

**CITY OF FORT BRAGG  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
APPLIED MARINE SCIENCES**

THIS AGREEMENT is made and entered into this 26<sup>th</sup> day of July, 2022 (“Effective Date”), by and between the FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT NO. 1, a municipal corporation, 416 N. Franklin Street, Fort Bragg, California 95437 (“City”), and APPLIED MARINE SCIENCES, a California corporation, 911 Center Street, Suite A, Santa Cruz, California 95060 (“Consultant”).

**WITNESSETH:**

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide two separate biological surveys and outfall inspection reports for receiving water monitoring and outfall inspection for the Fort Bragg Municipal Improvement District No. 1 as more fully described herein; and

B. 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

C. 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.

D. WHEREAS, the legislative body of the City on July 25, 2022 by Resolution No. [REDACTED] 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 AND BILLING**

2.1. Compensation. Consultant's total compensation shall not exceed **Forty-one Thousand Seventy-two Dollars (\$41,072.00)**.

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 **July 24, 2023**. 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 **October 24, 2023** 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 (\$3,000,000.00) per occurrence, Two Million Dollars (\$6,000,000.00) 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) [Section removed.]

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 **John Smith**, Public Works Director. 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 **Dane Hardin**, President, 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:  
Dane Hardin  
Applied Marine Sciences  
911 Center Street, Suite A  
Santa Cruz, CA 95060  
Tel: 831-426-6326  
Cell: 831-419-6075

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.

[Section Removed.]

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: \_\_\_\_\_

Sarah McCormick

Its: Acting City Manager

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

Dane Hardin

Its: President

ATTEST:

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

June Lemos, MMC  
City Clerk

APPROVED AS TO FORM:

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

Keith F. Collins  
City Attorney

## Exhibit A

# Proposal for Receiving Water Monitoring and Outfall Inspection

Fort Bragg Municipal Improvement District No. 1

July 30, 2021

Submitted to:

City of Fort Bragg  
416 North Franklin St.  
Fort Bragg, CA 95437

Submitted by:

A P P L I E D  
*marine*  
S C I E N C E S

911 Center Street  
Santa Cruz, CA 95060

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## 1. Background

The Monitoring and Reporting Program (MRP No. R1-2015-0024) for the Fort Bragg Municipal Improvement District No.1 (City of Fort Bragg) requires receiving water monitoring and inspection of the outfall from District's wastewater treatment facility. The primary objective of these activities is to document that the District's outfall is operating correctly and that the wastewater discharge is not impairing beneficial uses in the receiving water.

Protection of beneficial uses involves not only achievement of numerical objectives, but also documentation that narrative objectives are being met. For example, protection of the marine habitat beneficial use can be inferred through achievement of numerical water quality objectives, as well as through sampling to show whether biological communities in the vicinity of the discharge have been degraded. This proposal was developed to include elements that document the condition of flora and fauna on the seafloor in the vicinity of the outfall, and to provide a video record of the outfall condition.

## 2. Discharge and Monitoring History

In 1971, the Fort Bragg Municipal Improvement District No. 1 completed construction of a regional wastewater collection and treatment facility. At that time, wastewater was discharged through a 30-inch outfall that emptied into nearshore, shallow water. Following a thorough evaluation of outfall performance and biological communities in the vicinity of the outfall in 1973, the outfall was extended approximately 650 feet offshore in 1977. The extended outfall consists of 24-inch reinforced concrete pipe that was anchored in a trench in bedrock by anchor bolts every 12 feet and encased within approximately 20 inches of concrete. Treated wastewater is discharged through a diffuser of 14 6-inch aluminum bronze risers that project vertically every eight feet near the end of the outfall. Each riser terminates in 3-inch diffuser port directed parallel to the seafloor. As built, each port was covered with a natural rubber flapper, although the most recent inspection in 2018 revealed that many of the flappers were missing and one port was blocked with a rock. The outfall diffusers have since been repaired. An average dry-weather flow of approximately 0.55 MGD currently is discharged through 14 diffuser ports spanning 104 feet in 25–30 feet of water. Average wet-weather flow from January 2010 through December 2015 was approximately 0.71 MGD.

The 1973 evaluation of biological communities revealed decreased biological diversity within 75 feet of the outfall. Within this area, biological communities were dominated by the green alga, *Ulva lobata*. Infrared photography around the outfall also revealed depressed algal coverage within this area, which was attributed to outfall construction.

In December 2004, following negotiations between the City of Fort Bragg and the Water Board North Coast Region (Water Board) with technical assistance from Applied Marine Sciences, Inc. (AMS) the Water Board approved a monitoring plan. This plan was designed to document 1) compliance with California Ocean Plan receiving water objectives and 2) the integrity of the outfall structure, including the diffuser ports, at least once during each permit cycle to verify operational status of the outfall. Since 2004, monitoring has been conducted in 2007, 2012, 2017, and 2018.

On April 21, 2021, Governor Newsome declared a state of emergency in Mendocino County due to worsening drought conditions. In order to address drought effects on the Noyo River, a primary source of drinking water for the City of Fort Bragg, it has been proposed to install a skid-mounted desalination facility to treat water from the river for city drinking water. The desalination facility is expected to operate 12 hours per day and will contribute upwards of 21,000 gallons per day of reverse osmosis concentrate to the city's ocean wastewater discharge. This This scope of work has been developed to address concerns about effects of the changed character of the City's wastewater on ocean beneficial uses.

### 3. Objectives

1. To determine the potential effects of the District No. 1 outfall on the nearshore benthic community adjacent to the City of Fort Bragg.
2. To determine the receiving water concentrations of metals, fecal indicator bacteria, and how they compare to objectives in the California Ocean Plan.
3. To conduct a survey of the District No. 1 outfall.

### 4. Technical Approach

Before the surveys are conducted, AMS will develop a detailed plan outlining the dates, equipment, personnel, required coordination, sample handling and deliveries, safety features, and data to be collected.

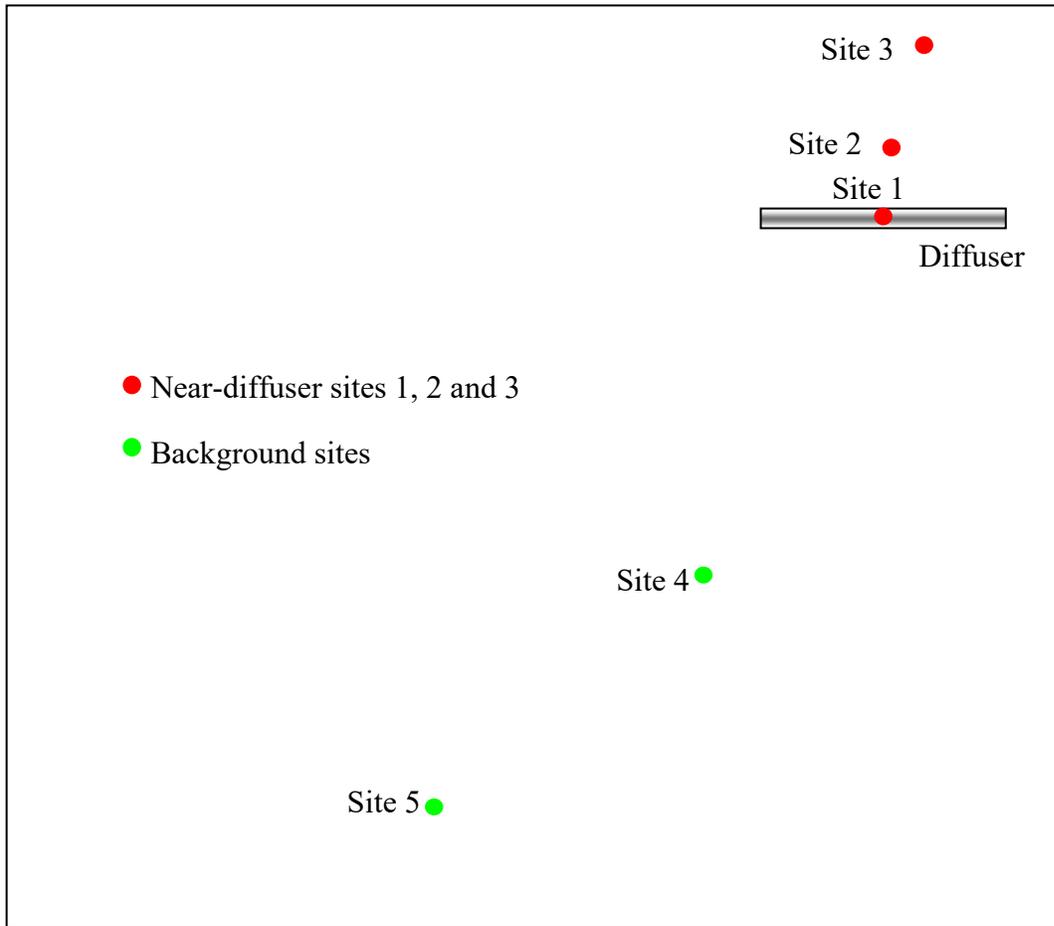
The technical approaches detailed below for assessing resident biota, and outfall condition are identical to those employed by AMS in conducting the 2008, 2012, and 2018 NPDES receiving water monitoring program (Hardin and Dominik 2008; Johnson and Hardin 2013; Hardin et al. 2019), with the addition of more trace metals and nutrients to the list of constituents being measured. Prior to the surveys, AMS will coordinate with the City of Fort Bragg to ensure that the usual discharges, including maximum expected contributions of reverse osmosis concentrate, are being released during sampling. Receiving water monitoring activities will be performed during periods of low winds and calm seas to ensure safety and maximize underwater visibility. Moreover, within the weather constraints, every attempt will be made to sample during periods of low tides. Qualified aquatic biologists will perform all biological sampling and analyses.

#### 4.1. Water Quality

##### 4.1.1. Sampling Sites.

Five sites will be sampled (Figure 1), with their locations being determined from the direction of currents at the diffuser. A SCUBA diver will attach a temporary surface buoy to the midpoint of the diffuser and a current drifter will be placed in the water at the buoy. Site 1 will be above the midpoint of the diffuser (39.440317° N, 123.817783° W), Site 2 will be 10 meters down current from the diffuser and Site 3 will be 30 meters down current from the diffuser. Sites 1, 2 and 3 will represent worst-case concentrations nearest the discharge. Site 4 will be approximately 100 meters up current from the diffuser midpoint and Site 5 will be approximately 200 meters up current from the diffuser midpoint. Sites 4 and 5 will represent background conditions. A hand-held GPS unit will be used to ensure proper location of each site. Samples will be collected from

0.5 meters below the water surface to avoid contamination by the surface micro layer and from mid-water (i.e., midway between the surface and the bottom).



**Figure 1. Example of layout for water sampling sites.**

#### **4.1.2. Sampling Methods.**

Water samples will be collected with a Watermark<sup>®</sup> Horizontal Polycarbonate Water Bottle. Profiles of conductivity, temperature, depth, pH, salinity, and dissolved oxygen also will be collected with a YSI<sup>®</sup> EXO (CTD) at surface and midwater intervals. Water samples will be promptly chilled on ice in preparation for transport to the laboratory and future analysis.

#### **4.1.3. Constituents Measured.**

Samples will be analyzed using approved EPA methods for nutrients, total suspended solids (TSS), trace metals, total coliform, fecal coliform, and *Enterococcus*. All parameters will be analyzed by certified laboratories. Temperature, salinity, pH, and dissolved oxygen will be measured by a recording CTD. The constituents to be measured at each site are shown in Table 1. The amount of undissociated ammonia will be estimated using standard tables based upon temperature, salinity, and pH (Skarheim, 1973).

**Table 1. Water-quality constituents to be measured at each site.**

Constituent, reporting limit	Site				
	1	2	3	4	5
Ammonia, 0.1 mg/L	x	x	x	x	X
TSS, 2 mg/L	x	x	x	x	X
Ocean Plan trace metals <sup>1</sup>	x	x	x	x	X
Nutrients <sup>2</sup>	x	x	x	x	X
Total Coliform, 1 CFU/100 ml	x	x	x	x	X
Fecal Coliform, 1 CFU/100 ml	x	x	x	x	X
Enterococcus, 1 CFU/100 ml	x	x	x	x	X
Temperature <sup>3</sup>	x	x	x	x	X
Salinity <sup>3</sup>	x	x	x	x	X
pH <sup>1</sup>	x	x	x	x	X
Dissolved Oxygen <sup>1</sup>	x	x	x	x	X

<sup>1</sup> = As, Cd, Cr, Cu, Pb, Ni, Se, Ag, Zn

<sup>2</sup> = Phosphate, Silica, Nitrite+Nitrate, Ammonia

<sup>3</sup> = Measured with recording CTD

#### 4.1.4. Standard Observations.

Standard observations will be made at each sampling site for floating or suspended material of wastewater origin, discoloration, turbidity, odor, and evidence of beneficial uses. Current speed and direction will be estimated by placing a surface drifter in the water at the diffuser midpoint and recording its location with a hand-held GPS at intervals during receiving water sampling.

#### 4.1.5. Reporting.

Water quality results will be submitted to the City of Fort Bragg following laboratory testing and data analysis.

## 4.2. Biological Evaluation

### 4.2.1. Sampling Sites

Sampling will be conducted along five 30-meter transects arranged perpendicular to the outfall axis, with the beginning of each transect positioned over the outfall (Figure 1). Transects will be randomly located along the length of the diffuser section, using random numbers as meter distances between the inner and outer ends of the diffuser and alternating transects will extend in opposite directions from the diffuser.

### 4.2.2. Sampling Methods

At 1-meter intervals along each transect, the species under the transect line will be noted. These observations will provide data on percent cover of the flora and fauna around the outfall, which can be used to determine such community parameters as species richness and total abundance. All abalone within 0.5 meters of each transect will be counted and measured.

These observations will provide data on the density and population structure of abalone around the outfall. A sediment sample will be collected near the diffuser at the beginning of each transect and at the outer end of each transect. These samples will provide data on the accumulation of organic material from the discharge around the outfall. Additionally, observations will be recorded every meter along each transect of any objectionable aquatic growths, floating particulates or oils, aesthetically undesirable discoloration of the seawater, color of fish or shellfish, and any evidence of degradation of indigenous biota attributable to the rate of deposition of inert solids, settleable material or nutrient materials.

#### 4.2.3. Analyses Performed

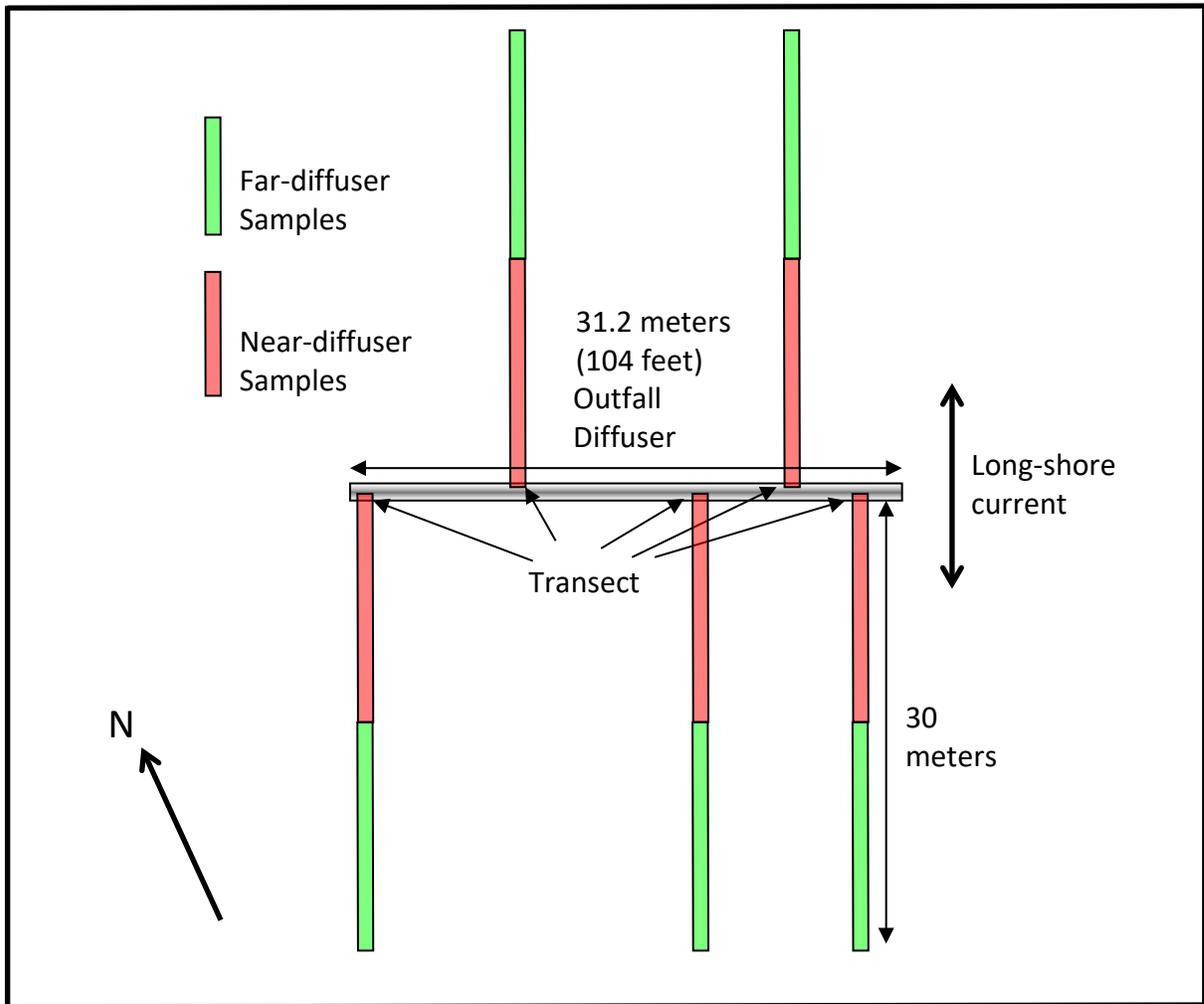
Transect data will be analyzed according to transect segments, with those sampling points occurring within 15 meters of the diffuser being compared to those occurring greater than 15 meters from the diffuser. Each 15-meter segment will represent a replicate sample, providing 5 replicates each for the near-diffuser samples and far-diffuser samples (Figure 1). The proportion of sampling points in each segment that fall over a given plant or animal species provides an estimate of the percentage of the substrate covered by that species. Sediment samples will be analyzed for Total Organic Carbon (TOC) to indicate whether organic material from the discharge is accumulating on the bottom. Routine statistical tests (e.g., t-test or analysis of variance) will be performed to determine whether there are differences between near-diffuser and far-diffuser samples in the percent cover of each species, the numbers or sizes of abalone or the percentage of TOC in sediments and any changes in the biological communities since the previous sampling events. Changes in the near-diffuser samples, in the absence of changes in the far-diffuser samples, could suggest effects of the discharge. Data from all previous years of monitoring will be included to determine changes over time.

## 5. Monitoring Schedule

Monitoring will be conducted during summer months in 2022, at the City’s convenience, to coincide with the season of maximum human visitation and utilization of beneficial uses. Coordination will also occur with the City of Fort Bragg to ensure that water quality sampling is performed during the peak contribution of reverse osmosis concentrate to the discharged effluent. Three days will be scheduled for the monitoring, as shown in Table 1. Considerable logistical saving is achieved by conducting the biological monitoring and outfall inspection in the same field effort, as we have scheduled.

**Table 1. Proposed Monitoring Schedule**

Day	Activity
1	Mobilize gear and travel to Fort Bragg, set up gear
2	Conduct outfall inspection and biological sampling
3	Conduct water quality sampling and return home



**Figure 1. Layout of biological evaluation sampling transects.**

## 6. Reporting

A narrative report of the biological evaluation and outfall inspection will be submitted within 90 days following fieldwork. This report will include a description of all survey and analytical methods and results, including interpretation of any differences between the near-diffuser samples and the far-diffuser samples. It will be comparable in scope to the 2008 and 2019 reports to the water board prepared by AMS (Hardin and Dominik 2008; Hardin et al. 2019) and will include appropriate statistical procedures to determine whether there have been changes in the biological communities that can be ascribed to the wastewater. The outfall inspection section of the report will document outfall condition and maintenance, including original video footage and notations of any observed cracks, breaks, malfunctions, and recommended repairs.

## 7. Budget

The cost estimate for the survey plan, research vessel, all biological monitoring, analyses, the outfall inspection, and all reporting is shown in Table 2.

**Table 2. Cost estimate for implementation of biological monitoring and outfall inspection.**

Cost Element	Item Cost
<b>Labor</b>	
Senior Scientist	\$4,290
Associate Scientists	\$21,560
Administrative Support	\$460
<b>Other Direct Costs</b>	
Transportation	\$313
Lodging and Per Diem	\$704
Equipment Rental	\$1,220
Research Vessel	\$3,200
Laboratory	\$6,700
Sample Shipping	\$500
Supplies	\$200
G&A (15% applied to Other Direct Costs)	\$1,925
<b>Total</b>	<b>\$41,072</b>

## 8. References Cited

Hardin D, Dominik C (2008) Receiving Water Monitoring Report, Fort Bragg Municipal Improvement District No. 1. City of Fort Bragg, Fort Bragg, CA

Hardin D, Herrman C, McEnery W (2019) Receiving Water Monitoring Report, Fort Bragg Municipal Improvement District No.1. City of Fort Bragg, CA

Johnson D, D Hardin (2013) Receiving Water Monitoring Report, Fort Bragg Municipal Improvement District No. 1. City of Fort Bragg, Fort Bragg, CA

Skarheim, HP (1973) Tables of the fraction of ammonia in the undissociated form for pH 6 to 9, temperature 0–30°C, TDS 0–3000 mg/L, and salinity 5–35 g/kg. Univ. of California at Berkeley, School of Public Health SERL Rep. 73-5, Berkeley

**EXHIBIT B**  
**CERTIFICATES OF INSURANCE AND ENDORSEMENTS**