



**REQUEST FOR PROPOSALS  
Banking and Merchant Services  
City of Fort Bragg**

**BID ISSUE DATE**                      **Tuesday, June 11, 2019**

Contact:                                      Victor Damiani  
Title:    Finance Director  
Email:    [vdamiani@fortbragg.com](mailto:vdamiani@fortbragg.com)  
Phone Number:                                707-961-2825 x122

**PROPOSAL DUE**

Date/Time:                                      **Friday, August 9, 2019, 2:00PM**

Mailing Address and  
Bid Opening Location:                      June Lemos, CMC  
    City Clerk  
    City of Fort Bragg  
    416 North Franklin Street  
    Fort Bragg, CA 95437

Sealed written responses must be received by the City Clerk no later than the date, time, and location indicated above for the Bid Opening. Late submission of responses shall not be considered. Submittal of responses by email or fax are not acceptable.

**BID CONTENTS**

- Section I - Purpose of Request for Proposal and General Terms and Conditions
- Section II - Introduction
- Section III - Schedule of Events
- Section IV - Proposer Qualifications
- Section V - Evaluation and Award Criteria
- Section VI - Proposal Instructions and Scope of Work
- Section VII - Sample Bid Form
- Exhibit A - Consultant Agreement Sample

Note: This Request for Proposals does not constitute an order for the goods or services specified.

## SECTION I

### PURPOSE OF REQUEST FOR PROPOSALS AND GENERAL TERMS AND CONDITIONS

#### **1.0 PURPOSE OF REQUEST FOR PROPOSALS (RFP)**

The City of Fort Bragg ("the City") Finance Department is currently seeking proposals from qualified financial institutions for Banking and Merchant Services for its bank accounts and related cash management services. The primary objective of this proposal is to obtain the most efficient, high-quality services at the most reasonable cost.

#### **1.1 PRE-PROPOSAL CONFERENCE** – None.

#### **1.2 QUESTIONS REGARDING THE RFP**

Any questions, interpretations, or clarifications, either administrative or technical, about this RFP must be requested via email prior to the date indicated in Section III. All pertinent questions will be answered and conveyed to all Proposers. Oral statements concerning the meaning or intent of the contents of this RFP by any person is unauthorized and invalid. **All questions either technical, commercial, or contractual in nature shall be directed to:** Victor Damiani, Finance Director, [vdamiani@fortbragg.com](mailto:vdamiani@fortbragg.com).

#### **1.3 ERRORS AND OMISSIONS**

If a Proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP or any of its attachments, he/she shall immediately notify the City of such error in writing and request modification or clarification of the document. Modifications will be made by addenda. Clarifications will be given by written notice to all parties who have been furnished or who have requested an RFP for proposing purposes, without divulging the source of the request for same.

If a Proposer fails to notify the City prior to the date fixed for submission of proposals of an error in the RFP known to him/her, or an error that reasonably should have been known to him/her, he/she shall bid at his/her own risk, and if he/she is awarded the contract, he/she shall not be entitled to additional compensation or time by reason of the error or its later correction.

#### **1.4 ADDENDA**

The City may modify this RFP, any of its key action dates, or any of its attachments, prior to the bid submittal date. Addenda will be numbered consecutively as a suffix to the RFP Reference Number. It is the Proposer's responsibility to ensure they have incorporated all addenda. Failure to acknowledge and incorporate addenda will not relieve the Proposer of the responsibility to meet all terms and conditions of the RFP and any subsequent addenda.

#### **1.5 SUBMISSION OF PROPOSAL**

Proposals will be accepted on or before the date and time indicated in the Schedule of Events, Section III, in accordance with Section VI, Proposal Instructions and Format.

#### **1.6 PROPOSER'S COST**

Costs for developing proposals are entirely the responsibility of the Proposer and shall not be chargeable to the City of Fort Bragg.

#### **1.7 EXCEPTIONS**

If a Bidder takes exception to any part of these specifications as written, or as amended by any addenda subsequently issued, or the Agreement, they must do so in writing. Said exceptions must

be submitted with the proposal. Failure to do so will be construed as acceptance of all items of the specification and the Agreement.

**1.8 DELIVERY OF PROPOSALS**

Proposals submitted by mail should be postmarked sufficiently in advance of the bid opening to ensure delivery to the City Clerk, City of Fort Bragg, prior to the specified opening time. The City assumes no responsibility for delay in delivery of the proposal by U.S. Mail or any other service. LATE PROPOSALS WILL NOT BE ACCEPTED.

**1.9 PROPOSALS BECOME THE PROPERTY OF THE CITY OF FORT BRAGG**

Proposals become the property of the City and information contained therein shall become public property subject to disclosure laws after Notice of Intent to Award or Notice to Proceed. The City reserves the right to make use of any information or ideas contained in the proposal.

**1.10 CONFIDENTIAL MATERIAL**

Proposer must notify City in advance of any proprietary or confidential material contained in the proposal and provide justification for not making such material public. City shall have sole discretion to disclose or not disclose such material subject to any protective order which Proposer may obtain.

**1.11 REJECTION OF PROPOSALS**

City may reject any or all proposals and may waive any immaterial deviation in a proposal. City of Fort Bragg's waiver of an immaterial defect shall in no way modify the RFP documents or excuse the Proposer from full compliance with the specifications if he/she is awarded the contract. Proposals referring to terms and conditions other than City of Fort Bragg's terms and conditions may be rejected as being non-responsive.

The City may make investigations as deemed necessary to determine the ability of the Proposer to perform the work, and the Proposer shall furnish to City of Fort Bragg all such information and data for this purpose as requested by the City. The City reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Proposer fails to satisfy the City that such Proposer is properly qualified to carry out the obligations of the contract and to complete the work specified.

**1.12 CANCELLATION**

This solicitation does not obligate the City to enter into an agreement. City of Fort Bragg retains the right to cancel this RFP at any time, should the project be canceled, City of Fort Bragg loses the required funding, or it is deemed in the best interest of the City. No obligation, either expressed or implied, exists on the part of the City to make an award or to pay any cost incurred in the preparation or submission of a proposal.

**1.13 INSURANCE REQUIREMENTS**

The City requires a certificate of insurance prior to commencement of any work. An underwriter's endorsement is also required with additional insured verbiage and must be an admitted surety in the State of California. Insurance requirements are outlined in Section 13 of the Professional Service Agreement, attached hereto as Exhibit A and incorporated herein by reference. Any requests for reduction in the insurance amount shall be included in the proposal. The cost of such insurance shall be included in the consultant's proposal.

**1.14 LOCAL BUSINESS PREFERENCE**

Local vendors are encouraged but not required. For purposes of this section, a "local" shall be defined as an individual, partnership or corporation which regularly maintains a place of business within the corporate limits of the City.

**1.15 DISPUTES/PROTESTS**

The City encourages Proposers to resolve issues regarding the requirements or the procurement process through written correspondence and discussions during the period in which clarifying addenda may be issued. The City wishes to foster cooperative relationships and to reach a fair agreement in a timely manner. Formal proposals for major professional and technical services shall be governed by the City's Purchasing Policy.

**1.16 AWARD OF CONTRACT**

Award, if any, will be to the Proposer whose proposal best complies with all of the requirements of the RFP documents and any addenda. Evaluation methodology and basis for award are described in Section V – Evaluation and Award Criteria.

**1.17 TERM OF CONTRACT**

The period of services shall be five (5) years with the option to renew for two (2) additional one-year periods. Annual renewals shall be automatic and based on satisfactory performance of service and unless terminated by either party with thirty (30) days written notice prior to the expiration of each renewal.

**1.18 CONTRACT DOCUMENTS**

In the event of a conflict between documents the following order of precedence shall apply:

1. City of Fort Bragg Professional Services Agreement
2. City of Fort Bragg Request for Proposals
3. Proposer's Proposal

**1.19 EXECUTION OF THE CONTRACT**

Upon approval by the City Council, the contract shall be signed by the Proposer and returned, along with the required attachments to the City of Fort Bragg within ten (10) working days. The period for execution may be changed by mutual agreement of the parties. Contracts are not effective until approved by the appropriate City of Fort Bragg officials. Any work performed prior to receipt of a fully executed contract shall be at Proposer's own risk.

**1.20 FAILURE TO EXECUTE THE CONTRACT**

Failure to execute the contract within the time frame identified above shall be sufficient cause for voiding the award. Failure to comply with other requirements within the set time shall constitute failure to execute the contract. If the successful Proposer refuses or fails to execute the contract, the City may award the contract to the next qualified highest ranked Proposer.

**1.21 NON-ENDORSEMENT**

If a proposal is accepted, the Proposer shall not issue any news releases or other statements pertaining to the award or servicing of the agreement which state or imply the City endorsement of Proposer's services.

**1.22 CONFLICT OF INTEREST**

The City requires a Statement of Economic Interest (Form 700) to be filed by any proposer who is involved in the making of the decisions which may have a foreseeable material effect on any City financial interest [reference Government Code § 82019].

## SECTION II

### INTRODUCTION

#### 2.0 **INTRODUCTION**

The City is requesting proposals from qualified financial institutions for Banking and Merchant Services for its bank accounts and related cash management services. The primary objective of this proposal is to obtain the most efficient, high quality services at the most reasonable cost.

The City of Fort Bragg is located approximately 165 miles north of San Francisco and 185 miles west of Sacramento on the scenic coast of Mendocino County. The City occupies 2.7 square miles. Census 2010 places the City's population at 7,273. The City is governed by a five-member City Council under the Council/Manager form of government. The City was originally incorporated in 1889 as a general law City.

The City provides a wide range of services to its residents including public safety services, construction and maintenance of streets and infrastructure, water service, community development, financial management and administrative services. Special Districts and Joint Power Authorities (JPAs) under the jurisdiction of the City provide emergency services, fire protection and wastewater treatment services.

The City is also financially accountable for a legally separate Successor Agency for the former Redevelopment Agency.

The City will endeavor to administer the proposal process in accordance with the terms and dates outlined in this RFP, however, the City reserves the right to modify the activities, time line, or any other aspect of the process at any time, as deemed necessary by City staff. By requesting the proposals, the City is in no way obligated to award a contract or pay the expenses of proposing banks in connection with the preparation or submission of a proposal. The awarding of any contract shall be contingent on the availability of the funds and the requisite staff and Council approvals. The decision to award any contract to a particular bank will be based on a variety of factors as listed in the RFP. It is in the City's interest to do business with banking professionals who are dedicated to the government market. No single factor will determine the final award decision.

**SECTION III**  
**SCHEDULE OF EVENTS**

**3.0 SCHEDULE**

Advertisement	June 11, 2019
Release of Request for Proposals	June 11, 2019
Last Day for Submission of Questions	July 2, 2019
City Response to Questions submitted via Addendum	July 23, 2019
Deadline for Receipt of Proposals	August 9, 2019 at 2:00PM
Evaluation	August 23, 2019
Optional Interview if Required	Week of August 26, 2019
Tentative Contract Award Date	September 23, 2019

\*NOTE: The dates subsequent to receipt of proposal may be adjusted without further notice.

## SECTION IV

### PROPOSER QUALIFICATIONS

#### 4.0 PROPOSER QUALIFICATIONS

In addition to meeting all other requirements of this RFP, all responding Proposers shall furnish verifiable evidence that their firm and personnel, at a minimum, meet the following qualifications.

- a. Be a Federal or State of California chartered institution.
- b. Be a member of the Federal Reserve System and have access to all services.
- c. Be a qualified State depository for public funds.
- d. Be a full-service bank in good standing among other comparable banks.
- e. Be capable of providing the services sought by the City, to include a wide range of electronic payment and deposit services.
- f. Agree to assign experienced and dedicated staff committed and capable of servicing the City's accounts.
- g. Be in compliance and good standing with the Community Reinvestment Act.
- h. Be sufficiently capitalized to accommodate the City's cash management needs and ensure collateralization of funds.
- i. Banking institution shall provide their current IDC rating.

## **SECTION V**

### **EVALUATION AND AWARD CRITERIA**

#### **5.0 EVALUATION METHOD**

The selection of the bank to provide banking and merchant services to the City will be based on a comprehensive review of the bank's qualifications as presented in this proposal, overall price and cost to the City, the experience and success of the bank in providing banking services to similar clients, the firm's ability to provide the services outlined in the RFP and an evaluation of the bank's ability to be a good business partner with the City.

Proposals will be reviewed and evaluated by City of Fort Bragg Finance Department and Administration Department personnel. Award will be made in the best interest of the City of Fort Bragg.

#### **5.1 EVALUATION CRITERIA**

The proposals will be evaluated and ranked in accordance with the evaluation criteria described below.

- Bank financial strength and ability to protect and collateralize City deposits.
- Overall cost to City and ability to guarantee pricing for contract period.
- Revenue sharing and/or cost reduction opportunities offered by the bank.
- Ability to meet minimum required service levels and offer required bank products.
- Quality references and overall experience with public agencies.
- Qualifications and strength of the relationship management team.
- Ability to offer product and service enhancements.
- Location of branch offices and services available at branches.
- Other qualitative characteristics as may be presented in the RFP.

Discussions may be conducted with the most qualified bidders for the purpose of clarification to assure the full understanding of, and conformance to, the solicitation requirements. Revisions may be permitted after submissions, and prior to award, for the purpose of obtaining best and final offer.



## SECTION VI

### PROPOSAL INSTRUCTIONS, FORMAT, AND SCOPE OF WORK

#### 6.0 INSTRUCTIONS

To be considered responsive to this RFP, Proposer must submit proposals in the format identified in this section. All requirements and questions in the RFP must be addressed and all requested data must be supplied. The City of Fort Bragg reserves the right to request additional information that, in the City's opinion, is necessary to assure that the Proposer's competence, number of qualified employees, business organization, and financial resources are adequate to perform according to contract. The City also reserves the right to reject any and all proposals, to waive any non-material irregularities or informalities, and to **accept or reject any item or combination of items**. This RFP and the bank's response, including all promises, warranties, commitments, and representations made in the successful proposal, will become binding contractual obligations. Proposed services and related pricing and warranties contained in the proposal must be valid for a period of 120 days after the submission of the proposal. Any questions concerning the RFP must be submitted via email to [vdamiani@fortbragg.com](mailto:vdamiani@fortbragg.com). All banks wishing to participate in this question and answer process are to provide an email address by **July 23, 2019** to ensure the City can respond to questions via email to all proposing parties, thus ensuring all participating parties have access to the same information.

#### 6.1 NUMBER OF COPIES

The Proposer shall provide one (1) original and three (3) duplicates of the proposal in hard copy, containing section tabs with responses following the order listed in Section 6.4 below, and one (1) proposal in digital (PDF) format. Each question of the RFP should be repeated with the bank's response following. Please refrain from including extraneous or marketing information. If a service requirement or section of the proposal cannot be met by a proposer, then "No Proposal" should be indicated on the Bid Form and the relevant section of the proposal. An alternate equivalent service may be offered. All copies of the proposal must be delivered sealed. One copy of the proposal must be clearly marked "Master Copy".

#### 6.2 DELIVERY OF PROPOSALS

- a. Address/Deliver proposals to: **June Lemos, CMC  
City Clerk  
City of Fort Bragg  
416 N. Franklin Street  
Fort Bragg, CA 95437**
- b. Proposals must be received by the City Clerk **no later than 2:00 p.m., Friday, August 9, 2019**. Late submissions, including fax or email delivery, will not be accepted.

#### 6.3 PREPARATION

Proposals should be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Emphasis should be on completeness and clarity of content. Bank personnel signing the cover letter, or any other related forms submitted must be authorized signers with the requisite authority to represent the bank and to enter into binding contracts with clients.

## 6.4 PROPOSAL FORMAT

To assist the City to adequately compare and evaluate each bank's qualifications objectively, all proposals must be submitted in the following prescribed format.

### Cover Letter

It should include the name of the proposing bank, its principal business address where the relationship will be managed, and the branch address that can meet the daily banking needs of the City and its employees.

### Table of Contents

**Tab A – Transmittal Letter:** The letter should address the bank's willingness and commitment, if selected to provide the service, and why the bank believes it should be selected. The letter should contain a statement that the bank has read and will comply with all the terms and conditions of the RFP. The letter should be addressed to Victor Damiani, Finance Director, and signed by an individual authorized to bind the bank.

**Tab B – Bank and Personnel File:** Please respond to the following:

*Bank Overview* – Provide a general overview of the bank's operations, fundamental management, customer service philosophy, and financial strength. Identify the primary office or branch that the City will be assigned to and where the City will conduct its primary banking business.

*Experience* – Describe the bank's direct experience in servicing public sector clients. Please include the information such as the number of nationwide and California public agency clients, the dollar amount of public funds on deposit for each of these categories, and the bank's knowledge of and adherence to the California Government Code and other applicable laws.

*Relationship Management* – Identify the size and scope of your California-based public banking unit, banking officers responsible for the City's accounts, what each person's role and responsibilities will be, and the relevant credentials and experience of each person on the relationship management team.

*Customer Service* – Describe how the bank handles problem resolution, customer service, day-to-day contact, and ongoing maintenance for governmental entities. Specify whom the City will be calling for day-to-day banking and treasury management issues. Explain the process for elevating an issue to a higher level to obtain a quick resolution when the day-to-day contact is not responsive.

*Compliance and Exceptions* – Include a statement to confirm the bank's compliance to specific minimum qualifications, listing any exceptions to required services.

*Responsible Banking Description* – Describe the bank's responsible banking policies and practices. Discuss any current efforts, or those that may be implemented in the City of Fort Bragg, if the bank were awarded the City banking contract. Lastly, describe any other efforts/contributions the bank has made/would make relative to investment in the local community (such as fraud prevention seminars hosted at the City's C.V. Starr Community Center).

**Tab C – References:** Please provide three (3) references. References should include other California cities of similar size and scope of service utilization as the City of Fort Bragg. Select

both long standing and recent customers. Include the following information for each reference:

- Contact name and title
- Name of agency
- Telephone number and email address
- Services provided

**Tab D – Demand Deposit Accounts:** The City currently uses three (3) demand deposit accounts (DDAs).

1. How many days after month-end will the City receive its bank statements?
2. Are the bank statements available online?
3. Does the bank offer ACH blocks or filters? If so, please explain.
4. Does the option exist to create sub-accounts under the primary account?

**Tab E – Collateralization of Deposits:** The bank is required to collateralize public funds deposits under the California Government Code, Sections 53651 and 53652. Copies of the reports filed with the State of California shall be made available to the City upon request. Please detail the bank's procedures for collateralizing public funds deposits.

1. What types of securities are used as collateral?
2. Which bank department is responsible for tracking deposits and monitoring collateral?
3. What is the bank's current level (\$ amount) of California public funds deposits and the related collateral?
4. What is the frequency of reporting to the State Treasurer's Office?
5. Please include a copy of the Bank's Contract for Deposit of Moneys in this section.

**Tab F – Bank Compensation:** The City has historically paid for bank services with a combination of hard-dollar fees and compensating balances. Please indicate the following in this section:

1. Can the City compensate the bank for services with fees, balances, or a combination of the two at its own election? Please describe any differences in related costs to the City with either option.
2. Can the City choose between paying for analysis deficiencies by check, auto debit, or ACH credit?
3. What is the bank's Earning Credit Rate (ECR) based on, and how is it calculated each month?
4. List the bank's average ECR for each of the last eight months (November 2018 thru June 2019).
5. Using the ECR for the month of June 2019, please calculate the level of compensating balances (after float and reserves) needed to offset one dollar of the bank services. (\$1 in services = \$ \_\_\_\_\_ in compensating balances.)
6. Please explain in detail, how and when the FDIC assessment is computed and charged.
7. What is the bank's settlement period for account analysis and billing purposes – monthly, quarterly, semiannually, or annually? How long can any excess balances be carried forward to apply to charges in future billing periods?
8. How long will the bank's pricing, as indicated in this proposal and the Banking Services Bid, be fixed?
9. Please detail which types of items and services can be applied against the account analysis in addition to the standard bank services, such as merchant bankcard processing, messenger service, armored carrier, check stock, supplies, custody services, etc. Is there a markup for any of the items? If so, how much?

10. How does the bank charge for overdrafts? Does the bank charge for the use of uncollected funds? If so, how is the charge calculated?
11. Please state the negative collected balance charge that the City will pay and, in detail, explain how this charge is computed. Is the rate quoted in this proposal good for the term of the contract?
12. Are Account Analysis Reports available online? If so, specify the cost.
13. What procedure is used to make any adjustments to the Account Analysis statements and how long does it take for adjustments to take effect?

**Tab G – Deposit Activity:** The City currently utilizes a variety of methods to process daily deposits. The City requires weekly deposit pick-up from City Hall.

Total monthly deposits consist of approximately 700 to 900 un-encoded checks which are scanned in office and uploaded electronically to the bank and approximately \$45,000.00 to \$55,000.00 in coin and currency. Deposited items should be automatically re-cleared once. The City requires the ability to use the branch to make branch deposits, to get change, to allow employees to cash payroll checks, and for other miscellaneous activities.

1. Please identify your branch locations within the City of Fort Bragg. Do all locations provide night depository services?
2. Please describe the bank's deposit requirements. How should the coin and currency deposits be prepared? How should un-encoded check deposits be prepared?
3. How would the City order cash vault supplies? How is payment made for such supplies?
4. Please describe in detail the bank's procedures for handling deposit adjustments. What documentation on discrepancies does the bank provide?
5. Is the deposit adjustment documentation different from cash deposits and check deposits? What is the minimum adjustment amount? How soon would support documentation of a deposit discrepancy be provided to the City?
6. Please describe the bank's returned item handling and notification procedures. Is an automatic re-clear option available? How long does it take for returned items to be sent to the City? Include any online tools available for this purpose.
7. What are the cut-off times for deposits at the bank's local branch and at the bank's Processing Center to ensure same day credit? Where is the Processing Center/Cash Vault located? Will the City deal directly with the Cash Vault on deposit adjustments or with a local representative?
8. Does the bank have the capability to accept "smart safe" electronic cash deposits?

**Tab H – Utility Billing Services:** The City currently requires utility bill and insert print and mail service as well as lockbox and electronic lockbox utility bill payment processing. Utility bills printed and mailed average 2,600 per month. Lockbox transactions processed average 650 per month. Electronic lockbox transactions processed average 200 per month.

1. Does the bank have the capability to provide utility bill print and mail service? If so, please describe the service and any costs associated.
2. Does the bank have the capability to provide lockbox and electronic lockbox payment processing service? If so, please describe the service and any costs associated.

**Tab I – Wire Transfers:** The City currently transacts wire transfers online, initiating approximately five (5) wires and book transfers a month and receiving approximately two (2) incoming wires per month.

1. Please describe the bank's online wire transfer capabilities. What is the deadline for initiating wire transfers?

2. What safeguards and security measures does the bank have in place to protect the City?

**Tab J – Automated Clearing House (ACH) Service Requirements**

**ACH Direct Deposit of Payroll:** The City utilizes direct deposit services for bi-weekly payroll for the City. Approximately 95% of the City's 61 employees take advantage of the direct deposit service. Please address the following:

1. Describe the bank's direct deposit services, including the software requirements and transmission options available.
2. Discuss screening measures that the bank uses to minimize errors on files sent to the bank. Describe the process and timing available for file/error correction.
3. Indicate the transmission deadlines for direct deposit ACH files, including date and time when the bank needs the file from the City and when the funds are debited from the City's account.
4. Discuss any employee benefit programs for City employees and indicate if the bank would be able to participate in City-hosted employee benefits presentations.
5. Is there direct support for file testing?

**ACH Vendor Payments:** The City would like to make payments electronically. Describe the program used by the bank to facilitate these payments. The City currently uses Springbrook v7 for its financial software.

**ACH Auto Debit:** The bank must have the capability to accommodate an online bill collection services.

**Tab K – Payroll Tax Processing:** Please describe the bank's payroll tax withholding services and its related costs. The City requires the ability to report and pay state and federal tax withholdings automatically online or by telephone.

**Tab L – State Activity/LAIF Transfers:** The City transacts State of California Local Agency Investment Fund (LAIF) transfers on a regular basis and receives State electronic payments.

1. Please describe the LAIF transfer process. Are the transfers done by telephone, email, fax, wire transfer, etc.? How is the accuracy of transfers assured?
2. What is the charge per transfer to LAIF? From LAIF?
3. Does the bank have an office in Sacramento that maintains a direct DDA banking relationship with the State Treasurer's office and the State Controller's office?
4. Is the bank an approved State of California depository?
5. What is the charge for the deposit of State electronic payments? State warrants?
6. What is the bank's position on past issuance of IOUs by the State of CA? Does the bank accept IOUs for deposit?

**Tab M – Online Bank Processes and Information Reporting:** The City currently utilizes a web-based online system to perform a variety of processes, such as placing stop payments and accessing online balance reporting information for all accounts.

1. Please describe the bank's online banking and information reporting system(s) including a list of all services provided.
2. What are the current computer hardware and software specifications for most effectively utilizing the bank's online system?
3. At what time (Pacific Standard Time) is prior day information available?

4. Is the per item fee for prior day reporting based on the number of items reported or accessed?
5. Can the reports be customized? Exported to Excel?
6. What types of security measures are in place? How is the assignment of user IDs and passwords managed?
7. What is the bank's contingency plan for providing this information in the event of an unexpected bank system problem or natural disaster?
8. Does the bank offer electronic delivery of statements, reports, and notices?

**Tab N – Account Reconciliation:** The City currently issues approximately 400 Accounts Payable and Payroll checks monthly and utilizes Full Account Reconciliation with Positive Pay services for its disbursement accounts.

1. Does the bank offer Full Account Reconciliation Services with Positive Pay? If so, please describe the service including accepted methods for receiving the Positive Pay data and the format specifications for that data.
2. Does the bank offer Teller Positive Pay and Payee Positive Pay?
3. How are the exception items under the Positive Pay reported to the City? What is the procedure and timeline for paying or returning exception items?
4. How are manual checks issued by the City sent to the bank for inclusion in Positive Pay?
5. Does the bank provide online check imaging for exception items?
6. Describe the bank's check truncation service. Is online check imaging available for paid items? Deposit slips? Bank correction advices?
7. Does the bank offer a CD-ROM imaging service? If so, please describe the service and associated costs.
8. Describe the bank's online stop payment, void, and cancellation services and features. How long is a stop payment effective via any method available?
9. Describe how long online images are available for display and what type of images are available.

**Tab O – Daylight Overdraft Protection:** The City currently requires daylight overdraft protection.

1. Describe any issues, concerns, and charges associated with the use of daylight overdraft facility.
2. Will the bank guarantee payment of all the items even if it results in the account being overdrawn temporarily for the day?

**Tab P – Merchant Bankcard:** The City currently accepts Visa and MasterCard credit card payments only online and only for utility bill payments through Springbrook. The City will consider implementing a credit card terminal at the Finance department counter.

1. Please describe the bank's Merchant Bankcard and Point-of-Sale processing capabilities.
2. Please describe your reporting methodology and how adjustments and charge backs and other debit adjustments are netted from daily proceeds or debited from daily proceeds or debited separately. Is the discount fee refunded when a charge back or refund occurs? What is the rebuttal process?
3. When and how would the City receive funds for each day's transactions? Is the settlement by ACH or Fed wire? Are settlement amounts listed separately on the bank statement or do they appear in one lump sum? Does the bank break out settlement amounts by merchant location?

4. What is the cutoff time for card transactions?
5. Can the bank supply the City with terminals if needed? Does the bank have a preferred credit card third party vendor for daily settlements?
6. Is the bankcard relationship managed by a separate unit of the bank, or by the Account Relationship Manager? Please briefly describe the structure of this area.
7. When and how are the discount rate fees charged to the City? Can this fee be paid through analysis? Is tiered pricing available?
8. Is reporting information available online? What is the fee associated with this service? Is a "corporate level" view available to see all the merchant accounts?
9. What network is used for front-end and back-end operations?
10. Please explain your rate increase policies. Can the rates be fixed for any period of time during the City's contract?
11. What payment gateway platforms are accepted or provided?
12. The following pertains to the associated discount rate and other applicable charges. Please provide the following:
  - a. Visa Authorization Fee
  - b. MasterCard Authorization Fee
  - c. Monthly Service Fee
  - d. Monthly Statement Fee
  - e. Please list any and all other applicable fees that the City would be charged.
  - f. List any other credit cards accepted (Discover, American Express, etc.) and provide information answering the questions in this section for such other services.

**Tab Q – Purchasing/Credit Card:** The City currently has a credit card program in place for employees to make various types of purchases and incur expenses for City-related business.

1. Does the bank offer a purchasing or credit card service? If so, please describe the services.
2. Please detail all of the fees associated with the service and/or any rebate/rewards available with the program.
3. How often are the statements and reports remitted to the City? Is the reporting available on line?
4. Is there an interface available to download cardholder purchase information, either in an Excel format or directly to the City's accounting system?
5. Do you provide an online application to review/approve procurement card transactions and to manage other aspects of the program?
6. Identify how fraud protection is identified, prevented, and monitored.
7. Describe if credit cards can be managed online, including requesting additional cards, editing purchasing limits, editing availability of vendors for each card, making online payments, and any other online services available for the management of credit cards.

**Tab R – City Disaster Preparedness Program:** Please describe any processes in place to assist the City in the event of a natural disaster.

**Tab S – Implementation Plan:** As part of any conversion, the City requires an efficient transition to the new bank or to enhanced services with its existing bank.

1. Please describe the overall plan the bank would coordinate to ensure such a conversion.
2. Please detail all costs and the responsible party (bank or City) associated with the conversion of all new services.

3. What size conversion allowance will the bank provide to the City? Please state a specific dollar amount or identify those supplies, products, or services included.
4. Will the bank provide on-site training for City personnel for all the services selected? How is the training typically structured?
5. The target implementation date is February 1, 2020.

**Tab T – Service Enhancements:** Based on the information provided in the RFP and your firm's knowledge of the public sector, please describe any services or technological enhancements not previously mentioned that should be considered for further improving effectiveness of the City's treasury management operations.

**Tab U – Social Responsibility/ Involvement in our local community:** Discuss involvement in the local and/or regional community and demonstrate how the proposed partnership will improve the livability of the community for its residents and visitors alike. Include a copy of your most recent Community Reinvestment Act (CRA) rating, along with a description of the scale and nature of your investments in the Fort Bragg and/or surrounding community.

**Exhibits for Banking Services Submittals:**

**Tab V – Sample Banking Services Bid Form:** Complete the Bid Form (pages 17-20) with pricing information.

**Tab W – Sample Account Analysis Statement and Users Guide**

**Tab X – Relevant Cash Management Agreements**

**Tab Y – Financial Statements and Ratings:** Provide the most recent audited financial statements or annual report for the bank (a reference to electronic availability will suffice). Also include the bank's most current Standard and Poor's, Moody's, and/or Fitch credit ratings, where available. A current IDC rating should also be provided.



**SECTION VII  
SAMPLE BID FORM**

**Tab V – Banking Services Bid Form:** This is a sample bid form. Please complete all items on this attachment. If the bank does not or cannot provide the specific requested service, please indicate “no proposal” and if appropriate, recommend an alternative service and include as a specified attachment. Per unit cost x Estimated Monthly Unit Volume = Total Monthly Cost x 12 = Estimated Total Annual Cost. Where fees vary for this formula, please indicate and provide an estimate of the total annual cost. Volumes indicated represent average monthly activity. If the bank opts not to use this sample form the bid should at a minimum include the proposed suite of products and estimated annual cost.

**Bank Name:** \_\_\_\_\_

Item	Per Unit Cost	Estimated Monthly Unit Volume	Total Monthly Cost	Estimated Total Annual Cost
<b>Balance &amp; Compensation Information Services</b>				
<b>General Account Services</b>				
<b>Lockbox and Elec. Lockbox Services</b>				
<b>Paper Disbursement Services</b>				

### Banking Services Bid Form

Bank Name: \_\_\_\_\_

Item	Per Unit Cost	Estimated Monthly Unit Volume	Total Monthly Cost	Estimated Total Annual Cost
<b>Paper Disbursement Services (Cont.)</b>				
<b>Paper Disbursement Recon Services</b>				
<b>Utility Bill Print and Mail Services</b>				
<b>Paper Disbursement Recon Services</b>				
<b>General ACH Services</b>				

### Banking Services Bid Form

Bank Name: \_\_\_\_\_

Item	Per Unit Cost	Estimated Monthly Unit Volume	Total Monthly Cost	Estimated Total Annual Cost
<b>General ACH Services (Cont.)</b>				
<b>Utility Bill Print and Mail Services</b>				
<b>Wire &amp; Other Funds Transfer Services</b>				

## Banking Service Bid Form

Bank Name: \_\_\_\_\_

Item	Per Unit Cost	Estimated Monthly Unit Volume	Total Monthly Cost	Estimated Total Annual Cost
<b>Wire &amp; Other Funds Trans Services (Cont.)</b>				
<b>Online Information Services</b>				
<b>Service Enhancements/Other</b>				
<b>Totals – Monthly and Annual Fees</b>				

**Other Information**

Earnings Credit Rate for June2019	
Uncollected Funds Rate (%)	
Overdraft Rate (%)	
Fixed Pricing Guarantee (# of Years)	

**Bank Information**

Name of Contact Bank Officer	
Signature of Authorized Bank Officer	
Bank Officer's Telephone Number	
Bank Officer's Email Address	

# PROFESSIONAL SERVICES AGREEMENT

## AGREEMENT

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the City of Fort Bragg, a California Municipal Corporation, 416 N. Franklin Street, Fort Bragg, California, 95437 ("City"), and name, /address, a \_\_\_\_\_ ("Consultant").

## RECITALS

**WHEREAS**, City has determined that it requires the following professional services from a consultant: to \_\_\_\_\_ ;  
and

**WHEREAS**, Consultant represents and warrants that it is fully qualified to perform such professional services by virtue of specialized experience and training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement; and

**WHEREAS**, the legislative body of the City on \_\_\_\_\_, 2019, by Resolution No. \_\_\_\_\_ - 2019 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**, City and Consultant, for the consideration hereinafter described, mutually agree as follows:

### 1. CONTRACT DOCUMENTS

This Agreement consists of the following documents, all of which are incorporated into and made a part of the Agreement:

- a. Professional Services Agreement;
- b. Consultant's Proposal (Exhibit 1)

### 2. DESCRIPTION OF SERVICES OR SCOPE OF WORK

The services to be performed under this Agreement ("Services") are as follows:  
\_\_\_\_\_.

The Services are further described in Consultant's proposal (the "Proposal"), which is attached to and made a part of this Agreement as Exhibit 1. Changes in the scope, character, or complexity of the Services, if such changes become desirable or necessary as the work progresses, shall be agreed upon by both parties in a written change order. For special cases where it is essential that the extra work be performed

immediately, execution of a change order or amendment to the Agreement covering the changes shall be completed as soon as possible.

### 3. TERM

The Agreement term will commence on [REDACTED], and expire on [REDACTED], unless the Agreement term is amended or the Agreement is terminated in accordance with its terms.

### 4. PAYMENT TERMS

a. City agrees to pay Consultant for Services that are actually performed in accordance with this Agreement. To be eligible for payment, Consultant invoices must be submitted not more often than monthly to the City and list the Services performed and the amounts to be paid according to the cost categories and prices in the Proposal.

b. NOT TO EXCEED CONTRACT: In no event will the City's obligation to pay the Consultant under this Agreement exceed \$ [REDACTED] (the "Not to Exceed Amount"), unless this Agreement is first modified in accordance with its terms. The Not to Exceed Amount includes salary, fringe benefits, overhead, profit, and all other expenses incurred by the Consultant in completing its Services under this Agreement.

c. TIME AND MATERIALS CONTRACT: Where the Proposal provides for compensation on a time and materials basis, Consultant must maintain adequate records to permit inspection and audit of Consultant's time and material charges under this Agreement. Consultant will make such records available to the City during normal business hours upon reasonable notice. The Consultant shall be paid \$ \_\_\_\_\_/hr, or where multiple rates involved, according to the rates set forth in the Consultant's proposal. Additionally the Consultant shall be compensated for materials necessary to provide the Services provided for herein, anticipated materials which should be identified in the Consultant's proposal.

d. In accordance with California Government Code § 8546.7, if this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), this Agreement and the Consultant's books and records related to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of four (4) years after final payment under the Agreement.

e. COST PRINCIPLES. The Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., are the governing factors regarding allowable elements of cost. Also the administrative requirements set forth in 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments are also included in this Agreement. This also applies to all subcontracts in excess of \$25,000.

## 5. TIME OF COMPLETION

Consultant must commence performance of the Services upon receipt of written direction to proceed from City. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 9 below and to satisfy Consultant's obligations hereunder. Consultant will complete the Services in accordance with this Agreement by                     ,20 (the "Time of Completion"). 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.

## 6. INDEPENDENT CONTRACTOR

Consultant and City agree that the Consultant will perform the Services as an independent contractor and not as an employee or agent of the City. Persons employed or utilized by Consultant in the performance of the Services will not be employees or agents of the City. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

## 7. SUBCONTRACTING

a. The Consultant shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this Agreement shall be subcontracted out without written authorization by the City's Contract Manager, except that, which is expressly identified in the approved Cost Proposal.

b. Any subcontract in excess of \$25,000 entered into by the Consultant relating to this Agreement shall incorporate by reference all of the provisions of this Agreement and make them applicable to said subcontractor.

c. Consultant will be solely responsible for payment of such subcontracted Services.

d. Any substitution of subcontractors must be approved in writing by the City's Contract Manager.

e. Subcontractors are bound to Consultant and City in the same manner and to the same extent as Consultant is bound to City under the Agreement. Subcontractor further must agree to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

f. If the Consultant uses subcontractors, it must comply with Civil Code § 8814 and all other California law relating to the prompt payment of subcontractors.

## 8. RECORD RETENTION

For the purpose of determining compliance with Public Contracts Code §§ 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, §§ 2500 *et seq.*, when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code § 8546.7, the Consultant, subcontractors, and the City shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement. The State, the State Auditor, City, Federal Highway Administration (“FHWA”), or any duly authorized representative of the federal government shall have access to any books, records, and documents of the Consultant and its subcontractors that are pertinent to the Agreement for audit, examination, excerpts, and transactions, and copies thereof shall be furnished if requested.

## 9. STANDARD OF PERFORMANCE

a. Consultant will perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession and will prepare all work products required by this Agreement in accordance with such standards. Consultant will comply with federal, state, and local laws and regulations applicable to performance of the Services, including, but not limited to, the California Building Standards Code as in effect in the City, the Americans with Disabilities Act, any air pollution control laws and regulations applicable to Consultant, and any laws and regulations related to any copyright, patent, trademark, or other intellectual property right involved in performance of the services. Consultant’s failure to comply with any law(s) or regulation(s) applicable to the performance of the services hereunder shall constitute a material breach of this agreement.

b. The Consultant should not substitute key personnel (Project Manager and others listed by name in the cost proposal) or subcontractors without prior written approval from the City. The Consultant must request and justify the need for the substitution and obtain approval from the City prior to use of a different subcontractor on the Agreement. The proposed substituted person or subcontractor must be as qualified as the original, and at the same or lower cost.

c. If this Agreement includes engineering services, the Consultant’s Project Manager must be a registered Engineer in the State of California.

d. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons,



Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

#### 10. OTHER GOVERNMENTAL REGULATIONS

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.

#### 11. USE OF RECYCLED PRODUCTS

Consultant shall endeavor to prepare and submit all reports, written studies, and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

#### 12. INDEMNITY

To the maximum extent permitted by law, Consultant shall, at its own expense, indemnify, defend with counsel acceptable to the City (which acceptance will not be unreasonably withheld), and hold harmless City and its officers, officials, employees, agents, and volunteers ("Indemnitees") from and against any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorneys' fees and costs and litigation costs) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of or in connection with the Services, or Consultant's failure to comply with any of the terms of this Agreement, regardless of any fault or alleged fault of the Indemnitees but excepting the sole negligence or willful misconduct of the Indemnitees.

The Consultant's obligation to indemnify, defend, and hold harmless under this provision shall not be excused because of the Consultant's inability to evaluate Liability, or because the Consultant evaluates Liability and determines that the Consultant is not or may not be liable. The Consultant must respond within 30 calendar days to any tender for defense and indemnity by the City, unless the time for responding is extended by an authorized representative of the City in writing. If the Consultant fails to accept tender of defense and indemnity within 30 calendar days, in addition to any other remedies authorized by law, so much of the money due or that may become due the Consultant under this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the matter subject to tender, or until the Consultant accepts the tender, whichever occurs first.

The Consultant waives any and all rights to express or implied indemnity against the Indemnitees concerning any Liability of the Consultant arising out of or in connection with the Services or Consultant's failure to comply with any of the terms of this Agreement.

Notwithstanding the foregoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code § 2783, as may be amended from time to time, Consultant's duty to indemnify under this provision shall not apply when to do so would be prohibited by California Civil Code § 2782, as may be amended from time to time.

Notwithstanding the foregoing, to the extent that the Services include design professional services subject to Cal. Civil Code § 2782.8, as amended from time to time, Consultant's duty to indemnify shall only be to the maximum extent permitted by Civil Code § 2782.8.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement 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 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.

The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this agreement.

Consultant/subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

### 13. INSURANCE

a. Before commencing performance of the Services, Consultant, at its own cost and expense, must: (1) procure "occurrence coverage" insurance of the kinds and in the amounts specified below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services hereunder by the Consultant or its agents, representatives, employees, or subcontractors; and (2) submit to the City certificates of insurance and endorsements evidencing insurance coverage that meets the requirements of this section. Consultant must maintain the insurance policies required by this section throughout the Agreement term. The cost of such insurance must be included in the Consultant's proposal.

Consultant agrees to include with all subcontractors in their subcontract the same requirements and provisions of this Agreement including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. The Consultant shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in this Agreement prior to commencement of any work and Consultant will provide proof of compliance to the City.

Consultant may not allow any subcontractor to commence work on the Services until Consultant and/or the subcontractor have obtained all insurance required by this Agreement for the subcontractor(s) and submitted certificates of insurance and endorsements evidencing such coverage to City.

b. Workers Compensation Insurance. Consultant must, at its sole cost and expense, maintain Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. Workers' Compensation Insurance as required by the State of California, with coverage providing Statutory Limits, and Employer's Liability Insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence must be provided. The insurance must be endorsed to waive all rights of subrogation against City and its officials, officers, employees, and volunteers for loss arising from or related to the Services.

c. For the Term of this Agreement, Consultant, at its own cost and expense, must maintain: (1) commercial general liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, TWO MILLION DOLLARS (\$2,000,000.00) aggregate, combined single limit coverage for risks associated with Services; and (2) automobile liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit coverage. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Services or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include, but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

d. Except for Workers' Compensation insurance and Professional Liability insurance, all other insurance coverages required pursuant to this Agreement must include or be endorsed to include the following:

(1) City and its officials, officers, employees, agents, and volunteers ("Additional Insured") shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by Consultant. The coverage may contain no special limitations on the scope of protection afforded to City or its officials, officers, employees, agents, or volunteers.

(2) The Additional Insured coverage under the Consultant's policy shall be "primary and non-contributory" and Consultant's coverage will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

e. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.

f. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

g. Insurance coverage required pursuant to this Agreement must include or be endorsed to include the following:

(1) Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

(2) Required insurance coverage may not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

h. Consultant, at its own cost and expense, must maintain for the period covered by this Agreement professional liability insurance in an amount not less than TWO MILLION DOLLARS (\$2,000,000) covering errors and omissions. Any deductible or self-insured retention under the required professional liability insurance may not exceed \$150,000 per claim.

i. All insurance required under this Agreement must be placed with insurers with a Best's rating of no less than A:VII unless otherwise approved by the City.

j. The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.

k. All self-insured retentions (SIR) must be disclosed to City for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or by the City. City reserves the right to obtain a full certified copy of

any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

I. To the extent this Agreement is a "construction contract" as defined by California Civil Code § 2783, as may be amended from time to time, Consultant shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following completion of the Services. In the event Consultant fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Consultant.

#### 14. NON DISCRIMINATION

During the performance of this Agreement, Consultant will not discriminate against any employee of the Consultant or applicant for employment because of race, religion, creed, color, national origin, gender, sexual orientation, or age. Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, creed, color, national origin, gender, sexual orientation, or age.

#### 15. FAIR EMPLOYMENT PRACTICES AND NON-DISCRIMINATION ASSURANCES

The Consultant shall not discriminate on the basis of race, color, national origin, gender, sexual orientation or age in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement, or such other remedy as recipient deems appropriate. [Delete if not DOT contract.]

#### 16. DISADVANTAGED BUSINESS ENTERPRISE CONSIDERATION

Consultants must give consideration to DBE firms as specified in 23 CFR §172.5(b), 49 CFR, Part 26, and in Exhibit 10-I "Notice to Proposers Disadvantaged Business Enterprise Information." If the contract has a DBE goal, the consultant must meet the DBE goal by using DBEs as subconsultants or document a good faith effort to have met the goal. If a DBE subconsultant is unable to perform, the consultant must make a good faith effort to replace him/her with another DBE subconsultant if the goal is not otherwise met. LAPM Exhibits 10-I, 10-J, 10-O1, 10-O2, 15-H and 17-F are to be included in the consultant contract. [Delete if not Caltrans contract.]

#### 17. LICENSES & PERMITS

##### a. BUSINESS LICENSE

Before the City will issue a notice to proceed with the Services, Consultant and any subcontractors must acquire, at their expense, a business license from City in accordance with Chapter 5.04 of the Fort Bragg Municipal Code. Such licenses must be kept valid throughout the Agreement term.

b. OTHER LICENSES AND PERMITS

Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.

18. CONSULTANT REPORTS AND/OR MEETINGS

a. The Consultant shall submit progress reports at least once a month. The report should be sufficiently detailed for the Contract Manager to determine, if the Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.

b. The Consultant's Project Manager shall meet with the City's Contract Manager, as needed, to discuss progress on the contract.

19. DOCUMENTATION, OWNERSHIP OF WORK PRODUCTS, AND TREATMENT OF DOCUMENTS

a. Consultant shall document the results of the work to the satisfaction of the City, and if applicable, the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the agreement objectives.

b. The Consultant shall sign all plans, specifications, estimates, and engineering data furnished by him/her, and where appropriate, indicate his/her California registration number.

c. All plans, specifications, reports, designs and other documents prepared by Consultant pursuant to this Agreement shall be and remain the property of the City. Any modification or reuse of such documents by the City without Consultant's prior consultation will be at the City's sole risk. Except as may be otherwise required by law, Consultant will disclose no data, plans, specifications, reports or other documents pertaining to the Services without the prior written consent of City.

20. DISPUTES

a. Any dispute, other than an audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by a

committee consisting of the City's Contract Manager and the City Manager, who may consider written or verbal information submitted by the Consultant.

b. Not later than thirty (30) days after completion of all work under the Agreement, the Consultant may request review by the City Council of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

c. Neither the pendency of a dispute, nor its consideration by the committee will excuse the Consultant from full and timely performance in accordance with the terms of this Agreement.

d. Should a dispute not be resolved by the procedures set forth above, then the parties must mediate the dispute before a mutually agreed upon neutral party within ninety (90) days of the completion of all Services under the Agreement. If mediation is not successful, the Consultant and City may pursue all rights and remedies available under California law.

## 21. TERMINATION AND REMEDIES

a. City or Consultant may terminate this Agreement for convenience by giving at least 30 days written notice to the other party specifying the termination effective date. Upon receipt of such notice from City, Consultant may continue performance of the Services through the date of termination. City shall pay Consultant for all Services actually performed in accordance with this Agreement through the termination effective date.

b. If Consultant materially breaches any term of this Agreement, in addition to any other remedies the City may have at law or equity, the City may:

(1) Terminate the Agreement by notice to the Consultant specifying the termination effective date;

(2) Retain, and/or recover from the Consultant at no additional cost to the City, the plans, specification, drawings, reports, and other design documents and work products prepared by Consultant, whether or not completed;

(3) Complete the unfinished Services itself or have the unfinished Services completed, and/or;

(4) Charge Consultant, or deduct from monies that may be due or become due the Consultant under this Agreement, the difference between the cost of completing the unfinished Services pursuant to this Agreement and the amount that would otherwise be due Consultant had Consultant completed the Services in accordance with this Agreement.

## 22. BINDING EFFECT AND ASSIGNMENT PROHIBITION

This Agreement is binding upon City, Consultant, and their successors. Except as otherwise provided herein, neither City nor Consultant may assign, sublet, or transfer their interest in this Agreement or any part thereof without the prior written consent of the other, and any purported assignment without such consent will be void.

### 23. REPRESENTATIVES

a. City Contract Manager for purposes of this Agreement will be [REDACTED]. Consultant's representative for purposes of this Agreement will be [REDACTED]. The parties' designated representatives will be the primary contact persons regarding the performance of the Services. The parties intend that their designated representatives will cooperate in all matters regarding this Agreement and in such manner so as to achieve performance of the Services in a timely and expeditious fashion.

b. Notices:

Any written notice to Consultant shall be sent to:

[CONSULTANT'S NAME, ADDRESS]

Any written notice to City shall be sent to:

[NAME]  
City of Fort Bragg  
416 N. Franklin Street  
Fort Bragg, CA 95437

### 24. INTEGRATION AND AMENDMENT

This Agreement represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements between the parties, whether written or oral. If a discrepancy, disagreement, ambiguity, inconsistency, or difference in interpretation of terms arises as to terms or provisions of this Agreement and any Exhibit(s) attached to this Agreement, this Agreement shall control and shall be deemed to reflect the intent of the parties with respect to the subject matter hereof. This Agreement may only be amended by a writing signed by a representative authorized to bind the Consultant and a representative authorized to bind the City.

### 25. COVENANT AGAINST CONTINGENT FEES, REBATES, KICKBACKS, OR OTHER UNLAWFUL CONSIDERATION

a. The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the consultant, to solicit or secure this agreement; and that it has not paid or agreed to pay any company



or person other than a bona fide employee any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this agreement. For breach or violation of this covenant, the City shall have the right to annul this agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

b. The Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration, either promised or paid to any City employee. For breach or violation of this warranty, City shall have the right in its discretion, to terminate the Agreement without liability, to pay only for the value of the work actually performed, or to deduct from the Agreement price, or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

c. The Consultant warrants and represents that it has not participated in any lobbying activities.

## 26. CONFLICT OF INTEREST PROHIBITION

City and Consultant will comply with the requirements of the City's Conflict of Interest Code adopted pursuant to California Government Code § 87300 *et seq.*, the Political Reform Act (California Government Code § 81000 *et seq.*), the regulations promulgated by the Fair Political Practices Commission (Title 2, § 18110 *et seq.* of the California Code of Regulations), California Government Code § 1090 *et seq.*, and any other ethics laws applicable to the performance of the Services and/or this Agreement. Consultant may be required to file with the City Clerk a completed Form 700 before commencing performance of the Services unless the City Clerk determines that completion of a Form 700 is not required, pursuant to City's Conflict of Interest Code. Form 700 forms are available from the City Clerk.

Consultant may not perform Services for any other person or entity that, pursuant to any applicable law or regulation, would result in a conflict of interest or would otherwise be prohibited with respect to Consultant's obligations pursuant to this Agreement. Consultant agrees to cooperate fully with City and to provide any necessary and appropriate information requested by City or any authorized representative concerning potential conflicts of interest or prohibitions concerning Consultant's obligations pursuant to this Agreement.

Consultant may not employ any City official, officer, or employee in the performance of the Services, nor may any official, officer, or employee of City have any financial interest in this Agreement that would violate California Government Code § 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of City. If Consultant was an employee, agent, appointee, or official of City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code

§ 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Consultant's performance of the Services, including reimbursement of expenses, and Consultant will be required to reimburse City for any sums paid to Consultant under this Agreement. Consultant understands that, in addition to the foregoing, penalties for violating Government Code § 1090 *et seq.* may include criminal prosecution and disqualification from holding public office in the State of California.

Any violation by Consultant of the requirements of this provision will constitute a material breach of this Agreement, and the City reserves all its rights and remedies at law and equity concerning any such violations.

**27. APPLICABLE LAW AND VENUE**

The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and the interpretation of this Agreement. Any action or proceeding that is initiated or undertaken to enforce or interpret any provision, performance, obligation or covenant set forth in this Agreement shall be brought in a state court in Mendocino County.

**28. SEVERABILITY**

If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged will remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

**29. COUNTERPARTS**

This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the parties have caused their authorized representative to execute this Agreement on the date first written above.

CITY

CONSULTANT

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

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

Tabatha Miller

Its: City Manager

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

[Attach Notary Acknowledgment Page]

ATTEST:

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

June Lemos, CMC  
City Clerk

APPROVED AS TO FORM:

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

Exhibit 1: Consultant's Proposal