Consultant and any subcontractor(s) shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day

and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Consultant or any subcontractor in connection with this Agreement. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (1) The information contained in the payroll record is true and correct; and (2) The employer has complied with the requirements of Sections 1771, 1881, and 1815 of the Labor Code for any work performed by his or her employees on this Project. The payroll records shall be certified and shall be available for inspection at all reasonable hours in accordance with the requirements of Labor Code Section 1776. Consultant shall also furnish each week to CITY's Project Administration Division a statement with respect to the wages of each of its employees during the preceding weekly payroll period.

(d) Registration with DIR: Consultant and any subcontractor(s) of Consultant shall comply with the provisions of Labor Code Section 1771 and Labor Code Section 1725.5 requiring registration with the DIR.

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 7920.000 *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 7924.510, 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: _____
Isaac Whippy
Its: City Manager

By: _____

Its: _____

ATTEST:

By: _____
Diana Sanchez
City Clerk

APPROVED AS TO FORM:

By: _____
Baron J. Bettenhausen
City Attorney

EXHIBIT A

CONSULTANT'S PROPOSAL

(Scope of Work, Fee Schedule and Time Table)

EXHIBIT B
CERTIFICATES OF INSURANCE AND ENDORSEMENTS