



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Meeting Agenda City Council

**THE FORT BRAGG CITY COUNCIL MEETS CONCURRENTLY  
AS THE FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT  
NO. 1 AND THE FORT BRAGG REDEVELOPMENT SUCCESSOR  
AGENCY**

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Monday, January 27, 2025

6:00 PM

Town Hall, 363 N. Main Street and Via Video  
Conference

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### CALL TO ORDER

### PLEDGE OF ALLEGIANCE

### ROLL CALL

### COUNCILMEMBERS PLEASE TAKE NOTICE

*Councilmembers are reminded that pursuant to the Council policy regarding use of electronic devices during public meetings adopted on November 28, 2022, all cell phones are to be turned off and there shall be no electronic communications during the meeting. All e-communications such as texts or emails from members of the public received during a meeting are to be forwarded to the City Clerk after the meeting is adjourned.*

### ZOOM WEBINAR INVITATION

*This meeting is being presented in a hybrid format, both in person at Town Hall and via Zoom.*

*You are invited to a Zoom webinar!*

*When: Jan 27, 2025 06:00 PM Pacific Time (US and Canada)*

*Topic: CITY COUNCIL*

*Join from PC, Mac, iPad, or Android:*

*<https://us06web.zoom.us/j/84822285652>*

*Join via audio:*

*+1 669 444 9171 US (\*6 mute/ unmute, \*9 raise hand)*

*Webinar ID: 848 2228 5652*

*International numbers available: <https://us06web.zoom.us/u/kbFQ5wI4p>*

*To speak during public comment portions of the agenda via zoom, please join the meeting and use the raise hand feature when the Mayor or Acting Mayor calls for public comment on the item you wish to address.*

### CLOSED SESSION REPORT

### AGENDA REVIEW

### 1. MAYOR'S RECOGNITIONS AND ANNOUNCEMENTS

## **2. PUBLIC COMMENTS ON: (1) NON-AGENDA, (2) CONSENT CALENDAR & (3) CLOSED SESSION ITEMS**

*MANNER OF ADDRESSING THE CITY COUNCIL: All remarks and questions shall be addressed to the City Council; no discussion or action will be taken pursuant to the Brown Act. No person shall speak without being recognized by the Mayor or Acting Mayor. Public comments are restricted to three (3) minutes per speaker.*

*TIME ALLOTMENT FOR PUBLIC COMMENT ON NON-AGENDA ITEMS: Thirty (30) minutes shall be allotted to receiving public comments. If necessary, the Mayor or Acting Mayor may allot an additional 30 minutes to public comments after Conduct of Business to allow those who have not yet spoken to do so. Any citizen, after being recognized by the Mayor or Acting Mayor, may speak on any topic that may be a proper subject for discussion before the City Council for such period of time as the Mayor or Acting Mayor may determine is appropriate under the circumstances of the particular meeting, including number of persons wishing to speak or the complexity of a particular topic. Time limitations shall be set without regard to a speaker's point of view or the content of the speech, as long as the speaker's comments are not disruptive of the meeting.*

*BROWN ACT REQUIREMENTS: The Brown Act does not allow action or discussion on items not on the agenda (subject to narrow exceptions). This will limit the Council's response to questions and requests made during this comment period.*

*WRITTEN PUBLIC COMMENTS: Written public comments received after agenda publication are forwarded to the Councilmembers as soon as possible after receipt and are available for inspection at City Hall, 416 N. Franklin Street, Fort Bragg, during normal business hours. All comments will become a permanent part of the agenda packet on the day after the meeting or as soon thereafter as possible, except comments that are in an unrecognized file type or too large to be uploaded to the City's agenda software application. Public comments may be submitted to City Clerk June Lemos, [jlemos@fortbragg.com](mailto:jlemos@fortbragg.com).*

### **2A. [24-1143](#) Supplemental - Public Comments for January 27, 2025 Agenda**

**Attachments:** [PUBLIC COMMENT 1-27-2025](#)

## **3. STAFF COMMENTS**

## **4. MATTERS FROM COUNCILMEMBERS**

## **5. CONSENT CALENDAR**

*All items under the Consent Calendar will be acted upon in one motion unless a Councilmember requests that an individual item be taken up under Conduct of Business.*

### **5A. [24-1131](#) Adoption of City Council Resolution Recommending and Consenting to an Extension of the Term in the Operating Agreement and Lease for the Caspar Transfer Station Between Mendocino County and Redwood Waste Solutions, Inc**

**Attachments:** [RESO Revised Lease Extension](#)

### **5B. [24-1127](#) Adopt by Title Only and Waive the Second Reading of the Ordinance of the City of Fort Bragg Delegating Authority to Appoint the City Clerk to the City Manager**

**Attachments:** [Ordinance 997-2024 City Clerk](#)

- 5C. [24-1126](#) Adopt by Title Only and Waive the Second Reading of the Ordinance 998-2024 Amending Chapter 6.12 “Nuisances”, Of the Fort Bragg Municipal Code Division 6, To Establish And Authorize Code Enforcement Cost Recovery Fees
- Attachments:** [Ordinance 998-2024 Chapter 6.12](#)
- 5D. [24-1058](#) Adopt City Council Resolution Approving Contract with B.T. Mancini Company Inc. for the City Hall Flooring Update Project and Authorizing City Manager to Execute Same (Amount Not To Exceed \$92,994); Categorical Exemption 15301
- Attachments:** [RESO City Hall Flooring Update Contract](#)  
[B.T. Mancino Co., Inc. Contract](#)  
[City Flooring](#)
- 5E. [24-1024](#) Adopt Resolution Approving Budget Amendment 2024/25-06 (Amount \$26,120.07), for Emergency Repair of a Stormdrain Line on North McPherson Street and Direct City Clerk to File Notice of Completion
- Attachments:** [RESO McPherson SD Repair BA](#)  
[Exhibit A - Budget Amendment 2024-25-06](#)  
[Exhibit B - Notice of Completion](#)
- 5F. [24-1129](#) Approve Second Amendment To Professional Services Agreement With Community Development Services
- Attachments:** [CDS PSA Amend No2](#)  
[CDS PSA Exhibit A](#)
- 5G. [24-1134](#) Approve Contract with Connection for Microsoft 365 Tenant Migration from Commercial to Government Cloud Not to Exceed \$18,246
- Attachments:** [Connection Quite 403242 City of Fort Bragg, CA - Tenant Migration to GCC - I-1](#)
- 5H. [24-1130](#) Approve Lease Contract with Cisco Capital for 3-Yr Endpoint Security Software Not to Exceed \$32,120.46
- Attachments:** [Cisco Endpoint Security 3-yr license lease.pdf](#)
- 5I. [24-1125](#) Approve Resolution of the Fort Bragg City Council Authorizing City Manager to Execute Contract with Bartley Pump PM LLC for Maintenance and Emergency Repairs to One of Two Noyo River Pumps (Amount not to Exceed \$67,880.97); and Authorize Budget Amendment 2024/25-04; Categorical Exemption 15301
- Attachments:** [RESO Bartley Pump](#)  
[Budget Amendment 2024/25-04](#)  
[Bartley Pump Quote](#)

- 5J. [24-1132](#) Authorize the City Manager to Execute Amendment to the Agreement for Transfer Station Operation and Solid Waste Transportation and Disposal Between the Cities of Fort Bragg and Willits, the county of Mendocino and Redwood Waste Solutions, Inc

**Attachments:** [Att 1 - Amendment to New Transfer Station Agreement](#)

- 5K. [24-1138](#) Approve letter of Support for Restoring the California Salmon Season for 2025

**Attachments:** [DRAFT salmon letter for FB City Council 2025 \(2\)](#)

## **6. DISCLOSURE OF EX PARTE COMMUNICATIONS ON AGENDA ITEMS**

## **7. PUBLIC HEARING**

*When a Public Hearing has been underway for a period of 60 minutes, the Council must vote on whether to continue with the hearing or to continue the hearing to another meeting.*

## **8. CONDUCT OF BUSINESS**

- 8A. [24-1108](#) Presentation of 2025 Economic Development Department Initiatives

- 8B. [24-1133](#) Adopt City Council Resolution Approving a Professional Services Agreement with Economic & Planning Systems, Inc. for Fort Bragg Mill Site Master Development Agreement

**Attachments:** [RESO EPS](#)

[Phase 1 Scope/Work Program](#)

[EPS- Standard PSA](#)

[8B Public Comment](#)

- 8C. [24-1137](#) Receive Report and Provide Direction on Implementation of Entertainment Zones Relaxing Restrictions on Public Consumption of Alcohol in Certain Limited Situations Pursuant to Authority of SB 969

**Attachments:** [Staff Report- SB 969](#)

- 8D. [24-1128](#) Fentanyl Task Force - January Update

**Attachments:** [Attachment #1 - Staff Report on Fentanyl Task Force](#)

8E. [24-1121](#) Receive Report and Consider Adoption of City Council Resolution Approving Budget Amendment No. 2024/25-07 and Authorizing the City Manager to Execute a Contract with Axon Enterprises, Inc. for a Five-Year Contract for In Car Video And License Plate Reader Equipment (Amount Not To Exceed \$118,047.65, Account 167-4216-0381)

- Attachments: [RESO Axon Fleet 3](#)  
[Fleet 3 - Quote](#)  
[Fleet 3 MPA](#)  
[Budget Amendment 2024-25-07](#)  
[Staff Report-Axon Fleet 3 cameras](#)  
[Letter of support from Fort Bragg Police Officer's Association President](#)  
[Public Comment AXON](#)

**ADJOURNMENT**

*The adjournment time for all Council meetings is no later than 10:00 p.m. If the Council is still in session at 10:00 p.m., the Council may continue the meeting upon majority vote.*

**NEXT REGULAR CITY COUNCIL MEETING:  
6:00 P.M., MONDAY, FEBRUARY 10, 2025.**

STATE OF CALIFORNIA     )  
  )ss.  
COUNTY OF MENDOCINO    )

I declare, under penalty of perjury, that I am employed by the City of Fort Bragg and that I caused this agenda to be posted in the City Hall notice case on January 24, 2025

\_\_\_\_\_  
AMBER LENORE WEAVER  
Acting City Clerk

**NOTICE TO THE PUBLIC:**

**DISTRIBUTION OF ADDITIONAL INFORMATION FOLLOWING AGENDA PACKET DISTRIBUTION:**

- *Materials related to an item on this Agenda submitted to the Council/District/Agency after distribution of the agenda packet are available for public inspection upon making reasonable arrangements with the City Clerk for viewing same during normal business hours.*
- *Such documents are also available on the City of Fort Bragg's website at <https://city.fortbragg.com> subject to staff's ability to post the documents before the meeting.*

**ADA NOTICE AND HEARING IMPAIRED PROVISIONS:**

*It is the policy of the City of Fort Bragg to offer its public programs, services and meetings in a manner that is readily accessible to everyone, including those with disabilities. Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities.*

*If you need assistance to ensure your full participation, please contact the City Clerk at (707) 961-2823. Notification 48 hours in advance of any need for assistance will enable the City to make reasonable arrangements to ensure accessibility.*

*This notice is in compliance with the Americans with Disabilities Act (28 CFR, 35.102-35.104 ADA Title II).*



# City of Fort Bragg

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## Text File

**File Number: 24-1143**

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**Agenda Date:** 1/27/2025

**Version:** 1

**Status:** Consent Agenda

**In Control:** City Council

**File Type:** Committee Minutes

**Agenda Number:** 2A.

Supplemental - Public Comments for January 27, 2025 Agenda

**Weaver, Amber**

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**From:** Kathryn <kathyb0707@gmail.com>  
**Sent:** Tuesday, January 14, 2025 8:52 AM  
**To:** City Clerk  
**Subject:** Public Comment

I live in the Sacramento Valley but visit Fort Bragg at least twice a month just to get away and I enjoy reading the Mendocino Voice. I came across an article regarding something one of the city council members said about the new vice mayor and was appalled by her questioning the vice mayor's ability to read, write, and understand, i can't get over someone saying such horrible things in a public setting this person should remove themselves or be recalled, Fort Bragg should not be known for hate.

Thank you  
Kathryn Bina





# City of Fort Bragg

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## Text File

File Number: 24-1131

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**Agenda Date:** 1/27/2025

**Version:** 1

**Status:** Consent Agenda

**In Control:** City Council

**File Type:** Consent Calendar

**Agenda Number:** 5A.

Adoption of City Council Resolution Recommending and Consenting to an Extension of the Term in the Operating Agreement and Lease for the Caspar Transfer Station Between Mendocino County and Redwood Waste Solutions, Inc

The term of the Operating Agreement and lease for the Caspar Transfer Station was recently amended to December 31, 2029. After further discussion with county staff, it was determined that it was in the best interest of all parties to extend all solid waste contracts so that they align with the 2032 expiration date of the franchise agreement. We believe that being able to bid all contracts together will result in a more favorable bidding process and outcome. In order to do that, the county needs a resolution from the City stating concurrence on extending the Caspar Agreement to June 30, 2032

**RESOLUTION NO. 4889-2025**

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL RECOMMENDING  
AND CONSENTING TO THE MENDOCINO COUNTY BOARD OF  
SUPERVISORS EXTENDING THE TERM OF THE CASPAR TRANSFER  
STATION OPERATIONS AGREEMENT AND LEASE BETWEEN THE  
COUNTY OF MENDOCINO AND REDWOOD WASTE SOLUTIONS, INC.,  
FROM DECEMBER 31, 2029 TO JUNE 30, 2032**

**WHEREAS**, the County of Mendocino (County) and the City of Fort Bragg (City) entered into a Joint Powers Agreement (Agreement) on January 25, 2011 to revise and update the obligations and responsibilities concerning the Caspar Landfill and Solid Waste Transfer Station; and

**WHEREAS**, the Agreement authorized the County to execute an Operating Agreement with Solid Waste of Willits, Inc. to operate the Caspar Transfer Station; and

**WHEREAS**, the County and Solid Wastes of Willits, Inc. entered into Mendocino County Agreement Number (No.) 11-008, Caspar Transfer Station Operations Agreement and Lease, on January 25, 2011, with an expiration date of June 30, 2017, later amended to be June 30, 2021 and amended again to June 30, 2025; and

**WHEREAS**, on December 19, 2023, the County approved Agreement No. 23-214 / DOT Agreement No. 230040, Assignment and Assumption Agreement Among Solid Wastes of Willits, Inc., Redwood Waste Solutions, Inc., and County of Mendocino, which, among other things, assigned the Caspar Transfer Station Operations Agreement and Lease to Redwood Waste Solutions, Inc. (RWS); and

**WHEREAS**, Mendocino County Agreement No. 11-008 provides that the County shall, at the County's discretion acting with concurrence of City of Fort Bragg, have the option to extend the Agreement on one or more occasions; and

**WHEREAS**, As required, on November 25, 2024, the Fort Bragg City Council passed Resolution No. 4876-2024, which recommended and concurred that the County execute an amendment to extend the term of BOS Agreement No. 11-008 until December 31, 2029; and

**WHEREAS**, RWS performs solid waste collection services in Franchise Areas No. 1, 2, 3, and 4 and operates all solid waste transfer station located within the county; and

**WHEREAS**, currently, the expiration dates of the franchise agreement for the solid waste collection services and transfer station operation do not align; and

**WHEREAS**, it is the desire of the City and the County to extend the expiration dates of all the agreements to align with the furthest date of June 30, 2032, to allow for a streamlined bidding process and likely provide for more competitive bids in the future; and

**WHEREAS**, RWS is willing to continue providing all services under the agreements until that time; and

**WHEREAS**, this Amendment to BOS Agreement No. 11-008 extends the expiration date of the Agreement from December 31, 2029, to June 30, 2032.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of Fort Bragg does hereby recommend and concur that the Mendocino County Board of Supervisors exercise the County’s option to extend the term of the Caspar Transfer Station Operations Agreement and Lease with Redwood Waste Solutions, Inc. until June 30, 2032.

The above and foregoing Resolution was introduced by Councilmember Albin-Smith, seconded by Councilmember Rafanan, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 27<sup>th</sup> day of January 2025, by the following vote:

- AYES:** Councilmembers Hockett, Albin-Smith, Vice Mayor Rafanan, and Mayor Godeke.
- NOES:** Councilmember Peters.
- ABSENT:** None.
- ABSTAIN:** None.
- RECUSED:** None.

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**JASON GODEKE**  
Mayor

**ATTEST:**

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**AMBER LENORE WEAVER**  
Acting City Clerk



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## Text File

**File Number: 24-1127**

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**Agenda Date:** 1/27/2025

**Version:** 1

**Status:** Business

**In Control:** City Council

**File Type:** Consent Calendar

**Agenda Number:** 5B.

Adopt by Title Only and Waive the Second Reading of the Ordinance of the City of Fort Bragg  
Delegating Authority to Appoint the City Clerk to the City Manager

BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG

AN ORDINANCE OF THE CITY OF FORT BRAGG DELEGATING AUTHORITY TO APPOINT THE CITY CLERK TO THE CITY MANAGER

ORDINANCE NO. 997-2024

WHEREAS, in 1980 the voters of the City passed Measure B adopting Ordinance 534, making the position of City Clerk appointed pursuant to Government Code 36510 rather than elected; and

WHEREAS, the City Council, through this ordinance, desires to vest in the City Manager its authority to appoint the City Clerk pursuant to the Government Code 36510 and 34856.

NOW, THEREFORE, the City Council ordains as follows:

Section 1. Amendment. Section 2.08.035 (DELEGATION) of Chapter 2.08 (CITY CLERK) of Title 2 (ADMINISTRATION AND PERSONNEL) of the Fort Bragg Municipal Code is hereby added as follows:

Section 2.08.035 Delegation

Pursuant to the authority of California Government Code § 36510 and 34856 and Ordinance 364, the City Council vests the City Manager its authority to appoint the City Clerk.

Section II: Effective Date. This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause a summary of said Ordinance to be published as provided in Government Code §36933, in a newspaper of general circulation published and circulated in the City of Fort Bragg, along with the names of the City Council voting for and against its passage.

Section III: Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

The foregoing Ordinance was introduced by Councilmember \_\_\_\_\_ at a regular meeting of the City Council of the City of Fort Bragg held on January 13, 2025, and adopted at a regular meeting of the City of Fort Bragg held on \_\_\_\_\_ by the following vote:

**AYES:  
NOES:  
ABSENT:  
ABSTAIN:  
RECUSED:**

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**Jason Godeke,  
Mayor**

**ATTEST:**

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**Amber Lenore Weaver  
Acting City Clerk**

**PUBLISH:** \_\_\_\_\_ and \_\_\_\_\_ (by summary).  
**EFFECTIVE DATE:** \_\_\_\_\_.



# City of Fort Bragg

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## Text File

File Number: 24-1126

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**Agenda Date:** 1/27/2025

**Version:** 1

**Status:** Consent Agenda

**In Control:** City Council

**File Type:** Consent Calendar

**Agenda Number:** 5C.

Adopt by Title Only and Waive the Second Reading of the Ordinance 998-2024 Amending Chapter 6.12 "Nuisances", Of the Fort Bragg Municipal Code Division 6, To Establish And Authorize Code Enforcement Cost Recovery Fees

**BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG**

**AN ORDINANCE AMENDING CHAPTER 6.12 (NUISANCES) OF THE FORT BRAGG MUNICIPAL CODE TO ESTABLISH CODE ENFORCEMENT COST RECOVERY FEES**

**ORDINANCE NO. 998-2024**

**WHEREAS**, pursuant to California Government Code Section 38770 et seq., the City Council has established, an alternate to procedures that may be used for purposes of abating a public nuisance; and

**WHEREAS**, the City of Fort Bragg has previously found that Code Enforcement is a necessary and vital City activity that contributes to the protection of the health, safety, and welfare of the city’s residents, visitors, and property; and

**WHEREAS**, at the October 15, 2024 meeting, the City Council received the staff report, draft updates to the Municipal Code, and a list of suggested Code Enforcement tasks that would qualify for cost recovery; and

**WHEREAS**, this ordinance adds the authority to assess and collect cost recovery fees to Chapter 6.12 of the Fort Bragg Municipal Code.

**NOW, THEREFORE, the City Council ordains as follows:**

**Section 1. Legislative Findings.** The City Council hereby finds as follows:

1. The foregoing recitals are true and correct and are made a part of this ordinance.
2. The proposed amendments are consistent with the General Plan because the proposed amendments promote and pursue the City’s objective of protecting the public health, safety, and welfare.

**Section 2.** Based on the foregoing, the City Council hereby amends Chapter 6.12 (NUISANCES): Section 6.12.060 (NOTICE OF VIOLATION.); Section 6.12.070 (RECOVERY OF ENFORCEMENT COSTS); and Section 6.12.140 (REPORT TO CITY COUNCIL OF COSTS OF ABATEMENT BY THE CITY) of the Fort Bragg Municipal Code as follows:

**CHAPTER 6.12  
NUISANCES**

Section

- 6.12.010 Purpose
- 6.12.015 Definitions
- 6.12.020 Public nuisances included
- 6.12.030 Owner’s responsibility
- 6.12.040 Nuisance conditions
- 6.12.050 Abatement by repair, rehabilitation, demolition, or removal
- 6.12.055 Summary abatement of immediate dangers
- 6.12.060 Notice of violation
- 6.12.065 Abatement by proceedings before hearing body and notice of administrative hearing
- 6.12.070 [Reserved] Recovery of Enforcement Costs**
- 6.12.080 Posting and serving notice of violation
- 6.12.090 Form of proper service of notice of violation
- 6.12.095 Enforcement stayed during pendency of hearing



- 6.12.100 Hearing by hearing body
- 6.12.110 Decision by hearing body ordering abatement
- 6.12.120 Service of order of abatement
- 6.12.130 Abatement by City officer
- 6.12.140 Report to City Council of costs of abatement by the City
- 6.12.150 Hearing by City Council on report of costs of abatement by City
- 6.12.155 Imposition of penalties
- 6.12.160 Special assessment or nuisance abatement lien on property for costs of abatement by the City
- 6.12.170 Abatement of certain vehicles
- 6.12.180 Alternative remedies

**6.12.060 NOTICE OF VIOLATION.**

A. Whenever an Enforcement Officer finds that a provision of this Code has been violated, he or she shall notify the violator in writing of the violation. The form of written notice shall be a Notice of Violation, which shall be served on the violator in the manner described in § 6.12.090, below.

B. The Enforcement Officer shall include in the Notice of Violation the following information:

1. Date and location of the violation, including the address or definite description of the location where the violation occurred, or is occurring;

32. Actions required to correct or abate the violation and a reasonable amount of time for the actions to be commenced, and the correction or abatement completed. **Recovery of code enforcement costs will accrue upon failure to correct or abate the violation within the time specified in the Notice of Violation or within a reasonable amount of time for the corrective actions to be commenced and completed;**

43. An order prohibiting the continuation or repeated occurrence of a violation of this Code described in the Notice of Violation; and

54. The signature of the citing Enforcement Officer.

C. A Notice of Violation shall be accompanied by a statement that the Responsible Party may request a hearing within 15 calendar days of the date of the Notice of Violation, and that failure to do so will constitute a waiver of the Responsible Party’s right to a hearing and that the City may proceed upon the Notice of Violation without a hearing. If the City chooses to set the matter for hearing or if a hearing is required pursuant to a specific provision of this Code, then the Notice of Violation shall include a Notice of Hearing in the form set forth in § 1.06.050 of this Code, as the same may be amended from time to time.

(Ord. 840, § 1, passed -- 2003; Am. Ord. 898 § 6, passed 11-14-2011)

**6.12.070 ~~[RESERVED]~~RECOVERY OF ENFORCEMENT COSTS.**

**This chapter provides authority for the City to recover the costs of inspection, enforcement and correction of violations of laws and ordinances to the full extent permitted by Government Code Section 54988 as it may be amended from time to time. Accordingly, provisions of this chapter which specify the process for creating, recording, and collecting liens for abatement of nuisances may also be used for the recovery of said costs of inspection, enforcement and correction as well.**

**Any person violating any provision of this code resulting in the city filing an administrative, civil action, or special proceeding to obtain code compliance or remedy of such violation shall be**

liable for the costs of such matter, including, but not limited to, costs of investigation, abatement, court costs, and costs of monitoring compliance. In addition, in any administrative, civil, or special proceeding to abate an administrative violation, the city may, at the initiation of the proceeding, seek an award of attorney's fees. If the city seeks an award of attorney's fees, the award shall be made to the prevailing party. Provided, however, that no award may be made to a prevailing party that exceeds the amount of reasonable attorney's fees incurred by the city in the action or proceeding.

**6.12.140 REPORT TO CITY COUNCIL OF COSTS OF ABATEMENT BY THE CITY.**

A. The City may elect to recover its costs to abate nuisance conditions, ~~including enforcement and correction of violations of laws and ordinances to the full extent permitted by Government Code Section 54988. Recoverable costs, include or enforce other provisions of this Code,~~ ~~including~~ without limitation, the costs of any hearing or appeal hearing (including staff time necessary to prepare for and attend a hearing or an appeal hearing), any re-inspections required to determine or confirm that compliance has been achieved, production of all staff reports, environmental tests or measurements that are deemed necessary or appropriate by the Code Enforcement Officer, third party inspection(s) or consultant services as deemed necessary by the City and any attorneys' fees incurred in pursuing enforcement, including any civil action to abate nuisance conditions or enforce this Code. To this end the City has prepared a fee schedule that calculates the typical cost of enforcing a variety of different code violations based on previous experience. The code violation enforcement fee is updated on an annual basis. If the City elects at the initiation of an administrative enforcement action or other proceeding to seek recovery of attorneys' fees, pursuant to Cal. Government Code § 38773.5(b), or any other applicable authority, including this Code, then the prevailing party shall be entitled to recover attorneys' fees in an amount not to exceed the amount of attorneys' fees incurred by the City in such action. Recovery by the City of the costs of enforcement shall be in addition to any penalty imposed on the Responsible Party.

B. ~~Accrual of Abatement Costs will occur whenever any person creating, causing, committing, or maintaining a public nuisance, as referred to in Sections 6.12.020 and/or 6.12.040, or other public nuisance, as defined under State law or by other ordinances or regulations, has been given notice, by or on behalf of the Code Enforcement Department or by any other officer, or employee authorized to give such notice, to abate such nuisances or cease and desist from continuing such nuisance or violation of law, and such person fails, refuses, or neglects to comply with the notice within the time specified therein, or if such a time is not specified, then within a time reasonably sufficient to enable such compliance, such non-complying person shall be liable to the City of Fort Bragg for any and all costs and expenses incurred by the City in abating the nuisance and or correcting violations of State law or other ordinances and regulations and in obtaining compliance with or enforcing the law as referred to or encompassed within such notice.~~

**BC.** If the City abates the nuisance, the Director of Finance at the direction and request of the City Manager shall keep an account of the cost of abatement, including attorney fees, if any, and incidental expenses and shall render an itemized written report to the City Council showing the cost of abatement, including any salvage value of material from the abatement.

**CD.** The term "incidental expenses" shall include, but not be limited to, the actual expenses and costs of the City in:

1. Preparation of notices, specifications, and contracts;

2. Inspecting the work;
3. Costs of preparing for and attending any required hearings;
4. The costs of printing and mailing required hereunder; and
5. Costs of imposing a lien or levying a special assessment on the property.

**D E.** Should the proceeds of sale of any salvage material exceed the cost of the abatement, the balance, if any, shall be paid to the Owner or Responsible Party upon establishment of his or her claim for the excess proceeds.

(Ord. 840, § 1, passed -- 2003; Am. Ord. 898 § 15, passed 11-14-2011)

**Section 3. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Fort Bragg hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

**Section 4. Effective Date and Publication.** This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause a summary of said Ordinance to be published as provided in Government Code Section 36933, in a newspaper of general circulation published and circulated in the City of Fort Bragg, along with the names of the City Council voting for and against its passage.

**The foregoing Ordinance was introduced by Councilmember Rafanan at a regular meeting of the City Council of the City of Fort Bragg held on December 9, 2024, and adopted at a regular meeting of the City of Fort Bragg held on the \_\_\_ day of January, by the following vote:**

**AYES:  
NOES:  
ABSENT:  
ABSTAIN:  
RECUSED:**

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**JASON GODEKE  
Mayor**

**ATTEST:**

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**Amber Weaver  
Acting City Clerk**



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Text File

File Number: 24-1058

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**Agenda Date:** 1/27/2025

**Version:** 1

**Status:** Consent Agenda

**In Control:** City Council

**File Type:** Resolution

**Agenda Number:** 5D.

Adopt City Council Resolution Approving Contract with B.T. Mancini Company Inc. for the City Hall Flooring Update Project and Authorizing City Manager to Execute Same (Amount Not To Exceed \$92,994); Categorical Exemption 15301

On October 23, 2024, City Hall Staff issued a request for quotes from qualified contractors to replace the flooring as part of the City Hall 1st Floor Remodel Project. Three bids were received, two of which were unresponsive, leaving B.T. Mancini Co., Inc. as the only responsive bid submitted. Funding has been appropriated for the Project in the Internal Services Fund and is sufficient to cover this portion of the project.

## RESOLUTION NO. 4890-2025

### RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING A CONTRACT WITH B.T. MANCINI CO. INC., FOR THE CITY HALL FLOORING UPDATE, CITY PROJECT NO. PWP-00141, AUTHORIZING CITY MANAGER TO EXECUTE THE CONTRACT (AMOUNT NOT TO EXCEED \$92,994); AND FINDING THE PROJECT EXEMPT FROM CEQA UNDER 14 CCR 15268

**WHEREAS**, the carpeting in the City Hall building needs replacement, as it is worn and damaged, causing maintenance to become increasingly challenging; and

**WHEREAS**, staff has determined that B.T. Mancini Co., Inc. is competent to provide this service, and only one informal bid, from B.T. Mancini Co., Inc. was responsive to the request for quotes; and

**WHEREAS**, staff has confirmed that B.T. Mancini Co., Inc. has the proper license, and experience and meets the requirements to complete the service; and

**WHEREAS**, the service is part of the City Hall 1<sup>st</sup> Floor Remodel Project, funded by the Internal Services Fund, with appropriations included in the FY 2024/25 budget; and

**WHEREAS**, installing the flooring is categorically exempt from CEQA, pursuant to 14 CCR Section 15301 which allows for the repair, maintenance, or minor alteration of an existing facilities and structures which involves negligible or no expansion of use; and

**WHEREAS**, based on all the evidence presented, the City Council finds as follows:

1. The B.T. Mancini Co., Inc. proposal, as a sought service provider, meets the requirements of the Project and is considered responsive.
2. Sufficient funds are available through the appropriations made in the Internal Services Fund for the labor and materials for the City Hall 1<sup>st</sup> Floor Remodel Project to fully complete the project.
3. B.T. Mancini Co., Inc. has the proper licenses to complete the Project and based upon previous experience in completing similar projects, is a responsible bidder.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of Fort Bragg does hereby find and determine that all of the above recitals are true and correct and are fully incorporated herein.

**BE IT FUTHER RESOLVED**, that the City Council accepts the proposal of B.T. Mancini Co., Inc. as the only responsive bid, awarding the contract for the City Hall Flooring Update Project to B.T. Mancini Co., Inc. and authorizes the City Manager to execute the same (Amount Not to Exceed \$92,994.00).

**The above and foregoing Resolution was introduced by Councilmember Rafanan, seconded by Councilmember Albin-Smith, and passed and adopted at a regular meeting**

of the City Council of the City of Fort Bragg held on the 27<sup>th</sup> day of January 2025, by the following vote:

**AYES:** Councilmembers Hockett, Peters, Albin-Smith, Vice Mayor Rafanan, and Mayor Godeke.

**NOES:** None.

**ABSENT:** None.

**ABSTAIN:** None.

**RECUSED:** None.

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**Jason Godeke**  
**Mayor**

**ATTEST:**

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**Amber Weaver**  
**Acting City Clerk**

CITY OF FORT BRAGG  
416 N. Franklin Street  
Fort Bragg, California 95437

**CONTRACT CHECK LIST**

Complete, accurate, executed copies of the following documents must be submitted to the CITY OF FORT BRAGG for the City Hall Flooring Update, Project No. PWP-00141 within ten (10) working days of receiving written notice of award of the project.

- \_\_\_\_\_ Contract Check List
- \_\_\_\_\_ Contract, Part 1
- \_\_\_\_\_ Contract, Part 2 – General Provisions
- \_\_\_\_\_ Contract, Part 3 – Special Provisions
- \_\_\_\_\_ Performance Bond
- \_\_\_\_\_ Payment Bond
- \_\_\_\_\_ Maintenance Bond
- \_\_\_\_\_ Certificates of Insurance and Endorsements

CITY OF FORT BRAGG  
416 Franklin Street  
Fort Bragg, California 95437

### CONTRACT, PART 1

The CITY OF FORT BRAGG, 416 N. Franklin Street, Fort Bragg, California 95437 (“City”) enters into this Contract, dated [REDACTED], for reference purposes only, with B.T. Mancino Co., Inc. 2985 Dutton Ave, unit one, Santa Rosa, CA 95407 (“Contractor”).

### RECITALS

- A. REQUEST FOR QUOTE. The City solicited quotes from a minimum of three (3) vendors on October 23, 2024 for the City Hall Flooring Update, Project No. PWP-00141 (“Project”) in accordance with Fort Bragg Municipal Code Section 3.22.050 for informal bidding. For purposes of this agreement “bid,” “proposal,” and “quote” are used interchangeably.
- B. PROJECT PROPOSAL. On November 14, 2024, City representatives received the lowest, responsive proposal for the Project from with B.T. Mancino Co., Inc.
- C.. PROJECT AWARD . On January 27, 2025, the City Council accepted the proposal of B.T. Mancino Co., Inc., awarding the contract for the City Hall Flooring Update, Project No. PWP-00141 authorizing the City Manager to execute the same.
- D. REQUIRED DOCUMENTS. The Contractor has provided the City executed copies of all documents specified in the contract check list.
- E. INVESTIGATION AND VERIFICATION OF SITE CONDITIONS. The Contractor warrants that it has conducted all necessary pre-bid investigations and other obligations, and agrees that it shall not be entitled to Change Orders (time or compensation) due to any information, error, inconsistency, omission, or conditions that Contractor should have known as a part of this Work. Contractor shall be responsible for the resultant losses, including, without limitation, the cost of correcting Defective Work. In executing this Contract, Contractor shall rely on the results of its own independent investigation and shall not rely on City-supplied information regarding above ground conditions and as-built conditions, and Contractor shall accept full responsibility for its verification work sufficient to complete the Work as intended.

City of Fort Bragg  
Project No. PWP-00140  
Contract, Part 1



## CONTRACT TERMS

The City and the Contractor agree as follows:

1. THE WORK. The Contractor shall furnish all equipment, tools, apparatus, facilities, material labor, and skill necessary to perform and complete in a good and workmanlike manner the City Hall Flooring Update Project (“Work”) as more specifically shown in the Contract Documents and applicable law.
2. LOCATION OF WORK.  
The Work will be performed at the following location:  
416 N. Franklin St. Fort Bragg, Ca 95437
3. TIME FOR COMPLETION. The Contractor must complete the Work in accordance with the Contract Documents within ninety (90) working days from the date specified in the City’s Notice to Proceed (“Time for Completion”).
4. REMEDIES FOR FAILURE TO TIMELY COMPLETE THE WORK. If the Contractor fails to fully perform the Work in accordance with the Contract Documents by the Time for Completion, as such time may be amended by change order or other modification to this Contract in accordance with its terms, and/or if the Contractor fails, by the Time for Completion, to fully perform all of the Contractor’s obligations under this Contract that have accrued by the Time for Completion, the Contractor will become liable to the City for all resulting loss and damage in accordance with the Contract Documents and applicable law. The City’s remedies for the Contractor’s failure to perform include, but are not limited to, assessment of liquidated damages of \$500 per day in accordance with California Government Code Section 53069.85 and the Contract Documents, and/or obtaining or providing for substitute performance in accordance with the Contract Documents.
5. CONTRACT PRICE AND PAYMENT. As full compensation in consideration of completion of the Work in accordance with the Contract Documents and in consideration of the fulfillment of all of the Contractor’s obligations under the Contract Documents, the City will pay the Contractor in lawful money of the United States the total price of **Ninety Two Thousand Nine Hundred Ninety Four Dollars \$92,994** (the “Contract Price”) as specified in the Contractor’s completed Quote dated November 14, 2024, and attached to and incorporated in this Contract as **Exhibit A**. Payment to the Contractor under this Contract will be for Work actually performed in accordance with the Contract Documents and will be made in accordance with the requirements of the Contract Documents and applicable law. The City will have no obligation to pay the Contractor any amount in excess of the Contract Price unless this Contract is first modified in accordance with its terms. The City’s obligation to pay the Contractor under this Contract is subject to and may be offset by charges that may apply to the Contractor under this Contract. Such charges include but are not limited to, charges for

liquidated damages and/or substitute performance in accordance with the Contract Documents.

The Contract Sum is all inclusive and includes all Work; all federal, state, and local taxes on materials and equipment, and labor furnished by Contractor, its subcontractors, subconsultants, architects, engineers, and" vendors or otherwise arising out of Contractor's performance of the Work, including any increases in any such taxes during the term of this Agreement; and any duties, fees, and royalties imposed with respect to any materials and equipment, labor or services. The taxes covered hereby include (but are not limited to) occupational, sales, use, excise, unemployment, FICA, and income taxes, customs, duties, and any and all other taxes on any item or service that is part of the Work, whether such taxes are normally included in the price of such item or service or are normally stated separately. Notwithstanding the foregoing, each party shall bear such state or local inventory, real property, personal property or fixtures taxes as may be properly assessed against it by applicable taxing authorities.

6. PREVAILING WAGES. In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 et seq., the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed. In accordance with California Labor Code Section 1773, the City has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project. In accordance with California Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at the City Public Works Department and will be made available on request. Throughout the performance of the Work the Contractor must comply with all provisions of the Contract Documents and all applicable laws and regulations that apply to wages earned in performance of the Work.

- 6.1. Contractor acknowledges and agrees that it shall comply with the requirements of California Public Contracts Code sections 2600 et seq., in its entirety and, in particular, those sections related to Skilled and Trained Workforce. By its execution of this agreement Contractor certifies and warrants that it is aware of the requirement of California Public Contracts Code section 2600 et seq. and its requirements as to a Skilled and Trained Workforce.

7. THE CONTRACT DOCUMENTS. This Contract consists of the following documents (“Contract Documents”), all of which are incorporated into and made a part of this Contract as if set forth in full. In the event of a conflict between or among the Contract Documents, precedence will be in the following order:
  - 7.1 This Part 1 of the Contract and change orders and other amendments to this Contract signed by authorized representatives of the City and the Contractor.
  - 7.2 The General Provisions, Part 2 of the Contract, and change orders and other amendments to the General Provisions signed by authorized representatives of the City and the Contractor.
  - 7.3 The Special Provisions, Part 3 of the Contract, and change orders and other amendments to the Special Provisions signed by authorized representatives of the City and the Contractor.
  - 7.4 The Technical Specifications [Section Removed]
  - 7.5 The Project Plans [Section Removed]
  - 7.6 The Contractor’s Quote dated November 14, 2024
  - 7.7 Contractor’s completed Certificates of Insurance and Endorsements
  - 7.8 Contractor’s executed Performance Bond
  - 7.9 Contractor’s executed Payment Bond
  - 7.10 Contractor’s Maintenance Bond
  
8. PROVISIONS INCORPORATED BY REFERENCE. Provisions or parts of provisions that are incorporated by reference and not set forth at length in any of the Contract Documents will only form a part of this Contract to the extent the Contract Documents expressly make such provisions or parts of provisions a part of this Contract. For example, published public works agreement provisions, such as those of the State of California Department of Transportation Standard Specifications (known as the Standard Specifications) are only a part of this Contract to the extent expressly incorporated in the Contract by section number. When such published provisions are made a part of this Contract, references in the published provisions to other entities, such as the State, the Agency, or similar references, will be deemed references to the City as the context of this Contract may require.
  
9. INTERPRETATION OF CONTRACT DOCUMENTS. Any question concerning the intent or meaning of any provision of the Contract Documents, must be submitted to the Public Works Director, or his/her designee, for issuance of an interpretation and/or decision by the authorized Public Works Director in accordance with the requirements of the Contract Documents. Interpretations or decisions by any other person concerning

the Contract Documents will not be binding on the City. The decision of the Public Works Director, or his/her designee, shall be final.

10. ASSIGNMENT PROHIBITED. The Contractor may not assign part or all of this Contract, or any monies due or to become due under this Contract, or any other right or interest of the Contractor under this Contract, or delegate any obligation or duty of the Contractor under this Contract without the prior written approval of an official authorized to bind the City and an authorized representative of Contractor's surety or sureties. Any such purported assignment or delegation without such written approval on behalf of the City and the Contractor's sureties will be void and a material breach of this Contract subject to all available remedies under this Contract and at law and equity.
11. CONTRACTOR'S LICENSE CERTIFICATION. By signing this Contract the Contractor certifies that the Contractor holds a valid Type C-15 license issued by the California State Contractors Licensing Board, and that the Contractor understands that failure to maintain its license in good standing throughout the performance of the Work may result in discipline and/or other penalties pursuant to the California Business and Professions Code, and may constitute a material breach of this Contract subject to all available remedies under this Contract and at law and equity.
12. SEVERABILITY. If any term or provision or portion of a term or provision of this Contract is declared invalid or unenforceable by any court of lawful jurisdiction, then the remaining terms and provisions or portions of terms or provisions will not be affected thereby and will remain in full force and effect.
13. PROJECT REPRESENTATIVES
  - 13.1 The City has designated John Smith as its Project Manager to act as its Representative in all matters relating to the Contract. If Project Manager is an employee of City, Project Manager is the beneficiary of all Contractor obligations to the City including, without limitation, all releases and indemnities.

Project Manager shall have final authority over all matters pertaining to the Contract and shall have sole authority to modify the Contract on behalf of the City, to accept work, and to make decisions or actions binding on the City, and shall have sole signature authority on behalf of the City.

The City may assign all or part of the Project Manager's rights, responsibilities and duties to a construction manager or other City representative.
  - 13.2 The Contractor has designated Dalton Gavrilloff as its Project Manager to act as Contractor's Representative in all matters relating to the Contract. The Contractor's Project Manager shall have final authority over all matters pertaining to the Contract and shall have sole authority to modify the Contract on behalf of

the Contractor and to make decisions or actions binding on the Contractor, and shall have sole signature authority on behalf of the Contractor.

**SIGNATURES ON FOLLOWING PAGE**

Executed on \_\_\_\_\_, by

CONTRACTOR

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

[Attach Notary Acknowledgment Page]

CITY

By: Isaac Whippy  
Title: City Manager

ATTEST:

By: \_\_\_\_\_  
Amber Weaver  
Acting City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Baron J. Bettenhausen  
City Attorney

CITY OF FORT BRAGG  
416 Franklin Street  
Fort Bragg, California 95437

**CONTRACT, PART 2**  
**GENERAL PROVISIONS**

1. DEFINITIONS

The following terms as used in any agreement of which these General Provisions are a part are defined as follows:

- 1.1 **City:** CITY OF FORT BRAGG.
- 1.2 **Construction Manager:** The City's authorized representative for administration and overall management of the Project contract and Work. The Construction Manager is the official point of contact between the City, the Architect and/or Engineer, and the Contractor. The Construction Manager for this project shall be Engineering Technician Kevin McDannold.
- 1.3 **Contract:** The agreement between the City and Contractor concerning the Project, as evidenced by and comprised of the Contract Documents.
- 1.4 **Contract Documents:** All documents identified in Section 7 of Part 1 of the Contract.
- 1.5 **Contractor:** B.T. Mancini Co., Inc. The successful bidder for the Project and party to the Project agreement with the City as specified in the Project agreement.
- 1.6 **Days:** Unless otherwise specified in the Contract Documents, Days mean working days.
- 1.7 **Project:** The City Hall Flooring Project as described in scope of work
- 1.8 **Project Inspector:** The party or parties charged by the City with inspecting the Work for compliance with the requirements of the Contract Documents and applicable laws and regulations. The Project Inspector acts under the direction of the City and shall coordinate with the Construction Manager and Architect as directed by the City in accordance with the Contract Documents. .
- 1.9 **Project Plans:** [Section Removed]
- 1.10 **Proposal:** The quote, bid, or proposal submitted by by Contractor to the City in response to City request for informal bid. For purposes of this Agreement, quote, proposal, and bid are used interchangeably.
- 1.11 **Subcontractor:** A person, firm or corporation that is obligated as a party to a contract with the Contractor to perform part of the Project work. For purposes of these General Provisions Subcontractors include, but are not limited to,

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those that are obligated as parties to a contract with the Contractor to specially fabricate and install a portion of the Project Work.

1.12 **Technical Specifications:** [Section Removed]

1.13 **Time for Completion:** The Time for Completion is the time by which the Work must be completed, as defined in the Contract, Part 1, or as modified in a writing, executed by the City and Contractor. .

1.14 **Work:** The furnishing of all equipment, tools, apparatus, facilities, material, labor and skill necessary to perform and complete in a good and workmanlike manner the Project in accordance with the Contract Document and applicable law(s).

1.15 **Written Notice:** Will be deemed to have been duly served for purposes of these General Provisions and any agreement of which they are a part if delivered in person to the individual or to a member of the firm or to any office of the corporation for whom the notice is intended, or if sent by registered or certified mail to the last known business address known to the party giving notice. Unless otherwise specified in the Contract Documents, the last known address of the Contractor shall be that listed in the Contractor's completed Quote.

2. PLANS AND SPECIFICATIONS [Section Removed]

3. CONTROL OF WORK AND MATERIAL

3.1 **Construction Manager's Status.** The Construction Manager will administer the Project in accordance with the Contract Documents. After execution of the agreement and issuance of the Notice to Proceed, all correspondence and/or instructions concerning the Project between the Contractor and/or City shall be forwarded through the Construction Manager. Except as otherwise provided in the Contract Documents, the Construction Manager will not be responsible for and will not have control or charge of construction means, methods, techniques, or procedures or for safety precautions in connection with the Work. The Construction Manager, however, will have authority to reject materials and/or workmanship that do not conform to the requirements of the Contract Documents. The Construction Manager will also have the authority to require inspection or testing of the Work.

3.2 [Section Removed]

3.3 **Inspection and Testing of Work and Material.**

3.3.1 The City and the Construction Manager and their representatives will have access to the Work at all times wherever it is in preparation or

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progress. The Contractor must provide proper facilities for such access and for inspection.

- 3.3.2 The Contractor must inspect all materials as delivered and promptly return all defective materials without waiting for their rejection by the Construction Manager.
- 3.3.3 If the Construction Manager, or any laws, ordinances, or any public authority require any Work to be tested or approved, the Contractor must give the Construction Manager timely notice of the Contractor's readiness for inspection. Inspections will be promptly made, and where practicable, at the source of supply. Any work subject to such testing that is covered up without timely notice to the Construction Manager or without the approval or consent of the Construction Manager must, if required by the Construction Manager, be uncovered for examination at the Contractor's expense. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 11 concerning any work subject to testing that is covered up without timely notice to the Construction Manager and that is not uncovered for examination at the Contractor's Expense if required by the Construction Manager.
- 3.3.4 Tests of materials or qualification tests required by the Contract Documents must be made in accordance with the California Building Standards Code as adopted by the City and other applicable law. Copies of all testing reports shall be distributed as required .
- 3.3.5 The City or its representatives may order re-examination of questioned Work. If ordered to do so, the Contractor must uncover such Work. If such Work is found to be according to the Contract Documents, the City shall pay the cost of uncovering and restoring the Work, unless such Work was subject to testing and covered up without timely notice to or approval of the Construction Manager. If re-examined Work is found not in accordance with the Contract Documents, the Contractor must pay the cost of uncovering and restoring the Work. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 11 concerning any re-examined Work not in accordance with the Contract Documents that the Contractor fails to uncover and restore at the Contractor's expense.
- 3.3.6 The Contractor must replace or correct without charge any material or workmanship found not to conform to the requirements of the Contract Documents, unless the City consents to accept such material or workmanship with an appropriate adjustment in the Contract Price. The Contractor must promptly segregate and remove non-conforming material from the Work site. The Contractor will have all of the

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obligations and the City will have all of the rights and remedies that are specified in Section 11 concerning any failure by the Contractor to replace or correct without charge any material or workmanship that does not conform to the requirements of the Contract Documents and that the City has not consented to accept.

3.4 Samples Furnished by the Contractor. The Contractor must furnish all samples for approval as directed in sufficient time to permit the Construction Manager, to examine, approve and select samples before they are required by the progress of the Work. Portions of the Work for which samples are required and for which the Construction Manager has selected samples must be in accordance with such approved samples. Samples must be sent prepaid to the office of the Construction Manager or to such place as the Construction Manager may direct.

3.5 Materials and Substitutions.

3.5.1 Materials used for the Work must be new and of the quality specified. When not particularly specified, materials must be the best of their class or kind. The Contractor must, if required, submit satisfactory evidence as to the kind and quality of materials.

3.5.2 If the Contractor submitted complete information to the Public Works Department for products proposed as equals in accordance with the Bid Package, and the City approved such products proposed as equals in writing, the Contractor may either furnish such products approved as equals, or furnish the products listed by manufacturer name, brand or model number in the Contract Documents. The City retains the right, in its sole discretion, to accept or reject any other proposed substitution. To be considered, proposals concerning products proposed as equals must include sufficient information to permit the City to determine whether the products proposed as equals will satisfy the same performance requirements as products listed by manufacturer's name, brand or model number. Such performance requirements may include, but are not limited to, size, strength, function, appearance, ease of maintenance and repair, and useful life requirements. If the City does not accept a proposed substitution, the Contractor must furnish an acceptable product approved by the Construction Manager.

3.5.3. During the performance of the Work, all materials must be neatly stacked, properly protected from the weather and other adverse impacts, and placed so as to avoid interference with efficient progress of the Work, with other activities of the City, or with the use of existing City facilities by the public. All materials must be delivered so as to ensure efficient and uninterrupted progress of the Work. Materials must be stored so as to cause no obstruction and so as to prevent

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overloading of any portion of the Work. The Contractor will be responsible for damage or loss of materials delivered to and/or stored at the Work site due to weather or other causes. The Contractor must promptly remove from the Work site all materials rejected by the City or its representatives as failing to conform to the requirements of the Contract Documents, whether such non-conforming materials have been incorporated in the Work or not. If the City or its representatives so direct, the Contractor must promptly replace and re-execute Work performed by the Contractor and order the replacement and re-execution of Work performed by subcontractors using non-conforming materials with materials that satisfy the requirements of the Contract Documents without expense to the City. The Contractor will bear the expense of making good all Work destroyed or damaged by such removal. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 11 concerning any failure by the Contractor to replace or re-execute Work using non-conforming materials, and/or to make good all work destroyed or damaged by such removal and/or execution.

- 3.6 Maintenance and Examination of Records. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Contract Modifications, Change Orders, Work Directives, Force Account orders, and written interpretations and clarifications in good order and annotated to show all as-built changes made during construction. These Project Record Documents, together with all approved Samples and a counterpart of all approved Shop Drawings, shall be maintained and available to the City for reference. Upon completion of the Work, Contractor shall deliver to the City, the Project Record Documents, Samples and Shop Drawings and as-built drawings.

Throughout Contractor's performance of the Work of the Project, Contractor shall maintain construction records to include: shop drawings; product data/material data sheets; samples; submittals; purchases; materials; equipment; inspections; applicable handbooks; applicable codes and standards; maintenance and operating manuals and instructions; RFI Log; Submittal Log; other related documents and revisions which arise out of the Construction Contracts. Contractor shall maintain records of principal building layout lines, elevations for the bottom of footings, floor levels, and key site elevations (certified by a qualified surveyor or professional engineer). Contractor shall make all records available to the City. At the completion of the Project, Contractor shall deliver all such records to the City to have a complete set of record as-built drawings.

The City may examine and audit at no additional cost to the City all books, estimates, records, contracts, documents, bid documents, bid cost data,

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subcontract job cost reports and other Project related data of the Contractor, subcontractors engaged in performance of the Work, and suppliers providing supplies, equipment and other materials required for the Work, including computations and projections related to bidding, negotiating, pricing or performing the Work or contract modifications and other materials concerning the Work, including, but not limited to, Contractor daily logs, in order to evaluate the accuracy, completeness, and currency of cost, pricing, scheduling and any other project related data. The Contractor will make available all such Project related data at all reasonable times for examination, audit, or reproduction at the Contractor's business office at or near the Work site, and at any other location where such Project related data may be kept until three years after final payment under the Agreement. Pursuant to California Government Code Section 8546.7, if the amount of public funds to be expended is in excess of \$10,000, this Contract shall be subject to the examination and audit of the State Auditor, at the request of the City, or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

- 3.7 Advertising. No advertising signs of any kind may be displayed on the Work site, or on fences, offices or elsewhere adjacent to the Work site.
- 3.8 Project Schedule. Prior to the pre-construction meeting, the Contractor shall submit a baseline schedule showing each task of Work, including, as required by the City, equipment procurement and delivery (Contractor and City supplied), activities with Subcontractors and suppliers, major submittal reviews, commissioning of systems, use of major equipment on site, and necessary interface with the City and third parties. The baseline schedule shall include the sequence of each task, the number of days required to complete each task, and the critical path controlling the completion of the entire Work. The schedule shall allow for the completion of the entire Work within the Time for Completion.
  - 3.8.1 City Review of Schedule. The City may review the Contractor's submitted schedule and may note any exceptions. The Contractor shall correct any exceptions noted by the City within five (5) working days of being notified of the exceptions.
  - 3.8.2 Update of Schedule. After submission of a schedule to which the City has taken no exceptions, the Contractor shall submit an updated schedule on a biweekly basis until completion of the Work. The updated schedule shall show the progress of Work as of the date specified in the updated schedule. Contractor shall provide the City with an electronic copy of each updated schedule.
  - 3.8.3 Float. The baseline schedule and all later submitted schedules shall show early and late completion dates for each task. The number of

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days between these dates shall be designated as “Float.” The Float shall be designated to the Project and shall be available to both the City and the Contractor as needed to complete the Work in accordance with the Contract.

- 3.8.4 Failure to Submit Schedule. If the Contractor fails to submit the schedule within the time period specified in this section or submit a schedule to which the City has taken uncorrected exceptions, the City may withhold payments to the Contractor until such schedules are submitted and/or corrected in accordance with the Contract documents.
- 3.8.5 Responsibility for Schedule. The Contractor will be solely and exclusively responsible for creating the schedule and properly updating it. The City may note exceptions to any schedule submitted by the Contractor. However, the Contractor will be solely responsible for determining the proper method of addressing such exceptions, and the City’s review of the schedule will not create scheduling obligations for the City.
- 3.8.6 Contractor’s baseline schedule and progress schedules shall be in the form of a CPM (arrow) diagram. Contractor shall provide the City with native format electronic schedules and hard copies of the baseline schedule, schedule updates, and look ahead schedules. All electronic and hard copies of the schedule that Contractor provides to the City shall indicate the critical path of the Work (in red) and shall show a logical progression of the Work through completion within Contract Time.
- 3.8.7 The City has no obligation to accept an early completion date.
- 3.8.8 The City may request a recovery schedule should Contractor fall 21 or more Days behind any schedule milestone, which schedule shall show Contractor’s plan and resources committed to retain Contract completion dates. The recovery schedule shall show the intended critical path. If the City requests, Contractor shall also: secure and demonstrate appropriate subcontractor and supplier consent to the recovery schedule; and submit a written plan and narrative explaining on trade flow and construction flow changes and man-hour loading assumptions for major Work activities and/or subcontractors.
- 3.8.9 If the Contractor requests an extension of the Time for Completion, it shall submit the request in a writing that provides information justifying the request and stating the extent of the adjustment requested for each specific change or alleged delay. The writing shall include this narrative and a schedule diagram depicting how the changed Work or other impact affects other schedule activities. The schedule diagram shall

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show how Contractor proposes to incorporate the changed Work or other impact in the schedule and how it impacts the current schedule impact or critical path or otherwise. Any requests of an extension of the Time for Completion stemming from an alleged project delay shall be made within five (5) days of the commencement of the alleged delay, explain the reason for delay, include the anticipated length of the delay, and contain a narrative justifying the extension, in addition to the other information and schedules required by this section.

3.9 Construction Staking. All Work done under this Contract must be in conformance with the Project Plans and staked by the Engineer in the field. The Contractor must inform the Engineer, forty-eight (48) hours in advance, of the time and places at which he or she wishes to do work, in order that lines and grades may be furnished and necessary measurements for record and payment made, with the minimum of inconvenience to the Engineer and delay to the Contractor.

3.10 Materials Testing. Materials will be tested by the CITY OF FORT BRAGG or its authorized agent, following State of California Test Methods. Statistical testing may not be used. All individual samples must meet the specified test results. Each material used must meet the specified requirements.

The Contractor must request and coordinate all testing. All tests must occur in the presence of the Project Inspector. The City will, at its sole discretion, have the right to reject any and/or all test results that do not meet this requirement, and to order a retest in the presence of the Project Inspector. The costs for all retests so ordered will be the responsibility of the Contractor. The cost of all retests will be charged to the Contractor at the actual cost plus 30 percent, with a minimum charge of \$150.00 per test to cover staff and administrative costs.

The City, at its sole expense, will provide all initial material and compaction tests. Sampling and testing will comply with Chapter 6 of the Caltrans Construction Manual, at a minimum. Where conditions vary, the City may perform additional testing. Cost for testing of materials offered in lieu of the specified materials will be the responsibility of the Contractor. Cost for R-value tests when required by the Standard Specifications will be the responsibility of the Contractor.

Testing will only be performed on normal City working days between the hours of 8:00 a.m. and 4:00 p.m. unless other arrangements are made in

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advance. Tests performed outside of these hours may be subject to increased charges.

The Contractor must request all tests in writing a minimum of two (2) working days in advance of the time desired. A minimum of one working day must be allowed for compilation and reporting of data and test results after tests have been performed. No subsequent layer of material may be placed until a passing test is obtained and acknowledged by the City.

Concrete and asphalt may be supplied only from suppliers approved and certified by the State Department of Transportation. Proposed mix designs for all concrete and asphalt concrete to be placed within the CITY OF FORT BRAGG must be provided to and approved by the City, prior to placement.

The Contractor must coordinate with the City concerning any additional testing as required.

#### 4. CHANGES IN WORK

- 4.1 City Directed Change Orders. The City may at any time during the progress of the Work direct any amendments to the Work or any of the Contract Documents. Such amendments will in no way void the agreement, but may be applied to amend the Contract Price or Time for Completion, if such amendments affect the Contract Price, the Project schedule, or any other provision of the Contract Documents based on a fair and reasonable valuation of the amendment in accordance with this Section 4.
- 4.2 Writing Requirement. Change orders and other amendments to the Contract Documents may be made only by a writing executed by authorized representatives of the City and the Contractor.
- 4.3 Contractor Proposed Change Orders. Unless the Construction Manager otherwise authorizes or the City and the Contractor otherwise agree, change order proposals submitted by the Contractor must be submitted to the Construction Manager no later than the time of the proposed change.
- 4.4 All Change Orders. All change order proposals must be submitted on completed Change Order forms provided by the City. All such change order proposals must itemize all cost impacts of the proposed change order and include a total price for that change order and the amended Contract Price that would become effective upon execution of the change order. All change order proposals must specify any change in the Project schedule, or in any project milestone including, but not limited to, the Time for Completion, under the change order, and must provide information justifying the requested change in the Time for Completion. It is understood that change orders that do not specify a change in any milestone, including, but not limited to, the Time for Completion, will be accomplished by the Time for Completion then in effect.

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- 4.5 Change Order Pricing. Change order pricing will be governed by the following:
- 4.5.1 Unit prices specified in the Contract Documents will apply to cost impacts involving items for which the Contract Documents specify unit prices.
  - 4.5.2 Cost impacts involving items for which no unit prices are specified will be calculated by adding the itemized actual direct cost that would be added or reduced under the change order and an allowance for indirect costs in accordance with this Section. Itemization for direct costs for required labor must include the classifications of labor required, the total hours required for each classification, the hourly rate for each classification and other labor related costs such as liability and workers compensation insurance, social security, retirement and unemployment insurance. All other cost impacts for which no unit prices are specified must be itemized as appropriate, including the cost of tools, vehicles, phones and other equipment, and the cost of all required materials or supplies. Indirect costs added under a change order may not exceed an allowance of fifteen (15) percent of the total of combined Contractor and subcontractor direct costs added under the change order. Such allowance covers Contractor overhead and profit under the change order and includes the cost of insurance in addition to that required pursuant to Section 8.8, bond premiums, superintendent labor, clerical labor, home office expenses, worksite office expenses, and utility costs under the change order. Such costs may not be itemized as direct costs under a change order. Indirect costs deducted under a change order will be calculated in exactly the same way as indirect costs added under a change order, except indirect costs deducted under a change order may not exceed an allowance of seven and a half (7.5) percent of the total of combined Contractor and subcontractor direct costs deducted under the change order.
- 4.6 Liability Under Unapproved Change Orders. The Contractor shall be solely responsible for any and all losses, costs, or liabilities of any kind incurred by the Contractor, any subcontractor engaged in the performance of the Work, any party supplying material or equipment for the Work or any third party that are incurred pursuant to Contractor-proposed change orders prior to issuance of an approved change order executed in accordance with this Section 4. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 11 concerning any work or resulting losses, costs, or liabilities pursuant to a Contractor proposed change order before issuance of an approved change order executed in accordance with this Section 4.

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- 4.7 Changes Subject to Contract Documents. Any changes in the Work and/or the Contract Documents pursuant to change orders and any other amendments issued in accordance with the Contract Documents, including this Section 4, will in all respects be subject to all provisions of the Contract Documents, except as modified by such change orders or amendments.
- 4.8 Change Order Disputes.
- 4.8.1 Disputed City Directed Change Orders. If the Contractor disputes a City directed change order following a reasonable effort by the City and the Contractor to resolve the dispute including, at a minimum, a meeting between appropriate representatives of the Contractor and the City, the Contractor must commence performing the Work consistent with the disputed change order within five (5) working days of the last meeting between representatives of the Contractor and the City to resolve the dispute, or within the time specified in the disputed City directed change order, whichever is later. In performing Work consistent with a disputed City-directed change order pursuant to this provision the Contractor will have all of the Contractor's rights concerning claims pursuant to the Contract Documents and applicable law.
- 4.8.2 Disputed Contractor Proposed Change Orders. If the City disputes a Contractor proposed change order, the City and the Contractor will use reasonable efforts to resolve the dispute including, at a minimum, holding a meeting between appropriate representatives of the Contractor and the City. Regardless of and throughout any such efforts to resolve the dispute the Contractor must continue performing the Work irrespective of and unmodified by the disputed change order. In continuing to perform the Work, the Contractor will retain all of the Contractor's rights under contract or law pertaining to resolution of disputes and protests between contracting parties. Disputes between the City and the Contractor concerning any Contractor-proposed change order or other amendment do not excuse the Contractor's obligation to perform the Work in accordance with the Contract Documents excluding such Contractor-proposed change order or other amendment by the Time for Completion or waive any other Project milestone or other requirement of the Contract Documents.
- 4.9 Change in Time for Completion. The Time for Completion may only be changed through a Change Order, and all time limits stated in the Contract Documents are to mean that time is of the essence. Contractor shall not be entitled time extension for impacts that consume Float, but do not impact the critical path. Time extensions will not be granted unless substantiated by the Critical Path Method (CPM) Schedule, and then not until the CPM float

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becomes zero. If contractor fails to submit documentation requesting and justifying a change in Time for Completion consistent with the Contract Documents, the Contractor shall be deemed to have agreed that there is no extension of time and that Contractor has irrevocably waived its rights to any change in the Time for Completion. Contractor initiated change orders shall address any impacts on the Time for Completion when first submitted to the City. Contractor shall submit any request for change in the Time for Completion and all supporting information and documentation required by the Contract Documents within seven (7) working days of receipt of a City-directed Change Order.

## 5. TRENCHING AND UTILITIES [Section Removed]

## 6. PROJECT FACILITIES

- 6.1 Work Site Offices. Any Work site office facilities used by the Contractor and/or its privities must conform to all applicable codes, ordinances and regulations. The cost of such Work site office facilities shall be paid from and included in the Contract Price.
- 6.2 City Rights of Access and Ownership. The City and its authorized representatives will at all reasonable times while such office facilities are located at the Work site (including, at a minimum, all times during which the Work is performed), have access to any such Work site office facilities used by the Contractor and/or its privities. With respect to the right of access of the City and its authorized representatives, neither the Contractor nor its privities shall have a reasonable expectation of privacy pursuant to the Fourth Amendment to the United States Constitution or other applicable law concerning such Work site office facilities used by the Contractor and/or its privities. Without exception, any and all Project related materials located at such Work site facilities will be deemed at all times to be City property subject to inspection and copying by the City and its authorized representatives at all reasonable times while such facilities are located at the Work site (including, at a minimum, all times during which the Work is performed). Any interference by the Contractor or its privities with the City's rights of access and/or Ownership pursuant to this Section 6 will constitute a material breach of the Agreement subject to any and all remedies available pursuant to the Contract Documents and at law and equity.

## 7. PROSECUTION AND PROGRESS OF THE WORK

- 7.1 Liquidated Damages. Time is of the essence in the Agreement. The City and the Contractor agree that it will be difficult and/or impossible to determine the

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actual damage which the City will sustain in the event of the Contractor's failure to fully perform the Work or to fully perform all of the Contractor's obligations that have accrued pursuant to the Agreement by the Time for Completion. Accordingly, the City and the Contractor agree in accordance with California Government Code Section 53069.85 that the Contractor will forfeit and pay to the City liquidated damages in the sum of \$500 per day for each and every calendar day completion of the Work and/or performance of all of the Contractor's obligations that have accrued pursuant to the Agreement is delayed beyond the Time for Completion. The City and the Contractor further agree in accordance with California Government Code Section 53069.85 that the liquidated damages sum specified in this provision is not manifestly unreasonable under the circumstances existing at the time the Agreement was made, and that the City may deduct liquidated damages sums in accordance with this provision from any payments due or that may become due the Contractor under the Agreement.

- 7.2 No Damage for Avoidable Delays. All delays in the Work that might have been avoided by the exercise of care, prudence, foresight and diligence of the Contractor or any privities of the Contractor will be deemed avoidable delays. Delays in the Work that may be unavoidable but that do not necessarily affect other portions of the Work or prevent completion of all Work within the Time for Completion, including, but not limited to, reasonable delays in Engineer approval of shop drawings, placement of construction survey stakes, measurements and inspection, and such interruption as may occur in prosecution of the Work due to reasonable interference of other contractors of the City, will be deemed avoidable delays. The Contractor will not be awarded a change in the Project schedule, the Time for Completion, and/or additional compensation in excess of the contract price for avoidable delays.
- 7.3 Unavoidable Delays. All delays in the Work that result from causes beyond the control of the Contractor and that the Contractor could not have avoided through exercise of care, prudence, foresight, and diligence will be deemed unavoidable delays. Orders issued by the City changing the amount of Work to be done, the quantity of materials to be furnished, or the manner in which the work is to be prosecuted, and unforeseen delays in the prosecution of the Work due to causes beyond the Contractor's control, such as strikes, lockouts, labor disturbances, fires, epidemics, earthquakes, acts of God, neglect by utility owners or other contractors that are not privities of the Contractor will be deemed unavoidable delays to the extent they actually delay the Contractor's completion of the Work. The Contractor will be awarded a change in the Project schedule, the Time for Completion, and/or additional compensation in excess of the Contract Price for unavoidable delays to the extent such delays actually delay the Contractor's completion of the Work and/or result in the Contractor incurring additional costs in excess of the Contract Price.

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- 7.4 No Damage for Contractor Caused Delay. Contractor shall not be entitled to additional compensation for extended field or home office overhead, field supervision, costs of capital, interest, escalation charges, acceleration costs or other impacts for any delays to the extent such delays are caused by the failure of the Contractor or any subcontractor or other entity engaged in performance of the Work to perform the Work in accordance with the Contract Documents.
- 7.5 No Damage for Other Delay. Contractor will not be entitled to damages for delay to the Work caused by the following, which the City and Contractor agree will be deemed for purposes of California Public Contract Code Section 7102 either not caused by the City, and/or within the contemplation of the City and the Contractor, and/or reasonable under the circumstances:
- 7.5.1 Exercise of the City's right to sequence the Work in a manner that would avoid disruption to the City and other contractors based on: the failure of the Contractor or any subcontractor or other entity engaged in the performance of the Work to perform the Work in accordance with the Contract Documents, enforcement by the City or any other governmental agency of competent jurisdiction of any government act or regulation, or enforcement by the City of any provisions of the Agreement.
- 7.5.2 Requests for clarification or information concerning the Contract Documents or proposed change orders or modifications to the Contract Documents, including extensive and/or numerous such requests for clarification or information or proposed change orders or modifications, provided such clarifications or information or proposed change orders or modifications are processed by the City or its representatives in a reasonable time in accordance with the Contract Documents.
- 7.6 Delays Caused by the City and/or Its Privities. Delay caused by the City and/or other Contractors of the City will be deemed unavoidable delays. Either the City or the Contractor may propose a change in the Time for Completion for delays that are purported to be caused by the City and/or its privities and that are not reasonable under the circumstances involved and/or that are not within the contemplation of the City and the Contractor. Such proposed changes in the Time for Completion will constitute change order proposals subject to Section 4. In accordance with Section 4, the City and the Contractor may agree upon pricing for the cost impacts, if any, resulting from such delays. If such pricing is in anticipation of cost impacts that may, but have not yet occurred, the City will be obligated to pay the Contractor for such anticipated impacts in accordance with the Agreement and any applicable, approved change orders only to the extent the Contractor actually incurs the anticipated cost impacts. Notwithstanding anything to the contrary in Section 4, the City and the Contractor may agree to a daily rate or cap or lump sum

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that will apply to the cost impacts, if any, resulting from delay purportedly caused by the City and/or its privities subject to this provision. However, if such daily rate or cap or lump sum is in anticipation of cost impacts that have not yet occurred, the City will be obligated to pay such daily rate or cap or lump sum only to the extent the Contractor actually incurs such cost impacts.

7.7 Weather Delays. Extensions of the Time for Completion will not be allowed for normal, adverse weather conditions that are consistent with historical weather data of the National Oceanographic and Atmospheric Administration of the U.S. Department of Commerce for the record station that is nearest or most applicable to the Work site. The Contractor should understand that normal adverse weather conditions are to be expected and plan the Work accordingly, such as by incorporating into the Project schedule, normal adverse weather delays as reflected in historical data of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce for the weather station most applicable to the Work site. Extensions of the Time for Completion for delays due to adverse weather will be allowed only if the number of adverse weather days far exceeds the historical data. No extensions of the Time for Completion will be granted for normal, adverse weather conditions or for adverse weather conditions that merely result in delays that do not or would not, themselves, result in failure to complete the Work by the Time for Completion.

7.8 Delay Claims. Within five (5) days of the beginning of any delay, Contractor shall notify the City in writing, by submitting a notice of delay that shall describe the anticipated delays resulting from the delay event in question. Whenever the Contractor claims a delay for which the Time for Completion may be extended, the Contractor must request an extension of time within five (5) days of submitting its notice of delay. The request must be in writing in the form of a change order and describe in detail the cause for the delay, and, if possible, the foreseeable extent of the delay. The City will determine all claims and adjustments in the Time for Completion. No claim for an adjustment in the Time for Completion will be valid and such claim will be waived if not submitted in accordance with the requirements of this Section and Section 4.9. In cases of substantial compliance with the notice timing requirements of this Section (but not to exceed twenty-one (21) days from the beginning of the delay event), City may in its sole discretion recognize a claim for delay accompanied with the proper documentation and justification, provided the Contractor also shows good faith and a manifest lack of prejudice to the City from the late notice.

7.9 Contractor Coordination of the Work.

7.9.1 The City reserves the right to do other work in connection with or in the vicinity of the Project by contract or otherwise, and Contractor shall at all times conduct the Work so as to impose no hardship on the City,

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others engaged in the Work or other contractors working at the Work site. The Contractor will adjust, correct and coordinate the Work with the work of others so that no delays result in the Work or other work at or near the Work site.

- 7.9.2 If any part of the Work depends for proper execution or results upon the work of the City or any other contractor, the Contractor will, before proceeding with such Work, promptly report to the City any apparent discrepancies or defects in such other Work. Failure of the Contractor to promptly report any apparent discrepancy or defect will be deemed an acceptance of the City's or other contractor's Work as fit and proper.
- 7.9.3 The Contractor will anticipate the relations of the various trades to the progress of the Work and will ensure that required anchorage or blocking is furnished and set at proper times. Anchorage and blocking necessary for each trade shall be part of the Work except where stated otherwise.
- 7.9.4 The Contractor will provide proper facilities at all times for access of the City, the Construction Manager, Architect or Engineer, and other authorized City representatives to conveniently examine and inspect the Work.

## 8. CONTRACTOR RESPONSIBILITIES

- 8.1. Eligibility. By executing the Agreement, the Contractor certifies that the Contractor is not ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7. In accordance with California Public Contract Code Section 6109(a), contractors who are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7 may neither bid on, be awarded or perform the Work. To the fullest extent permitted by law, the Contractor shall hold harmless and indemnify the City from and against any and all damages, costs, and liability arising from or as a consequence of any violation of Public Contract Code Section 6109.
- 8.2 Non Discrimination. During the performance of this Contract, Contractor will not discriminate against any employee or subcontractor of the Contractor or applicant for employment because of race, religion, creed, color, national origin, gender, sexual orientation, or age. Contractor 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.

Contractor acknowledges that Contractor, and all subcontractors hired by Contractor to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act ("IRCA"). Contractor is

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and shall remain in compliance with the IRCA and shall ensure that any subcontractors hired by Contractor to perform services under this Agreement are in compliance with the IRCA. In addition, Contractor agrees to indemnify, defend and hold harmless City, its agents, officers and employees, from any liability, damages or causes of action arising out of or relating to any claims that Contractor's employees, or employees of any subcontractor hired by Contractor, are not authorized to work in the United States for Contractor or its subcontractor and/or any other claims based upon alleged IRCA violations committed by Contractor or Contractor's subcontractors.

- 8.3 Supervision of the Work. The Contractor will be solely responsible for the performance of the Work, including portions of the Work to be performed by subcontractors. The Contractor is charged with ensuring that all orders or instructions from the City, Construction Manager or Architect are disseminated to and followed by all subcontractors engaged in performance of the Work. The Contractor will supervise the Work using the Contractor's best skill and attention. At any time during the progress of the Work, the City, the Construction Manager, or the Architect may require the Contractor and/or subcontractors engaged in performance of the Work to attend a project meeting and the Contractor will attend, and ensure the attendance of any subcontractors whose attendance is required by the City and/or advisable in light of the matters to be addressed at the meeting.
- 8.4 Contractor's Superintendent. The Contractor will keep on the Work, throughout its progress, a competent superintendent and any necessary assistants, all satisfactory to the City. The superintendent may not be changed without the consent of the City. The superintendent will represent the Contractor and all directions given by the City to the superintendent will bind the Contractor in accordance with the Agreement. Superintendent time included in Contractor's completed bid schedule and/or in approved change orders, if any, must be included in Contractor's approved overhead rate and may not be charged as a direct cost.
- 8.5 Competent Employees. The Contractor must at all times enforce strict discipline and good order among the Contractor's employees and may not employ on the Project any unfit person or anyone not skilled in the Work assigned, or anyone incompetent or unfit for the duties of that person. When the City determines that a Contractor employee does not satisfy the requirements of this provision, upon notice from the City, the Contractor must ensure that employee performs no further Work and is no longer present at the Work site. Any such Contractor employee may not again be employed on the Project without City approval.
- 8.6 Items Necessary for Proper Completion of the Work. Except as otherwise noted in the Contract Documents, the Contractor will provide and pay for all labor, materials, equipment, permits, fees, licenses, facilities and services

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necessary for the proper execution and timely completion of the Work in accordance with the Contract Documents.

- 8.7 Construction Reports. The Contractor must submit daily construction reports detailing the daily progress of the Work to the Construction Manager on a weekly basis.
- 8.8 Subcontracting. The Contractor must perform with his or her own organization, a value of work amounting to not less than fifty percent (50%) of the Contract amount, except that the bid amount for subcontracted "Specialty Items" so designated in the Special Provisions may be eliminated from the Contract amount and not considered as sub-contracted for the purposes of calculating the value of work to be performed by the Contractor. For the purposes of determining the value of work to be performed by the Contractor pursuant to this provision, materials, equipment, incidentals, etc., shall be considered to have been purchased by the Contractor or Subcontractor that is to install them. Where a portion of an item is subcontracted, the value of work subcontracted will be based on the estimated cost of such portion of the subcontracted item, as determined from information submitted by the Contractor, subject to approval by the Engineer.
- 8.8.1 By executing the Contract, the Contractor certifies that no subcontractor included on the list of proposed subcontractors submitted with the Contractor's bid is ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7. In accordance with California Public Contract Code Section 6109(a), subcontractors who are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7 may neither bid on, be awarded or perform as a subcontractor on the Work. In accordance with California Public Contract Code Section 6109(b), any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. The Contractor will ensure that no debarred subcontractor receives any public money for performing the Work, and any public money that may have been paid to a debarred subcontractor for the Work is returned to the City. The Contractor will be responsible for payment of wages to workers of a debarred subcontractor who has been allowed to perform the Work.
- 8.8.2 The Agreement and the performance of the Work are subject to the requirements of the Subletting and Subcontracting Fair Practices Act codified at California Public Contract Code Section 4100 et seq. If the Contractor fails to specify a subcontractor or specifies more than one subcontractor for the same portion of the Work in excess of one-half of

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one percent of the Contractor's total bid, the Contractor agrees that the Contractor is fully qualified to perform that portion of the Work with the Contractor's own forces, and that the Contractor will perform that portion of the Work with the Contractor's own forces. If after award of the Agreement the Contractor subcontracts, except as provided for in California Public Contract Code Sections 4107 or 4109, any such portion of the Work, the Contractor will be subject to the penalties set forth in California Public Contract Code Sections 4110 and 4111, including cancellation of the Agreement, assessment of a penalty of up to 10 percent of the amount of the subcontract, and disciplinary action by the Contractors State License Board.

- 8.8.3. No contractual relationship exists between the City and any subcontractor engaged in performance of the Work.
- 8.8.4. Incorporation of Contract Documents. The Contractor must incorporate the Contract Documents in each contract with a subcontractor engaged in the performance of the Work including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. The Contractor shall be solely responsible for any delay or additional costs incurred as a result of its failure to provide adequate or accurate project information to a subcontractor that results in improper submittals and/or work, or time or other impacts is the sole responsibility of the Contractor. The Contractor will have all of the obligations and the City will have all of the remedies that are specified in Section 11.
- 8.8.5. Subcontractor agrees to be bound to General Contractor and City in the same manner and to the same extent as General Contractor is bound to City under the Contract Documents. Subcontractor further agrees 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's Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request. The Contractor shall require all subcontractors to provide a valid certificate of insurance with the required endorsements included in the agreement prior to commencement of any work and General Contractor will provide proof of compliance to the City.
- 8.8.6. Coordination of Subcontract Work: The Contractor is responsible for scheduling the Work of subcontractors so as to avoid delay or injury to either Work or materials.

## 8.9 Insurance.

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- 8.9.1 All required insurance shall be provided in the form of “occurrence”-type policies underwritten by admitted insurers in the State of California with a rating of A or better from the current year Best Rating Guide. All policies must be issued at the expense of the Contractor and must be maintained at the Contractor’s expense throughout the performance of the Work.
- 8.9.2 The Contractor and any subcontractors engaged in performance of the Work must secure payment of workers compensation in accordance with California Labor Code Section 3700 and other applicable law. The Contractor must verify that all Subcontractors comply with this requirement.
- 8.9.3 Within ten (10) working days following notice of award the Contractor must submit to the City along with executed copies of all other documents specified in the Contract Check List certificates of insurance and endorsements evidencing that the Contractor has in effect and will maintain throughout the performance of the Work the following kinds and amounts of insurance:
- 8.9.3.1 Worker’s Compensation Insurance. Workers Compensation and Employers Liability insurance as required by any applicable law, regulation or statute, including the provisions of Division IV of the Labor Code of the State of California, and any act or acts amending it. Worker’s Compensation insurance must be for Statutory Limits and must cover the full liability of the Contractor. The Contractor’s Employer’s Liability Insurance must be in an amount no less than \$1,000,000.00 per occurrence. 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 work performed under this agreement.
- 8.9.3.2 Commercial General Liability and Automobile Liability Insurance. Coverage for liability because of Bodily Injury and Property Damage including, but not limited to the following coverage:
- Completed Operations and Products Liability
  - Bodily Injury
  - Personal Injury
  - Broad Form Property Damage Liability
  - Contractual Liability insuring the obligations assumed by the Contractor under the Contract Documents

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- Automobile Liability, including owned, non-owned and hired automobiles
- Coverage for the XCU hazards of Explosion, Collapse and Underground Hazards

8.9.3.3 Commercial General Liability Self-Insured Retentions:

- 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 the City.
- The 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.

8.9.3.4 Commercial Umbrella Policy. The limits of insurance required in these Contract Documents 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.

8.9.3.5 Builders Risk. The Contractor must, at the Contractor's own expense, maintain a builder's risk fire insurance policy, special form including extended coverage and vandalism, and malicious mischief endorsements. The policy must name the City and the Contractor as insureds. Such insurance must be carried in the amount of 100% of the Contract Price. In the event of a partial or total destruction by fire of any or all of the Work at any time prior to the completion and acceptance thereof, the Contractor shall promptly reconstruct all Work so destroyed or injured at the Contractor's own cost and expense and at no cost to the City.



8.9.8 Contractor shall maintain insurance as required by these Contract Documents to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event contractor 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 Contractor.

#### 8.10 Indemnities.

8.10.1 The Contractor will take all responsibility for the Work, and will bear all losses and damages directly or indirectly resulting to the Contractor, any subcontractors engaged in performance of the Work, the City, its officials, officers, employees, agents, volunteers and consultants, and to third parties on account of the performance or character of the Work, unforeseen difficulties, accidents, or occurrences of other causes arising out of the Contractor's execution of the Work or of any subcontractor engaged in performance of the Work. To the fullest extent permitted by law the Contractor will indemnify, defend and hold harmless the City, its officials, officers, employees, agents, volunteers and consultants from and against any or all loss, liability, expense, claims, costs (including costs of defense and consultants' costs), suits, and damages of every kind, nature and description (including, but not limited to, penalties resulting from exposure to hazards in violation of the California Labor Code and bodily injury or death) directly or indirectly arising from the Contractor's performance of the Work, failure to perform the Work, or condition of the Work that is caused in whole or in part by any act or omission of Contractor, its subcontractors, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, resulting from any cause whatsoever, save for liability for any loss, damage, or expense arising out of the City's sole negligence or willful misconduct.

8.10.2 The Contractor will indemnify, defend and hold harmless the City, the City's officials, officers, employees, volunteers, agents and the Construction Manager for all liability on account of any patent rights, copyrights, trade names or other intellectual property rights that may apply to the Contractor's performance of the Work. The Contractor will pay all royalties or other charges as a result of intellectual property rights that may apply to methods, types of construction, processes, materials, or equipment used in the performance of the Work, and will furnish written assurance satisfactory to the City that any such charges have been paid.

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- 8.10.3 The Contractor assumes all liability for any accident or accidents resulting to any person or property as a result of inadequate protective devices for the prevention of accidents in connection with the performance of the Work. The Contractor will indemnify, defend, and hold harmless the City and its officials, officers, employees, agents, volunteers and consultants from such liability.
- 8.10.4 Approval of the Contractor's certificates of insurance and/or endorsements does not relieve the Contractor of liability under this Section 8.10. The Contractor will defend, with legal counsel reasonably acceptable to the City, any action or actions filed in connection with any Claims and will pay all related costs and expenses, including attorney's fees incurred. The Contractor will promptly pay any judgment rendered against the City, its officials, officers, employees, agents, volunteers or consultants for any Claims. In the event the City, its officials, officers, employees, agents, volunteers or consultants is made a party to any action or proceeding filed or prosecuted against Contractor for any Claims, Contractor agrees to pay the City, its officials, officers, employees, agents, volunteers and consultants any and all costs and expenses incurred in such action or proceeding, including but not limited to, reasonable attorneys' fees.
- 8.10.5 Contractor will indemnify, hold harmless and defend, with legal counsel reasonably acceptable to the City, the City and its officials, officers, employees, agents and volunteers from and against any and all claims related to damage to surface or underground facilities caused by the Contractor or any of the Contractor's privities or agents.
- 8.10.6 The Contractor will indemnify, hold harmless and defend, with legal counsel reasonably acceptable to the City, the City and its officials, officers, employees, agents and volunteers from and against any and all claims, including any fines or other penalties, related to failure of the Contractor and/or privities or agents of the Contractor to comply with the requirements of the General Permit, or to implement the Stormwater Pollution Prevention Plan ("SWPPP") in accordance with provision 12 of the Special Provisions. The City may withhold from amounts due or that may become due to the Contractor under this Contract amounts that equal or are estimated to equal the amount of claims, including fines, resulting from failure of the Contractor and/or privities or agents of the Contractor to comply with the requirements of the General Permit, or to implement the SWPPP in accordance with provision 12 of the Special Provisions.

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- 8.10.7 In accordance with California Civil Code Section 2782(a), nothing in the Contract will be construed to indemnify the City for its sole negligence, willful misconduct, or for defects in design furnished by the City. By execution of the Contract Documents the Contractor acknowledges and agrees that the Contractor has read and understands the insurance and indemnity requirements of the Contract Documents, which are material elements of consideration.
  - 8.10.8 The defense and indemnification obligations of these Contract Documents are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in these Contract Documents.
  - 8.10.9 Contractor/Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of these Contract Documents for the full period of time allowed by law.
  - 8.10.10 If Contractor fails to perform any of the foregoing defense and indemnity obligations, the City may defend itself and back-charge the Contractor for the City's costs and fees (including attorneys' and consultants' fees), and damages and withhold such sums from progress payments or other Contract monies which may become due.
- 8.11 Licenses/Permits. The Contractor must, without additional expense to the City, obtain all licenses, permits and other approvals required for the performance of the Work.
- 8.12 California Labor Code Requirements.
- 8.12.1 In accordance with California Labor Code Section 1771.1, this Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR). The Contractor and subcontractors engaged in performance of the Work must comply with Labor Code Section 1771.1.
  - 8.12.2 In accordance with California Labor Code Section 1810, eight (8) hours of labor in performance of the Work shall constitute a legal day's work under the Agreement.
  - 8.12.3 In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the Work is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess

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of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.

- 8.12.4 The Contractor and its subcontractors will forfeit as a penalty to the City \$25 for each worker employed in the performance of the Work for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one calendar day, or more than forty (40) hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 et seq.
- 8.12.5 In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the Work is to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the Public Works Department and shall be made available on request. The Contractor and subcontractors engaged in the performance of the Work shall pay no less than these rates to all persons engaged in performance of the Work.
- 8.12.6 In accordance with California Labor Code Section 1775, the Contractor and any subcontractors engaged in performance of the Work must comply with Labor Code Section 1775 which establishes a penalty of up to \$200 per day for each worker engaged in the performance of the Work that the Contractor or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner. The Contractor or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the Work is not paid the general prevailing per diem wages by the subcontractor, the Contractor is not liable for any penalties therefor unless the Contractor had knowledge of that failure or unless the Contractor fails to comply with all of the following requirements:
  - 8.12.6.1 The contract executed between the Contractor and the subcontractor for the performance of part of the Work must include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
  - 8.12.6.2 The Contractor must monitor payment of the specified general prevailing rate of per diem wages by the

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subcontractor by periodic review of the subcontractor's certified payroll records.

- 8.12.6.3 Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Contractor must diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the Work.
- 8.12.6.4 Prior to making final payment to the subcontractor, the Contractor must obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to employees engaged in the performance of the Work and any amounts due pursuant to California Labor Code Section 1813.
- 8.12.7 In accordance with California Labor Code Section 1776, the Contractor and each subcontractor engaged in performance of the Work, must keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating that the information contained in the payroll record is true and correct and that the employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project. The payroll records required pursuant to California Labor Code Section 1776 must be certified and must be available for inspection by the City and its authorized representatives, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations and must otherwise be available for inspection in accordance with California Labor Code Section 1776.
- 8.12.8 In accordance with California Labor Code Section 1777.5, the Contractor, on behalf of the Contractor and any subcontractors engaged in performance of the Work, will be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.
- 8.12.9 In case it becomes necessary for the Contractor or any subcontractor engaged in performance of the Work to employ on the Work any person in a trade or occupation (except executive, supervisory,

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administrative, clerical, or other non-manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor must pay the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by that person. The minimum rate thus furnished will be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

8.13 Laws and Ordinances. The Contractor and all subcontractors engaged in the performance of the Work must conform to the following specific rules and regulations as well as all other laws, ordinances, rules and regulations that apply to the Work. Nothing in the Contract Documents is to be construed to permit Work not conforming to these codes:

- National Electrical Safety Code, U. S. Department of Commerce
- National Board of Fire Underwriters' Regulations
- California Building Standards Code as adopted by the City
- California Plumbing Code as amended by applicable local ordinances for plumbing, sewage disposal and health requirements.
- California Mechanical Code as amended by applicable local ordinances for all construction work.
- California Administrative Code Titles 15, 19 and 24 (with California amendments), and Americans with Disabilities Act (ADA) accessibility guidelines, whichever is more stringent.
- Manual of Accident Prevention in Construction, latest edition, published by A.G.C. of America
- Industrial Accident Commission's Safety Orders, State of California
- Regulations of the State Fire Marshall (Title 19, California Code of Regulation) and Applicable Local Fire Safety Codes
- Labor Code of the State of California - Division 2, Part 7, Public Works and Public Agencies
- Federal, state, and local air pollution control laws and regulations applicable to the Contractor and/or Work

8.14 Guaranty. The Contractor guarantees all of the Work for one year from the date the City accepts the Work. Upon receiving written notice of a need for repairs which are directly attributable to defective materials or workmanship the Contractor must make good any defects arising or discovered in any part of the Work by diligently commencing the necessary repairs within seven (7) days from the date of notice from the City. If the Contractor fails to make good any defects in the Work in accordance with this provision, in addition to any other available remedy under the contract or at law or equity, the City may make good or have made good such defects in the Work and deduct the cost

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from amounts that may be due or become due the Contractor, and/or call on the Contractor's maintenance bond for the cost of making good such defects and for the City's reasonable legal costs, if any, of recovering against the bond. The Contractor shall remain responsible for repairing any Work found to be defective regardless of when such defect is discovered by the City.

Where defective or rejected Work and any damage caused thereby has been corrected, removed, or replaced by the Contractor pursuant to this section, the guarantee period with respect to that Work shall be extended for an additional period of one year after such correction, removal, or replacement has been satisfactorily completed.

#### 8.15 Safety.

8.15.1 In accordance with generally accepted construction practices and applicable law, the Contractor will be solely and completely responsible for conditions of the Work site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours. For purposes of California Labor Code Section 6400 and related provisions of law, the Contractor and the Contractor's privities and any other entities engaged in the performance of the Work will be "employers" responsible for furnishing employment and a place of employment that is safe and healthful for the employees, if any, of such entities engaged in the performance of the Work. Neither the City nor its officials, officers, employees, agents, volunteers or consultants will be "employers" pursuant to California Labor Code Section 6400 and related provisions of law with respect to the Contractor, the Contractor's privities or other entities engaged in the performance of the Work. The Contractor agrees that neither the City, the Construction Manager, the Architect, nor the Engineer will be responsible for having hazards corrected and/or removed at the Work site. The Contractor agrees that the City will not be responsible for taking steps to protect the Contractor's employees from such hazards, or for instructing the Contractor's employees to recognize such hazards or to avoid the associated dangers. The Contractor agrees with respect to the Work and the Work site, the Contractor will be responsible for not creating hazards and for having hazards corrected and/or removed, for taking appropriate, feasible steps to protect the Contractor's employees from such hazards and that the Contractor has instructed and/or will instruct its employees to recognize such hazards and how to avoid the associated dangers.

8.15.2 Review and inspection by the City, the Construction Manager, the Architect or Engineer, and/or other representatives of the City of the Contractor's performance of the Work will not constitute review of the

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adequacy of the Contractor's safety measures in, on, or near the Work site. Such reviews and inspections do not relieve the Contractor of any of the Contractor's obligations under the Contract Documents and applicable law to ensure that the Work site is maintained and the Work is performed in a safe manner.

- 8.15.3 The Contractor will be solely responsible for the implementation and maintenance of safety programs to ensure that the Work site is maintained and the Work is performed in a safe manner in accordance with the Contract Documents and applicable law.
  - 8.15.4 Within ten (10) working days following notice of award the Contractor must submit to the City a copy of the Contractor's Safety Plan.
  - 8.15.5 The Contractor must furnish and place proper guards and systems for the prevention of accidents, including, but not limited to, those systems required pursuant to Title 8, Section 1670 et seq. of the California Code of Regulations concerning safety belts and nets. The Contractor must provide and maintain any other necessary systems or devices required to secure safety of life or property at the Work site in accordance with accepted standards of the industry and applicable law. The Contractor must maintain during all night hours sufficient lights to prevent accident or damage to life or property.
- 8.16 Assignment of Unfair Business Practice Claims. In accordance with California Public Contract Code Section 7103.5, the Contractor and any subcontractors offer and agree to assign to the City all rights, title, and interest in and to all causes of action the Contractor or any subcontractors may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to this contract. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgement by the parties.
- 8.17 Contractor shall be responsible for properly notifying residents and property owners impacted by this project in accordance with City standards. Specific notification procedures vary with the type of work and shall be coordinated with the City before work begins. The City will furnish a list of impacted property owners.
- 8.18 Contractor shall use paper products and printing and writing paper that meets Federal Trade Commission recyclability standards as defined in 16 CFR 260.12.

## 9. MEASUREMENT AND PAYMENT

9.1 F.O.B. All shipments must be F.O.B. destination to the Work site and/or other sites indicated in the Contract Documents. The Contract Price is all-inclusive (including sales tax). There shall be no additional compensation paid for containers, packing, unpacking, drayage or insurance.

### 9.2 Payment

9.2.1 On or about the first day of each calendar month the Contractor will submit to the Construction Manager a verified application for payment and schedule of values supported by a statement showing all materials actually installed during the preceding month and the cost of labor actually expended in the performance of the Work. **Billing must be received on a monthly basis, at a minimum.** Unless otherwise provided in the Contract Documents, no allowances or payments will be made for material or equipment not placed at the Work site.

9.2.2 To be eligible for payment the Contractor's applications for payment must include certified payroll reports prepared in accordance with California Labor Code Section 1776 and the Agreement for each employee of the Contractor and any subcontractors engaged in the performance of the Work during the preceding months, applications for payment will not be processed without certified payroll reports.

9.2.3 In accordance with California Public Contract Code Section 20104.50, the City will review applications for payment as soon as practicable after receipt. Any application or part of an application that is determined to be improper will be returned to the Contractor as soon as practicable, but no later than seven (7) days after receipt by the City, along with a written description of the reasons why the application is improper. The Contractor's failure to submit a schedule in the time specified in Section 3.8, or its submission of a schedule to which the City has taken any uncorrected exception, shall serve as a basis for returning an application for payment in its entirety.

9.2.4 Unless the Contractor has elected to post securities in lieu of retention in accordance with California Public Contract Code Section 22300 and the Agreement, and the Contractor and the City have executed an escrow agreement in accordance with the Public Contract Code and the Agreement, the City will make progress payments to the Contractor in accordance with applicable law in the amount of ninety-five (95) percent of the value of the labor actually performed and the material incorporated in the Work as specified in Contractor's verified application for payment upon approval by the City's authorized representative(s). Payment of progress payments will not be construed as acceptance of the Work performed. If the Contractor has elected to post securities in

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lieu of retention in accordance with Public Contract Code Section 22300 and the Agreement and the Contractor and the City have executed an escrow agreement in accordance with the Public Contract Code and the Agreement, the City will make payments to the Contractor or the Contractor's escrow agent in accordance with such escrow agreement.

9.2.5 The City will pay the Contractor's final invoice in accordance with applicable law and this Section 9 following acceptance of the Work provided that:

9.2.5.1 The Contractor has furnished evidence satisfactory to the City that all claims for labor and material have been paid, or the time for filing valid stop notices has passed and no stop notices have been filed, or all stop notices filed have been released by valid release or release bond acceptable to the City.

9.2.5.2 No claim has been presented to the City by any person based upon any acts or omissions of the Contractor or any subcontractor engaged in the performance of the Work.

9.2.5.3 No other claim or dispute exists under the Agreement or applicable law concerning payment of the Contractor's final invoice and/or release of the Agreement retention.

9.2.5.4 The Contractor has filed with the City the Maintenance Bond provided in the Contract Documents with duly notarized signatures of an authorized representative of the Contractor and an attorney-in-fact of an admitted surety insurer acceptable to the City and such Maintenance Bond binds the Contractor as Principal and the Surety in accordance with its terms in the amount of 10% of the final Contract Price.

9.2.6 In accordance with California Public Contract Code Section 20104.50, if the City fails to make a progress payment within thirty (30) days of receipt of an undisputed, properly submitted application for payment, the City will pay the Contractor interest equivalent to the legal rate set forth in subdivision (a) of California Code of Civil Procedure Section 685.010. The number of days available to the City to make a payment without incurring an interest obligation pursuant to this provision and California Public Contract Code Section 20104.50 will be reduced by the number of days, if any, by which the City has delayed return of an application for payment beyond the seven day return requirement set forth in Section 9.2.5.

9.3 Non-Allowable Direct Charges. The following costs are not allowable direct charges under the Agreement. The following costs may only be paid under

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the Agreement, if at all, as part of any allowance for contractor overhead and/or profit established under the Agreement.

- 9.3.1 Labor costs in excess of applicable prevailing wages pursuant to the Agreement and applicable law, liability and workers compensation insurance, social security, retirement and unemployment insurance and other employee compensation and benefits pursuant to bona fide compensation plans in effect at the time specified for the opening of Project bids for contractor and subcontractor employees engaged in the performance of the Work or in excess of the labor costs specified in Section 4.5 of this Contract in the case of cost impacts involving items for which the Contract Documents do not specify prices and for which no lump sum amount has been approved by the City. However, in no event will allowable direct labor charges under the agreement include employee bonuses, employee vehicles or vehicle allowances, employee telephones or telephone allowances, or employee housing or housing allowances, whether or not such benefits are part of a bona fide compensation plan in effect at the time specified for the opening of Project bids.
  - 9.3.2 Superintendent labor and clerical labor.
  - 9.3.3 Bond premiums.
  - 9.3.4 Insurance in excess of that required under Section 8.8.
  - 9.3.5 Utility costs.
  - 9.3.6 Work Site office expenses.
  - 9.3.7 Home office expenses.
  - 9.3.8 Permit or license costs.
- 9.4 Retention. The City or its agent may, in accordance with the Contract Documents and applicable law, withhold any payment of monies due or that may become due the Contractor because of:
- 9.4.1 Defective work not remedied or uncompleted work.
  - 9.4.2 Claims filed or reasonable evidence indicating probable filing of claims.
  - 9.4.3 Failure to properly pay subcontractors or to pay for material or labor.
  - 9.4.4 Reasonable doubt that the Work can be completed for the balance then unpaid.
  - 9.4.5 Damage to another contractor.
  - 9.4.6 Damage to the City.

- 9.4.7 Damage to a third party.
  - 9.4.8 Delay in the progress of the Work, which, in the City's judgment, is due to the failure of the Contractor to properly expedite the Work.
  - 9.4.9 Liquidated damages or other charges that apply to the Contractor under the Agreement.
  - 9.4.10 Any other lawful basis for withholding payment under the contract.
- 9.5 Securities in Lieu of Retention.
- 9.5.1 In accordance with Public Contract Code Section 22300, except where federal regulations or policies do not permit substitution of securities, the Contractor may substitute securities for any moneys withheld by the City to ensure performance of the Work. At the Contractor's request and expense, securities equivalent to the amount withheld will be deposited with the City, or with a state or federally chartered bank in California as the escrow agent, who will then pay those moneys to the Contractor under the terms of an Escrow for Security Deposit agreement. The Escrow for Security Deposit agreement is provided in the Contract Documents. Upon satisfactory completion of the Work, the securities will be returned to the Contractor.
  - 9.5.2 Alternatively, at the Contractor's request and expense, the City will pay retentions earned directly to the escrow agent. At the Contractor's expense, the Contractor may direct investment of the payments into securities. Upon satisfactory completion of the Work, the Contractor will receive from the escrow agent all securities, interest, and payments received by the escrow agent from the City pursuant to this provision and the terms of the Escrow for Security Deposit agreement. The Contractor will, within 20 days of receipt of payment, pay to each subcontractor the respective amount of interest earned, less costs of retention withheld from each Subcontractor, on monies withheld to ensure the Contractor's performance of the Work.
  - 9.5.3 Securities eligible for investment in accordance with this provision include those listed in Government Code Section 16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the City.
  - 9.5.4 The Contractor will be the beneficial owner of any securities substituted for moneys withheld and will receive any interest thereon.



10. PROJECT ACCEPTANCE AND CLOSEOUT

10.1 Occupancy. The City reserves the right to occupy or use any part or parts or the entirety of the Work before the Work is fully performed. Subject to applicable law, exercising this right will in no way constitute acceptance of any part of the Work so occupied or used or acceptance of the entire Work, nor will such occupancy or use in any way affect the times when payments will become due the Contractor, nor will such occupancy or use in any way prejudice the City’s rights under the Agreement, any Agreement bonds, or at law or equity. Occupancy or use shall not waive the City’s rights to assess liquidated damages in accordance with Section 7 after the date of such occupancy or use.

10.2 Work Completion and Final Inspection. When the Contractor considers the Work is completed, the Contractor will submit written certification to the Construction Manager specifying that: the Contract Documents have been reviewed; the Work has been inspected for compliance with the Contract Documents; the Work has been completed in accordance with the Contract Documents; and that equipment and systems have been tested in the presence of the City’s representative and are operational. The City and/or the City’s authorized representatives will make an inspection to verify that the Work is complete and will notify the Contractor in writing of any incomplete or deficient Work. The Contractor will take immediate steps to remedy the stated deficiencies and give notice of correction to the Construction Manager. Upon receiving a notice of correction, the City or the City’s authorized representatives will re-inspect the Work. The Contractor must correct all punch list items within 15 working days after the issuance of the punch list. Before acceptance of the Work the Contractor must submit: one set of the Project Record Drawings (As-Builts), and any equipment operating and maintenance instructions and data, warranties.

10.3 Work Acceptance.

10.3.1 All finished Work will be subject to inspection and acceptance or rejection by the City, the Construction Manager, and the Architect or Engineer and other government agencies having jurisdiction over the Work. Final acceptance of the Work will be at the discretion of the City.

10.3.2 The City will accept the Work in writing only when the Work has been completed to the City’s reasonable satisfaction. Progress payments will in no way be construed as acceptance of any part of the Work.

10.3.3 In evaluating the Work, no allowance will be made for deviations from the Contract Documents unless already approved in writing in accordance with the requirements of Section 4, above.

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- 10.3.4 The fact that the Work and materials have been inspected from time to time and that progress payments have been made does not relieve the Contractor of the responsibility of replacing and making good any defective or omitted work or materials in accordance with the requirements of the Contract Documents.
- 10.3.5 None of the provisions of this section, including acceptance of the Project, final payment, or use or occupancy of the Project Site shall constitute acceptance of Work not done in accordance with the Contract Documents nor relieve Contractor of liability relating to the express guarantees or responsibility for faulty materials or workmanship. Nothing in this section or the Contract Documents shall be construed to limit, relieve, or release Contractor's, subcontractors', and materials suppliers' liability to the City for damages sustained as a result of latent defects in materials, equipment, or the Work caused by the Contractor, its agents, suppliers, employees, or Subcontractors.

## 11. REMEDIES AND DISPUTES

11.1 Failure to Correct Work. Within ten (10) working days of receiving written notice from the City describing Work that is defective or that is otherwise not in accordance with the requirements of the Agreement and/or applicable law and directing that such Work be corrected, the Contractor and/or the Contractor's sureties must give the City written notice of the intent of the Contractor and/or the Contractor's sureties to correct such Work and commence correction of such Work in accordance with the City's notice and the Agreement. If the Contractor and/or the Contractor's sureties do not give the City written notice of intent to correct such Work and commence correction of such Work within ten (10) working days of receipt of the City's notice, then the City may correct such work and/or have such work corrected for the account and at the expense of the Contractor and/or its sureties, and the Contractor and/or its sureties will be liable to the City for any resulting excess cost. The City may, in addition to all other remedies that the City may have under the Agreement and at law or equity, deduct any such excess cost of completing the Work from amounts that are due or that may become due the Contractor. Contractor shall not be entitled to an extension of the Time of Completion because of a delay in the performance of the Work attributable to the City's exercise of its rights under this section.

### 11.2 Termination for Cause

11.2.1 In accordance with California Public Contract Code Section 7105, in addition to all other available remedies that the City may have under the Agreement, and at law or equity, the City may terminate the

Contractor's control of the Work for any material breach of the Contract, including, but not limited to the following:

- 11.2.1.1 If the Contractor or any of its subcontractors engaged in the performance of the Work fails to timely perform the Work and/or any of the Contractor's material obligations under the Contract Documents, including but not limited to submission of an acceptable schedule, that have accrued except for due to reasons beyond the control of the Contractor pursuant to the Contract Documents.
  - 11.2.1.2 If the Contractor is adjudged bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of its creditors.
  - 11.2.1.3 If the Contractor or any of the subcontractors engaged in the performance of the Work persistently or repeatedly refuses or fails to supply enough properly skilled workmen or proper materials for the timely completion of the Work.
  - 11.2.1.4 If the Contractor fails to make prompt payment to subcontractors engaged in the performance of the Work or for material or labor used in the performance of the Work in accordance with the Contract Documents and applicable law.
  - 11.2.1.5 If the Contractor or any subcontractors engaged in the performance of the Work persistently disregards laws or ordinances applicable to the performance of the Work, or the instructions of the City, the Construction Manager, the Architect, or other authorized representatives of the City.
- 11.2.2 If the City intends to terminate the Contractor's control of the Work for any of the reasons specified in Sections 11.2.1.1 through 11.2.1.5, above, the City will immediately serve written notice to the Contractor and its sureties in accordance with the Contract Documents. Notice of the City's intent to terminate the Contractor's control of the Work will be given by registered or certified mail and specify the grounds for termination, the required cure and the time by which the cure must be effected. Upon receipt of notice of the City's intent to terminate the Contractor's control of the Work for any of the reasons specified in provisions 11.2.1.1 through 11.2.1.5, above, the Contractor will have ten (10) days from receipt of the notice or a longer time specified in the notice to cure its default. If the Contractor does not affect the required cure by the time specified in the notice, the City will issue a written notice of termination to the Contractor and its sureties by registered or certified mail. The notice of termination will specify: that

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upon receipt of the notice the Contractor's right to perform or complete the Work, including on behalf of the Contractor's sureties, is terminated; that the Contractor's sureties will have the right to take over and complete the Work and perform all of the Contractor's remaining obligations that have accrued under the Agreement; and that if the Contractor's sureties do not both give the City written notice of their intention to take over and perform the Agreement and commence completion of the Work and performance of all of the Contractor's remaining obligations that have accrued under the Agreement within ten (10) days after receipt of notice of termination that the City may declare the Contractor's sureties in default and take over the completion of the Work or have the Work completed for the account and at the expense of the Contractor and its sureties, and the Contractor and its sureties will be liable to the City for any resulting excess cost. The City may, in addition to all other available remedies that the City may have under the Contract Documents and at law or equity, deduct any such excess cost of completing the Work from amounts that are due or that may become due the Contractor.

- 11.2.3 Upon termination of the Contractor's control of the Work for any of the reasons specified in Sections 11.2.1.1 through 11.2.1.5, the Contractor will, if so directed by the City, immediately remove from the Work site any and all materials and personal property belonging to the Contractor which have not been incorporated in the Work and the Contractor and its sureties will be liable upon their bond for all damages caused the City by reason of the Contractor's failure to complete the Work.
- 11.2.4 Upon termination of the Contractor's control of the Work for any of the reasons specified in provisions 11.2.1.1 through 11.2.1.5, above, the City reserves the right to refuse tender of the Contractor by any surety to complete the Work.
- 11.2.5 If the City completes or has completed any portion of, or the whole of the Work, following termination of the Contractor's control of the Work for any of the reasons specified in Sections 11.2.1.1 through 11.2.1.5, above, the City will neither be liable for nor account to the Contractor or the Contractor's sureties in any way for the time within which, or the manner in which such Work is performed, or for any changes made in such Work or for the money expended in satisfying claims and/or suits and/or other obligations in connection with completing the Work. If, following termination of the Contractor's control of the Work for any of the reasons specified in Sections 11.2.1.1 through 11.2.1.5, above, the unpaid balance of the Contract Price exceeds the expense of completing the Work, including compensation for additional legal,

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managerial and administrative services and all other amounts due for the completion of the Work and/or satisfaction of claims of the City and/or others arising out of the Agreement and any other charges that apply to the Contractor under the Agreement, the difference will be paid to the Contractor. If such expenses of completing the Work exceed the unpaid balance of the Contract Price, the Contractor or its sureties will pay the difference to the City.

- 11.2.6 If the Agreement or Contractor's control of the Work is terminated for any reason, Contractor waives all consequential damages resulting therefrom, including, but not limited to, the loss of any anticipated profit by the Contractor for the Work, the loss of profit on any potential or future jobs, and the loss of bonding capacity.
- 11.2.7 In accordance with California Government Code Section 4410, in the event a national emergency occurs, and public work being performed by contract is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the City and the Contractor may, by written agreement, terminate the Agreement. In accordance with California Government Code Section 4411, such an agreement will include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either party will pay to the other or any other person, under the facts and circumstances in the case. Compensation to the Contractor will be determined on the basis of the reasonable value of the work done, including preparatory work. As an exception to the foregoing, in the case of any fully completed separate item or portion of the Work for which there is a separate contract price, the contract price shall control. The parties may in any other case adopt the contract price as the reasonable value of the work or any portion of the work done.
- 11.2.8 In the event a termination for cause is later determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and the Contractor shall have no greater rights than it would have following a termination for convenience. Any contractor claim arising out of a termination for cause shall be made in accordance with this section.

### 11.3 Termination for Convenience.

- 11.3.1 The City may terminate performance of the Work under the Contract Documents in accordance with this clause in whole, or from time to

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time in part, whenever the City shall determine that termination is in the City's best interest. Termination shall be effected by the City delivering to the Contractor notice of termination specifying the extent to which performance of the Work under the Contract Documents is terminated, and the effective date of the termination.

- 11.3.2 Contractor shall comply strictly with the City's direction regarding the effective date of the termination, the extent of the termination, and shall stop work on the date and to the extent specified.
- 11.3.3 Contractor shall be entitled to a total payment on account of the Contract work so terminated measured by: (i) the actual cost to Contractor of Work actually performed, up to the date of the termination, with profit and overhead limited to twelve percent (12%) of actual cost of work performed, up to but not exceeding the actual contract value of the work completed as measured by the Schedule of Values and Progress Schedule; and (ii) offset by payments made and other contract credits. In connection with any such calculation, however, the City shall retain all rights under the Contract Documents including, without limitation, claims, indemnities, or setoffs.
- 11.3.4 Under no circumstances may Contractor recover legal costs of any nature, nor may Contractor recover costs incurred after the date of the termination.

#### 11.4 Disputes.

The procedure set forth in California Public Contracts Code section 9204 (as summarized in Exhibit B attached hereto) shall apply to all "claims" by the Contractor on the City, as that term is defined in Section 9204. With respect to "claims" or any portion of a claim not resolved by way of the procedure set forth in Section 9204, the following procedure shall thereafter apply as follows:

- 11.4.1 In accordance with California Public Contract Code Section 20104.2, the following procedures apply to claims of \$375,000 or less between the Contractor and the City:
  - 11.4.1.1 The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.
  - 11.4.1.2 For claims of less than fifty thousand dollars (\$50,000), the City shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional

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documentation supporting the claim or relating to defenses to the claim the City may have against the Contractor.

11.4.1.2.1 If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the Contractor.

11.4.1.2.2 The City's written response to the claim, as further documented, shall be submitted to the Contractor within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the Contractor in producing the additional information, whichever is greater.

11.4.1.3 For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the City shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the City may have against the Contractor.

11.4.1.3.1 If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the Contractor.

11.4.1.3.2 The City's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

11.4.1.4 If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within 15 days of receipt of the City's response or within 15 days of the City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute.

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- 11.4.1.5 Following the meet and confer conference, if the claim or any portion remains in dispute, the Contractor may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.
- 11.4.1.6 This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.
- 11.4.2 In accordance with California Public Contract Code Section 20104.4, the following procedures apply to civil actions to resolve claims of \$375,000 or less between the City and the Contractor:
  - 11.4.2.1 Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.
  - 11.4.2.2 If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.



11.4.2.2.1 Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

11.4.2.2.2 In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

11.4.2.3 The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

11.4.3 In accordance with California Public Contract Code Section 20104.6:

11.4.3.1 The City shall not fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

11.4.3.2 In any suit filed under Public Contract Code Section 20104.4 concerning this contract, the City shall pay interest at the legal rate on any arbitration award or judgment. Such interest shall accrue from date the suit was filed.

11.5 Non-Waiver.

11.5.1 Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

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11.5.2 Neither acceptance of the whole or any part of Work by City nor any verbal statements on behalf of City or its authorized agents or representatives shall operate as a waiver or modification of any provision of the Contract Documents, or of any power reserved to City herein nor any right to damages provided in the Contract Documents.

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CITY OF FORT BRAGG  
416 Franklin Street  
Fort Bragg, California 95437

**CONTRACT, PART 3**

**SPECIAL PROVISIONS**

12. SPECIAL PROVISIONS

12.1 Description of Work.

The Work in general consists of removal of existing carpet and replacement with Stone Composite Plank flooring in the first floor of the City Hall building and other such items of work as are required to complete the project in accordance with this Contract, the Project Plans and Technical Specifications.

12.2 Construction Limitations.

The Contractor will be expected to conduct his or her operations in a manner that creates a minimum of damage to the natural vegetation and landscape. Ingress and egress must be via the existing driveways. Care must be exercised to avoid hazards that may cause injury to persons, animals or property either during working hours or after work hours, which will include dust control, and temporary fencing as required.

The Contractor will be responsible for obtaining permission from the property owners for any construction outside of the Work site or easements as shown on the plans. Equipment will be restricted to the immediate area of construction.

Receptacles for construction residue, including oil, cleaning fluids, and litter must be covered. Such residues must be disposed of in a proper manner. Construction activity within the existing right-of-way must be scheduled to minimize traffic inconvenience and safety hazards to motorists, pedestrians and cyclists.

12.3 Storm Water Pollution Prevention.

The Contractor must perform the Work in compliance with all applicable requirements of the California State Water Resources Control Board pursuant to Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 ("General Permit") adopted pursuant to regulations adopted by the U.S. Environmental

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Protection Agency (USEPA) on November 16, 1990 and codified in 40 Code of Federal Regulations Parts 122, 123, 124. The General Permit applies to storm water discharges from construction sites that disturb land equal to or greater than one acre, and to construction activity that results in soil disturbances of less than one acre if the construction activity is part of a larger common plan of development that encompasses one acre or more of soil disturbance or if there is significant water quality impairment resulting from the activity.

#### 12.4 Maintaining Traffic and Pedestrian Operations.

The Contractor must conduct his or her operations so as to cause the least possible obstruction and inconvenience to public traffic.

Due to the need to accommodate and minimize inconvenience to the public, unless expressly specified or approved in writing by the Construction Manager, no road closures will be permitted. The Contractor must make provisions for the safe passage of pedestrians around the area of Work at all times.

Residents affected by construction must be provided passage and access through the Work area to the maximum extent possible. In addition, all driveways must be accessible at the end of each workday, and no driveway or property access may be closed for more than four (4) hours during the workday. Access to driveways, houses, and buildings along the road or street must be as convenient as possible and well maintained, and all temporary crossings must be maintained in good condition. To minimize the need for and complexity of detours, not more than one crossing or street intersection or road may be closed at any one time without the written approval of the Construction Manager.

The Contractor must provide multiple, advance written notices of closures to all affected property owners in a form approved by the Construction Manager.

Except as otherwise approved by the Construction Manager, the stockpiling or storing of material in City streets or rights of way shall be prohibited. Where this is unavoidable, all such materials must be piled or stored in a manner that will not obstruct sidewalks, driveways, or pedestrian crossings. Gutters and drainage channels must be kept clear and unobstructed at all times. All such materials shall be stored and handled in a manner that protects City streets, sidewalks, or other facilities from damage.

Where approved in advance by the Construction Manager, the Contractor must construct and maintain detours for the use of public traffic at his or her own expense. Failure or refusal of the Contractor to construct and maintain detours so approved at the proper time will be a material breach of the Contract subject to any and all remedies available pursuant to the Contract Documents and at law and equity. Such remedies include, but are not limited to, termination pursuant to Section 11.

Throughout performance of the Work, the Contractor must construct and adequately maintain suitable and safe crossings over trenches and such detours as are necessary to care for the public and private traffic at all times including Saturdays, Sundays and holidays.

The Contractor will be responsible for keeping all emergency services, including the Fort Bragg police and fire departments informed of obstructions to, or detours around any public or private roads caused by reasons of his or her operations.

The Contractor must comply with the State of California, Department of Transportation Manual of warning signs, lights, and devices for use and performance of work within the job site.

The fact that rain or other causes, either within or beyond the control of the Contractor, may force suspension or delay of the Work, shall in no way relieve the Contractor of his or her responsibility of maintaining traffic through the Project and providing local access as specified in this section. The Contractor must, at all times, keep on the job such materials, force and equipment as may be necessary to keep roads, streets and driveways within the Project open to traffic and in good repair and shall expedite the passage of such traffic, using such force and equipment as may be necessary.

Full compensation for conforming to the requirements of this section will be deemed included in the prices paid or the various Contract items of Work, and no additional allowances will be made therefor.

## 12.5 Public Safety.

The Contractor must at all times conduct the Work in accordance with Construction Safety Orders of the Division of Industrial Safety, State of California, to ensure the least possible obstruction to traffic and inconvenience to the general public, and adequate protection of persons and property in the vicinity of the Work.

No pedestrian or vehicle access way may be closed to the public without first

obtaining permission of the Construction Manager.

Should the Contractor fail to provide public safety as specified or if, in the opinion of the Construction Manager, the warning devices furnished by the Contractor are not adequate, the City may place any warning lights or barricades or take any necessary action to protect or warn the public of any dangerous condition connected with the Contractor's operations, and the Contractor will be liable to the City for, and the City may deduct from amounts due or that may become due to the Contractor under the Contract, all costs incurred including, but not limited to, administrative costs.

Nothing in this section will be construed to impose tort liability on the City or Construction Manager.

Contractor acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a Contractor, must be accessible to the disabled public. Contractor shall provide the services specified in the Contract Documents in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under the Contract Documents and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns shall constitute a material breach of the Contract Documents.

#### 12.6 Protection of Existing Facilities and Property.

Subject to Section 5 of the General Provisions, the Contractor must take all necessary measures to avoid injury to existing surface and underground utility facilities in and near the Work site. Subject to Section 5 of the General Provisions, no error or omission of utility markouts will be construed to relieve the Contractor from his responsibility to protect all underground pipes, conduits, cables or other structures affected by the Work.

The existing underground facilities in the area of Work may include telephone, television and electrical cables, gas mains, water mains, sewer pipe and drainage pipe. The various utility companies must be notified before trenching begins and at such other times as required to protect their facilities. The Contractor must immediately notify the Construction Manager of any facilities found. If damage should occur to the existing facilities, the utility company and the City must be notified immediately and, subject to

Section 5 of the General Provisions, repairs acceptable to the utility company must be made at the Contractor's expense.

If in the performance of the Work an existing utility is encountered that is not shown on the Project Plans and is not apparent or inferable from visual inspection of the Project site, the Project Inspector must be notified immediately. The Construction Manager will determine, subject to Section 5 of the General Provisions, whether the Project Plans or Technical Specifications should be modified, or whether the existing utility should be relocated or whether the Contractor must work around the existing utility. Subject to Section 5 of the General Provisions, the Contractor must replace, at his or her own expense, in as good condition as they were prior to the start of construction, all existing improvements and surroundings damaged by his or her operation. Reconstruction of all existing improvements must conform to CITY OF FORT BRAGG Public Works Standard Specifications and Details under the direction of and subject to the acceptance by the Construction Manager.

Subject to Section 5 of the General Provisions, should the Contractor fail to take adequate measures to avoid injury or damage to the facilities described above, the City may take any actions necessary to protect such facilities from the Contractor's operations. Subject to Section 5 of the General Provisions, the City may withhold the cost of injury to existing surface and underground utility facilities in and near the Work site from amounts due or that may become due the Contractor.

#### 12.7 Preconstruction Conference.

A pre-construction conference will be scheduled, at which time the Contractor must present his or her proposed work schedule in accordance with Section 3.8 of the General Provisions, information concerning offsite yards, Subcontractors, location of disposal and stock pile areas, and traffic control plans. All such schedules will be subject to the approval of the Construction Manager and the applicable agencies.

#### 12.8 Owner Notification.

The Contractor must notify all property owners and businesses affected by the Work at least 48 hours before Work is to begin. The notice must be in writing in the form of a door hanger, and must indicate the Contractor's name and phone number, type of work, day(s) and time when Work will occur. Notices must be reviewed in advance and approved by the Construction Manager.



#### 12.9 Emergency Service Providers Notifications.

The Contractor must furnish the name and phone number of a representative that can be contacted in the event of an emergency. Said information must be reported to the City Police Department dispatcher, and updated as required to provide 24-hour phone access.

#### 12.10 Clean up.

Attention is directed to Section 4-1.02 of the Caltrans Standard Specifications, which section is made a part of this Contract.

Before final inspection of the Work, the Contractor must clean the construction site and all ground occupied by him in connection with the Work, of all rubbish, excess material, falsework, temporary structures and equipment. All parts of the Work shall be left in a neat and presentable condition.

Nothing herein shall require the Contractor to remove warning, regulatory, and guide signs prior to formal acceptance by the Construction Manager.

#### 12.11 Payment.

Payment for all work and work requirements specified in these Special Provisions shall be considered as included in the Contract Price and no additional allowances shall be made therefore.

#### 12.12 Construction Staking.

Attention is directed to Section 3.9 of the General Provisions for information on Construction Staking.

#### 12.13 Materials Testing Allowance.

Attention is directed to Section 3.10 of the General Provisions for information on Materials Testing Allowance.

#### 12.14 Obstructions.

Attention is directed to Section 15, "Existing Highway Facilities," of the Caltrans Standard Specifications, which section is made a part of this Contract.

Attention is directed to the existence of overhead and underground power, telephone, and television cable poles, underground sewer mains and laterals, underground gas mains, and underground water mains and laterals within the area in which construction is to be performed.

The Contractor will be required to work around public and private utility facilities and other improvements that are to remain in place within the construction area, and he will be held liable to the owners of such facilities for interference with service resulting from his operations.

#### 12.15 Hours of Work.

Unless otherwise specified herein, all construction activity, except for emergency situations, will be confined to Monday through Friday between the hours of 7:30 a.m. and 6:00 p.m., to minimize nuisances to local residents. Mufflers and/or baffles will be required on all construction equipment to control and minimize noise. The Contractor must comply with all applicable noise regulations in the City's Zoning Ordinance.

Saturdays, Sundays, holidays and overtime shall not be regarded as working days. Work shall not be allowed on non-working days without the expressed approval of the Construction Manager. The Contractor shall make a request for approval in writing with the stipulation (implied or expressed) that the Contractor shall pay for all overtime labor charges at the applicable hourly rate of the City or contract employee performing duties of inspector and/or resident engineer. All overtime labor charges shall be deducted from the final payment along with any liquidated damages.

Work necessary for the proper care and protection of work already performed or in case of emergency may be allowed without permission of the Construction Manager.

#### 12.16 Dust Control.

The Contractor must furnish all labor, equipment, and means required and carry out effective measures wherever and as often as necessary to prevent its operation from producing dust in amounts damaging to property, cultivated vegetation, or domestic animals, or causing a nuisance. The Contractor will be responsible for any damage resulting from any dust originating from the performance of the Work. The use of water resulting in mud on streets, sidewalks, or driveways, will not be permitted as a substitute for sweeping or other methods of dust control. The Contractor may not

discharge smoke, dust, or any other air contaminants into the atmosphere in such quantity as will violate the regulations of any legally constituted authority.

Dust control must conform to the provisions in Sections 10-5, "Dust Control" and Section 18, "Dust Palliatives" of the Caltrans Standard Specifications, which section is made a part of this Contract.

#### 12.17 Water for Construction and Dust Control.

Unless otherwise provided, the Contractor will be responsible for applying to the City's Utility Department to establish utility accounts (at no charge) for all water necessary to perform the Work. The Contractor must comply with all City requirements for construction water, including provision of deposits and provision of backflow prevention devices. In accordance with State law, backflow prevention devices for construction water connections must be re-tested when relocated. The Contractor will be responsible for the cost of any re-testing.

The Contractor is prohibited from operating gate valves, fire hydrants, pumps or any other components of the City water system. The Contractor must contact the City's utilities staff, a minimum of twenty-four (24) hours in advance, to operate these or any other components on the City water system.

#### 12.18 Protection and Restoration of Vegetation.

Trees, lawns, shrubbery and vegetation that are not to be removed must be protected from damage or injury. Existing trees, shrubs, and other plants, that are not to be removed and are injured or damaged by reason of the Contractor's operations, must be replaced by the Contractor in accordance with the requirements in Section 20-3.01C, "Replacement," of the Caltrans Standard Specifications. Section 20-3.01C of the Caltrans Standard Specifications is made a part of this Contract.

When it is necessary to cut limbs and branches of trees to provide clearance for equipment used in construction, the Contractor must repair the damaged areas by properly painting with an emulsified asphalt type seal. All cuts through 1/2" or larger roots and limbs must be hand trimmed and cleanly cut before being repaired.

#### 12.19 Surplus Material.

All material removed or excavated during the course of construction will be surplus. All surplus material will be the property of the Contractor and be disposed of outside the right-of-way, unless the City elects to salvage certain objects that are determined to be of historical interest. The City reserves the right of ownership of all objects that it elects to salvage, and the Contractor must protect such objects from subsequent damage until delivered unto the care of the owner.

#### 12.20 Cultural Resources.

In accordance with the National Historic Preservation Act of 1966 (16 U.S.C. 470), the following procedures are implemented to ensure historic preservation and fair compensation to the Contractor for delays attendant to the cultural resources investigation. The Contractor hereby agrees to comply with these procedures.

#### 12.21 Historical Finds.

In the event potential historical, architectural, archeological, or cultural resources (hereinafter called cultural resources) are discovered the following procedures will apply:

1. The Contractor must immediately notify the Construction Manager and stop any Work that may jeopardize the find pending an investigation of its significance;
2. The Construction Manager will select a qualified archeologist (such as through the Northwest Information Center at Sonoma State University or other official contact) and wait for an archaeologist to complete an evaluation of significance before continuing Work in that area.
3. The Construction Manager will supply the Contractor with a "Stop Work Order" directing the Contractor to cease all portions of the Work that the Construction Manager determines may impact the find. The "Stop Work Order" will be effective until a qualified archaeologist assesses the value of the potential cultural resources. The "Stop Work Order" will contain the following:
  - a. A clear description of the Work to be suspended;
  - b. Any instructions regarding issuance of further orders by the Contractor for materials services;
  - c. Guidance as to action to be taken regarding Subcontractors;
  - d. Any direction to the Contractor to minimize costs; and

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- e. Estimated duration of the temporary suspension.
4. If the archaeologist determines the potential find is a bona fide cultural resource, the Construction Manager may extend the duration of the "Stop Work Order" in writing, and if so the "Stop Work Order" will remain in effect and Work subject to the "Stop Work Order" may not resume until authorized by the Construction Manager.

#### 12.22 Cultural Resources Defined.

Possible indicators that a cultural resource has been found include, but are not limited to the following:

1. Prehistoric-era archaeological site indicators: obsidian tools, tool manufacture waste flakes, grinding and other implements, dwelling sites, animal or human bones, fossils, and/or locally darkened soil containing dietary debris such as bone fragments and shellfish remains;
2. Historic-era site indicators: ceramic, glass, and/or metal.

#### 12.23 Construction Manager's Discretion.

Once possible cultural resources are found at the Work site, the Construction Manager may use discretion to continue the Work, regardless of the cultural resource find, if the Construction Manager determines that there are overriding considerations such as the instability of the excavation site, the existence of adverse weather or other conditions that would preclude leaving the site exposed, or if the site would be unsafe to workers who would retrieve cultural resource items from therein.

CITY OF FORT BRAGG  
416 Franklin Street  
Fort Bragg, California 95437

**CONSTRUCTION PERFORMANCE BOND**

**(Note: The successful bidder must use this form. Use of any other bond form may prevent a contract from forming and/or result in forfeiture of the successful bidder's bid bond.)**

THIS CONSTRUCTION PERFORMANCE BOND (Bond), dated \_\_\_\_\_, is in the amount of \_\_\_\_\_ (Penal Sum), which is 100% of the Contract Sum and is entered into by and between the parties listed below to ensure the faithful performance of the Contract identified below. This Bond consists of this page and the Bond Terms and Conditions, Paragraphs 1 through 14 attached to this page. Any singular reference to \_\_\_\_\_ (Contractor), \_\_\_\_\_ (Surety), City of Fort Bragg (City), or other party shall be considered plural where applicable.

CONTRACTOR:

SURETY:

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Name of Surety

\_\_\_\_\_  
Address

\_\_\_\_\_  
Principal Place of Business

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
City/State/Zip

CONSTRUCTION CONTRACT:

Agreement for the \_\_\_\_\_ (Project) located at \_\_\_\_\_ (Address), California, dated \_\_\_\_\_, in the amount of \_\_\_\_\_.

CONTRACTOR AS PRINCIPAL

SURETY

Company: (Corp. Seal)

Company: (Corp. Seal)

Signature:

Signature:

Name:

Name:

Title:

Title:

City of Fort Bragg  
Project No. PWP-00140  
Construction Performance Bond

## BOND TERMS AND CONDITIONS

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the City and the State of California for the complete and proper performance of the Construction Contract, which is incorporated herein by reference.
2. If Contractor completely and properly performs all of its obligations under the Construction Contract, Surety and Contractor shall have no obligation under this Bond.
3. If there is no City Default, Surety's obligation under this Bond shall arise after:
  - 3.1 City provides Surety with written notice that City has declared a Contractor Default under the Construction Contract pursuant to the terms of the Construction Contract; and
  - 3.2 City has agreed to pay the Balance of the Contract Sum:
    - 3.2.1 To Surety in accordance with the terms of this Bond and the Construction Contract; or
    - 3.2.2 To a Contractor selected to perform the Construction Contract in accordance with the terms of this Bond and the Construction Contract.
4. When City has satisfied the conditions of Paragraph 3 above, Surety shall promptly (within 40 Days) and at Surety's expense elect to take one of the following actions:
  - 4.1 Arrange for Contractor, with consent of City, to perform and complete the Construction Contract (but City may withhold consent, in which case the Surety must elect an option described in Paragraphs 4.2, 4.3 or 4.4 below); or
  - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors or Construction entities; provided, that Surety may not select Contractor as its agent or independent contractor or Contractor without City's consent; or
  - 4.3 Undertake to perform and complete the Construction Contract by obtaining bids from qualified contractors or Construction entities acceptable to City for a contract for performance and completion of the Construction Contract and, upon determination by City of the lowest responsive and responsible Bidder, arrange for a contract to be prepared for execution by City and the contractor or Contractor selected with City's concurrence, to be secured with performance and payment bonds executed by a qualified surety

City of Fort Bragg  
Project No. PWP-00140  
Construction Performance Bond

equivalent to the bonds issued on the Construction Contract; and, if Surety's obligations defined in Paragraph 6 below, exceed the Balance of the Contract Sum, then Surety shall pay to City the amount of such excess; or

- 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor or Contractor, and with reasonable promptness under the circumstances and, after investigation and consultation with City, determine in good faith its monetary obligation to City under Paragraph 6 below, for the performance and completion of the Construction Contract and, as soon as practicable after the amount is determined, tender payment therefor to City with full explanation of the payment's calculation. If City accepts Surety's tender under this Paragraph 4.4, City may still hold Surety liable for future damages then unknown or unliquidated resulting from the Contractor Default, as agreed by City and Surety at the time of tender. If City disputes the amount of Surety's tender under this Paragraph 4.4, City may exercise all remedies available to it at law to enforce Surety's liability under Paragraphs 6 and 7 below.
5. At all times City shall be entitled to enforce any remedy available to City at law or under the Construction Contract including, without limitation, and by way of example only, rights to perform work, protect Work, mitigate damages, advance critical Work to mitigate schedule delay, and coordinate Work with other consultants or contractors.
6. If Surety elects to act under Paragraphs 4.1, 4.2 or 4.3 above, within the time period provided in Paragraph 4, above, and complies with its obligations under this Bond, Surety's obligations under this Bond are commensurate with Contractor's Construction Contract obligations. Surety's obligations include, but are not limited to:
  - 6.1 Contractor's obligations to complete the Construction Contract and correct Defective Work;
  - 6.2 Contractor's obligations to pay liquidated damages; and
  - 6.3 To the extent otherwise required of Contractor under the Construction Contract, Contractor's obligations to pay additional legal, design professional, and other costs not included within liquidated damages resulting from Contractor Default (but excluding attorney's fees incurred to enforce this Bond).



7. If Surety does not elect to act under Paragraphs 4.1, 4.2, 4.3, or 4.4, above, within the time period provided in Paragraph 4, above, or comply with its obligations under this Bond, then Surety shall be deemed to be in default on this Bond ten Days after receipt of an additional written notice from City to Surety demanding that Surety perform its obligations under this Bond. Such Surety default shall be independent of the Contractor Default. To the extent Surety's independent default causes City to suffer damages including, but not limited to, delay damages, which are different from, or in addition to (but not duplicative of) damages which City is entitled to receive under the Construction Contract, Surety shall also be liable for such damages. In the event any Surety obligation following its independent default is inconsistent or conflicts with California Civil Code Section 2809, or any other law which either prohibits, restricts, limits or modifies in any way any obligation of a surety which is larger in amount or in any other respect more burdensome than that of the principal, Surety hereby waives the provisions of such laws to that extent.
8. If Surety elects to act under Paragraphs 4.1, 4.2, 4.3 or 4.4 above, within the time period provided in Paragraph 4, above, and complies with all obligations under this Bond, Surety's monetary obligation under this Bond is limited to the Penal Sum.
9. No right of action shall accrue on this Bond to any person or entity other than City or its successors or assigns.
10. Surety hereby waives notice of any change, alteration or addition to the Construction Contract or to related subcontracts, design agreements, purchase orders and other obligations, including changes of time, and of any City action in accordance with Paragraph 5 above. Surety consents to all terms of the Construction Contract, including provisions on changes to the Contract. No extension of time, change, alteration, Modification, deletion, or addition to the Contract Documents, or of the Work (including services) required thereunder, or any City action in accordance with Paragraph 5 above shall release or exonerate Surety on this Bond or in any way affect the obligations of Surety on this Bond, unless such action is an City Default.
11. Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction where a proceeding is pending between City and Contractor regarding the Construction Contract, or in the Superior Court of the County of Mendocino, California, or in a court of competent jurisdiction in the location in which the Work is located. Communications from City to Surety under Paragraph 3.1 above shall be deemed to include the necessary agreements under Paragraph 3.2 above unless expressly stated otherwise.
12. All notices to Surety or Contractor shall be mailed or delivered (at the address set forth on the signature page of this Bond), and all notices to City shall be mailed or delivered as provided in the Construction Contract. Actual receipt of notice by

City of Fort Bragg  
Project No. PWP-00140  
Construction Performance Bond

Surety, City or Contractor, however accomplished, shall be sufficient compliance as of the date received at the foregoing addresses.

13. Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein.

14. Definitions

14.1 Balance of the Contract Sum: The total amount payable by City to Contractor pursuant to the terms of the Construction Contract after all proper adjustments have been made under the Construction Contract, for example, deductions for progress payments made, and increases/decreases for approved Modifications to the Construction Contract.

14.2 Construction Contract: The agreement between City and Contractor identified on the signature page of this Bond, including all Contract Documents and changes thereto.

14.3 Contractor Default: Material failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract, limited to "default" or any other condition allowing a termination for cause as provided in the Construction Contract.

14.4 City Default: Material failure of City, which has neither been remedied nor waived, to pay Contractor progress payments due under the Construction Contract or to perform other material terms of the Construction Contract, if such failure is the cause of the asserted Contractor Default and is sufficient to justify Contractor termination of the Construction Contract.

**END OF DOCUMENT**

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City of Fort Bragg  
Project No. PWP-00140  
Construction Performance Bond

CITY OF FORT BRAGG  
416 Franklin Street  
Fort Bragg, California 95437

**CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND**

**(Note: The successful bidder must use this form. Use of any other bond form may prevent a contract from forming and/or result in forfeiture of the successful bidder's bid bond.)**

KNOW ALL PERSONS BY THESE PRESENTS:

1.01 WHEREAS, the City of Fort Bragg, 416 N. Franklin Street, Fort Bragg, California 95437 (City) has awarded a Contract to \_\_\_\_\_ as Principal, dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the Contract), titled THE \_\_\_\_\_ PROJECT in the amount of \$\_\_\_\_\_, which Contract is by this reference made a part hereof, for the work of the following Contract:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1.02 WHEREAS, Principal is required to furnish a bond in connection with the Contract to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided by law;

1.03 NOW, THEREFORE, we, the undersigned Principal and \_\_\_\_\_, as Surety, are held and firmly bound unto City in the sum of 100% OF THE CONTRACT PRICE (\$ \_\_\_\_\_), for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

1.04 THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its executors, administrators, successors, or assigns approved by City, or its subcontractors shall fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the State of California Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to Section 13020 of the State of California Unemployment Insurance Code with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the sum specified in this bond,

City of Fort Bragg  
Project No. PWP-00140  
Construction Labor & Material Payment Bond

plus reasonable attorneys' fees, otherwise the above obligation shall become and be null and void.

- 1.05 This bond shall inure to the benefit of any of the persons named in California Civil Code Section 9100, as to give a right of action to such persons or their assigns in any suit brought upon this bond. The intent of this bond is to comply with the California Mechanic's Lien Law.
- 1.06 Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder, shall in any way affect the obligation of this bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder.
- 1.07 Surety's obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection with Contract; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing City's rights against the other.
- 1.08 Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this \_\_\_\_day of \_\_\_\_\_, \_\_\_\_\_.

**CONTRACTOR AS PRINCIPAL**

**SURETY**

Company: (Corp. Seal)

Company: (Corp. Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
City, State, Zip Code

**END OF DOCUMENT**

City of Fort Bragg  
Project No. PWP-00140  
Construction Labor & Material Payment Bond

FORT BRAGG  
416 Franklin Street  
Fort Bragg, California 95437

**MAINTENANCE BOND**

**(Note: The successful bidder must use this form. Use of any other bond form may prevent a contract from forming and/or result in forfeiture of the successful bidder's bid bond.)**

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS the City Council of the CITY OF FORT BRAGG has awarded to \_\_\_\_\_, (designated as the "PRINCIPAL") a contract for the \_\_\_\_\_ Project, Project No. \_\_\_\_\_, which contract and all of the contract documents as defined therein (designated as the "Contract") are hereby made a part hereof; and

WHEREAS, the PRINCIPAL is required under the terms of the Contract to furnish a bond for the correction of any defects due to defective materials or workmanship in the work performed under the Contract.

NOW, THEREFORE, we the PRINCIPAL and the undersigned \_\_\_\_\_, as surety (designated as "SURETY"), an admitted surety insurer authorized to do business in the State of California, are held and firmly bound unto the CITY OF FORT BRAGG, (designated as the "OBLIGEE"), in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), lawful money of the United States, being a sum not less than ten percent (10%) of the final Contract price, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH that if, during a maintenance period of one (1) year from the date of acceptance by the OBLIGEE of the contracted work, the PRINCIPAL upon receiving written notice of a need for repairs which are directly attributable to defective materials or workmanship, shall diligently take the necessary steps to correct said defects within seven (7) days from the date of said notice, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

If any action shall be brought by the OBLIGEE upon this bond, a reasonable attorney's fee, to be fixed by the Court, shall be and become a part of OBLIGEE's judgment in any such action.

No right of action shall accrue on this bond to, or for the use of, any person or corporation other than the OBLIGEE named herein or the heirs, executors, administrator or successor of the OBLIGEE.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their seals this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ the name and corporate seals

City of Fort Bragg  
Project No. PWP-00140  
Construction Labor & Material Payment Bond

of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Corporate Seal)

PRINCIPAL

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

(Acknowledgement)

Title:

(Corporate Seal)

SURETY

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

(Attorney-in-fact)

(Acknowledgement)

Title:

*(NOTE TO SURETY COMPANY: A certified copy of unrevoked resolution of authority for the attorney-in-fact must be submitted with and attached to the executed bid bond.)*

**END OF DOCUMENT**

**B.T. Mancini Co., Inc.**

2985 Dutton Ave Unit 1  
 Santa Rosa CA 95407  
 (707) 568-5300 Fax: (707) 568-5302  
 CA Contractor's License #: 229210  
 NV Contractor's License #:0010497  
 DIR #: 100002989  
 www.btmancini.com

**BID PROPOSAL - FLOORING****Contact:** Kevin McDannold**Date:** 11.14.2024**Company:** City of Fort Bragg**Project:** Fort Bragg City Hall Flooring Update**Project Address:** 415 N. Franklin Street, Fort Bragg, CA 95437**BID OVERVIEW:**

**B.T. Mancini Co., Inc.** to furnish and install materials listed below in accordance with plan sheet(s) "**A2.1**" of plans prepared by Levethal, Scholsser, Newberger Architects and dated **07.30.2008** wherein all provisions listed on this proposal are honored.

- > **(1) Addendum(s)**
- > All work to be completed only in areas, with materials, and in the proposed layout, shown on the attached colored plan, entitled: "**BTM HIGHLIGHTED WORK PLAN – "Fort Bragg City Hall takeoffs"** in order to maintain listed pricing.

**MATERIALS INCLUDED:**

1. **SPC:** Gemcore 7"x48"x5mm SPC w/20mil wear layer, style Opal, color TBD
2. **Qtr Rnd:** Gemcore Qtr Round, style Opal, color TBD @ existing wood base boards
3. **Adhesive, sundries & transitions**

**ADD ALTERNATE OPTIONS (add cost to base bid if desired):**

1. Add (2) office per attached plan sheet to include demo of existing flooring & installation of new flooring as detailed above
2. Add Underlayment: Furnish & install Powerhold 4x5x6mm underlayment at existing substate
3. Add Underlayment @ (2) additional offices to furnish & install
4. Moving Furniture in multiple phases

**OTHER SERVICES INCLUDED/KEY NOTES:**

1. **Demo & Disposal of existing floor coverings**
2. **Normal Floor Prep:** See attached definition of "Normal Floor Prep" as compared to "Major Floor Prep."
3. **Work to take place on regular business hours of Mon-Fri 5:30AM – 5:30PM**
4. **(4) Mobilizations**

**EXCLUSIONS: (To be made part of the Contract Documents)**

1. Thresholds, Extruded metal edgings, resilient flooring, ~~moving of furniture~~, paint touch ups, removal/replacement of existing wood base, Wood base at Phase 4 corridor where carpet base will be removed. All IT to be handled by the City and boxing up personal items, removing files from cabinets for furniture moving if elected. Repairs to existing wood substrate once carpet/pad is removed.
- ~~2. The removal and relocation of furniture, counters, equipment or any other items inhibiting continuous flooring installation.~~
3. Demo of any existing adhesive, and/or any other materials or residues existing on slab.
4. Asbestos and/or mold removal (including, but not limited to, floor covering and adhesives)
5. Major floor preparation (including, but not limited to: cleaning and filling of saw cuts, ramping and leveling of concrete, unforeseen sub floor repairs, and any grinding of concrete to make flat or to remove existing adhesives.) Please see final page under heading "Major and Normal Floor Preparation" for a more detailed explanation of included and excluded services regarding floor preparation.
6. Any demo or removal of other trades' construction materials, including, but not limited to: marking pen, paint, oils, grease, curing compounds, release agents, sealers, taping mud, fire caulking.
7. Demo, Preparation, and Replacement of rejected mock-up locations. Work of this nature can be performed only as an "ADD" to the **BASE BID**.
8. Final cleaning and waxing/polishing of resilient flooring and/or vacuuming of carpet.
9. Additional cost for the hoisting of materials to above-grade floors if traditional elevators are not available and/or the fees associated with the oversight of a dedicated lift operator.
10. Floor protection, dust/infectious containment, post-installation traffic control.
11. ~~Cost of bonds~~, permits or fees.
- ~~12. Liquidated damages.~~
13. Waiver of subrogation.

PLEASE SEE PRICING ON FINAL PAGE



**PROJECT CONDITIONS and SCOPE REQUIREMENTS: (To be made part of the Contract Documents)**

1. Pricing is based on **normal business hours, Monday - Friday, 8 hour shifts.**
2. G. C. or Owner is responsible for all environmental conditions, including heat, lighting at no additional cost to B.T. Mancini Co., Inc.
3. Acceptable moisture emission test results are required prior to installation of flooring.
4. Pricing includes all applicable tax and freight.
5. **Pricing is valid for 30 days.**
6. Extra work is quoted as an "ADD" to this subcontract to be done during work duration. After our work is complete, these quoted prices may increase.
7. Area of installation must be a minimum of 65 degrees F; building completely constructed with doors, windows, heating and HVAC fully operational.
8. Area of installation will require free and clear access to construction areas.
9. B.T. Mancini will not honor any back charges, unless notified in writing at the time of occurrence and given the opportunity to verify and/or correct the issue within 48 hours.
10. B.T. Mancini Co., Inc. will not be responsible for any delays in obtaining special items, which are beyond our control.
11. B.T. Mancini Co., Inc. will not be responsible for any damage to finished or unfinished materials caused by other trades.
12. ~~Prices based on material being fabricated and installed at one time.~~

**INSURANCE QUALIFICATIONS, DESCRIPTIONS and KEYNOTES: (To be made part of the Contract Documents)**

1. Upon award, all project and/or contractor specific insurance requirements will be reviewed by BTM prior to acceptance. If requested by the insurance documents, BTM will name the Contractor and the Owner as additionally insured. However, all other agents not contracted by BTM, such as the Architect/Engineer and other consultants, are excluded and will not be named as additionally insured. Coverage outlined will only be provided on forms CG 20 10 04/13 and CG 20 37 04/13, all other forms are excluded.
2. When any WRAP Program is implemented on a project, B.T. Mancini Co., Inc. will only provide Additionally Insured and Completed Operations Coverage for offsite operations.

**QUALIFICATIONS**

1. B.T. Mancini Co., Inc. shall defend, indemnify and hold harmless the Contractor and Owner from damages only to the extent such damages were caused by any negligent act or omission of B.T. Mancini Co., Inc.
2. B.T. Mancini Co., Inc. will not defend, indemnify or hold harmless any other person or entity. ~~This provision supersedes any other indemnity provision.~~

**PAYMENT TERMS:**

Payment to Seller is express obligation of Buyer and is not dependent upon "the condition precedent" of buyer receiving funds from other sources. Seller to be paid according to the following schedule:

1. B.T. Mancini Co., Inc. will order materials to meet your schedule. ~~We will bill for these materials when delivered to our warehouse or the job site as arranged. We shall expect payment for the materials to be paid by the tenth of the month following your receipt of our invoice.~~
2. ~~If we perform installation work, we shall expect to be paid a minimum of 95% of our invoice for installation by the tenth of the month following your receipt of our invoice.~~
3. Any retention that you may have withheld shall be paid not later than thirty days following the completion of the work.

**SPECIAL PROVISIONS:**

Should a dispute arise over the provisions of the subcontract, change order, delays, or any other matters, and litigation or arbitration ensue, the prevailing party will be entitled to reasonable attorney's fees and costs.

**GENERAL CONDITIONS TO AGREEMENT**

1. **Definitions** – The word "Seller" as used herein means B.T. Mancini Co., Inc. and the word "Buyer" means the purchaser of material and services ("Work") hereunder from the Seller for the specific project referenced herein.
2. **Incorporation** – Buyer agrees that these General Conditions are a material part of the agreement between Buyer and Seller for the Work ("Agreement"), will be and hereby are incorporated into any further expression of that Agreement, ~~and when in conflict with any other written terms and conditions governing Seller's performance of the Work, shall take precedence thereover.~~
3. **Prompt Performance** – Seller shall make reasonable efforts to perform the Work promptly in accordance with the terms of this Agreement, but shall not be liable for delay or schedule impacts arising from strikes, lockouts, fire, earthquake, war, governmental acts, Acts of God, or other events beyond Seller's reasonable control, whether affecting the production, loading, transportation, delivery, or installation of the Work.
4. **Warranty** – Seller warrants that the Work will be of good quality and new unless the Agreement requires or permits otherwise. For one (1) year from the date of substantial completion of the Work, Seller will at its sole discretion repair or replace any non-conforming Work under this warranty. Seller's warranty excludes remedy for damage or defect caused by abuse, alterations not executed by Seller, improper or insufficient maintenance, improper operation, normal wear and tear, and normal usage. Seller makes no other warranty, express or implied, regarding the Work, including the suitability thereof for any specific project. After substantial completion, Buyer's rights under this warranty are its sole and exclusive remedy against Seller for non-confirming Work.
5. **Delay** – In the event the Work is stopped or delayed for any cause beyond the reasonable control and not the fault of Seller, then Seller shall in addition to any remedies otherwise available, be entitled to an equitable adjustment to both the time and cost of performing the Work, and may, if such stoppage or

delay continues for thirty (30) days, terminate this Agreement and be paid for all Work performed. Stoppage or delay shall be presumed not to be the fault of Seller unless proved otherwise.

6. **Indemnification** – To the fullest extent of Seller’s own negligence, Seller agrees to indemnify Buyer against damages arising out of Seller’s performance of the Work and resulting in bodily injury or property damage other than to the Work itself.
7. **Dispute Resolution** – In any legal proceeding related to this Agreement, and in addition to any costs otherwise recoverable, the prevailing party shall be entitled to its reasonable attorneys’, experts’, and consulting fees. Venue for any dispute shall lie in the county where the Work is to be performed or in Santa Clara County. This Agreement shall be governed by California law without regard to its choice of law provisions.
8. **Claims** – Claims by Buyer for shortages or for improper, defective or damaged material must be made in writing specifying in detail the nature and extent of the shortage, defect or damage within five (5) days of delivery, and accompanied by the original freight bill with a notation on the face thereof by local agent of the carrier as to the items and quantity short or damaged. Risk of damage shall be on Buyer when materials are delivered to a common carrier F.O.B. shipping point. Title to material shall remain with Seller until payment in full is made by Buyer.
9. **Limitation on Claims** – Any claim by Buyer, whether for breach of contract, tort, property damage, or personal injury must be made in writing within one (1) year of substantial completion of the Work, or such claim shall be deemed forever waived. Buyer and Seller hereby waive any claim against each other for consequential, special, exemplary, or other indirect damages.
10. **Protection and Security** – Buyer shall take reasonable steps to protect the Work installed and/or stored at the job site from damage, vandalism and theft, and shall provide, as appropriate, security guards and secure storage areas. Once accepted, damaged or stolen materials shall be Buyer’s responsibility.
11. **Assignment** – Buyer shall not assign its rights or obligations under this Agreement, in whole or in part, without Seller’s written consent.
12. **Bankruptcy** – In the event Buyer is adjudicated bankrupt, files a voluntary petition in bankruptcy, makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a trustee or receiver over a substantial part of the Buyer’s property, Seller shall have the right to terminate the Agreement, and in addition to any other remedies, collect for all Work performed.
13. **Payment** – Buyer shall pay Seller according to the following schedule for the Work:
  - (a) For materials delivered, the cost of those materials to Buyer shall be paid by the 10th day of the month following delivery.
  - (b) For installation, not less than 90% of the cost to Buyer performed in any month shall be paid by the 10th day of the following month.
  - (c) Retention shall be paid within thirty (30) days of the completion and acceptance of Seller’s Work. The benefit of any reduction of the retention under any agreement between Buyer and its customer (for example, from 10% to 5%), will be passed proportionally on to Seller.
  - (d) Buyer shall not make any payment to Seller in the form of a joint check, or any other type of payment other than payment solely in the name of Seller, unless agreed to by the Seller in writing. Buyer’s payment shall constitute acceptance of the Work. Any sums not paid when due shall bear interest at the rate of 1 1/2 % per month, annual percent rate 18%, until paid, provided that if such rate of late charge is not permitted by law, the highest legal rate shall be charged. In the event payment is not made as provided herein, Seller shall have the right to withhold further Work until paid, or upon five (5) days’ written notice to Buyer, to terminate this Agreement and seek damages.
14. **Job Conditions** – Unless otherwise stated herein, the working surfaces and job conditions shall be ready to receive Seller’s Work upon issuance of Buyer’s notice to proceed. Seller is entitled to rely on Buyer’s notice as representation that Buyer has carefully inspected and approved the work performed by others that it is to receive, align, abut, adjoin, accept, or similarly relate to Seller’s Work.
15. **Penalties and Back charges** – No back charges, penalties, liquidated damages or other deductions against the price set forth herein may be withheld from Seller unless (1) Buyer notifies Seller in writing of the basis for such charge no later than thirty (30) days after the cause for such charge is established; (2) Buyer is first provided sufficient opportunity to cure or correct any claimed defect or default in its Work; and (3) in no event will Seller be charged after payment would otherwise be due Seller per paragraph 13 hereof. Buyer’s failure to strictly comply with these conditions shall constitute a waiver by Buyer of any such charge against Seller.
16. **Extra Work** – Prior to making any change in the Work, including the time for storage, delivery, or installation thereof, Buyer will provide Seller with a written change order. Unless expressly agreed otherwise, Seller will be paid for any change in the Work on the basis of its actual costs, including taxes and insurance, plus 15% overhead and 10% profit thereon. Seller is not obligated to perform any changes to the Work until it receives a written change order or written directive from the Seller agreeing to the price for and/or any time extension required by the change.
17. **Bonds** – Unless specifically included, the cost of any required surety bonds shall be paid for by Buyer.
18. **Escalation** – Seller’s price is based on completion of the Work in accordance with the project schedule provided to Seller prior to this Agreement or as otherwise described herein. In the event commencement of the project or the Work is delayed through no fault of the Seller, prices for the Work shall be equitably adjusted by any actual cost increases incurred by and not reasonably avoidable by Seller.
19. **Contract and Credit Acceptance** – All agreements are subject to approval by Seller’s authorized employee(s). Acceptance of this Agreement by Seller and continued performance of Work shall at all times be subject to Buyer’s creditworthiness, and Seller reserves the right to require full or partial payment in advance if Buyer’s financial condition creates a reasonable concern that Buyer cannot meet its financial obligations to Seller.
20. **Material Approval** – Samples or other submittals furnished by Seller, when reviewed without any noted objection or exception by Buyer, Buyer’s customer, or any agent, architect, or engineer thereof, shall be deemed the correct interpretation of the Work to be furnished.
21. **Inspection and Acceptance** – Upon completion, Buyer shall promptly inspect Seller’s Work and notify Seller in writing of the basis for any rejection, default, or deficiency. Buyer’s failure to timely inspect or reject Seller’s Work within ten (10) days after completion of Seller’s Work, shall constitute Buyer’s complete and final acceptance of the Work.
22. **Labor Rates and Working Conditions** – Seller’s price is based on working full time and continuously without interruption on normal work days at straight time hourly rates prevailing in the area where the Work is to be performed. If Buyer requests overtime, off-hours Work, or multiple mobilizations, the price shall be equitably adjusted to cover Seller’s additional costs, including any increase in wages, taxes, insurance, set-up, or travel costs, plus overhead at 15% and profit at 10% thereon.
23. **Epidemic Rider:** If as a direct or indirect result of any virus, disease, contagion, including but not limited to COVID-19 (individually or collectively, “Epidemic”), B.T. Mancini Company’s work is delayed, disrupted, suspended, or otherwise impacted, including, but not limited to, by (1) disruptions to material and/or equipment supply; (2) illness of B.T. Mancini Company’s workforce and/or unavailability of labor; (3) government quarantines, shelter-in-place orders; closures, or other mandates, restrictions, and/or directives; (4) Owner or Contractor restrictions and/or directives; and/or (5) fulfillment of B.T. Mancini Company’s contractual or legal health and safety obligations associated with an Epidemic; then B.T. Mancini Company, Inc. shall be entitled to an equitable adjustment to the Subcontract schedule and duration to account for such disruptions, suspensions, and impacts. To the extent any of the causes identified herein results in an increase in the cost of labor, materials, or equipment used in the performance of this Subcontract, or other costs of performance of the Subcontract, B.T. Mancini Company, Inc. shall be entitled to an equitable adjustment to the Subcontract price for such increases,

Buyer

provided B.T. Mancini Company, Inc. presents documentation of such increases (including the original prices and/or estimates) and evidence of B.T. Mancini Company’s reasonable efforts to find alternative sources of material or equipment supply and/or labor at the original/non-impacted prices and/or estimates.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS’ STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR OF THE BOARD WHOSE ADDRESS IS: CONTRACTORS’ STATE LICENSE BOARD, 9821 BUSINESS PARK DRIVE, SACRAMENTO, CALIFORNIA 95827 OR 222.cslb.ca.gov.

**MAJOR AND NORMAL FLOOR PREPARATION:**

**Major Preparation:**

The following is what BT Mancini Co., Inc. considers Major Floor preparation. If the general contractor/owner would like BT Mancini Co. Inc. address any of the following items, it will be performed on a “Time & Materials” basis. The hourly rate will be as stated on our schedule of time and material costs which will be returned with the executed contract.

**Major Preparation is:**

1. The clean-up or moving of other trade’s materials that are left on, spilled on, dropped on, sprayed on, etc... the floor.
2. The clean-up of mud that is tracked on the floor during construction.
3. **Markings or lines of any kind on slab in Resilient Flooring Areas are not acceptable (this includes but is not limited to: permanent marker, spray paint). The removal of these marks is considered major floor preparation.**
4. **Any** work required to bring the slab to the flatness required in the specifications or by the owner. This includes slab curl at joints and key ways.
5. **Any** work required to create a smooth trowel finish.
6. Remediating fissures and cracks greater than 1/16”
7. Cleaning and filling of saw cuts.
8. On wood floors, the setting of nails so they are below the surface of the wood. The filling and sanding of a poor grade of underlayment. The filling or preparing of divots at nail heads. Also additional nailing. *(Note; Wood Subfloors should have Flooring Grade Subfloor installed to meet Manufacturer’s Spec’s)*
9. The installation of a cementitious topping over moisture mitigation system administered by others.

**Normal Preparation:**

The following is what BT Mancini Co. Inc. expects to do for normal floor preparation.

**Normal Preparation is:**

1. A final sweep to remove the fine dust that has settled after the general contractor has swept and cleaned the floor just prior to BT Mancini Co. Inc. arriving at the job.
2. The filling of small holes and normal shrinkage and/or expansion cracks in the slab which are less than 1/16”.
3. Fill Normal Butt or Keyed construction joints or zip strips.
4. Fill all seams on wood subfloors.

**PLEASE NOTE:** Floor preparation is cosmetic only and should not be considered a structural repair.

**BASE BID: \$76,936.00**  
**Add Alt #1\_Rms: \$7,258.00**  
**Add Alt #2\_Ulay @ Base Bid: \$34,076.00**  
**Add Alt #3\_Ulay @ Rm Adds: \$3,718.00**  
**Add Alt #4\_Furniture Moving: \$8,800.00**

*Jennifer Mills*

Respectfully Submitted,  
Jennifer Mills 707-568-5300

Base bid plus Add Alt #1 and Add Alt #4 - \$92,994

**QUOTATION ACCEPTANCE:**

This quotation, unless otherwise noted, will remain in effect for 30 days from the above date. Upon acceptance by the Buyer and credit approval by the B.T. Mancini Co., Inc. this instrument shall constitute a binding contract. In the event the Buyer elects to issue his own purchase order or contract based on this quotation, the conditions contained herein shall be deemed to be incorporated in said purchase order or contract. This proposal expressly limits acceptance to terms of The General Conditions of Sale contained herein. No terms additional or different from The General Conditions will be accepted, including, but not limited to, any terms which establish a “condition precedent” to the Buyer making payment to the Seller other than any “condition precedent” already contained in this proposal. **The undersigned hereby accepts this proposal and states that he has read The General Conditions of Sale attached to this proposal.**

**ACCEPTED:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

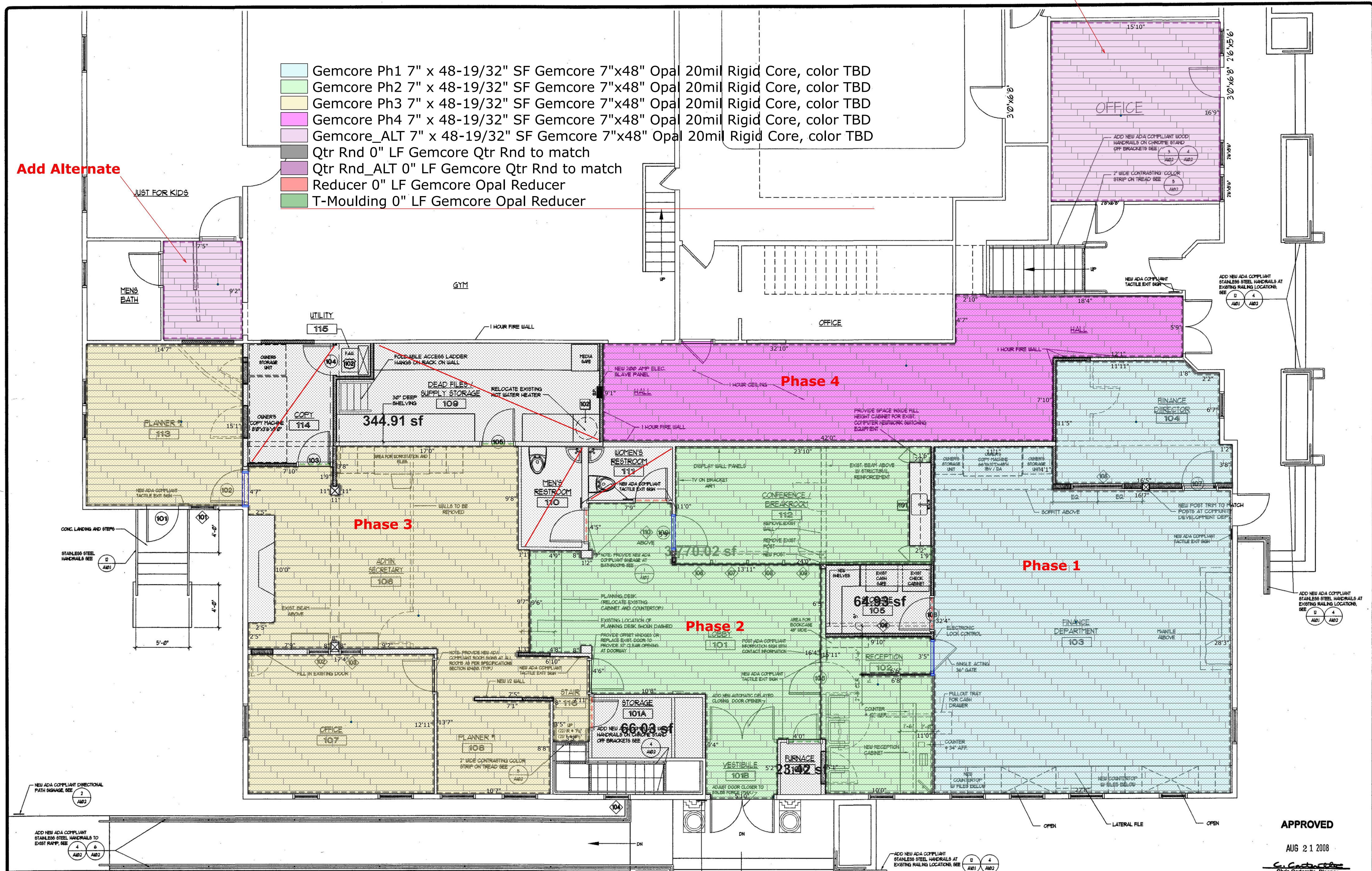
**PRINT NAME:** \_\_\_\_\_

**COMPANY:** \_\_\_\_\_

Add Alternate

Add Alternate

- Gemcore Ph1 7" x 48-19/32" SF Gemcore 7"x48" Opal 20mil Rigid Core, color TBD
- Gemcore Ph2 7" x 48-19/32" SF Gemcore 7"x48" Opal 20mil Rigid Core, color TBD
- Gemcore Ph3 7" x 48-19/32" SF Gemcore 7"x48" Opal 20mil Rigid Core, color TBD
- Gemcore Ph4 7" x 48-19/32" SF Gemcore 7"x48" Opal 20mil Rigid Core, color TBD
- Gemcore\_ALT 7" x 48-19/32" SF Gemcore 7"x48" Opal 20mil Rigid Core, color TBD
- Qtr Rnd 0" LF Gemcore Qtr Rnd to match
- Qtr Rnd\_ALT 0" LF Gemcore Qtr Rnd to match
- Reducer 0" LF Gemcore Opal Reducer
- T-Moulding 0" LF Gemcore Opal Reducer



**FIRST FLOOR PLAN**  
SCALE: 1/4" = 1'-0"

APPROVED

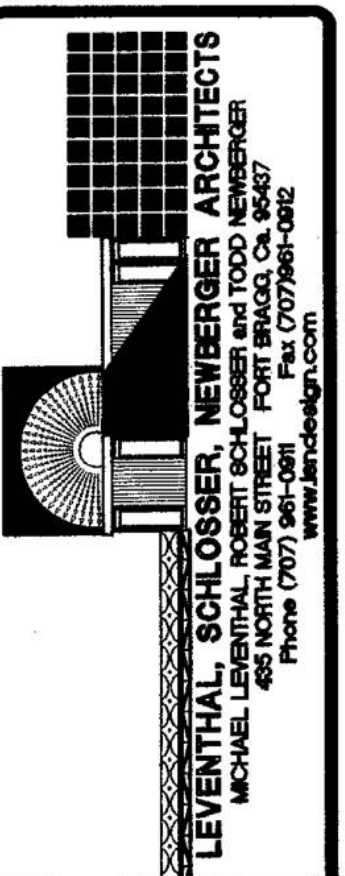
AUG 21 2008

*C. Carter*  
Chris Carter, Planner  
City of Fort Bragg

RECEIVED

AUG 20 2008

CITY OF FORT BRAGG  
COMMUNITY DEVELOPMENT DEPT.



FIRST FLOOR PLAN

A Remodel To:  
**FORT BRAGG CITY HALL**  
 416 North Franklin Street  
 Fort Bragg, California 95437

REVISION

DRAWN	RA
CHECKED	
SCALE	1/4" = 1'-0"
SHEET	

**A2.1**

## **EXHIBIT B**

### **CLAIMS PROCEDURE**

#### **SUMMARY OF PUBLIC CONTRACT CODE § 9204**

The following procedure will apply to any claims by the Contractor on the City:

A “claim” is a separate demand on the City by a contractor on a public works project and sent by registered mail or certified mail with return receipt requested, for one or more of the following:

- A time extension, including relief from penalties for delay
- Payment by the City of money damages under the terms of the contract
- Payment of an amount that is disputed by the City

#### **Initial Review**

The claim must be supported by appropriate documentation. The City has 45 days within which to review the claim and provide the contractor with a written statement identifying the disputed and undisputed portions of the claim. If the City does not issue a written statement, the claim is deemed rejected in its entirety. The City will pay any undisputed portion of the claim within 60 days of issuing the statement.

#### **Meet & Confer**

If the contractor disputes the City’s written response, or if the City does not issue one, the contractor may request in writing an informal conference to meet and confer for possible settlement of the claim. The City will schedule the meet and confer conference within 30 days of this request and provide a written statement identifying the remaining disputed and undisputed portions of the claim within 10 business days of the meet and confer. The City will pay the undisputed portion within 60 days of issuing this statement.

#### **Mediation**

With respect to any disputed portion remaining after the meet and confer, the City and contractor will submit the matter to nonbinding mediation, agree to a mediator within 10 business days after issuing the written statement, and share mediation costs equally. If mediation is unsuccessful, then the terms of the public works agreement and applicable law will govern resolution of the dispute.

#### **Miscellaneous Provisions**

Amounts not paid by the City in a timely manner bear interest at 7% per annum. Subcontractors may submit claims via this procedure through the general contractor. The City and contractor may waive the requirement to mediate, but cannot otherwise waive these claim procedures.

**Weaver, Amber**

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**From:** Jacob Patterson <jacob.patterson.esq@gmail.com>  
**Sent:** Friday, January 24, 2025 2:09 PM  
**To:** City Clerk  
**Cc:** Whippy, Isaac  
**Subject:** Public Comment -- 1/27/25 CC Mtg., Item No. 5C, City Hall Flooring

City Council,

I have a couple of concerns about this contract but the product is nice.

Section 12.19 declares that all leftover material is surplus property and will be retained by the contractor. I think the City should keep a small supply of any surplus flooring in case we need to make repairs. This product is in plank form and individual pieces can be replaced. Most flooring projects end up with some leftover material--at least all of mine have--and it is a prudent practice to keep a few spare parts like extra tiles or floor planks so we can match any damaged areas without having to pay for new material or replace the whole floor if the product is discontinued. This should be amended prior to approval.

The Materials Included and the Exclusions sections (page 74 of 79 in the PDF) in the Bid Proposal lists the wood base as excluded and include quarter round. I am not sure what wood base is. If it is baseboards, this shouldn't be excluded unless the product can be installed securely right up to the baseboards without leaving a gap or requiring additional quarter round trim. When you install flooring well, it involves the removal of baseboards and replacement of the baseboards over the new flooring, not slapping a bandaid over the new flooring by adding quarter round. This doesn't appear to be the approach here. I am not sure what is proposed but adding additional trim on top of the existing baseboards is problematic because it is lower-quality work--at this price we shouldn't be getting a low-quality install using quarter round--but also because the quarter round can interfere with furniture placement due to the extra space out from the wall surface. That makes it difficult to attach tall furniture to the walls for safety purposes. The City may be exposing staff and visitors to avoidable risk in the case of an earthquake because the contractor is taking a shortcut and using additional quarter round trim when better techniques are available and common, We should make sure the product will not involve additional trim pieces rather than the superior method of only having existing baseboards and trim even if they have to be removed and reinstalled. If not, we should consider having PW remove any necessary trim prior to the contractors doing the work. This should be amended prior to approval.

Best,

--Jacob



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Text File

File Number: 24-1024

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**Agenda Date:** 1/27/2025

**Version:** 1

**Status:** Consent Agenda

**In Control:** City Council

**File Type:** Resolution

**Agenda Number:** 5E.

Adopt Resolution Approving Budget Amendment 2024/25-06 (Amount \$26,120.07), for  
Emergency Repair of a Stormdrain Line on North McPherson Street and Direct City Clerk to File  
Notice of Completion

## RESOLUTION NO. 4891-2025

### RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING BUDGET AMENDMENT 2024/25-06 (AMOUNT \$26,120.07), FOR EMERGENCY REPAIR OF A STORMDRAIN LINE ON NORTH MCPHERSON STREET AND DIRECT CITY CLERK TO FILE NOTICE OF COMPLETION

**WHEREAS**, a sinkhole was discovered on the 100 block of North McPherson Street in the fall of 2024; and

**WHEREAS**, the City Council took action on September 23, 2024, directing the completion of emergency work under public contract code 22050 and 20168, and authorizing the City Manager to execute contracts; and

**WHEREAS**, staff requested emergency quotes from local contractors and received the lowest estimate from Akeff Construction Services, Inc. in the amount of \$22,800 to complete the repair work; and

**WHEREAS**, a contract was executed on October 07, 2024, and repair work began shortly thereafter; and

**WHEREAS**, the total cost of the construction work performed by Akeff was \$24,967.57, an increase of \$2,167.57, due to unforeseen underground condition corrections needed to complete the work; and

**WHEREAS**, the total cost of the design services from Lumos & Associates Inc. to prepare construction-ready plans was \$1,152.50; and

**WHEREAS**, as an emergency project, this was not budgeted in the FY 24/25 budget thus requiring a budget amendment BA 2024/25-06, (Exhibit A) to cover the total project cost of \$26,120.07; and

**WHEREAS**, staff completed an inspection of the site on January 13, 2025, and determined that all items of work and the provisions of the contract with Akeff Construction Services, Inc., have been completed and staff is recommending the City Clerk file a Notice of Completion (Exhibit B) with the Mendocino County Clerk certifying project closeout; and

**WHEREAS**, based on all the evidence presented, the City Council finds as follows:

1. The adjustments to the FY 2024-25 Budget have been identified and are necessary, as shown in Exhibit A.
2. There are sufficient funds available in the street sales tax fund to cover the FY 24/25 budget amendment 06.
3. All items of work and provisions of this contract are deemed complete and the City Clerk is directed to file the Notice of Completion (Exhibit B).
4. The foregoing recitals are true and correct and are made a part of this Resolution.



**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Fort Bragg does hereby amend the previously adopted FY 2024/25 Budget to incorporate the changes enumerated in Exhibit A, and directs the City Clerk to File the Notice of Completion, Exhibit B.

**The above and foregoing Resolution was introduced by Vice Mayor Rafanan, seconded by Councilmember Albin-Smith, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 27<sup>th</sup> day of January 2025, by the following vote:**

- AYES:** Councilmembers Hockett, Albin-Smith, Peters, Vice Mayor Rafanan, and Mayor Godeke.
- NOES:** None.
- ABSENT:** None.
- ABSTAIN:** None.
- RECUSED:** None.

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**JASON GODEKE**  
Mayor

**ATTEST:**

---

**AMBER LENORE WEAVER**  
Acting City Clerk



**BUDGET AMENDMENT FY 2022/23**

Budget Adjustment #: **2022/23-04**  
 Budget FY: **FY 2022/23**

Account Description	Account #		FY 22/23	Current Budget	Increase (+) Budget Amt	Decrease (-) Budget Amt	Revised Total Budget Amt	Description
<b>Expenditures</b>								
1 Salaries & Wages - IT Lead	521	4394	0101	\$ 123,693	\$ 15,915		\$ 139,608	
Medical Premium - CE Officer	521	4394	0211	\$ 26,112	\$ -		\$ 26,112	
Dental Premium - CE Officer	521	4394	0213	\$ 1,928	\$ -		\$ 1,928	
VSP Premium - CE Officer	521	4394	0214	\$ 459	\$ -		\$ 459	
PERS - CE Officer	521	4394	0220	\$ 10,150	\$ 2,829		\$ 12,979	
Worker's Comp - CE Officer	521	4394	0231	\$ 2,037	\$ 749		\$ 2,786	
FICA/Medicare - IT Lead	521	4394	0252	\$ 9,258	\$ 3,434		\$ 12,692	
<b>2 Transfer Code Enforcement Budget from the Community Development Department to the Police Department</b>								
Salaries & Wages -Code Enforcement	110	4320	0101	\$ 299,956	\$ 76,609		\$ 223,347	Transfer of CE Officer Budget to PD
Medical Premium - CE Officer	110	4320	0211	\$ 51,350	\$ 17,674		\$ 33,677	Transfer of CE Officer Budget to PD
Dental Premium - CE Officer	110	4320	0213	\$ 3,733	\$ 1,212		\$ 2,521	Transfer of CE Officer Budget to PD
VSP Premium - CE Officer	110	4320	0214	\$ 917	\$ 229		\$ 688	Transfer of CE Officer Budget to PD
PERS - CE Officer	110	4320	0220	\$ 24,518	\$ 5,946		\$ 18,572	Transfer of CE Officer Budget to PD
Worker's Comp - CE Officer	110	4320	0231		\$ 1,276		\$ (1,276)	Transfer of CE Officer Budget to PD
FICA/Medicare - CE Officer	110	4320	0252	\$ 22,761	\$ 5,861		\$ 16,901	Transfer of CE Officer Budget to PD
Salaries & Wages -Code Enforcement	110	4200	0101	\$ 1,865,705	\$ 76,609		\$ 1,942,314	Transfer of CE Officer Budget to PD
Medical Premium - CE Officer	110	4200	0211	\$ 337,999	\$ 17,674		\$ 355,673	Transfer of CE Officer Budget to PD
Dental Premium - CE Officer	110	4200	0213	\$ 24,765	\$ 1,212		\$ 25,977	Transfer of CE Officer Budget to PD
VSP Premium - CE Officer	110	4200	0214	\$ 4,816	\$ 229		\$ 5,045	Transfer of CE Officer Budget to PD
PERS - CE Officer	110	4200	0220	\$ 374,904	\$ 5,946		\$ 380,850	Transfer of CE Officer Budget to PD
Worker's Comp - CE Officer	110	4200	0231	\$ 123,024	\$ 1,276		\$ 124,301	Transfer of CE Officer Budget to PD
FICA/Medicare - CE Officer	110	4200	0252	\$ 157,175	\$ 5,861		\$ 163,036	Transfer of CE Officer Budget to PD
<b>3 Budget for a 2nd Code Enforcement Officer (November 2021-June 2022)</b>								
Salaries & Wages - 2nd CE Officer	110	4200	0101	\$ 1,865,705	\$ 47,144		\$ 1,912,849	Budget- 2nd CE Officer
Medical Premium - 2nd CE Officer	110	4200	0211	\$ 337,999	\$ 10,876		\$ 348,875	Budget- 2nd CE Officer
Dental Premium - 2nd CE Officer	110	4200	0213	\$ 24,765	\$ 746		\$ 25,511	Budget- 2nd CE Officer
VSP Premium - 2nd CE Officer	110	4200	0214	\$ 4,816	\$ 141		\$ 4,957	Budget- 2nd CE Officer
PERS - 2nd CE Officer	110	4200	0220	\$ 374,904	\$ 3,659		\$ 378,563	Budget- 2nd CE Officer
Worker's Comp - 2nd CE Officer	110	4200	0231	\$ 123,024	\$ 786		\$ 123,810	Budget- 2nd CE Officer
FICA/Medicare - 2nd CE Officer	110	4200	0252	\$ 157,175	\$ 3,607		\$ 160,782	Budget- 2nd CE Officer
<b>4 Revenues</b>								
CDD- Grant Staff Time Reimb	110	4320	3318	\$ 98,000		\$ 98,000	\$ -	Transfer of CDD Grant Revenue-CE
PD- Grant Staff Time Reimb	110	4200	3318	\$ 268,420	\$ 98,000		\$ 366,420	Transfer of CDD Grant Revenue-CE
PD- Grant Staff time Reimb	110	4200	3318	\$ 268,420	\$ 66,958		\$ 335,378	Budget 2nd CE Grant Reimb
				\$ 340,724	\$ 206,807		\$ 6,948,770	

**Reason for Amendment:** RESOLUTION # : \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Authorization:**

Requested By: Finance/Admin Dept \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Approval: Isaac Whippy \_\_\_\_\_

Finance Use: Adriana Moreno Ramos \_\_\_\_\_

**Attach copies of Resolution or other documentation**

RECORDING REQUESTED BY:

City of Fort Bragg

AND WHEN RECORDED, RETURN TO:

City of Fort Bragg  
416 North Franklin Street  
Fort Bragg, California 95437  
Attention: Amber Weaver, Acting City Clerk

The City is exempt from recordation fees per Government Code §27383.

**NOTICE OF COMPLETION**

1. The undersigned is the duly authorized agent of the owner, City of Fort Bragg.
2. The full name of the owner is City of Fort Bragg, a municipal corporation.
3. The nature of the interest of the owner is a [fee interest, a right-of-way, an easement, etc.].
4. This project was constructed in accordance with the Construction Agreement entitled Emergency Repair of a stormdrain line on North McPherson dated October 7, 2024.
5. The name of the contractor of the improvement work is Akeff Construction Services, Inc., 32205 N Mitchell Creek Road, Fort Bragg, California 95437. Fort Bragg City Council provided direction for the emergency repair work on September 23, 2024 to authorize City Manager to execute contracts pursuant to Resolution 4855-2024.
6. The address of the owner is City of Fort Bragg, 416 North Franklin Street, Fort Bragg, California 95437.
7. On January 13, 2025, Chantell O’Neal, Assistant Director Engineering, performed a final inspection and recommends Council accept work as complete.

State of California     )  
County of Mendocino    )

I hereby certify under penalty of perjury that the forgoing is true and correct:

City Council Approval

CITY OF FORT BRAGG

\_\_\_\_\_  
(Date)

By: \_\_\_\_\_  
Amber Weaver  
Acting City Clerk

PROOF OF SERVICE BY MAIL  
(Code of Civil Procedure Sections 1013a, 2015.5)

I am over the age of 18 years, employed in the County of Mendocino, and not a party to the within action; my business address is Fort Bragg City Hall, 416 North Franklin Street, Fort Bragg, California 95437.

On \_\_\_\_\_, 2025, I served the attached document by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, via Certified Mail, Return Receipt Requested, in the United States mail at Fort Bragg, California addressed as follows:

Executed on \_\_\_\_\_, 2025, at Fort Bragg, Mendocino County, California.

I declare, under penalty of perjury, that the foregoing is true and correct.

ATTEST:

\_\_\_\_\_  
Amber Weaver  
Acting City Clerk



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Text File

File Number: 24-1129

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**Agenda Date:** 1/27/2025

**Version:** 1

**Status:** Consent Agenda

**In Control:** City Council

**File Type:** Staff Report

**Agenda Number:** 5F.

Approve Second Amendment To Professional Services Agreement With Community Development Services

**SECOND AMENDMENT TO  
PROFESSIONAL SERVICES AGREEMENT  
WITH COMMUNITY DEVELOPMENT SERVICES**

**THIS SECOND AMENDMENT** is made and entered into this \_\_\_ day of January 2025, by and between the CITY OF FORT BRAGG, a municipal corporation, 416 N. Franklin Street, Fort Bragg, California 95437 (“City”), and PARKER LUCAS & ASSOCIATES DBA COMMUNITY DEVELOPMENT SERVICES, a California corporation, 3895 Main Street, Kelseyville, California 95451 (“Consultant”).

**WHEREAS**, the City and Consultant entered into a Professional Services Agreement (“Contract”) on June 1, 2021 in the amount of \$105,774.00; and

**WHEREAS**, on September 18, 2024, the City and Consultant entered into a First Amendment to the Contract to increase the scope of work and compensation; and

**WHEREAS**, City and Consultant desire to contract for the specific services described in Exhibit “A” (“Boost Fort Bragg Business Loan and Technical Support Program”) and desire to set forth their rights, duties, and liabilities in connection with the services to be performed; and

**WHEREAS**, the cost of providing these additional services will increase the overall contract amount by \$65,000.00, for a total Not to Exceed Amount of One Hundred Eighty One Thousand Three Hundred Fifty-One Dollars (\$181,351.00); and

**WHEREAS**, the Contract is set to expire on March 31, 2026; and

**WHEREAS**, the parties desire to amend the contract to extend the services through December 31, 2026; and

**NOW, THEREFORE**, for the aforementioned reasons and other valuable consideration, the receipt and sufficiency of which is acknowledged, City and Consultant hereby agree that the Professional Services Agreement for loan underwriting services is hereby amended as follows:

**1. SERVICES PROVIDED BY CONSULATANT**

Paragraph 1.1 (Scope of Work) is hereby amended to include the additional work described in Exhibit A attached hereto and incorporated herein by reference.

**2. TIME OF PERFORMANCE**

Paragraph 3.1 (Commencement and Completion of Work) is hereby amended to extend the time of completion of the project to December 31, 2026.

**3. COMPENSATION AND BILLING**

Paragraph 2.1 (Compensation) is hereby amended to state, "Consultant's total compensation shall not exceed of **One Hundred Eighty One Thousand Three Hundred Fifty-One Dollars (\$181,351.00).**"

1. Except as expressly amended herein, the Professional Services Agreement, between the City and Consultant dated September 18, 2024, is hereby reaffirmed.

**IN WITNESS WHEREOF**, the parties have executed this Amendment the day and year first above written.

CITY

CONSULTANT

By: \_\_\_\_\_  
Isaac Whippy  
Its: City Manager

By: \_\_\_\_\_  
Jeff Lucas  
Its: Principal

ATTEST:

By: \_\_\_\_\_  
Amber Lenore Weaver  
Acting City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Baron J. Bettenhausen  
City Attorney



## **CDS**

### **Scope of Work**

#### **Boost Fort Bragg Business Loan and Technical Support Program**

**Provide program outreach, networking, and marketing as needed to identify, contact, and attract prospective eligible businesses for business financial assistance.**

CDS intends to market the program with the city, conduct business site visits, assist the applicant with the loan application documentation, provide technical assistance as needed, and when appropriate, work with the local business service providers to arrange additional technical assistance to the loan applicant. We also work with the Chamber of Commerce and business organizations to market the program. Should the City wish it, we will engage in presentations with staff to business and community organizations regarding the program's availability and purpose.

**Prepare loan proposals utilizing Boost Program underwriting criteria, present them to the loan committee, and close and service loans in accordance with the Boost Program Guidelines.**

CDS will review and assist applicants with the loan application process and, as early in the process as practicable, advise the applicant of the credit worthiness of the application and the potential fit with the Boost business loan program. If the loan makes sense, we will package the deal and carry it forward to the program committee.

Whenever possible CDS will refer applicants to local appropriate service providers when more work is necessary to prepare the applicant for future consideration. However, whenever possible, we will work directly with the applicant to prepare them for a successful loan application and funding. This is an important element of what we do. The very best way to market this program is to successfully complete loans that work for the City and the business. It is the city, business community, and the banks that will market the program for us if we do our jobs properly.

#### **Business Loan Processing**

On-site meetings loan application and follow up meetings will occur at the business location. CDS will not package a loan without first meeting the business owner at their place of business.

CDS analyzes every loan application following the Boost Program Guidelines utilizing the fundamental five Cs of credit analysis to determine creditworthiness. The criteria are addressed in each loan proposal we prepare. This assessment includes running a credit check on each applicant with over 20% ownership of the business.

CDS will use standard underwriting criteria during the underwriting process to mitigate lending risk as much as possible. CDS interviews the applicant, visits the business site, gathers the necessary documentation, analyzes the information, prepares the loan proposal, presents the loan proposal, documents the loan decision, prepares the additional necessary supporting documentation, prepares the loan check sheet and signature documents. CDS then prepares loan closing documents, prepares escrow instructions, and will work with City staff to properly disburse the loan funds.

CDS will work with staff to arrange the loan committee meetings, present the proposal to the committee, and if approved, complete the approval process, prepare the loan closing documents and title instructions, work with staff on the drawdown of funds.

### **Loan Closing & Documentation**

CDS uses LaserPro® loan closing documentation software, the commercial loan industry standard. All loan conditions are reviewed by the loan committee and staff for appropriateness. Hard copy originals of all loan closing documents will be provided for review by staff. CDS follows appropriate business underwriting criteria and analysis for each loan using the Boost Program Guidelines to ensure compliance with the city's program intentions and requirements.

CDS will utilize LaserPro® documents in accordance with the loan conditions of each approved loan. These include promissory note, business loan agreement, deed of trust, UCC filings and other loan and loan closing documents required, utilizing industry standard documents.

CDS will provide specific escrow instructions based on the conditions set by the loan committee after the preliminary title search is completed, and the loan has been approved. CDS will communicate with the title company throughout the process. We often utilize Fidelity Title Company as they are experienced with city lending practices.

When we can arrange a companion loan, we will coordinate the issues of security, disbursement, and use of funds with the participating lender. CDS is an experienced lender, we prefer companion loans with local banks because we can share risk and spread our resources further.

### **Monitor Loan Performance**

If needed, CDS will assist the City with loan modifications as needed and present the modifications to the Boost Loan Committee for review and approval. If approved, the modification is then memorialized, and the loan documents revised to reflect the modification.

CDS will routinely perform required post loan closing tasks including monitoring the on-going viability of the borrowers, including recommendations for action if necessary; monitoring borrowers use of funds; and periodic site visits to verify availability and condition of collateral, examine business records and procedures, and help, obtain annual business financials, tax returns, and make sure all insurance coverage documentation is in place. CDS will also provide direct assistance and support to business when needed.

CDS will participate in phone or zoom meetings as needed by City staff to provide timely response to any inquiry or request by staff for information, completion of reporting tasks, clarifications regarding program eligibility, procedures, and any questions regarding Boost Program.

### **Timeline**

CDS is prepared to implement the Boost Program in December 2024.

### **Budget**

CDS bills at a rate of \$150/hr. and will work within a budget not to exceed 433 hours for a term of 24 months in an amount not to exceed \$65,000.





# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Text File

**File Number: 24-1134**

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**Agenda Date:** 1/27/2025

**Version:** 2

**Status:** Consent Agenda

**In Control:** City Council

**File Type:** Consent Calendar

**Agenda Number:** 5G.

Approve Contract with Connection for Microsoft 365 Tenant Migration from Commercial to Government Cloud Not to Exceed \$18,246

# STATEMENT OF WORK

**SOW# 403242**

## Governing Terms

This Statement of Work (“SOW”) between City of Fort Bragg, CA (“Client”) located at 416 North Franklin Street Fort Bragg CA 95437 and GovConnection, Inc. d/b/a Connection (“Service Provider”) is in effect as of the date of last signature (“Effective Date”) and is governed by Connection’s Terms of Service located at <https://www.connection.com/IPA/Content/About/Legal/TermsConditionsServices.htm>.

<b>Engagement Name</b>	Tenant Migration to GCC		
<b>Statement of Work</b>	SOW # 403242	Revision# 1.0	Date: 12/9/2024
<b>Client</b>	<b>City of Fort Bragg, CA</b> Deb Smith		
<b>Account Executive</b>	Erik Adams		
<b>SOW Author</b>	James Chase		
<b>Anticipated Duration</b>	3 Weeks		
<b>Total Fees</b>	\$15,480.00		
<b>Remote/Onsite</b>	Remote		

## Summary / Overview

The Client is looking to adopt more M365 services beyond Exchange Online email. Additionally they are planning to update their organization to utilize a .gov suffix and GCC tenant. In order to simplify the transfer to GCC, the Client has prioritized this migration of Exchange Online email. The Service Provider was engaged to assist with configuring a target greenfield tenant and migrating users and mailboxes to the target environment.

The following are the goals and objectives of this engagement:

- Prepare the target tenant for users and services to be migrated.
- Configure migration toolsets and migrate users, groups, and mailboxes to the target tenant.

The following are requirements to be completed at or prior to project commencement:

- Target tenant is active and licensed for users to be migrated (not needed immediately at project commencement but instead before migrations can begin).
- Licensed Global Admin accounts are created in the source and target environments for Service Provider Engineer.

The Service Provider understands the following are in use by the Client:

- Client is currently in the commercial cloud and uses a .com domain suffix.
  - Would like to move to the GCC gov cloud and utilize a .gov suffix.
- Currently use Exchange Online Email only within this tenant.
- ~110 mailboxes with a total of 560GB.
- Users are cloud only in the source tenant.
- There are two users in Teams, but this usage can be orphaned.
- 9 OneDrive Accounts with less than 3GB.
- Email security provided by Checkpoint Harmony, which will be retained.
- Users Outlook 2016 today

## Tasks and Deliverables

### Tenant Discovery

The Service Provider will conduct discovery of the source tenant to validate usage and settings in place and gain a complete understanding of the current tenant structure that needs to be recreated/migrated in the target.

### Users Population

Users are currently cloud only in the source tenant and will remain cloud only in the target. The Client will export a user and group list and import into the target tenant to populate these accounts. Group membership and permissions will be repopulated collaboratively in the target tenant and validated by the Client.

### **Exchange Online Services**

Exchange Online settings, mail flow rules and access methods will be configured in the target tenant as they are configured in the source tenant today for users being migrated. This will allow carry over functionality. Any additional security settings/updates recommended for best practice applications would be configured at this time. Existing services in use with Exchange Online will be updated at that service by the Client (as needed) to function with the new tenant.

### **OneDrive for Business Services**

After users are created in the target tenant, the OneDrive for Business service will be pre-provisioned via scripting for users. OneDrive for Business files/content will be reviewed in preparation for migration along with mailboxes.

### **M365 Apps**

The Client's existing Office applications are not supported for use with M365 services by Microsoft. Updated M365 based applications will need to be deployed to end users as they are migrated to ensure no loss in functionality. The Service Provider will assist the Client with the preparation of the configuration file to be used to deploy the Office applications to end users. The Client is ultimately responsible for the deployment of Office to end users. This step should occur prior to the cutover of users from Exchange to Exchange Online.

### **Tenant Migration Tools**

The Service Provider will configure three toolsets as part of this migration to accomplish the following requirements. The costs of these tools are listed as part of the pricing table and will be acquired by the Service Provider as part of this project and invoiced to the Client.

- Migration of Exchange Online mailboxes.
- Migration of OneDrive for Business files.

The Client is responsible for any local touches, interaction, or support during these profile migrations/changes. The configured Tools will be used to migrate data to the target tenant in preparation of the cutovers by the Service Provider. Agents deployed to local systems will be used to copy the Outlook profiles in use and prepare them to be used with the target tenant.

### **Cutover**

After the pre-stage migration of users is completed, the Service Provider will plan for and execute the cutover. The custom domain will be removed from the source tenant and the domain cutover process initiated. The Client and Service Provider will engage Microsoft to disassociate and remove the source tenant's custom domain from use in M365. Once the domain has been removed by Microsoft, it will be added and verified to the target tenant by the Client. The required DNS records for communications, mail flow and authentication will be configured in the target tenant and final delta migrations of OneDrive files, and Exchange Online email will occur. Users local Outlook clients and mobile email profiles (where in use) will be cutover at this time.

**Note:** Domain removal is subject to Microsoft's SLA of a minimum of 12 hours. Mail flow and Teams communications with this domain will be affected at this time.

**Note:** Any existing sharing links and externally granted permissions in OneDrive for Business, need to be re-created by the Client's end users following the cutover. Support of this is not in scope of this SOW.

**Note:** Users may need to clear out locally cached login credentials in Office applications following the cutover. When migrating to a GCC tenant, user outlook profiles will need to be recreated or updated locally by the Client's IT staff. The Service Provider will provide steps outlining the necessary steps to the Client to be included in their communications plan. The OWA can be used temporarily by all users to alleviate demands following the cutover.

**The following activities are associated with this engagement:**

- Conduct discovery into the source tenant to confirm services in use.
- Validate migration readiness.
  - Identify Client responsibilities prior to the migration.
- Determine the proper migration strategy for services in use.
- Discuss and prepare for downtime (where applicable).
- Develop a tenant migration project plan.
- **\*Client\*** Populate target tenant with users and groups.
- Copy any mail flow rules, settings and services in use where needed.
- Configure user/device access methods as needed.
- Configure the deployment .xml file
- Configure the migration tools and connect to the source/target tenant.
- Test tenant access and services.
- Validate the migration tools.
- **Client Task:** Test M365 apps deployment
- **Client Task:** Deploy M365 apps



- Complete the pre-stage migration of mailboxes and files.
- Prepare users for the cutover.
  - **\*Client\*** Distribute change notifications.
- Execute the Cutover.
  - Remove the custom domain from the source tenant.
  - **\*Client\*** Once available add domain to the target tenant.
  - **\*Client\*** Verify DNS as needed (MX, SRV, etc.).
  - **\*Client\*** Set as send/receive address
- Complete the post cutover delta migrations.
- Complete final tasks and remediation where needed.

The following deliverables are associated with this engagement:

- **Design Documentation/Project Plan**
  - High level migration plan.
  - Source Tenant analysis.
- **End User Change Communications**
  - High level steps to be completed by end users for Client to include in the communication plan.
- **Recorded Working Sessions**
  - For review and knowledge transfer where/when requested.
- **Scope Delivered as described in this SOW**
  - Active usage as documented in the design is migrated to the target tenant and users have been cutover to work within the new environment.

## Project Management

A Service Provider resource will work with Client to oversee the project to completion. This resource will be the primary contact during the project. These Project Management tasks include but are not limited to:

- Conduct the kickoff meeting and ensure project scope, deliverables, communications, objectives aligned, and project expectations are set.
- Establish and manage service schedule and status reporting.
- Identify, monitor, and manage project risk, issues, and escalations.
- Facilitate change management as needed.
- Confirm the Services delivered are in accordance with the SOW.
- Coordinate deliverable and project completion acceptance from the Client.
- Monitor the project budget.

## Completion Criteria

The Completion Criteria are as follows:

- The deployment of services is completed and reviewed with the Client.
- The Service Provider presents final project deliverables.
- The Client agrees in writing that tasks and deliverables have been satisfied.
- The Client signs the Project Close form.
- Hours are exhausted and the project is not extended.

## Claimed Partner of Record (CPOR)

CPOR is how Microsoft will recognize and associate partners (Service Provider) for the engagement and the impact they drive with Microsoft 365 (includes Office 365 and EM+S). As part of this project, Service Provider will submit the claim for association to Microsoft soon after project commencement. Microsoft will verify the association request with Client after Service Provider submits the claim by notifying them by email. Microsoft's CPOR program states that Client can have multiple partners associated but only one partner per workload at any given time. The Client acknowledges that the Service Provider may receive monetary fees, commissions, or compensation from Microsoft for the services provided herein as outlined in the Statement of Work. The Client can also opt out at any time. The following technologies are applicable:

- **Exchange Online**

No intellectual property ("IP") is created as a result of this engagement. To the extent that the Deliverable(s) includes Service Provider's pre-existing IP, Service Provider grants to Client a perpetual, royalty-free, worldwide right to use the technology imbedded in the Deliverable(s).

## Protected Health Information (PHI)

The Service is not one that requires processing or storage of individual PHI by Service Provider. Access, if any, to PHI is incidental.

## Client Responsibilities

1. The Client will ensure the timely backup, removal, protection, and restoration, as applicable, of any programs, data and removable storage media contained in the computer products, hardware or software, before rendering same for service and the restoration of all data after the completion of service.
2. Any workstation "touches" that need to take place will be the responsibility of the Client unless otherwise agreed to by the Service Provider.

3. The Client IT staff will respond to requests for information or assistance in a timely manner (e.g. that same day of the request is made) in order to keep the project on track.
4. At least one member of the Client's IT or Project Management staff will be dedicated to the project at least 50% of the time.
5. The Client is responsible for making changes or additions to the current load balancing solutions, firewalls, or routers to support proper communication routing.
6. The Client is responsible for meeting the minimum requirements for all services included in this Statement of Work. This includes updates or patches to systems in use.
7. The purchasing of any/all required 3rd Party SSL Certificates is the responsibility of the Client
8. The Client is responsible for organizing and coordinating all Client resources/users for any steps of this SOW where their interaction is required. This includes Design Sessions, migration validation and any applicable UAT.
9. The Client is responsible for any end user support where needed (cutovers, migrations, troubleshooting, etc.).
10. The Client is responsible for providing lists of users, groups and mailboxes to be migrated in the format requested.
11. The Client is responsible for direct interaction with DNS hosting and making of final changes with direction provided by the Service Provider.
12. The Client will provide fully licensed Microsoft 365 global admin role credentials to all assigned Service Provider engineers.
13. The Client will ensure any/all required firewall ports are opened per specifications outlined.

## Engagement Specific Assumptions

1. The Service Provider assumes no liability for the loss or recovery of data or programs.
2. The Service Provider assumes that the existing environment is stable, properly configured and free of critical errors in the event logs.
3. All required hardware, software and licensing will be on-site prior to project commencement.
4. All required hardware will be racked, configured and boot tested prior to the Service Provider's project commencement unless otherwise agreed to by the Service Provider.
5. The Service Provider assumes all service tasks included in this SOW will be performed contiguously unless otherwise stated.
6. All whitelisting mandated by Microsoft must be followed exactly as described. The Client must provide documentation that these changes have been completed.
7. All work will be performed remotely unless otherwise noted.
8. Final Project Commencement lead-times are determined at signature and will be based off the availability of resources to be assigned.

9. The Client understands that Microsoft's SLAs surrounding the domain removal and disassociation cannot be altered by Service Provider and must be accounted for in the timeline of the project. Disassociation of a domain from the Source Tenant (once dependencies are completely removed) is a minimum of 12 hours.
10. The Service Provider assumes that all Microsoft Office applications (where in use) are compatible with current Microsoft 365 services.
11. Public Folder mailboxes are not in use to be migrated.
12. There are no active legal holds on any user accounts to be migrated.

## Out of Scope

1. Installation/configuration of software not specifically listed.
2. Setup, cabling, or configuring of any LAN/WAN hardware.
3. Development or debugging of any scripts.
4. Formal technical or classroom training.
5. Remediation of certificate mismatch warnings.
6. Remediation of any Active Directory issues.
7. Third-party integration of any kind unless specifically indicated in this SOW.
8. Any aspects of User Adoption or Change Management.
9. Re-configuration of Mail Apps.
10. Support of end users or troubleshooting during the Migration/Cutover steps included in this SOW.
11. Direct interaction with any third-party services in use or planned for use with either tenant.
12. Export or archival of any inactive users/mailboxes.
13. Migration of local .pst files or journaled mail into Office 365.
14. Deployment of applications to end users.

## Pricing

Name	Price	QTY	Subtotal
Senior Engineer	\$255.00	50	\$12,750.00
Project Manager	\$108.00	10	\$1,080.00
BitTitan User Migration Bundle	\$15.00	110	\$1,650.00
		Subtotal	<b>\$15,480.00</b>
		<b>Total</b>	<b>\$15,480.00</b>

Unless otherwise noted in this SOW, pricing is based on the following assumptions:

1. This quote for Services is valid for 60 days from the date delivered to the Client.
2. Pricing included within this SOW does not include any applicable taxes.
3. All project tasks will be performed contiguously.
4. Services will be provided during local service hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays.

## Pricing Terms

The pricing listed is estimated and the actual number of units (hours, etc.) required to complete the project will be reflected on the invoice.

## Expense Terms

There are no anticipated expenses for the project included in the price.

## Invoicing Terms

The Client will receive an invoice at project completion.

For applicable time and materials engagements, Client agrees to be invoiced for actual time and materials up to 20% beyond the original estimate.

## Signature

By signing this Statement of Work, client agrees to all sections of this Statement of Work and to provide full and timely payment for completion of Services per the terms and conditions of this Agreement.

1. Service delivery will be scheduled following Service Provider’s receipt of this signed Statement of Work and, if applicable, the accompanying purchase orders (PO), unless otherwise agreed upon by Client and Service Provider.
2. The estimated dates for beginning and conducting the project will be mutually agreed upon by Client and Service Provider.
3. Client delays to the project schedule may incur additional costs.
4. Upon execution of this Agreement, please deliver signed Agreement to Account Manager and or SOW Author listed on page 1 of this document.

ACCEPTED BY: GovConnection, Inc. d/b/a Connection	ACCEPTED BY: City of Fort Bragg, CA
Name:	Name:
Title:	Title:
Signature:	Signature:
Date:	Date:

Purchase Order



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Text File

File Number: 24-1130

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**Agenda Date:** 1/27/2025

**Version:** 1

**Status:** Consent Agenda

**In Control:** City Council

**File Type:** Consent Calendar

**Agenda Number:** 5H.

Approve Lease Contract with Cisco Capital for 3-Yr Endpoint Security Software Not to Exceed \$32,120.46



# Installment Payment Agreement Reference 500-50693701 (Support Only)

Send Email Invoicing to: \_\_\_\_\_

<b>OBLIGOR</b>	Full Legal Name <b>Fort Bragg, City of</b>	Tax ID#	Phone Number
	Billing Address <b>416 N Franklin St, Fort Bragg, CA 95437</b>		Purchase Order Requisition Number
	System Location (if not same as above)	County	Send Invoice to Attention of:

<b>SYSTEM INFORMATION</b>	Software/Support Information: See attached supplier quote/invoice number <u>00014431</u> dated <u>12/06/2024</u> , referenced solely for descriptive purposes. No other term or condition thereof is incorporated into this agreement or binding upon Payee.
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<b>PAYMENT INFORMATION</b>	Number of Payments	Payment	Term (in Months):	Payment Frequency:	Total Financed Amount:
	3	\$10,706.82	36	Annually	\$29,370.60
			Security Deposit (PLUS)	First Period Payment (PLUS)	Other (EQUALS)
			+	+	=

**1. Agreement:** You ("Obligor") agree to pay us ("Payee"), pursuant to this Agreement, the installment payments identified above for the System (defined as the software ("Software") and the right to receive consulting, maintenance and other related services (collectively, "Support") listed above). IF THIS AGREEMENT HAS BEEN PROVIDED TO OBLIGOR ELECTRONICALLY AND OBLIGOR WISHES TO ENTER INTO THIS AGREEMENT ELECTRONICALLY, OBLIGOR'S ELECTRONIC SIGNATURE WILL CONSTITUTE OBLIGOR'S ACKNOWLEDGEMENT AND AGREEMENT TO DO BUSINESS AND RECEIVE ALL RELATED RECORDS ELECTRONICALLY. Obligor authorizes us to adjust your payment by up to 15% if the System cost and/or included taxes and charges differ from the estimates upon which we calculated the installment payments. The Payments are based on like term SWAP interest rates as published in the ICE Report Center daily update referencing USD Rates 1100 (<https://www.theice.com/marketdata/reports/180>). Unless we have provided you with a written commitment to the contrary, you hereby authorizes us to adjust the Payments, on or before the date on which we accept the Agreement, in accordance with any change in the like term SWAP rate, to preserve our implicit finance rate as of the date the Payment was quoted. Obligor is deemed to have unconditionally and irrevocably accepted the System on the date Obligor executes this Agreement (the "Commencement Date") provided, however, this Agreement shall not be binding on Payee until the earlier of (a) the date Payee signs the Agreement or (b) activates the Agreement by booking it as reflected in Payee's books and records. This Agreement commences on the Commencement Date and the periodic payments ("Payments") shall be payable in advance beginning on the Commencement Date or any later date Payee may designate and thereafter until all amounts are fully paid. Obligor irrevocably directs and authorizes Payee to fund the supplier(s) in full for the System, even though some or all of the System may not have been delivered, performed, installed and/or tested. If we designate the Payments to begin later than the Commencement Date, you will pay an interim payment for the System's use for the period from the Commencement Date until the first Payment due adate, based on the Payment amount, the number of days in the period, and a year of 360 days. YOUR PAYMENT OBLIGATIONS ARE ABSOLUTE, UNCONDITIONAL, AND ARE NOT SUBJECT TO CANCELLATION, REDUCTION, SETOFF OR COUNTERCLAIM FOR ANY REASON WHATSOEVER, INCLUDING WITHOUT LIMIT: (a) FAILURE BY ANY SUPPLIER TO DELIVER OR DELAY IN DELIVERY OF THE SYSTEM; (b) DEFECTS IN THE SYSTEM; OR (c) UNSUITABILITY OF THE SYSTEM FOR OBLIGOR'S PURPOSES. You agree to pay us a fee of \$99.95 to reimburse our expenses for preparing financing statements, other documentation costs and all ongoing administration costs during the Agreement term. Security deposits are non-interest-bearing, unless otherwise required by law, and may be applied to cure a default. If you are not in default, we will return the deposit to you at Agreement termination. You will pay us a late charge of 5% of the payment or \$10, whichever is greater, on any payment not made when due. Such amount shall be payable in addition to any and all amounts or monies payable by you as a result of the exercise of any of the remedies herein provided. We may charge you a fee of \$25 for any check that is returned. YOU ACKNOWLEDGE THAT NO ONE IS AUTHORIZED TO WAIVE OR CHANGE ANY TERM, PROVISION OR CONDITION HEREOF.

**2. Warranty Disclaimer, Use and Maintenance:** WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. To the extent made to us, we transfer to you any manufacturer or provider warranties for the System. You are required at your cost to keep the System in good working condition and to pay for all supplies and repairs. If the System includes the cost of Support provided by a third party, you agree that we are not responsible to provide the Support and you will make all Support claims against the third party. You agree that any Support or Software claims will not impact your obligation to pay all payments when due.

**3. Assignment:** You may not transfer, sell, sublease, assign, pledge or encumber either the System or any rights herein without our prior written consent. You agree that we may sell, assign, or transfer

this Agreement and our interest in the System, or any portion thereof, without your consent and the transferee will not have to perform any of our obligations and the rights of the transferee will not be subject to any claims, defenses, or setoffs that you may have against us or any supplier.

**4. Taxes:** You are responsible for and agree to pay when due, either directly or as reimbursement to us, and indemnify us against, all taxes (i.e., sales, use and personal property taxes) and charges in connection with the purchase, ownership and use of the System except for taxes or charges included in the Total Financed Amount.

**5. Insurance:** You are responsible for the risk of loss or destruction of, or damage to the System. You will (i) keep the System insured against all risks of loss or damage for an amount equal to the replacement cost, (ii) list us as the insurance sole loss payee, and (iii) give us written proof of the insurance. If you do not provide such insurance, we have the right, without obligation, to obtain insurance against theft and physical damage and add an insurance fee (which may include a profit) to the amount due from you. You will obtain and maintain comprehensive public liability insurance and name us as an additional insured with coverages and amounts acceptable to us.

**6. Default and Remedies:** You are in default under this Agreement if: a) you fail to pay any amount when due; b) you breach any other obligation under this Agreement or any other agreement with us; c) you, your owner(s) or any guarantor(s) are listed on a US or foreign government sanctions list or are subject to sanctions therefrom. If you are in default we may: (i) declare the entire balance of unpaid payments for the full term immediately due and payable to us; (ii) sue you for and receive the total amount due on the Agreement, with future payments discounted to the date of default at the lesser of (A) a per annum interest rate equivalent to that of a U.S. Treasury constant maturity obligation (as reported by the U.S. Treasury Department) that would have a repayment term equal to the remaining Agreement term, all as reasonably determined by us, or (B) 3% per annum, plus reasonable collection and legal costs; (iii) charge you interest on all monies due at the rate of 18% per year or the highest rate permitted by law from the date of default; (iv) require that you immediately return the System to us or we may peaceably repossess it if you fail to return it to us, and/or (v) cause any Software or Support provider to terminate, as applicable, all of your rights to use or have available, as applicable, any or all of Software and/or Support, and you acknowledge that Cisco Systems, Inc., or any affiliate thereof (collectively, "Cisco"), as third party beneficiary of this provision, may terminate your right to use any or all Cisco Software and/or Cisco Support under any Software or Support arrangement, without liability for any reason whatsoever. Any return or repossession will not be considered a termination or cancellation of this Agreement. You remain liable for any deficiency with any excess being retained by us.

**7. Miscellaneous:** This Agreement shall be governed and construed in accordance with the laws of state of New York, and, as applicable, the Electronics Signatures in Global and National Commerce Act. YOU CONSENT TO JURISDICTION, PERSONAL OR OTHERWISE, IN ANY STATE OR FEDERAL COURT IN NEW YORK. YOU AND WE HEREBY WAIVE A TRIAL BY JURY IN ANY CLAIM ARISING IN CONNECTION WITH THIS AGREEMENT. You agree that the System will only be used for business purposes and not for personal, family or household use. You agree that this Agreement may be executed in counterparts and any facsimile, photographic or other electronic transmission and/or electronic signing of this Agreement by you when manually countersigned by us or attached to our original signature counterpart and/or in our possession shall constitute the sole original chattel paper as defined in the UCC for all purposes and will be admissible as legal evidence thereof. At our option, we may require a manual signature. We may inspect the System during the Agreement term. You authorize us to contact you about your accounts in any way, including at any number or email address at which we believe we can reach you, even if you are charged for such contact by a provider. For information about our privacy practices, please review our privacy statement at [lesseedirect.com/us/privacy](https://lesseedirect.com/us/privacy).

<b>OBLIGOR</b>	You agree that this is non-cancelable.		
	Signature	DOB	Date
	Title	Print Name	
	Obligor (Full Legal Name): <b>Fort Bragg, City of</b>		

<b>PAYEE</b>	<b>Cisco Systems Capital Corporation</b>	
	Lease Processing Center, 1111 Old Eagle School Road, Wayne, PA 19087	
	PHONE: (866) 247-2680 • FAX: (877) 247-2690	
	Commencement Date	Agreement Number
	Accepted By: _____	

<b>GUARANTY</b>	I unconditionally guaranty prompt payment of all the Obligor's obligations. Payee is not required to proceed against the Obligor or enforce other remedies before proceeding against me. I waive notice of acceptance and all other notices or demands of any kind to which I may be entitled. I consent to any extensions or modification granted to the Obligor and the release and/or compromise of any obligations of the Obligor or any other guarantors without releasing me from my obligations. This is a continuing guaranty and will remain in effect in the event of my death and may be enforced by or for the benefit of any assignee or successor of the Payee. This guaranty is governed by and constituted in accordance with the laws of the State of New York, and, as applicable, the Electronic Signatures in Global and National Commerce Act. I CONSENT TO EXCLUSIVE JURISDICTION IN ANY STATE OR FEDERAL COURT IN NEW YORK. PAYEE AND I HEREBY WAIVE TRIAL BY JURY. IF THIS GUARANTY HAS BEEN PROVIDED ELECTRONICALLY AND ANY GUARANTOR WISHES TO ENTER INTO THIS GUARANTY ELECTRONICALLY, SUCH GUARANTOR'S ELECTRONIC SIGNATURE WILL CONSTITUTE SUCH GUARANTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO DO BUSINESS AND RECEIVE ALL RELATED RECORDS ELECTRONICALLY.		
	Signature	Name of Guarantor	Date

22CSC299v1



# CISCO FISCAL FUNDING ADDENDUM

<b>INFORMATION</b>	Lessee/Obligor (full legal name) <u>Fort Bragg, City of</u> ("Customer")
	DBA (if any) _____ Lessor/Payee/Seller <u>Cisco Systems Capital Corporation</u> ("Company")
	Lease/Installment Payment Agreement/Contract No. <u>500-50693701</u> dated _____ (the "Agreement")
	Master Lease Agreement/Master Installment Agreement No./Master Rental Agreement (if any) _____

This Fiscal Funding Addendum ("Addendum"), dated as of \_\_\_\_\_, 20\_\_\_\_\_, is made part of and amends the above-referenced Agreement by and between Company and the above-referenced Customer. Unless otherwise defined herein, capitalized terms shall have the definition set forth in the Agreement.

Customer warrants that it has funds available to pay all rents or installment payments, as applicable ("Payments") payable under the Agreement until the end of Customer's current appropriation period. If Customer's legislative body or other funding authority does not appropriate funds for Payments for any subsequent appropriation period and Customer does not otherwise have funds available to lawfully pay the Payments (a "Non-Appropriation Event"), Customer may, subject to the conditions herein and upon prior written notice to Company (a "Non-Appropriation Notice"), effective sixty (60) days after the later of Company's receipt of same or the end of the Customer's current appropriation period (the "Non-Appropriation Date"), terminate the Agreement and be released of its obligation to make all Payments coming due after the Non-Appropriation Date. As a condition to exercising its rights under this Addendum, Customer shall (i) provide in the Non-Appropriation Notice a certification of a responsible official that a Non-Appropriation Event has occurred, (ii) deliver to Company an opinion of Customer's counsel (addressed to Company) verifying that the Non-Appropriation Event as set forth in the Non-Appropriation Notice has occurred, (iii) on or before the Non-Appropriation Date return the Equipment to Company at a location designated by Company, in the condition required by, and in accordance with the return provisions of the Agreement and, (iv) at Customer's expense, pay Company all sums payable to Company under the Agreement up to the Non-Appropriation Date. In the event of any Non-Appropriation Event, Company shall retain all sums paid hereunder or under the Agreement by Customer, including the security deposit (if any) specified in the Agreement.

Customer further represents, warrants and covenants for the benefit of Company that:

- (a) Customer is a municipal corporation and political subdivision duly organized and existing under the constitution and laws of the State in which it is organized.
- (b) Customer is authorized under the constitution and laws of such State, and has been duly authorized to enter into this Agreement and the transaction contemplated hereby and to perform all of its obligations hereunder.
- (c) This Agreement constitutes the legal, valid and binding obligation of Customer enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.
- (d) Customer has complied with such public bidding requirements as may be applicable to this Agreement.
- (e) The Equipment, together with the software, support and services, if any, subject to the Agreement, are essential to the function of Customer or to the services Customer provides to its citizens, and Customer has an immediate need for, and expects to make immediate use of, substantially all the Equipment (and such software, support and services, if any), which need is not temporary or expected to diminish in the foreseeable future.
- (f) Customer has never failed to appropriate or otherwise make available funds sufficient to pay amounts coming due under any lease, lease purchase, rental, installment sale or other similar agreement.

This Addendum is not intended to permit Customer to terminate the Agreement at will or for convenience.

Except as expressly modified by this Addendum, the Agreement remains in full force and effect. In the event of any conflict, inconsistency or incongruity between the provisions of this Addendum and any of the provisions of the Agreement, the provisions of this Addendum shall in all respects govern and control. A facsimile copy of this document with facsimile signatures may be treated as an original and will be admissible as evidence in a court of law. Customer authorizes Company to correct or insert missing information (including but not limited to the Agreement number and description) in this Addendum.

Intending to be legally bound, each of the parties has caused this Addendum to be executed by its duly authorized representative.

<b>CUSTOMER SIGNATURE</b>	Signature X _____ (MUST BE SIGNED BY AUTHORIZED REPRESENTATIVE OR OFFICER OF LESSEE)
	Print Name _____
	Title _____ Date _____
	Customer <u>Fort Bragg, City of</u>

<b>ACCEPTED BY COMPANY</b>	Signature X _____
	Print Name _____
	Title _____ Date _____
	Name of Corporation or Partnership <u>Cisco Systems Capital Corporation</u>

### BILLING INFORMATION

Agreement Number: \_\_\_\_\_

This form is required for Cisco Systems Capital Corporation to properly bill and credit your account. **Please complete this form and return it with the signed documents.**

#### ENROLL IN PAPERLESS BILLING!

- Paperless
- Convenient
- Access your invoices anytime, anywhere, from any device

Sign me up for Email Invoicing. Send my invoices to the email address below:

Email Address(es): \_\_\_\_\_

**NOTE:** Your invoices will be emailed from noreply@notices.leasedirect.com.

**Subject line will be:** "Your Lease Direct Invoice is ready to view online!" You will not receive a physical invoice if you elect paperless billing.

#### Billing Information (Please fill out the below details completely and accurately)

Billing Name: Fort Bragg, City of Phone: \_\_\_\_\_

Customer Contact Email (if different from above): \_\_\_\_\_

Billing Address: \_\_\_\_\_

Street Address or PO Box Attention

---

City State Zip

FEDERAL TAX ID #: \_\_\_\_\_

Accounts Payable Contact Information (if different from above):

Name: \_\_\_\_\_ Email: \_\_\_\_\_ Phone: \_\_\_\_\_

#### Additional Details

- Do you require a Purchase Order Number on the invoice?  Yes  No  
**If yes, please provide the PO# \_\_\_\_\_ or forward a copy (front & back) for our file.**
- Is a new purchase order required for each new fiscal period?  Yes  No  
**If yes, provide month/year PO expires: \_\_\_\_\_**
- Do you have multiple contracts, and would like them all billed on one invoice (Summary Billing)?  Yes  No  
**If yes, please provide your contract number: \_\_\_\_\_**
- Are you tax exempt?  Yes  No  
**If yes, please forward a copy of exempt certificate or direct pay permit.**
- Do you require our W9 to establish us as a vendor?  Yes  No
- Are there any additional billing requirements to ensure timely payments? \_\_\_\_\_

#### Payment Information

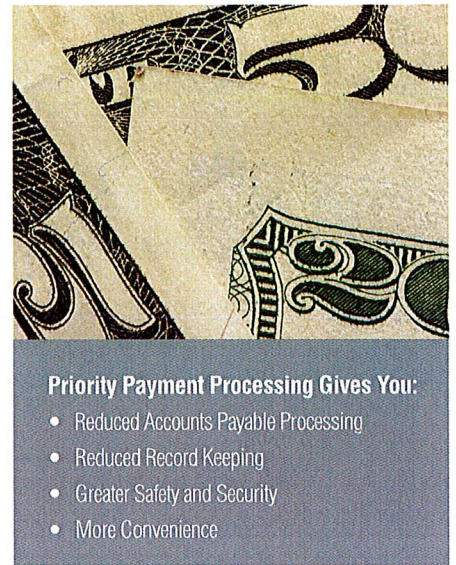
Please check this box if you are interested in enrolling in AutoPay.

For other forms of payment, please note the following remittance address (it may differ from address for service and supplies). Please include remittance slip with payment and send to: PO BOX 825736, PHILADELPHIA, PA 19182-5736

This form completed by: Name: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

# Streamline Your Accounts Payable Process

## with priority payment processing!



### Hate Writing Checks?

Priority payment processing will eliminate the need to write monthly checks. Instead, we debit your bank account of choice via the Automated Clearing House (ACH) System for your monthly payment due under your lease.

**YES, I want to sign-up for convenient Direct Debit by completing this brief authorization form.**

INSTRUCTIONS: Start by filling in information in Section #1. Then click on the "Sign Here" button on the bottom of this form and follow screen instructions.

### SECTION #1 – CONTACT INFORMATION

Contact Person

Contact Person email

### SECTION #2 – CUSTOMER INFORMATION

Customer Name

Phone Number

Street Address

City

State

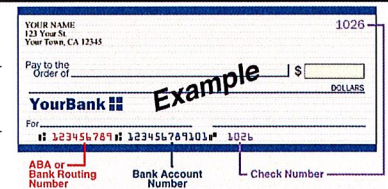
Zip Code

### SECTION #3 – BANK ACCOUNT INFORMATION

Bank Name

ABA Routing Number

Bank Account Number



### SECTION #4 – CONTRACT INFORMATION

Use Direct Debit on the following Contract Numbers: \_\_\_\_\_

### SECTION #5 – TERMS & CONDITIONS

- 1) I authorize charges to the bank account number listed above in the name of LeaseDirect for payments, fees, taxes and all other charges owed on the above referenced contract(s).
- 2) This authorization will remain in effect until all my obligations under the above referenced contract(s) have been satisfied.
- 3) I authorize the release of information concerning my financial condition to suppliers, other creditors, credit bureaus and other credit reporters.

Authorization granted by: \_\_\_\_\_ Date: \_\_\_\_\_

**You will receive an email confirmation from us when we complete the processing of your Direct Debit request.**

**For questions contact us at (800) 736-0220.**

Thank you for helping us in our continuing commitment to "Going Green"!

### FOR INTERNAL USE ONLY

Direct Debit Request Completed by: \_\_\_\_\_ Date: \_\_\_\_\_

We will begin ongoing direct debit of your account beginning with the payment due on: \_\_\_\_\_



350 5th Ave, Suite 4750  
New York, NY 10118

<b>Date</b>	<b>Quote No.</b>	<b>Expiration Date</b>	<b>Billing</b>	<b>Payment Term</b>	<b>Contract Length</b>
12 / 06 / 2024	00014431	03 / 02 / 2025	Financed - Cisco Capital	Net 15	36 Months

Deb Smith  
City Of Fort Bragg  
416 North Franklin Street  
Fort Bragg, California, 95437

<b>Software Subscriptions</b>	<b>Price</b>	<b>QTY</b>	<b>Term</b>	<b>Discount</b>	<b>Subtotal</b>
Cisco Secure Endpoint Essentials <i>Anti-Virus   Cisco Secure Endpoint   Quantity in Devices   AMP4E-CL-LIC</i>	\$6.24	150	36	45.00%	\$18,532.80
Cisco Umbrella DNS Security Advantage <i>Web Gateway   Cisco Umbrella DNS Security   Quantity in Users   UMB-DNS-ADV-K9</i>	\$6.69	75	36	40.00%	\$10,837.80
				Line item discount total	<b>-\$22,388.40</b>
				<b>Software Subscriptions Total</b>	<b>\$29,370.60</b>

\*Plus all applicable taxes

Are you a tax exempt business?

Yes  No



daniella@port53tech.com  
port53tech.com

Accepted by

Date

Send invoices to:

Billing Contact

Me

### Port53 Technologies Software License Agreement

**Renewal Term:** all Software Subscription Term(s) shall automatically renew for an additional term equal to the Contract Length noted above, unless either party gives the other written notice of non-renewal at least 90 days before the end of the then-current Software Subscription Term. Notwithstanding properly noticed non-renewal, the Client acknowledges the Software Subscription Term(s) cannot be terminated because Port53 Technologies must advance all fees on behalf of Client for the Software that is subject to the Software Subscription(s). Upon renewal, software subscriptions are subject to inflation related price adjustments not to exceed 8% on any renewal term.

**No Warranties:** the Software Subscription offered in this Quote is provided without any warranty, express or implied, and is being offered "as is." The Client must assess the compatibility and suitability of the Software Subscription(s) for their specific needs and requirements before proceeding with this Quote.

**Disputes:** Any legal action arising from this Quote shall be administered by the American Arbitration Association and the prevailing party shall be entitled to recover their attorneys' fees and costs from the other party.





# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Text File

File Number: 24-1125

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**Agenda Date:** 1/27/2025

**Version:** 1

**Status:** Consent Agenda

**In Control:** City Council

**File Type:** Consent Calendar

**Agenda Number:** 5I.

Approve Resolution of the Fort Bragg City Council Authorizing City Manager to Execute Contract with Bartley Pump PM LLC for Maintenance and Emergency Repairs to One of Two Noyo River Pumps (Amount not to Exceed \$67,880.97); and Authorize Budget Amendment 2024/25-04; Categorical Exemption 15301



**RESOLUTION NO. 4892-2025**

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL  
AUTHORIZING CITY MANAGER TO EXECUTE CONTRACT WITH BARTLEY  
PUMP PM LLC FOR MAINTENANCE AND EMERGENCY REPAIRS TO ONE  
OF TWO NOYO RIVER PUMPS (AMOUNT NOT TO EXCEED \$67,880.97);  
AND AUTHORIZE BUDGET AMENDMENT 2024/25-04**

**WHEREAS**, the City of Fort Bragg relies heavily on water diverted at the Noyo River intake; and

**WHEREAS**, the Noyo River pump station houses two 150 horsepower pumps; and

**WHEREAS**, one of the water pumps is in need of maintenance and emergency repair; and

**WHEREAS**, a quote was received from Bartley Pump PM LLC for a total amount not to exceed \$67,880.97; and

**WHEREAS**, the City has confirmed the Bartley Pump PM LLC has the proper license and experience and meets the requirements to perform the maintenance and repairs; and

**WHEREAS**, Budget amendment 2024/25-04 is needed to cover the cost of this unexpected maintenance and repairs; and

**WHEREAS**, pursuant to Fort Bragg Municipal Code 3.22.040 and California Public Contract Code 22050, a City may, in cases of emergency, authorize the award of an contract without complying with the requirements of notice inviting bids.

**WHEREAS**, this project is categorically exempt pursuant to CEQA Guidelines 15301 as it involves the repair and maintenance or minor alteration of an existing public structures or facility involving negligible or no expansion of the existing or former use.

**NOW, THEREFORE, BE IT FOUND, DETERMINED, AND RESOLVED AS FOLLOWS:**

1. That the Recitals set forth above are true and correct and are incorporated herein as findings and determinations.
2. That the City Council of Fort Bragg does hereby authorize the City Manager to execute a contract with Bartley Pump PM LLC for the maintenance and emergency repairs to the Noyo River Pump (Amount Not to Exceed \$67,880.97) and authorizes Budget Amendment 2024/25-04.

**The above and foregoing Resolution was introduced by Vice Mayor Rafanan, seconded by Councilmember Albin-Smith, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 27 day of January, 2025, by the following vote:**

**AYES: Councilmembers Albin-Smith, Peters, Hockett, Vice Mayor Rafanan, and Mayor Godeke.**

**NOES: None.**  
**ABSENT: None.**  
**ABSTAIN: None.**  
**RECUSED: None.**

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**JASON GODEKE**  
**Mayor**

**ATTEST:**

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**AMBER LENORE WEAVER**  
**Acting City Clerk**



**BUDGET AMENDMENT FY 2022/23**

Budget Adjustment #: **2022/23-04**  
 Budget FY: **FY 2022/23**

Account Description	Account #		FY 22/23	Current Budget	Increase (+) Budget Amt	Decrease (-) Budget Amt	Revised Total Budget Amt	Description
<b>Expenditures</b>								
1 Salaries & Wages - IT Lead	521	4394	0101	\$ 123,693	\$ 15,915		\$ 139,608	
Medical Premium - CE Officer	521	4394	0211	\$ 26,112	\$ -		\$ 26,112	
Dental Premium - CE Officer	521	4394	0213	\$ 1,928	\$ -		\$ 1,928	
VSP Premium - CE Officer	521	4394	0214	\$ 459	\$ -		\$ 459	
PERS - CE Officer	521	4394	0220	\$ 10,150	\$ 2,829		\$ 12,979	
Worker's Comp - CE Officer	521	4394	0231	\$ 2,037	\$ 749		\$ 2,786	
FICA/Medicare - IT Lead	521	4394	0252	\$ 9,258	\$ 3,434		\$ 12,692	
<b>2 Transfer Code Enforcement Budget from the Community Development Department to the Police Department</b>								
Salaries & Wages -Code Enforcement	110	4320	0101	\$ 299,956	\$ 76,609		\$ 223,347	Transfer of CE Officer Budget to PD
Medical Premium - CE Officer	110	4320	0211	\$ 51,350	\$ 17,674		\$ 33,677	Transfer of CE Officer Budget to PD
Dental Premium - CE Officer	110	4320	0213	\$ 3,733	\$ 1,212		\$ 2,521	Transfer of CE Officer Budget to PD
VSP Premium - CE Officer	110	4320	0214	\$ 917	\$ 229		\$ 688	Transfer of CE Officer Budget to PD
PERS - CE Officer	110	4320	0220	\$ 24,518	\$ 5,946		\$ 18,572	Transfer of CE Officer Budget to PD
Worker's Comp - CE Officer	110	4320	0231		\$ 1,276		\$ (1,276)	Transfer of CE Officer Budget to PD
FICA/Medicare - CE Officer	110	4320	0252	\$ 22,761	\$ 5,861		\$ 16,901	Transfer of CE Officer Budget to PD
Salaries & Wages -Code Enforcement	110	4200	0101	\$ 1,865,705	\$ 76,609		\$ 1,942,314	Transfer of CE Officer Budget to PD
Medical Premium - CE Officer	110	4200	0211	\$ 337,999	\$ 17,674		\$ 355,673	Transfer of CE Officer Budget to PD
Dental Premium - CE Officer	110	4200	0213	\$ 24,765	\$ 1,212		\$ 25,977	Transfer of CE Officer Budget to PD
VSP Premium - CE Officer	110	4200	0214	\$ 4,816	\$ 229		\$ 5,045	Transfer of CE Officer Budget to PD
PERS - CE Officer	110	4200	0220	\$ 374,904	\$ 5,946		\$ 380,850	Transfer of CE Officer Budget to PD
Worker's Comp - CE Officer	110	4200	0231	\$ 123,024	\$ 1,276		\$ 124,301	Transfer of CE Officer Budget to PD
FICA/Medicare - CE Officer	110	4200	0252	\$ 157,175	\$ 5,861		\$ 163,036	Transfer of CE Officer Budget to PD
<b>3 Budget for a 2nd Code Enforcement Officer (November 2021-June 2022)</b>								
Salaries & Wages - 2nd CE Officer	110	4200	0101	\$ 1,865,705	\$ 47,144		\$ 1,912,849	Budget- 2nd CE Officer
Medical Premium - 2nd CE Officer	110	4200	0211	\$ 337,999	\$ 10,876		\$ 348,875	Budget- 2nd CE Officer
Dental Premium - 2nd CE Officer	110	4200	0213	\$ 24,765	\$ 746		\$ 25,511	Budget- 2nd CE Officer
VSP Premium - 2nd CE Officer	110	4200	0214	\$ 4,816	\$ 141		\$ 4,957	Budget- 2nd CE Officer
PERS - 2nd CE Officer	110	4200	0220	\$ 374,904	\$ 3,659		\$ 378,563	Budget- 2nd CE Officer
Worker's Comp - 2nd CE Officer	110	4200	0231	\$ 123,024	\$ 786		\$ 123,810	Budget- 2nd CE Officer
FICA/Medicare - 2nd CE Officer	110	4200	0252	\$ 157,175	\$ 3,607		\$ 160,782	Budget- 2nd CE Officer
<b>4 Revenues</b>								
CDD- Grant Staff Time Reimb	110	4320	3318	\$ 98,000		\$ 98,000	\$ -	Transfer of CDD Grant Revenue-CE
PD- Grant Staff Time Reimb	110	4200	3318	\$ 268,420	\$ 98,000		\$ 366,420	Transfer of CDD Grant Revenue-CE
PD- Grant Staff time Reimb	110	4200	3318	\$ 268,420	\$ 66,958		\$ 335,378	Budget 2nd CE Grant Reimb
				\$ 340,724	\$ 206,807		\$ 6,948,770	

**Reason for Amendment:** RESOLUTION # : \_\_\_\_\_

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**Authorization:**

Requested By: Finance/Admin Dept \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Approval: Isaac Whippy \_\_\_\_\_

Finance Use: Adriana Moreno Ramos \_\_\_\_\_

**Attach copies of Resolution or other documentation**



COMMERCIAL | INDUSTRIAL | MUNICIPAL PUMP SYSTEMS

Service, Repair, Parts & Expertise

Quote

REMIT TO:

Bartley Pump PM LLC

4000 S. Moorland Ave.

Santa Rosa, CA 95407

T 707-584-9191

F 707-584-9198

[www.pumpmannorcal.com](http://www.pumpmannorcal.com)

License No. 1033562: Class A General Engineering & C-57 Drilling Contractor

C-10 Electrical Contractor & C-55 Water Treatment & C-16 Fire Protection & C61/D21 Pumps and Machines

DIR# 1000054366

Wednesday, November 6, 2024

Customer: City of Fort Bragg  
416 N Franklin St  
Fort Bragg, CA 95437

RE: Noyo River Intake - Pull & Repair Pump

JOBSITE: Noyo River Intake

NOTE: Please see our quote below.

QUANT	ITEM	DESCRIPTION	TAXABLE TOTAL
1 Each	Head Nut 1-1/2"		\$ 106.40
1 Each	Head Shaft SS 1-1/2"		\$ 644.00
1 Each	Motor Steady Bushing		\$ 330.40
1 Each	Mechanical Seal 5610 1-1/2" w/ Flush Port		\$ 3,162.60
1 Each	1-1/2" Mech Seal Mt. Plate		\$ 708.40
6 Each	Water Lube Bearing 1-1/2" X 2-1/2"		\$ 142.80
1 Each	SS Bowl Shaft 1-15/16"		\$ 1,733.20
2 Each	Suct/Disch Brz Bearing 1-15/16"		\$ 677.60
11 Each	Inter. Brz Bowl Bearing 1-15/16"		\$ 2,479.40
11 Each	Bowl Wear Ring 14"		\$ 5,497.80
1 Each	Motor - Disassemble, test and inspect. Check fits, steam clean, dip and bake, balance rotor, replace bearings, detail parts, assemble and test run. (Does not include any machine work such as loose bearing housings)		\$ 9,346.40

Total for materials \$ 24,829.00

Sales Tax \$ 2,203.57

Freight \$ -

**LABOR DESCRIPTION**

Crane Charge	\$ 2,300.00
Labor to pull & set pump	\$ 19,200.00
Per Diem	\$ 1,000.00
Disassemble Pump & Bowl	\$ 2,730.00
Clean & Repair Head	\$ 546.00
Straighten Line Shafts	\$ 364.00
Machine Bowls & Impellers for Wear Rings	\$ 2,912.00
Dynamically Balance Impeller 14"	\$ 7,792.40
Clean for Reassembly	\$ 910.00
Assemble Pump & Bowl	\$ 3,094.00

**TOTAL \$ 67,880.97**

Sincerely,

Sophia Bruno  
Assistant Project Manager



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Text File

File Number: 24-1132

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**Agenda Date:** 1/27/2025

**Version:** 1

**Status:** Consent Agenda

**In Control:** City Council

**File Type:** Consent Calendar

**Agenda Number:** 5J.

Authorize the City Manager to Execute Amendment to the Agreement for Transfer Station Operation and Solid Waste Transportation and Disposal Between the Cities of Fort Bragg and Willits, the county of Mendocino and Redwood Waste Solutions, Inc

This agreement provides a mechanism to allow for the flow of solid waste between the City of Fort Bragg and the Willits Transfer Station. Amending the agreement allows current operations to continue. After discussion with county staff, it was determined that it was in the best interest of all parties to extend all solid waste contracts so that they align with the 2032 expiration date of the solid waste franchise agreement. We believe that being able to bid all contracts together will result in a more favorable bidding process and outcome.

## AMENDMENT TO NEW TRANSFER STATION AGREEMENT

THIS AMENDMENT TO NEW TRANSFER STATION AGREEMENT (the “Amendment”) is made and entered into as of January 27, 2025, by and between the City of Fort Bragg, California (the “City”) and Redwood Waste Solutions, Inc. (“Contractor”). The City and Contractor are collectively referred to herein as the “Parties” and each individually as a “Party.”

### RECITALS

WHEREAS, in February and March 2000, the City and Solid Wastes of Willits, Inc., among other parties, executed the Agreement for Transfer Station Operation and Solid Waste Transportation and Disposal (the “Transfer Station Agreement”) for the Willits Solid Waste Transfer Station and Recycling Center (the “SWTS”);

WHEREAS, prior to the Transfer Station Agreement’s expiration, the City and Solid Wastes of Willits, Inc. entered into the Option Agreement to Enter into a New Agreement for Transfer Station Operation and Solid Waste Transportation and Disposal Between the City of Fort Bragg and Solid Wastes of Willits, Inc., dated January 10, 2011 (the “Option Agreement”);

WHEREAS, the Option Agreement granted the City the option to enter into a new agreement with the Contractor setting the terms and conditions under which Solid Wastes of Willits, Inc. would operate the SWTS (defined therein and herein as the “New Transfer Station Agreement”);

WHEREAS, the City timely exercised its option prior to December 3, 2014, and the City and Solid Waste of Willits, Inc. entered into the New Transfer Station Agreement with terms and conditions identical to the Transfer Station Agreement except as otherwise set forth in the Option Agreement;

WHEREAS, on or about January 1, 2024, the Contractor purchased certain assets from Solid Wastes of Willits, Inc. and now operates the SWTS pursuant to the New Transfer Station Agreement; and

WHEREAS, the Parties desire to extend the term through June 30, 2032, to permit the Contractor to operate the SWTS through such date.

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants, and agreements set forth herein, the City and Contractor hereby agree as follows:

### AGREEMENT

1. The Parties acknowledge and agree that (a) the New Transfer Station Agreement was entered into as of the date the City exercised the option granted in the Option Agreement, (b) the terms and conditions of the New Transfer Station Agreement are identical to those in the Transfer Station Agreement except as otherwise set forth in the Option Agreement, (c) Contractor validly assumed the New Transfer Station Agreement.
2. The term of the New Transfer Station Agreement is hereby extended to June 30, 2032, and will expire on such date unless further extended by written agreement of the Parties.
3. The Parties shall cooperate in good faith to negotiate and execute a new agreement setting forth the terms and conditions under which Contractor shall operate the SWTS until June 30, 2032 (the “Restated Transfer Station Agreement”); provided, however, that the Restated Transfer Station

Agreement shall have (a) a term that extends until June 30, 2032, and (b) terms and conditions substantially similar to those in the New Transfer Station Agreement.

4. Until such time as the Parties enter into the Restated Transfer Station Agreement, Contractor shall operate the SWTS pursuant to the terms of the New Transfer Station Agreement, and the Parties shall be bound by such terms.
5. The Parties shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary, in connection with the performance of their obligations hereunder or with the transactions contemplated hereunder and to carry out the intent of the Parties.
6. In the event that any term or provision, or portion thereof, of this Amendment, shall be determined by a court of competent jurisdiction to be invalid or unenforceable, this Amendment shall, to the extent reasonably practicable, remain in force as to the balance of its terms and provisions as if such invalid unenforceable term or provision were not a part hereof, and such.
7. The New Transfer Station Agreement and this Amendment represent the entire agreement among the Parties with respect to the matters that are the subject hereof. All terms and provisions of the New Transfer Station Agreement not amended hereby, either expressly or by necessary implication, shall remain in full force and effect. This Amendment and the New Transfer Station Agreement may only be amended with the written consent of the Parties, and no oral waiver or amendment shall be effective under any circumstances whatsoever.

[Signatures on Next Page]



IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment as of the Effective Date above written.

REDWOOD WASTE SOLUTIONS, INC.

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

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

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

CITY OF FORT BRAGG

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

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

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

Attest:

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

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

Title: \_\_\_\_\_

Approved as to Form:

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

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

Title: \_\_\_\_\_



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
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## Text File

**File Number: 24-1138**

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**Agenda Date:** 1/27/2025

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**Status:** Business

**In Control:** City Council

**File Type:**  
Recognition/Announcements

**Agenda Number:** 5K.

Approve letter of Support for Restoring the California Salmon Season for 2025



## CITY OF FORTBRAGG

*Incorporated August 5, 1889*  
416 N. Franklin Street  
Fort Bragg, CA95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

<https://www.city.fortbragg.com/>

Pacific Fishery Management Council (PFMC)  
7700 NE Ambassador Pl. #101  
Portland, OR 97220  
RE: Restoring the California Salmon Season for 2025

February 1, 2025  
(Via USPS)

Dear Council members, Salmon Technical Team and Salmon Advisory Subpanel,

The City of Fort Bragg works closely with the Noyo Harbor District, and the harbor is an indispensable part of our local community. Salmon, and salmon fishing have been a part of our identity and culture for as long as people have inhabited our coast. The purpose of this letter is to support our local harbor, our commercial and recreational fishing fleet, the businesses, residents and visitors to the Mendocino Coast and the City of Fort Bragg.

The Noyo Harbor District (Fort Bragg, CA), and their facilities stand as the first line of support services to the local commercial and recreational fishing fleets. As a designated fishing village, our harbor is the hub of fishing activity, support services and area of safe refuge for mariners between Eureka and Bodega Bay.

After the extreme regulatory changes that occurred to our California Salmon and Near-shore Rockfish fisheries in 2023, and a consecutive year of full closure to the Ocean Salmon season in 2024, the impacts placed on our harbor, our commercial and recreational fishing fleets, and our local economy have become grave in nature.

The City of Fort Bragg and coastal Mendocino County rely on tourism and fishing to sustain our local economy. Two consecutive years with no Salmon season presented additional stress to our already fragile local economy and resulted in the loss of hundreds of jobs. The severe, negative impacts to our commercial salmon fleet, as well as to our Commercial Passenger Fishing Vessel fleet, has seen many of our operators losing between 70% and 100% of their business.

While Disaster Relief funds going back to 2023 have been authorized and promised, no payments have been made to the commercial fleet and eligible support businesses as of the writing of this letter.

As a community whose economy relies on tourism and fishing, the continued closure of our commercial and recreational Salmon fishery is devastating. Here in the harbor, we experienced significant declines in revenues from our permanent and seasonal slip occupancy, as well as launch ramp fees. The businesses in adjacent

communities, as well as those within our harbor experienced the cancellation of reservations for hotels, vacation rentals, and campsites. Fishing and marine equipment stores experienced reduced sales, as well as area restaurants.

We want sustainable fisheries not only for our commercial and recreational fleets, but also for the health of our ocean and rivers. With the Sacramento River Fall Chinook (SRFC) and Klamath River Fall Chinook (KRFC) being our primary constraining stocks, news reports have already given us an idea of the 2024 escapement numbers.

We have learned that a record number of fish returned to the Mokelumne River, and with very strong returns to the Feather and American Rivers, so much so that 8.5 million eggs were donated to the struggling Coleman hatchery on the Sacramento River to meet their production goal. The issues surrounding the returns to Coleman are not new. For over 5 decades, low flows and high temperatures have plagued the Sacramento River system. Some due to natural fluctuations like drought, but more often than not, poor water management, competing interests and politics have been the blame.

The Klamath River is already seeing tremendous improvement since the removal of the dams, with returning fish located in areas where they have not been seen in 100 years.

We understand that the setting of seasons is a multi-step process with many agencies involved. We, along with many other coastal communities, rely on you and the other agencies to establish seasons using the best available science. As you move closer to deciding on options for the 2025 salmon seasons, please consider the following:

- The California ocean Salmon fisheries constitute valuable and renewable natural resources. These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.
- The collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources of the United States. It is impossible to accurately determine actual ocean abundance, however reports of incidental salmon encounters by commercial and recreational anglers targeting other species is higher than it has ever been.
- Escapement goals were reached and exceeded in 2023 for SRFC and KRFC and alternatives that would have allowed ocean salmon fishing in 2024 were presented.
- That egg collections for the 2024 SRFC have met their production goals.
- That another year without ocean salmon fishing further erodes the cultural and economic significance that salmon, and salmon fishing have to California, the west coast, and its people.

The Noyo Harbor District supports a return to California ocean salmon fishing in 2025, and so does the City of Fort Bragg. We ask that the PFMC, NOAA Fisheries, and the California Department of Fish and Wildlife work together to achieve that goal, return our fleets to salmon fishing, and prevent exacerbating the negative impacts to our coastal communities.

Respectfully submitted,

Mayor and City Council of the City of Fort Bragg CA

CC: CDFW Director, California Fish and Game Commission  
US Congressman Jared Huffman  
CA Assemblyman Chris Rogers



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
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## Text File

**File Number: 24-1108**

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**Agenda Date:** 1/27/2025

**Version:** 1

**Status:** Business

**In Control:** City Council

**File Type:** Report

**Agenda Number:** 8A.

Presentation of 2025 Economic Development Department Initiatives



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
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## Text File

File Number: 24-1133

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**Agenda Date:** 1/27/2025

**Version:** 1

**Status:** Consent Agenda

**In Control:** City Council

**File Type:** Staff Report

**Agenda Number:** 8B.

Adopt City Council Resolution Approving a Professional Services Agreement with Economic & Planning Systems, Inc. for Fort Bragg Mill Site Master Development Agreement

**RESOLUTION NO. 4893-2025**

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING PROFESSIONAL SERVICES AGREEMENT WITH ECONOMIC & PLANNING SYSTEMS, INC. FOR FORT BRAGG MILL SITE MASTER DEVELOPMENT AGREEMENT**

**WHEREAS**, the City of Fort Bragg has been engaged in planning, environmental remediation, and development efforts related to the Mill Site for the past 20 years; and

**WHEREAS**, the Mill Site represents a significant opportunity for redevelopment to benefit the community, including housing, public infrastructure, recreation, environmental restoration, and economic development; and

**WHEREAS**, a Master Development Agreement ("MDA") is proposed as a multi-pronged cooperative approach to facilitate the comprehensive development of the Mill Site in coordination with Mendocino Railway ("MR"), the California Coastal Commission, and other key stakeholders ; and

**WHEREAS**, City proposes to utilize the services of Economic & Planning Systems as an independent contractor to provide a comprehensive, cooperative approach to achieving the desired development of the Mill Site, as more fully described herein; and

**WHEREAS**, The Consultant supplied a scope of work and costs in accordance with the workload required for project completion as described in the contract attached to the Professional Services Agreement as Exhibit A; and

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

**WHEREAS**, per the Fort Bragg Municipal Code Section 3.20.040, decisions to award contracts in an amount greater than \$25,000 shall be made by Council resolution; and

**WHEREAS**, the contract cost of \$64,560 will be shared equally by the Mendocino Railway and the City of Fort Bragg; and

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of Fort Bragg does hereby that the City Council of the City of Fort Bragg does hereby approve a Professional Services Agreement with Economic & Planning Systems for the Fort Bragg Mill Site Master Development Agreement.

**The above and foregoing Resolution was introduced by Councilmember Rafanan, seconded by Councilmember Albin-Smith, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 27 day of January 2025, by the following vote:**

**AYES:** Councilmembers Albin-Smith, Peters, Hockett, Vice Mayor Rafanan, and Mayor Godeke.

**NOES:** None.

**ABSENT:** None.

**ABSTAIN: None.**  
**RECUSED: None.**

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**JASON GODEKE**  
**Mayor**

**ATTEST:**

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**AMBER LENORE WEAVER**  
**Acting City Clerk**



## Fort Bragg Mill Site Master Development Agreement Phase 1 Work Program: Development Strategy Preparation

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### Introduction

The 'Overview of the Proposed Master Development Agreement Process' describes a multi-pronged, cooperative approach to achieving the desired development of the Mill Site that has been the subject of previous planning, environmental remediation, and development efforts over the past 20 years. The first phase of this process is proposed to be the assembly of a 'Development Strategy'. This Strategy will, over a compressed time frame of 90 days, assemble and articulate the desired 'high-level' outcomes of the proposed cooperative planning, financing, and development efforts to be completed in subsequent components and phases of the process. At the heart of this Development Strategy will be an *'Illustrative Plan'*, a visual representation of the Mill Site in its envisioned future form, showing the general location of land uses, major roads and access points, public infrastructure, open spaces and recreational facilities, and identifying the land transactions that are envisioned as may be proposed.

An initial working version of the *Illustrative Plan* will be assembled by the City and its consultants in an expedient manner based on prior planning efforts, proposals by MR or other entities for future development of the Mill Site and vetted with MR, and in consultation with the California Coastal Commission, all of which will be done in a cooperative effort predicated on the goal toward potentially resolving (settling) pending litigation through the proposed Master Development Agreement Program. The initial *Illustrative Plan* will then be subjected to a geographically-based constraints analysis. The resulting *Illustrative Plan* and constraints analysis will then be reviewed in a workshop format by other affected landowners, the key regulating agencies (California Coastal Commission, DTSC, RWQCB), and tribal representatives, seeking concurrence and recommending agreeable changes. The resulting public review *Illustrative Plan* will then be presented in a formal public engagement process and subsequently guide the more detailed, multi-pronged technical efforts composing the Master Development.

The *Illustrative Plan* will take advantage of the full range of existing and prior planning efforts conducted and completed by the City and reflect proposals made by MR and the other affected landowners and incorporate the input and concerns of the Coastal Commission and other regulating agencies in the mix. It is further proposed that a generalized market assessment be conducted that may include the preparation of a developer solicitation (RFQ). All this outreach and market reference will be designed to test and modify the *Illustrative Plan* as may be appropriate. The resulting *Illustrative Plan* will become the reference point and guide for creating the Development Strategy – that will specify the more detailed land use planning, zoning regulations, remediation actions, environmental review, infrastructure investments and financing strategies, and identification and evaluation of the land transactions that may be involved, i.e., the four structural components of a Mill Site Development Agreement.

## Guiding Principles

The preparation of the Millsite Development Strategy will be guided by the following principles:

1. Maximize Use of Existing Information, Plans, & Decisions. The prior planning and regulatory efforts by the City and landowner proposals will provide a sound basis for assembling the *Illustrative Plan*. A GIS-based composite map will be prepared as a graphic illustration and measuring tool for documenting the sources assembled.
2. Consultations with Other Regulating Agencies. It is recognized that the development of the Millsite must ultimately meet with planning and regulatory approval of the Coastal Commission and the agencies regulating hazardous materials remediation. At the preliminary stage, the City will be seeking preliminary comments and input that can help shape the plan that will ultimately be submitted for approval. Also, the Coastal Commission is a party to the pending litigation with MR and the City, and so the Coastal Commission's early input and participation is necessary to any potential successful resolution of issues in the action.
3. Engagement of Affected Property Owners and Interests. MR and other affected property owners, including tribal interests, will be engaged and consulted as the *Illustrative Plan* is assembled. This process may result in the formulation of several development scenarios, reflecting the various interests.
4. Ongoing Public Information & Engagement. The assembly of the *Illustrative Plan* and its review will include ongoing public information (through updates at each City Council meeting, regular Website posts, etc.) as well as two public workshops, including an initial workshop that presents the proposed Master Development Agreement Program and the process for assembling the *Illustrative Plan*. The resulting draft *Illustrative Plan* will be presented in a City Council Study Session with full public participation invited.

The City Council direction and discussions. It is proposed that the City Council will be regularly briefed regarding the ongoing effort through formation of a Council Ad Hoc Committee. Additionally, it is proposed that a standing Mill Site update be provided at each City Council meeting. Finally, it is proposed that the Council will accept the resulting Development Strategy Report as a guide for the next Phase of the Master Development Agreement Program.

5. Negotiation Confidentiality and Integrity. While the development of the *Illustrative Plan* will be an entirely public process, the pending litigation, resolving various regulatory challenges, and negotiations over possible real estate transactions, will require appropriate confidentiality and discipline throughout the process.

## Phase 1 Work Tasks

### Task 1 – Preliminary Review of Proposed Master DA Planning Process

The Development Strategy (and the proposed Development Agreement (DA) Process will be initiated by assembling the appropriate documents and conducting a preliminary meeting between representatives of the City and Mendocino Railway (MR) representatives, also with the anticipated participation of the California Coastal Commission. This meeting will provide for a discussion about the proposed process and in particular the actions needed to initiate and conduct the Process. The

Consultant (Walter Kieser) with the firm EPS, will facilitate the meeting and recommend any resulting changes to the Work Program.

Outcome sought: Agreement to proceed with the Master DA Planning Process and specifically the Phase 1 Work Program (as may be modified as a result of the meeting). It is assumed that the stay on pending litigation will be in place by the time this meeting occurs. Specifically, the Phase 1 Work Program, as agreed upon, will be converted to an task-oriented identification of ‘resources’ (personnel) and their initial respective commitment of time, and a related task budget adding up to a Phase 1 budget estimate.

## Task 2 – Scope of Proposed Development Strategy & Commitment of Resources

Once the Process has tentatively been agreed upon, an effort to more fully scope the preparation of the proposed Development Strategy can occur along with assembling the resources (staff, consultants, agency advisors, etc.). A first-round assembly of adopted or proposed archival plans and documents, regulatory orders, agreements, etc.) will occur as a reference point and as needed to initiate preparation of the *Illustrative Plan*. City and MR will review and agree upon the Work Program, budget, timeframe, and the responsibilities of the respective parties, with the anticipated participation of the Coastal Commission.

Outcome sought: Detailed Work Program, formal assembly, commitment, and engagement of resources, and a funding agreement for the Phase 1 Development Strategy preparation.

## Task 3 – Preparation of the Illustrative Plan & Development Strategy

### 3.1: Overview

The ‘overview’ will describe the purpose of the Development Strategy and its component elements and how it will influence the subsequent phases of the DA Process. Specifically, the scope of each element will be developed in a manner that can lead to the necessary technical and engagement efforts.

### 3.2: Assembly and Review of Planning and Regulatory Document Archive.

As noted above, the *Illustrative Plan* and Development Strategy will be fully informed by the body of existing adopted plans and regulations and archival proposed plans and regulations, prior MR submittals, all in the context of the existing circumstances. These efforts include:

- The original draft City/GP Specific Plan that followed four years of work and was shelved in 2012 when the cost-recovery litigation for the remediation became GP’s primary focus;
- A revision of City/GP Specific Plan that was prepared by Marie Jones in 2018 and went through a community process (including a presentation to the Coastal Commission when they met here in Fort Bragg. This plan was ‘shelved’ when MR purchased the north half of the Mill Site;
- MR’s prior draft land use plan for the north half of the Mill Site;
- Plans submitted by members of the Fort Bragg community over time (Noyo Headlands Unified Design Group, John Gallo, Grassroots Institute, etc.); and

- Plans/alternatives for the Mill Pond area, including work done to evaluate the feasibility of restoring the Maple Creek and Alder Creek drainages/wetlands.

### **3.3: Base Mapping and Constraints Analysis**

A GIS-based mapping system will be assembled that includes a working scale base map of the Mill Site, identification of and mapping of recognized development constraints including natural features, remediation-related constraints, resource conservation areas, etc. A map layer that spatially documents the adopted and archival proposed plans and regulations will also be prepared. As an example, constraints will include a map layer showing areas on the Mill Site that are subject to deed covenants that restrict future uses, require ongoing groundwater monitoring, etc.

### **3.4: Draft Illustrative Plan & Vision for the Mill Site**

At the highest level, the City, MR, the Coastal Commissions and the other affected landowners and the public will be encouraged to express their ideal vision for the Mill Site including specific goals and related objectives in full view of adopted plans and regulations, archival plans and regulations and the development constraints as presently documented. These goals and objectives will be drafted and reviewed in stakeholder consultations, a series of formal ‘workshop’ style meetings where each party brings forth their respective goals and objectives towards achieving an integrated single Vision. Once the documentation is compiled, the EPS team can analyze it and clarify where there is alignment and where there are potentially conflicting components.

Following this effort, an informal meeting of City representatives (ad hoc Council committee and City Manager), MR representatives (preferably without respective legal representation) can be convened, with anticipated participation from the Coastal Commission, to work through the areas where there may be a lack of alignment. While ideally, a single integrated vision could be achieved, there may be some components of the preliminary *Illustrative Plan* where “alternative scenarios” are prepared for subsequent community input, as may be directed by the ad hoc committee.

### **3.5 Initial Regulating Agency Consultation**

This early consultation with the DTSC, CCC and RWQCB will be conducted between the consultant team and the individual agencies to present and review the *Illustrative Plan* and to gain insights regarding related review and regulatory procedures and requirements. At this point we are only trying to gain clarity about the regulatory issues, requirements and procedures in order to accurately reflect and present them at the first community workshop.

### **3.6 Landowner Consultations**

The other landowners will be engaged in a consultant-led workshop format to present and discuss the *Illustrative Plan*. The other landowners include:

- The Native American housing parcel and engagement of broader tribal interests. (Given the government-to-government aspects of the tribal consultations, the ad hoc committee should lead this effort.);
- The City properties (Wastewater Treatment Facility and the Noyo Headlands Park).
- The Noyo Center for Marine Science (11.6-acre undeveloped parcel with big plans for a marine science education and research campus (the “Ocean Science Center”). The Noyo Center has been engaged in an in-depth conceptual planning process for its Ocean Science Center facility

for the past year. Its planning efforts have occurred in consultation with the City and an environmental review and permitting process will begin in early 2025.

### **3.7 Public Engagement Process**

The broader public of Fort Bragg will be engaged and consulted regarding the *Illustrative Plan* and the Vision, as they have been initially articulated through cooperation of the City, MR, the Coastal Commission, other regulatory agencies, and other affected landowners and tribal interests. General public information regarding the process will begin immediately (press release, Council agenda item, website announcement, etc.). At least one formal, facilitated community workshop will be conducted to introduce the proposed DA Process and in particular the proposed *Illustrative Plan* and vision for the Mill Site. Resulting input will be taken into account and a revised *Illustrative Plan* and vision will be prepared for a presentation at a City Council Study Session where public testimony will be received.

## **Task 4 Specifications for the Development Agreement**

Completion and review of the *Illustrative Plan* and Development Strategy will lead to preparation of a summary *Development Strategy Report* that will provide the technical basis for scoping and initiating the subsequent technical phases of the DA Process. The Report will be a descriptive and review relevant documents and information, subject to review and refinement as the process proceeds into the Phase 2 effort where general agreement and direction will be documented in int proposed Memorandum of Understanding, including but not limited to the following topics.

### **4.1 Specification of Land Use Plans & Regulations**

The *Illustrative Plan* will be evaluated to determine the planning regulatory actions necessary to convert it into a formal land use plan and related 'project description' as needed for the environmental review process. The resulting Land Use Plan will be the basis for the required amendment to the Local Coastal Program and related regulatory actions by the City including rezoning, master tentative map, etc., all building on prior efforts, as may be applicable.

### **4.2 Remediation Requirements**

The earlier consultations with DTSC, CCC and RWQCB and any other regulatory agencies, and continued dialogue between the City, MR and CCC, will hopefully lead to a proposed action plan for resolving outstanding issues regarding the final clean-up of the Mill Pond and for reaching necessary solutions regarding how needed remediation will be funded, including alternatives for funding. It will be important to accurately identify the status of the remediation and the necessary steps to get a RAP approved for OU-E (Operable Unit E - the Mill Pond area). The public will need to be assured that there will be plenty of community process during the environmental review process.

### **4.3 Infrastructure Requirements and Financing Strategy**

Substantial infrastructure improvements will be required to achieve the *Illustrative Plan* and vision. This task will define the components of infrastructure, and assemble prior efforts to define and evaluate infrastructure needs in the context of the *Illustrative Plan*. While cost estimates will be the result of subsequent design and engineering efforts, a general sense of costs can be estimated at this point that can lead to identification of funding options, including the proposed land-secured financing (Mello-Roos Community Facilities District), existing City impact fee programs, grant sources, etc. The first City/GP Specific Plan process (2012) included civil engineering work to define

the necessary infrastructure to support redevelopment of the Mill Site that can serve as a reference point for this work.

#### *4.4 Real Property Transactions*

The *Illustrative Plan* will also identify the tentatively agreed upon 'end state' for property ownership in the Mill Site, reflecting any land trades, purchase and sales, and dedications that derive from the master tentative map. It is recognized that there presently exists no agreement regarding various transaction proposals; in this task, an effort will be made to resolve an agreeable plan for potential real property transactions (and the related conditions, covenants, and restrictions that may need to be applied). Existing examples of potential real property transactions include:

- Transfer of Mill Pond/central park area (i.e., OU-E) to City of Fort Bragg, after remediation.
- Transfer of Maple Creek and Alder Creek corridors for open space/habitat purposes.
- Transfer of a wildlife corridor connecting forested/wetland areas along Main Street to the coast.
- The Noyo Center has expressed interest in acquiring a small parcel that adjoins the Noyo Center property and would accommodate an alternative road access around the southeast boundary of their parcel.

#### *4.5 Project Description & CEQA Process*

The foregoing tasks, as assembled, can lead to the preparation of a provisional 'project description' as commonly understood and required as part of CEQA review (preparation of an EIR). In this instance it is appropriate and recommended that a 'programmatic' EIR be prepared that encompasses all the aspects of the Development Strategy that would likely require CEQA clearance. There will also be an evaluation of the need for NEPA clearance; if so, it would make sense to consolidate the environmental review for the OU-E RAP with the environmental review for the initial Mill Site entitlements. NEPA clearance might be needed as well.

#### *4.6 Proposed DA Procedural Steps*

The proposed Development Agreement is a contractual form built upon statutory authority and numerous examples of how master development plans are achieved through a cooperative 'public-private' approach to development. This task would review and refine the proposed procedural steps and the specific content of each step.

#### *4.7 Anticipated Roles and Responsibilities of the Parties*

The final task of the Development Strategy, building upon all the tasks described above, will be to describe the anticipated roles and responsibilities of the parties in completing the four elements of the DA including the land use approvals, the regulatory clearances, any financing plan, and any real estate transactions.

**CITY OF FORT BRAGG  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
Economic & Planning Systems, Inc.**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of January, 2025 (“Effective Date”), by and between the CITY OF FORT BRAGG, a municipal corporation, 416 N. Franklin Street, Fort Bragg, California 95437 (“City”), and Economic & Planning Systems, a California corporation, 455 Capital Mall, Suite 701 Sacramento, CA 95814 (“Consultant”).

**WITNESSETH:**

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide a multi-pronged, cooperative approach to achieving the desired development of the Mill Site, 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 City Manager is authorized by Fort Bragg Municipal Code Section 3.20.040 to approve contracts in an amount not to exceed \$25,000.

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

**1.0. SERVICES PROVIDED BY CONSULTANT**

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

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

section.

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

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

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

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

Consultant shall, in all solicitations and advertisements for employees placed by, or on behalf of Consultant, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender, sexual orientation, or disability. Consultant shall cause the paragraphs contained in this Section to be inserted in all subcontracts for any work covered by the Agreement, provided that



the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

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

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense. All insurance requirements contained in this Agreement are independently applicable to any and all subcontractors that Consultant may engage during the term of this Agreement.

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

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

2.1. Compensation. Consultant shall be paid in accordance with the 2024 Hourly Billing Rates set forth in **Exhibit A**, for a total amount not to exceed twenty five thousand Dollars (\$ 25,000.00).

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 June 30, 2025. 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 September 30, 2025, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

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

If the Consultant defaults in the performance of any of the terms or conditions of

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

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

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

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

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

## 5.0. INSURANCE

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

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

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

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

The Consultant shall also comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect for the duration of this Agreement, complete Workers' Compensation

Insurance, and shall furnish a Certificate of Insurance to the City Clerk before execution of this Agreement by the City. The City, its officers and employees shall not be responsible for any claims in law or equity occasioned by failure of the consultant to comply with this section.

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

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

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

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

maintained by the City of Fort Bragg shall be excess and not contributing with the insurance provided by this policy."

- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Fort Bragg, its officers, officials, agents, employees, and volunteers.
- (e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

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

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

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

## 6.0. GENERAL PROVISIONS

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

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

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

6.3. Project Managers. The Project Manager designated to work directly with

Consultant in the performance of this Agreement will be City Manager Isaac Whippy. 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 the City Manager Isaac Whippy 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:

Economic & Planning Systems  
455 Capitol Mall, Suite 701  
Sacramento, CA 95814  
Tel:510-841-9190  
Fax:

IF TO CITY:

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

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

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

6.7. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or

encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.8. Indemnification and Hold Harmless.

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

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

6.9. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of



Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.10. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

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

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

6.12. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, preliminary notes, working documents, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City, but shall be made available to the City within ten (10) days of request or within ten (10) days of termination. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless

Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, preliminary notes and working documents, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City. Consultant or Consultant's agents shall execute such documents as may be necessary from time to time to confirm City's ownership of the copyright in such documents.

6.13. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 7920.000 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 7924.510, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.14. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

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

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

6.17. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If,

and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, the conflict shall be resolved by giving precedence in the following order, if applicable: This Agreement, the City's Request for Proposals, the Consultant's Proposal.

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

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

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

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

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

6.23. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

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

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

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

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

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

CITY

CONSULTANT

By: \_\_\_\_\_  
Isaac Whippy  
Its: City Manager

By: \_\_\_\_\_  
Benjamin C. Sigman  
Its: Principal

ATTEST:

By: \_\_\_\_\_  
Amber Lenore Weaver  
Acting City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Baron J. Bettenhausen  
City Attorney

**EXHIBIT A**

**CONSULTANT'S PROPOSAL**

(Scope of Work, Fee Schedule, Hourly Billing Rates, and Time Table)

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

## Munoz, Cristal

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**From:** Jacob Patterson <jacob.patterson.esq@gmail.com>  
**Sent:** Monday, January 27, 2025 11:52 AM  
**To:** City Clerk  
**Cc:** Whippy, Isaac  
**Subject:** Public Comment -- 1/27/25 CC Mtg., Item No. 8B, Mill Site Contract

City Council & Manager,

While I support the concept of you approving this proposed contract--I have been advocating for a development agreement since the litigation began as the most sensible way to deal with the situation--I only see a resolution and a draft scope of work and no draft contract in the agenda materials. How can you be asked to approve a contract that isn't actually presented for your (or the public's) review?

I look forward to the staff presentation regarding this item, it is a great step forward and I am pleased that Isaac and Chris have been able to get this far already. That said, a couple of the details in the draft scope of work appear to be premature (or even incorrect and/or controversial) so it is important to remember that this is merely a draft and not necessarily reflective of the final product that will facilitate the LCP update and eventual development agreement. Technically, it might involve development agreements for the different plan areas since we are much further along with the north half and wouldn't want uncertainty about the southern half to delay physical and economic development in the northern half.

Regards,

--Jacob

Council Members, City Manager Whippy, et al,

We were surprised to see the item #8B enclosure, "Phase 1 Scope/Work Program" and are concerned by what this "Mill Site Master Development Agreement Phase 1 Work Program: Development Strategy Preparation" may indicate as the course of action for the City and the level of transparency (or lack thereof) in negotiations with Mendocino Railway/Sierra Northern Railway/Sierra Railroad (MRY/SNR). The history of actions taken by Georgia Pacific/Koch Industries and MRY/SNR do not instill confidence that the highest and best use of the Noyo Headlands for the sake of the public will be served without robust enforcement by controlling authorities and full public participation early and often. To hear now of the negotiations behind closed doors that generated this document on December 6<sup>th</sup>, which we only are seeing now as part of obtaining permission to commit resources for the consultation of the Walter Kieser of Economic & Planning Systems (EPS), raises this level of concern.

We do not accuse you or the City of anything nefarious, but wish to alert you to the heightened sensitivity within the community and the unflagging need for full transparency. If the decision at this time is solely to engage EPS and no commitments or assurances have been given that the process will result in any specific outcomes, then we look forward to participating throughout the process, again, both early and often. By participation, this should not be understood as merely having frequent public meetings in which we are told what has been proposed and/or decided and that our "concerns will be noted", but without any substantive changes to those proposals and decisions. That is not public engagement. That is, at best, public information and, frankly, rather patronizing.

True public engagement will necessarily involve actually changing what is proposed to address the stated concerns and interests of the Community. We believe that public engagement is among the priorities that are on the table in this negotiation. However, as negotiations progress and encounter stumbling blocks, priorities shift. We ask that you adopt Public Engagement and Participation in the significant decisions regarding the Headlands not as a priority, but as a fundamental value that will not be traded away. The International Association for Public Participation lists seven **Core Values for the Practice of Public Participation**

1. Public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process.
2. Public participation includes the promise that the public's contribution will influence the decision.



3. Public participation promotes sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers.
4. Public participation seeks out and facilitates the involvement of those potentially affected by or interested in a decision.
5. Public participation seeks input from participants in designing how they participate.
6. Public participation provides participants with the information they need to participate in a meaningful way.
7. Public participation communicates to participants how their input affected the decision.

Most of the people in Fort Bragg have been left out of the previous decisions and decision making processes and do not understand what has taken so long. Some wish to blame the City for the delay, which is specious and perhaps promulgated by those who have an axe to grind or something to gain. We do not believe that closed doors will be an effective path forward in this instance. We trust that the City Council has the intention of doing what is best for the City and the surrounding community. The only way to ensure that is to adopt the values described above and ensure that development on this jewel in the rough truly serves the highest and best use for the people who live and work in and around Fort Bragg. For instance, at what point will the Pomo original owners of the land be included, or the Latino Community, if there is not an extensive outreach and engagement effort beyond a few City Council meetings?

Consideration must go beyond the "Affected Landowners" as land may change hands, but the Community remains and the location is immovable. We are a bit concerned also that "maximizing use of existing information, plans and decision", may be weighted heavily in favor of plans previously generated by the participating principals, as opposed to the others mentioned (NHUDG, GRI, Wynn's Creek Daylighting plan, etc.) or other, more current understandings of the Climate Crisis and Sea Level Rise, the need for carbon sequestration and wildlife preservation, and the necessary redress of environmental injustice.

The remediation of the remaining contamination, not just containing Pond 8 and leaving the beach and other areas fenced off, may have a greater role in this than the need to "assure the public that there will be plenty of community process during the environmental review". Please remember that the use of the land and the resulting exposure potential determines the level of risk and the appropriate degree and manner of decontamination. All that is currently being offered is containment, not remediation, and that is for pond 8, but all of the ponds are in OU-E as well as the wetlands and upland areas. There remain questions

as to the characterization of the contamination in this area and the potential for finding new hot spots within this and other operational use areas.

Another area of concern is the Local Coastal Plan (LCP) Revision for the Noyo Headlands. As the City's grant is focused strictly on the Harbor's LCP and the County has the rest of the Coast (with the exception of the Sea Level Rise Analysis which also covers the Headlands), the revision of the LCP for this specific area is a bit in limbo. We recommend that the City obtain the available grant funds to hire the consultants necessary for the LCP revision. If the landowner does so, as the client, the consultant's work will serve their interests. If the consultants conducting the analyses work for the City, the revision is far more likely to serve the greater Community. We noticed that the Coastal Commission took exception to the 90-day Stay and do not appear to be part of these negotiations. MRY/SNR is currently in violation of several Coastal Commission regulations and have potential fines assessed. How is the question of jurisdiction being handled within this negotiation? It does not appear in the document.

It is unclear what happens if these negotiations break down prior to the signing of the DA. If the City wishes to engage the Community in the process beyond what is comfortable for MRY/SNR, who will win the City's favor? Does that mean a return to Lawfare? It is not our intention to sabotage this effort, but to ensure that it serves the entire Community and not just the players who currently sit at the table.

We look forward to your response and to collaborating in a transformational planning process that encompasses the long-term resiliency and benefits the entire Fort Bragg and Coastal Community. Thank you for your hard work thus far and we trust that you will find your way to a more inclusive and transparent process that engages all aspect of our Community.

In Gratitude and with Respect,

The GRI Noyo Headlands Workgroup



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Text File

File Number: 24-1137

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**Agenda Date:** 1/27/2025

**Version:** 1

**Status:** Business

**In Control:** City Council

**File Type:** Staff Report

**Agenda Number:** 8C.

**Receive Report and Provide Direction on Implementation of Entertainment Zones  
Relaxing Restrictions on Public Consumption of Alcohol in Certain Limited Situations  
Pursuant to Authority of SB 969**



## CITY COUNCIL STAFF REPORT

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**TO:** City Council

**DATE:** January 28, 2025

**DEPARTMENT:** Administration Department

**PREPARED BY:** Isaac Whippy, City Manager

**PRESENTER:** Isaac Whippy, City Manager

**AGENDA TITLE:** Receive Report and Provide Direction on Implementation of Entertainment Zones Relaxing Restrictions on Public Consumption of Alcohol in Certain Limited Situations Pursuant to Authority of SB 969

---

### RECOMMENDATION

Staff recommends the City Council review and provide direction on the potential implementation of provisions under recently enacted Senate Bill (SB) 969. This legislation authorizes the establishment of entertainment zones, permitting limited public alcohol consumption under specific conditions. Staff further suggests referring this item to the Community Development Committee for additional evaluation and recommendations to be brought forward to the City Council.

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### BACKGROUND

SB 969, [signed into law in September of 2024](#) and became effective on January 1, 2025, allows municipalities to designate entertainment zones where alcohol may be consumed in public areas under controlled circumstances. The bill seeks to enhance economic vitality by supporting our central business district, encouraging tourism, and promoting local businesses. Cities may adopt ordinances or resolutions to establish such zones, provided they comply with specific state regulations and guidelines.

### DISCUSSION AND ANALYSIS

Key Provisions of SB 969:

1. Entertainment Zone Definition:
  - An area designated by the city where alcohol consumption is permitted in public spaces.
  - Boundaries and operational hours must be clearly defined.
2. Licensing and Regulation:
  - Participating businesses must possess valid alcoholic beverage licenses issued by the Department of Alcoholic Beverage Control (ABC).

AGENDA ITEM NO. 8B.

- Cities must establish rules for managing alcohol service, security, and waste disposal.
- 3. Public Safety Requirements:
  - Implementation of measures to ensure public safety and minimize nuisances, such as increased law enforcement presence and security protocols.
  - Clear signage indicating the zone boundaries and rules.

Potential Benefits for Fort Bragg:

- Economic Development: Increased foot traffic to local businesses, particularly in the Central Business District.
- Tourism Enhancement: Creation of a vibrant atmosphere appealing to visitors.
- Support for Local Events: Flexibility to align entertainment zones with existing events such as festivals and parades.

Considerations and Challenges:

- Public Safety: Ensuring adequate resources for law enforcement and emergency services.
- Community Feedback: Balancing the interests of residents, businesses, and visitors.
- Operational Costs: Expenses related to security, signage, and waste management.
- Compliance and Enforcement: Monitoring businesses for adherence to alcohol service laws.

Proposed Process for Implementation:

1. Conduct outreach with stakeholders, including businesses, residents, and law enforcement.
2. Define potential boundaries and operational details for an entertainment zone.
3. Draft and present an ordinance or resolution for City Council consideration.
4. Submit plans to ABC for review and approval.
5. Launch a pilot program to assess effectiveness and community impact.

**FISCAL IMPACT/FUNDING SOURCE**

Implementation costs include staff time for ordinance development, outreach efforts, signage installation, and potential increased public safety expenditures. Revenue opportunities may arise from increased business activity and tourism.

**STRATEGIC PLAN/COUNCIL PRIORITIES/GENERAL PLAN CONSISTENCY**

Goal: 1 Invigorate Economic Opportunity and Community Vibrancy

- Bring locals and visitors to Fort Bragg with a seasonal program featuring recurring activities that support artists and local businesses such as festivals, farmer's markets, night markets, vendor fairs, and downtown concerts.
- Revitalize Fort Bragg consistent with the character of the community by supporting existing businesses and attracting a variety of local business ownership, supporting buyer empowerment, and creating employment opportunities to encourage spending within our local economy.
- Invest in our long-standing tourism economy by beautifying and improving our downtown with increased walkability, restroom facilities with signage, ample electric vehicle charging stations and off-site parking, and advertising statewide to increase visitors to Fort Bragg.



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Text File

File Number: 24-1128

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**Agenda Date:** 1/27/2025

**Version:** 1

**Status:** Consent Agenda

**In Control:** City Council

**File Type:** Staff Report

**Agenda Number:** 8D.

Fentanyl Task Force - January Update

Receive and File Update; Consider and Provide Direction



## CITY COUNCIL STAFF REPORT

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**TO:** City Council **DATE:** January 27, 2025

**DEPARTMENT:** Police Department

**PREPARED BY:** Thomas O'Neal, Police Captain

**PRESENTERS:** Neil Cervenka, Chief of Police, Thomas O'Neal, Police Captain

**AGENDA TITLE:** Fentanyl Task Force-Update January 2025

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### RECOMMENDATION

After a review of the report and presentation, the City Council should:

1. Provide feedback and suggestions related to the direction of the Fentanyl Task Force.
2. Consider suggesting additional information or data that should be added to the report prior to the next update scheduled for June of 2025.

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### BACKGROUND

#### Fentanyl Task Force Overview

The Fentanyl Task Force (Task Force) was formed on January 23, 2024, following multiple fentanyl overdose deaths on the Mendocino Coast. The initial goal of the Task Force was to bring together a diverse group of subject matter experts in order to explore potential solutions to the fentanyl crisis. A public solicitation was issued for applications for Task Force Members and approximately 25 applications were received. Those applications were reviewed and reduced down to 18 individuals.

The Fentanyl Task Force met for the first time on February 28, 2024. Members participated in several presentations from subject matter experts currently working in organizations related to the fentanyl crisis. Task Force members participated in group discussions and obtained a general overview of the crisis and some potential responses. The goal of this first meeting was to gather a trove of data that could be sorted through in order to identify potential approaches to the crisis.

The Police Department's Care Response Unit correlated the data from the first Task Force meeting and began identifying potential solutions at the local level. The data gained from the meeting included hours of group discussion, presentation notes, recommended

AGENDA ITEM NO. XX



literature, and informal data related to the crisis. The first meeting additionally generate several questions that required further research. With multiple potential solutions identified, the Task Force met a second time on October 16, 2024 to determine a formal plan of action.

During the second Task Force meeting, members engaged in question and answer sessions with representatives from nine difference agencies that provide direct services related to the fentanyl crisis and were associated with the proposed plans of action. The Task Force identified strengths, weaknesses, and opportunities related to these services that could be harnessed or mitigated to achieve the group’s goals. The last half of the meeting included group discussions focused on identifying three foundational approaches that the Task Force could take immediately. The Task Force additionally formalized its Mission Statement to guide the future of the program.

## **DISCUSSION AND ANALYSIS**

This section represents the current state of the Fentanyl Task Force at the time of this report:

### Mission Statement

The Fentanyl Task Force provides a collaboration of unique organizational leaders to address the impact of the opioid epidemic as a community. United by our shared commitment to combat the fentanyl crisis, our diverse task force empowers agencies through collaborative resource sharing and innovation. We strive to break down barriers to treatment and care, leveraging the unique strengths of our community resources to ensure equitable access and effective solutions for all affected individuals.

The Task Force has now split into three different Committees in order to focus our efforts on achieving actionable items:

1. Education Committee
2. Treatment Access Committee
3. Youth In-Patient Treatment Center

These Committees have met several times since October 16, 2024, and have identified the following goals, plans of action, and challenges:

### Education Committee

The Education Committee is tasked with developing and implementing effective education campaigns targeting school-aged children, youth, businesses, and underrepresented groups, including the Latinx and Native American communities. The

goal of these campaigns is to raise awareness about the dangers of opioids and fentanyl and to promote prevention efforts across these diverse groups. The Committee, consisting of local business owners, educators, and individuals with lived experiences, is dedicated to addressing the needs of these communities and ensuring that resources are tailored to their unique challenges.

The Education Committee expects to release its first targeted education campaign by March 31, 2025.

The Education Committee is seeking approximately \$5000 in order to fund its initial campaign.

### Treatment Access Committee

This committee's first goal is to streamline connecting youth to services from the initial report of a youth experiencing substance use disorder to the connection to treatment. The goal is to provide every school staff member the tools needed to connect youth to a qualified service provider for substance use disorders within one hour of the initial self-disclosure to school staff. This committee expects to achieve this goal by August of 2025.

This committee's main challenges include navigating policies and statutes that create barriers between our education system and our medical system.

### Youth In-Patient Treatment Committee

This committee's overarching goal is to increase access to in-patient treatment for youth experiencing a substance use disorder. Currently, the majority of juveniles with substance use disorders are required to travel to southern California to be treated in the only commonly available in-patient treatment facility.

This committee is currently exploring the potential of opening an in-patient treatment facility in Mendocino or Lake County and is actively conducting a feasibility study including research related to this complex and critical issue. This committee expects to complete this feasibility study by April of 2025.

## **FISCAL IMPACT/FUNDING SOURCE**

The only current costs associated with the Task Force is staff time related to Police Department staff and some indirect costs such as printing and meeting supplies. That staff time has varied depending on the associated project.

## **ENVIRONMENTAL ANALYSIS:**

Not applicable.

**STRATEGIC PLAN/COUNCIL PRIORITIES/GENERAL PLAN CONSISTENCY**

Not applicable.

**COMMUNITY OUTREACH**

Community members have actively submitted suggestions and concerns to the Task Force since its inception. The Care Response Unit is planning a Town Hall style meeting to be open to the public sometime in February of 2025.

**COMMITTEE REVIEW AND RECOMMENDATIONS**

Updates related to the Task Force have been verbally provided at Public Safety Committee and City Council multiple times since the inception of the program. This will be the first official report to City Council.

**ALTERNATIVES:**

No alternatives were identified. The report is intended to be informational only.

**ATTACHMENTS:**

None applicable.

**NOTIFICATION:**

None Applicable



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Text File

File Number: 24-1121

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**Agenda Date:** 1/27/2025

**Version:** 1

**Status:** Business

**In Control:** City Council

**File Type:** Staff Report

**Agenda Number:** 8E.

Receive Report and Consider Adoption of City Council Resolution Approving Budget Amendment No. 2024/25-07 and Authorizing the City Manager to Execute a Contract with Axon Enterprises, Inc. for a Five-Year Contract for In Car Video And License Plate Reader Equipment (Amount Not To Exceed \$118,047.65, Account 167-4216-0381)

Axon Fleet 3 offers a complete in-car camera video and mobile Automated License Plate Reader (ALPR) solution. The addition of this technology will capture front video through the windshield, video and audio of the rear prisoner area, and mobile ALPR in every marked vehicle. This solution aids officers in providing video evidence as well as increases transparency by recording activity from a different perspective than our current body worn cameras.

## RESOLUTION NO. 4894-2025

### RESOLUTION OF THE FORT BRAGG CITY COUNCIL AUTHORIZING BUDGET AMENDMENT No. 2024/25-07, AND EXECUTION OF A CONTRACT WITH AXON ENTERPRISES, AUTHORIZING A FIVE-YEAR CONTRACT FOR IN CAR VIDEO AND LICENSE PLATE READER EQUIPMENT (AMOUNT NOT TO EXCEED \$118,047.65, ACCOUNT 167-4216-0381)

**WHEREAS**, in 2017, the Fort Bragg Police Department implemented the Axon Enterprises Body Worn Camera system; and

**WHEREAS**, they have proven to be very effective in gathering evidence and reducing liability; and

**WHEREAS**, in 2022, the Fort Bragg Police Department renewed a 5-year contract with Axon adding unlimited digital cloud storage for all videos, Taser 10's, and Axon Signal; and

**WHEREAS**, Axon has released Fleet 3, an in-car camera system which will record through the windshield and the back seat; and

**WHEREAS**, video evidence is relied on in court to ensure successful prosecutions; and

**WHEREAS**, video evidence will reduce officer court appearances; and

**WHEREAS**, Axon Fleet 3 is also an integrated Automated License Plate Reader (ALPR) connected with Flock ALPR which alerts officers to wanted vehicles; and

**WHEREAS**, the Fort Bragg Police Department already is contracted with Flock and has stationary cameras deployed; and

**WHEREAS**, the cost of eight (8) Fleet 3 systems for all eight (8) patrol cars, associated hardware and software is \$23,609.52 per year for four years and the last year at \$23,609.57 for a total of \$118,047.65; and

**WHEREAS**, Axon Fleet 3 is the only in car video solution integrated with Axon Evidence.com, which allow for unlimited video storage at no additional cost; and

**WHEREAS**, there are presently available funds in the Asset Forfeiture Fund for this purchase; and

**WHEREAS**, the budget amendment to re-appropriate the funds in the current fiscal year is identified in Exhibit A attached hereto; and

**WHEREAS**, based on all of the evidence presented, the City Council finds as follows;

1. The adjustments to the FY 2024-25 Budget have been identified and are necessary, as shown in Exhibit C.
2. There are sufficient funds available in the Asset Forfeiture Fund for this purchase.

3. AXON has demonstrated they possess the necessary experience and propensity to provide the service.
4. The foregoing recitals are true and correct and are made a part of this Resolution.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of Fort Bragg does hereby approve Budget Amendment No. 2024/25-07, including approving a contract agreement with Axon Enterprises Inc., while authorizing the City Manager to execute the same upon execution by Contractor (Amount Not to Exceed \$118,047.65 Account 167-4216-0381).

The above and foregoing Resolution was introduced by Councilmember Peters, seconded by Vice Mayor Rafanan, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 27th day of January, 2025, by the following vote:

**AYES:** Councilmembers Albin-Smith, Hockett, Peters, Vice Mayor Rafanan, and Mayor Godeke.  
**NOES:** None.  
**ABSENT:** None.  
**ABSTAIN:** None.  
**RECUSED:** None.

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**JASON GODEKE**  
Mayor

**ATTEST:**

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**Amber Weaver**  
City Clerk



**Axon Enterprise, Inc.**  
 17800 N 85th St.  
 Scottsdale, Arizona 85255  
 United States  
 VAT: 86-0741227  
 Domestic: (800) 978-2737  
 International: +1.800.978.2737

Q-653428-45671.918DB

Issued: 01/14/2025

Quote Expiration: 03/31/2025

Estimated Contract Start Date: 04/01/2025

Account Number: 112203

Payment Terms: N30

Delivery Method:

SHIP TO	BILL TO
Fort Bragg Police Dept. - CA 250 Cypress St Fort Bragg, CA 95437-5437 USA	Fort Bragg Police Dept. - CA 250 Cypress St Fort Bragg CA 95437-5437 USA Email:

SALES REPRESENTATIVE	PRIMARY CONTACT
Daniel Birt Phone: Email: dbirt@axon.com Fax:	Neil Cervenka Phone: 707-961-2804 Email: ncervenka@fortbragg.com Fax:

**Quote Summary**

Program Length	60 Months
<b>TOTAL COST</b>	<b>\$114,153.60</b>
<b>ESTIMATED TOTAL W/ TAX</b>	<b>\$118,047.65</b>

**Discount Summary**

Average Savings Per Year	\$4,648.32
<b>TOTAL SAVINGS</b>	<b>\$23,241.60</b>

**Payment Summary**

<b>Date</b>	<b>Subtotal</b>	<b>Tax</b>	<b>Total</b>
Mar 2025	\$22,830.72	\$778.80	\$23,609.52
Mar 2026	\$22,830.72	\$778.80	\$23,609.52
Mar 2027	\$22,830.72	\$778.80	\$23,609.52
Mar 2028	\$22,830.72	\$778.80	\$23,609.52
Mar 2029	\$22,830.72	\$778.85	\$23,609.57
<b>Total</b>	<b>\$114,153.60</b>	<b>\$3,894.05</b>	<b>\$118,047.65</b>



Quote Unbundled Price:	\$137,395.20
Quote List Price:	\$125,193.60
Quote Subtotal:	\$114,153.60

## Pricing

All deliverables are detailed in Delivery Schedules section lower in proposal

Item	Description	Qty	Term	Unbundled	List Price	Net Price	Subtotal	Tax	Total
<b>Program</b>									
Fleet3A	Fleet 3 Advanced	8	60	\$279.99	\$254.57	\$231.57	\$111,153.60	\$3,894.05	\$115,047.65
<b>A la Carte Services</b>									
100159	AXON FLEET 3 - SERVICES - ALPR API INTEGRATION	1			\$3,000.00	\$3,000.00	\$3,000.00	\$0.00	\$3,000.00
<b>Total</b>							<b>\$114,153.60</b>	<b>\$3,894.05</b>	<b>\$118,047.65</b>

## Delivery Schedule

### Hardware

Bundle	Item	Description	QTY	Shipping Location	Estimated Delivery Date
Fleet 3 Advanced	70112	AXON SIGNAL - VEHICLE	8	1	03/01/2025
Fleet 3 Advanced	72036	AXON FLEET 3 - STANDARD 2 CAMERA KIT	8	1	03/01/2025
Fleet 3 Advanced	72040	AXON FLEET - TAP REFRESH 1 - 2 CAMERA KIT	8	1	03/01/2030

### Software

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
Fleet 3 Advanced	80400	AXON EVIDENCE - FLEET VEHICLE LICENSE	8	04/01/2025	03/31/2030
Fleet 3 Advanced	80401	AXON FLEET 3 - ALPR LICENSE - 1 CAMERA	8	04/01/2025	03/31/2030
Fleet 3 Advanced	80402	AXON FLEET - LICENSE - REAL-TIME LOCATION, ALERTS, & LIVESTREAM	8	04/01/2025	03/31/2030
Fleet 3 Advanced	80410	AXON EVIDENCE - STORAGE - FLEET 1 CAMERA UNLIMITED	16	04/01/2025	03/31/2030

### Services

Bundle	Item	Description	QTY
Fleet 3 Advanced	73391	AXON FLEET 3 - DEPLOYMENT PER VEHICLE - NOT OVERSIZED	8
A la Carte	100159	AXON FLEET 3 - SERVICES - ALPR API INTEGRATION	1

### Warranties

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
Fleet 3 Advanced	80379	AXON SIGNAL - EXT WARRANTY - SIGNAL UNIT	8	03/01/2026	03/31/2030
Fleet 3 Advanced	80495	AXON FLEET 3 - EXT WARRANTY - 2 CAMERA KIT	8	03/01/2026	03/31/2030

## Shipping Locations

Location Number	Street	City	State	Zip	Country
1	250 Cypress St	Fort Bragg	CA	95437-5437	USA

## Payment Details

### Mar 2025

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 1	100159	AXON FLEET 3 - SERVICES - ALPR API INTEGRATION	1	\$600.00	\$0.00	\$600.00
Year 1	Fleet3A	Fleet 3 Advanced	8	\$22,230.72	\$778.80	\$23,009.52
<b>Total</b>				<b>\$22,830.72</b>	<b>\$778.80</b>	<b>\$23,609.52</b>

### Mar 2026

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 2	100159	AXON FLEET 3 - SERVICES - ALPR API INTEGRATION	1	\$600.00	\$0.00	\$600.00
Year 2	Fleet3A	Fleet 3 Advanced	8	\$22,230.72	\$778.80	\$23,009.52
<b>Total</b>				<b>\$22,830.72</b>	<b>\$778.80</b>	<b>\$23,609.52</b>

### Mar 2027

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 3	100159	AXON FLEET 3 - SERVICES - ALPR API INTEGRATION	1	\$600.00	\$0.00	\$600.00
Year 3	Fleet3A	Fleet 3 Advanced	8	\$22,230.72	\$778.80	\$23,009.52
<b>Total</b>				<b>\$22,830.72</b>	<b>\$778.80</b>	<b>\$23,609.52</b>

### Mar 2028

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 4	100159	AXON FLEET 3 - SERVICES - ALPR API INTEGRATION	1	\$600.00	\$0.00	\$600.00
Year 4	Fleet3A	Fleet 3 Advanced	8	\$22,230.72	\$778.80	\$23,009.52
<b>Total</b>				<b>\$22,830.72</b>	<b>\$778.80</b>	<b>\$23,609.52</b>

### Mar 2029

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 5	100159	AXON FLEET 3 - SERVICES - ALPR API INTEGRATION	1	\$600.00	\$0.00	\$600.00
Year 5	Fleet3A	Fleet 3 Advanced	8	\$22,230.72	\$778.85	\$23,009.57
<b>Total</b>				<b>\$22,830.72</b>	<b>\$778.85</b>	<b>\$23,609.57</b>

Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

## Standard Terms and Conditions

### Axon Enterprise Inc. Sales Terms and Conditions

#### Axon Master Services and Purchasing Agreement:

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at <https://www.axon.com/sales-terms-and-conditions>), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. In the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern to the extent it includes the products and services being purchased and does not conflict with the Axon Customer Experience Improvement Program Appendix as described below.

#### ACEIP:

The Axon Customer Experience Improvement Program Appendix, which includes the sharing of de-identified segments of Agency Content with Axon to develop new products and improve your product experience (posted at [www.axon.com/legal/sales-terms-and-conditions](http://www.axon.com/legal/sales-terms-and-conditions)), is incorporated herein by reference. By signing below, you agree to the terms of the Axon Customer Experience Improvement Program.

#### Acceptance of Terms:

Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

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Signature

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Date Signed

1/14/2025



This Master Services and Purchasing Agreement ("**Agreement**") is between Axon Enterprise, Inc. ("**Axon**"), and the customer listed below or, if no customer is listed below, the customer on the Quote attached hereto ("**Customer**"). This Agreement is effective as of the later of the (a) last signature date on this Agreement or (b) date of acceptance of the Quote ("**Effective Date**"). Axon and Customer are each a "**Party**" and collectively "**Parties**". This Agreement governs Customer's purchase and use of the Axon Devices and Services detailed in the Quote as defined below. It is the intent of the Parties that this Agreement will govern all subsequent purchases by Customer for the same Axon Devices and Services in the Quote, and all such subsequent quotes accepted by Customer shall be also incorporated into this Agreement by reference as a Quote. The Parties agree as follows:

1. **Definitions.**

- 1.1. "**Axon Cloud Services**" means Axon's web services, including but not limited to, Axon Evidence, Axon Records, Axon Dispatch, FUSUS services and interactions between Axon Evidence and Axon Devices or Axon client software. Axon Cloud Service excludes third-party applications, hardware warranties, and my.evidence.com.
- 1.2. "**Axon Device**" means all hardware provided by Axon under this Agreement. Axon-manufactured Devices are a subset of Axon Devices.
- 1.3. "**Quote**" means an offer to sell and is only valid for devices and services on the offer at the specified prices. Any inconsistent or supplemental terms within Customer's purchase order in response to a Quote will be void. Orders are subject to prior credit approval. Changes in the deployment estimated ship date may change charges in the Quote. Shipping dates are estimates only. Axon is not responsible for typographical errors in any Quote by Axon, and Axon reserves the right to cancel any orders resulting from such errors.
- 1.4. "**Services**" means all services provided by Axon under this Agreement, including software, Axon Cloud Services, and professional services.

2. **Term.** This Agreement begins on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated ("**Term**").

- 2.1. All subscriptions including Axon Evidence, Axon Fleet, Officer Safety Plans, Technology Assurance Plans, and TASER 7 or TASER 10 plans begin on the date stated in the Quote. Each subscription term ends upon completion of the subscription stated in the Quote ("**Subscription Term**").
- 2.2. Upon completion of the Subscription Term, the Subscription Term will automatically renew for an additional 5 years ("**Renewal Term**"). For purchase of TASER 7 or TASER 10 as a standalone, Axon may increase pricing to its then-current list pricing for any Renewal Term. For all other purchases, Axon may increase pricing on all line items in the Quote by up to 3% at the beginning of each year of the Renewal Term. New devices and services may require additional terms. Axon will not authorize services until Axon receives a signed Quote or accepts a purchase order, whichever is first.

3. **Payment.** Axon invoices for Axon Devices upon shipment, or on the date specified within the invoicing plan in the Quote. Payment is due net 30 days from the invoice date. Axon invoices for Axon Cloud Services on an upfront annual basis prior to the beginning of the Subscription Term and upon the anniversary of the Subscription Term. Payment obligations are non-cancelable. Unless otherwise prohibited by law, Customer will pay interest on all past-due sums at the lower of one-and-a-half percent (1.5%) per month or the highest rate allowed by law. Customer will pay invoices without setoff, deduction, or withholding. If Axon sends a past due account to collections, Customer is responsible for collection and attorneys' fees.

4. **Taxes.** Customer is responsible for sales and other taxes associated with the order unless Customer provides Axon a valid tax exemption certificate.

5. **Shipping.** Axon may make partial shipments and ship Axon Devices from multiple locations. All shipments are EXW (Incoterms 2020) via common carrier. Title and risk of loss pass to Customer upon Axon's delivery to the common carrier. Customer is responsible for any shipping charges in the Quote.

6. **Returns.** All sales are final. Axon does not allow refunds or exchanges, except warranty returns or as provided by state or federal law.

7. **Warranty.**

- 7.1. **Limited Warranty.** Axon warrants that Axon-manufactured Devices are free from defects in workmanship and materials for one (1) year from the date of Customer's receipt, except Signal Sidearm which Axon warrants for thirty (30) months from Customer's receipt and Axon-manufactured accessories, which Axon warrants for ninety (90) days from Customer's receipt, respectively, from the date of Customer's receipt. Used conducted energy weapon ("**CEW**") cartridges are deemed to have operated properly. Extended warranties run from the expiration of the one (1) year hardware warranty through the extended warranty term purchased.

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Title: Master Services and Purchasing Agreement between Axon and Customer

Department: Legal

Version: 22

Release Date: 8/2/2024

- 7.2. **Disclaimer.** All software and Axon Cloud Services are provided "AS IS," without any warranty of any kind, either express or implied, including without limitation the implied warranties of merchantability, fitness for a particular purpose and non-infringement. Axon Devices and Services that are not manufactured, published or performed by Axon ("Third-Party Products") are not covered by Axon's warranty and are only subject to the warranties of the third-party provider or manufacturer.
- 7.3. **Claims.** If Axon receives a valid warranty claim for an Axon-manufactured Device during the warranty term, Axon's sole responsibility is to repair or replace the Axon-manufactured Device with the same or like Axon-manufactured Device, at Axon's option. A replacement Axon-manufactured Device will be new or like new. Axon will warrant the replacement Axon-manufactured Device for the longer of (a) the remaining warranty of the original Axon-manufactured Device or (b) ninety (90) days from the date of repair or replacement.
- 7.3.1. If Customer exchanges an Axon Device or part, the replacement item becomes Customer's property, and the replaced item becomes Axon's property. Before delivering an Axon-manufactured Device for service, Customer must upload Axon-manufactured Device data to Axon Evidence or download it and retain a copy. Axon is not responsible for any loss of software, data, or other information contained in storage media or any part of the Axon-manufactured Device sent to Axon for service.
- 7.4. **Spare Axon Devices.** At Axon's reasonable discretion, Axon may provide Customer a predetermined number of spare Axon Devices as detailed in the Quote ("**Spare Axon Devices**"). Spare Axon Devices are intended to replace broken or non-functioning units while Customer submits the broken or non-functioning units, through Axon's warranty return process. Axon will repair or replace the unit with a replacement Axon Device. Title and risk of loss for all Spare Axon Devices shall pass to Customer in accordance with shipping terms of this Agreement. Axon assumes no liability or obligation in the event Customer does not utilize Spare Axon Devices for the intended purpose.
- 7.5. **Limitations.** Axon's warranty excludes damage related to: (a) failure to follow Axon Device use instructions; (b) Axon Devices used with equipment not manufactured or recommended by Axon; (c) abuse, misuse, or intentional damage to Axon Device; (d) force majeure; (e) Axon Devices repaired or modified by persons other than Axon without Axon's written permission; or (f) Axon Devices with a defaced or removed serial number. Axon's warranty will be void if Customer resells Axon Devices.
- 7.5.1. **To the extent permitted by law, the above warranties and remedies are exclusive. Axon disclaims all other warranties, remedies, and conditions, whether oral, written, statutory, or implied. If statutory or implied warranties cannot be lawfully disclaimed, then such warranties are limited to the duration of the warranty described above and by the provisions in this Agreement. Customer confirms and agrees that in deciding whether to sign this Agreement, Customer has not relied on any statement or representation by Axon or anyone acting on behalf of Axon related to the subject matter of this Agreement that is not in this Agreement.**
- 7.5.2. **Axon's cumulative liability to any party for any loss or damage resulting from any claim, demand, or action arising out of or relating to this Agreement will not exceed the purchase price paid to Axon for the Axon Device, or if for Services, the amount paid for such Services over the twelve (12) months preceding the claim. Neither Party will be liable for special, indirect, incidental, punitive or consequential damages, however caused, whether for breach of warranty or contract, negligence, strict liability, tort or any other legal theory.**
- 7.6. **Online Support Platforms.** Use of Axon's online support platforms (e.g., Axon Academy and MyAxon) is governed by the Axon Online Support Platforms Terms of Use Appendix available at [www.axon.com/sales-terms-and-conditions](http://www.axon.com/sales-terms-and-conditions).
- 7.7. **Third-Party Software and Services.** Use of software or services other than those provided by Axon is governed by the terms, if any, entered into between Customer and the respective third-party provider, including, without limitation, the terms applicable to such software or services located at [www.axon.com/sales-terms-and-conditions](http://www.axon.com/sales-terms-and-conditions), if any.
- 7.8. **Axon Aid.** Upon mutual agreement between Axon and Customer, Axon may provide certain products and services to Customer, as a charitable donation under the Axon Aid program. In such event, Customer expressly waives and releases any and all claims, now known or hereafter known, against Axon and its officers, directors, employees, agents, contractors, affiliates, successors, and assigns (collectively, "**Releasees**"), including but not limited to, on account of injury, death, property damage, or loss of data, arising out of or attributable to the Axon Aid program whether arising out of the negligence of any Releasees or otherwise. Customer agrees not to make or bring any such claim against any Releasee, and forever release and discharge all Releasees from liability under such claims. Customer expressly allows Axon to publicly announce its participation in Axon Aid and use its name in marketing materials. Axon may terminate the Axon Aid program without cause immediately

upon notice to the Customer.

8. **Statement of Work.** Certain Axon Devices and Services, including Axon Interview Room, Axon Channel Services, and Axon Fleet, may require a Statement of Work that details Axon's Service deliverables ("**SOW**"). In the event Axon provides an SOW to Customer, Axon is only responsible for the performance of Services described in the SOW. Additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule. The SOW is incorporated into this Agreement by reference.
9. **Axon Device Warnings.** See [www.axon.com/legal](http://www.axon.com/legal) for the most current Axon Device warnings.
10. **Design Changes.** Axon may make design changes to any Axon Device or Service without notifying Customer or making the same change to Axon Devices and Services previously purchased by Customer.
11. **Bundled Offerings.** Some offerings in bundled offerings may not be generally available at the time of Customer's purchase. Axon will not provide a refund, credit, or additional discount beyond what is in the Quote due to a delay of availability or Customer's election not to utilize any portion of an Axon bundle.
12. **Insurance.** Axon will maintain General Liability, Workers' Compensation, and Automobile Liability insurance. Upon request, Axon will supply certificates of insurance.
13. **IP Rights.** Axon owns and reserves all right, title, and interest in Axon-manufactured Devices and Services and suggestions to Axon, including all related intellectual property rights. Customer will not cause any Axon proprietary rights to be violated.
14. **IP Indemnification.** Axon will indemnify Customer against all claims, losses, and reasonable expenses from any third-party claim alleging that the use of Axon-manufactured Devices, Axon Cloud Services or Axon software ("**Axon Products**") infringes or misappropriates the third-party's intellectual property rights. Customer must promptly provide Axon with written notice of such claim, tender to Axon the defense or settlement of such claim at Axon's expense and cooperate fully with Axon in the defense or settlement of such claim. Axon's IP indemnification obligations do not apply to claims based on (a) modification of Axon Products by Customer or a third-party not approved by Axon; (b) use of Axon Products in combination with hardware or services not approved by Axon; (c) use of Axon Products other than as permitted in this Agreement; or (d) use of Axon Products that is not the most current software release provided by Axon.
15. **Customer Responsibilities.** Customer is responsible for (a) Customer's use of Axon Devices; (b) Customer or an end user's breach of this Agreement or violation of applicable law; (c) disputes between Customer and a third-party over Customer's use of Axon Devices; (d) secure and sustainable destruction and disposal of Axon Devices at Customer's cost; and (e) any regulatory violations or fines, as a result of improper destruction or disposal of Axon Devices.
16. **Termination.**
  - 16.1. **For Breach.** A Party may terminate this Agreement for cause if it provides thirty (30) days written notice of the breach to the other Party, and the breach remains uncured thirty (30) days after written notice. If Customer terminates this Agreement due to Axon's uncured breach, Axon will refund prepaid amounts on a prorated basis based on the effective date of termination.
  - 16.2. **By Customer.** If sufficient funds are not appropriated or otherwise legally available to pay the fees, Customer may terminate this Agreement. Customer will deliver notice of termination under this section as soon as reasonably practicable.
  - 16.3. **Effect of Termination.** Upon termination of this Agreement, Customer rights immediately terminate. Customer remains responsible for all fees incurred before the effective date of termination. If Customer purchases Axon Devices for less than the manufacturer's suggested retail price ("**MSRP**") and this Agreement terminates before the end of the Term, Axon will invoice Customer the difference between the MSRP for Axon Devices received, including any Spare Axon Devices, and amounts paid towards those Axon Devices. Only if terminating for non-appropriation, Customer may return Axon Devices to Axon within thirty (30) days of termination. MSRP is the standalone price of the individual Axon Device at the time of sale. For bundled Axon Devices, MSRP is the standalone price of all individual components.
17. **Confidentiality.** "**Confidential Information**" means nonpublic information designated as confidential or, given the nature of the information or circumstances surrounding disclosure, should reasonably be understood to be confidential. Each Party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of the other Party's Confidential Information. Unless required by law, neither Party will disclose the other Party's Confidential Information during the Term and for five (5) years thereafter. To the extent permissible by law, Axon pricing is Confidential Information and competition sensitive. If Customer receives a public records request to disclose Axon

Confidential Information, to the extent allowed by law, Customer will provide notice to Axon before disclosure. Axon may publicly announce information related to this Agreement.

18. **General.**

- 18.1. **Force Majeure.** Neither Party will be liable for any delay or failure to perform due to a cause beyond a Party's reasonable control.
- 18.2. **Independent Contractors.** The Parties are independent contractors. Neither Party has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, Customer, fiduciary, or employment relationship between the Parties.
- 18.3. **Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 18.4. **Non-Discrimination.** Neither Party nor its employees will discriminate against any person based on race; religion; creed; color; sex; gender identity and expression; pregnancy; childbirth; breastfeeding; medical conditions related to pregnancy, childbirth, or breastfeeding; sexual orientation; marital status; age; national origin; ancestry; genetic information; disability; veteran status; or any class protected by local, state, or federal law.
- 18.5. **Export Compliance.** Each Party will comply with all import and export control laws and regulations.
- 18.6. **Assignment.** Neither Party may assign this Agreement without the other Party's prior written consent. Axon may assign this Agreement, its rights, or obligations without consent: (a) to an affiliate or subsidiary; or (b) for purposes of financing, merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. This Agreement is binding upon the Parties respective successors and assigns.
- 18.7. **Waiver.** No waiver or delay by either Party in exercising any right under this Agreement constitutes a waiver of that right.
- 18.8. **Severability.** If a court of competent jurisdiction holds any portion of this Agreement invalid or unenforceable, the remaining portions of this Agreement will remain in effect.
- 18.9. **Survival.** The following sections will survive termination: Payment, Warranty, Axon Device Warnings, Indemnification, IP Rights, Customer Responsibilities and any other Sections detailed in the survival sections of the Appendices.
- 18.10. **Governing Law.** The laws of the country, state, province, or municipality where Customer is physically located, without reference to conflict of law rules, govern this Agreement and any dispute arising from it. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.
- 18.11. **Notices.** All notices must be in English. Notices posted on Customer's Axon Evidence site are effective upon posting. Notices by email are effective on the sent date of the email. Notices by personal delivery are effective immediately. Notices to Customer shall be provided to the address on file with Axon. Notices to Axon shall be provided to Axon Enterprise, Inc., Attn: Legal, 17800 North 85th Street, Scottsdale, Arizona 85255 with a copy to [legal@axon.com](mailto:legal@axon.com).
- 18.12. **Entire Agreement.** This Agreement, the Appendices, including any applicable Appendices not attached herein for the products and services purchased, which are incorporated by reference and located in the Master Purchasing and Services Agreement located at <https://www.axon.com/sales-terms-and-conditions>, Quote and any SOW(s), represents the entire agreement between the Parties. This Agreement supersedes all prior agreements or understandings, whether written or verbal, regarding the subject matter of this Agreement. This Agreement may only be modified or amended in a writing signed by the Parties.





# Master Services and Purchasing Agreement for Customer

Each Party, by and through its respective representative authorized to execute this Agreement, has duly executed and delivered this Agreement as of the date of signature.

**AXON:**

Axon Enterprise, Inc.

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CUSTOMER:**

\_\_\_\_\_

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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## Axon Cloud Services Terms of Use Appendix

### 1. Definitions.

- a. "**Customer Content**" is data uploaded into, ingested by, or created in Axon Cloud Services within Customer's tenant, including media or multimedia uploaded into Axon Cloud Services by Customer. Customer Content includes Evidence but excludes Non-Content Data.
  - b. "**Evidence**" is media or multimedia uploaded into Axon Evidence as 'evidence' by a Customer. Evidence is a subset of Customer Content.
  - c. "**Non-Content Data**" is data, configuration, and usage information about Customer's Axon Cloud Services tenant, Axon Devices and client software, and users that is transmitted or generated when using Axon Devices. Non-Content Data includes data about users captured during account management and customer support activities. Non-Content Data does not include Customer Content.
  - d. "**Provided Data**" means de-identified, de-personalized, data derived from Customer's TASER energy weapon deployment reports, related TASER energy weapon logs, body-worn camera footage, and incident reports.
  - e. "**Transformed Data**" means the Provided Data used for the purpose of quantitative evaluation of the performance and effectiveness of TASER energy weapons in the field across a variety of circumstances.
2. **Access.** Upon Axon granting Customer a subscription to Axon Cloud Services, Customer may access and use Axon Cloud Services to store and manage Customer Content. Customer may not exceed more end users than the Quote specifies. Axon Air requires an Axon Evidence subscription for each drone operator. For Axon Evidence Lite, Customer may access and use Axon Evidence only to store and manage TASER CEW and TASER CAM data ("**TASER Data**"). Customer may not upload non-TASER Data to Axon Evidence Lite.
3. **Customer Owns Customer Content.** Customer controls and owns all right, title, and interest in Customer Content. Except as outlined herein, Axon obtains no interest in Customer Content, and Customer Content is not Axon's business records. Customer is solely responsible for uploading, sharing, managing, and deleting Customer Content. Axon will only have access to Customer Content for the limited purposes set forth herein. Customer agrees to allow Axon access to Customer Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of the Axon products.
4. **Security.** Axon will implement commercially reasonable and appropriate measures to secure Customer Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive information security program to protect Axon Cloud Services and Customer Content including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; encryption of uploaded digital evidence; security education; and data protection. Axon agrees to the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum for its digital evidence or records management systems.
5. **Customer Responsibilities.** Customer is responsible for (a) ensuring Customer owns Customer Content or has the necessary rights to use Customer Content (b) ensuring no Customer Content or Customer end user's use of Customer Content or Axon Cloud Services violates this Agreement or applicable laws; (c) maintaining necessary computer equipment and Internet connections for use of Axon Cloud Services and (d) verify the accuracy of any auto generated or AI generated reports. If Customer becomes aware of any violation of this Agreement by an end user, Customer will immediately terminate that end user's access to Axon Cloud Services.
- a. Customer will also maintain the security of end usernames and passwords and security and access by end users to Customer Content. Customer is responsible for ensuring the configuration and utilization of Axon Cloud Services meet applicable Customer regulation and standards. Customer may not sell, transfer, or sublicense access to any other entity or person. If Customer provides access to unauthorized third-parties, Axon may assess additional fees along with suspending Customer's access. Customer shall contact Axon immediately if an unauthorized party may be using Customer's account or Customer Content, or if account information is lost or stolen.
6. **Privacy.** Customer's use of Axon Cloud Services is subject to the Axon Cloud Services Privacy Policy, a current version of which is available at <https://www.axon.com/legal/cloud-services-privacy-policy>. Customer agrees to allow Axon access to Non-Content Data from Customer to (a) perform troubleshooting, maintenance, or diagnostic

screenings; (b) provide, develop, improve, and support current and future Axon products and related services; and (c) enforce this Agreement or policies governing the use of Axon products.

7. **Axon Body Wi-Fi Positioning.** Axon Body cameras may offer a feature to enhance location services where GPS/GNSS signals may not be available, for instance, within buildings or underground. Customer administrators can manage their choice to use this service within the administrative features of Axon Cloud Services. If Customer chooses to use this service, Axon must also enable the usage of the feature for Customer's Axon Cloud Services tenant. Customer will not see this option with Axon Cloud Services unless Axon has enabled Wi-Fi Positioning for Customer's Axon Cloud Services tenant.

8. **Storage.** For Axon Unlimited Device Storage subscriptions, Customer may store unlimited data in Customer's Axon Evidence account only if data originates from Axon Capture or an Axon Device. Axon may charge Customer additional fees for exceeding purchased storage amounts. Axon may place Customer Content that Customer has not viewed or accessed for six (6) months into archival storage. Customer Content in archival storage will not have immediate availability and may take up to twenty-four (24) hours to access.

For Third-Party Unlimited Storage the following restrictions apply: (i) it may only be used in conjunction with a valid Axon's Evidence.com user license; (ii) is limited to data of the law enforcement Customer that purchased the Third-Party Unlimited Storage and the Axon's Evidence.com end user or Customer is prohibited from storing data for other law enforcement agencies; and (iii) Customer may only upload and store data that is directly related to: (1) the investigation of, or the prosecution of a crime; (2) common law enforcement activities; or (3) any Customer Content created by Axon Devices or Evidence.com.

9. **Location of Storage.** Axon may transfer Customer Content to third-party subcontractors for storage. Axon will determine the locations of data centers for storage of Customer Content. For United States agencies, Axon will ensure all Agency Content stored in Axon Cloud Services remains within the United States. Ownership of Customer Content remains with Customer.

10. **Suspension.** Axon may temporarily suspend Customer's or any end user's right to access or use any portion or all of Axon Cloud Services immediately upon notice, if Customer or end user's use of or registration for Axon Cloud Services may (a) pose a security risk to Axon Cloud Services or any third-party; (b) adversely impact Axon Cloud Services, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent. Customer remains responsible for all fees incurred through suspension. Axon will not delete Customer Content because of suspension, except as specified in this Agreement.

11. **Axon Cloud Services Warranty.** Axon disclaims any warranties or responsibility for data corruption or errors before Customer uploads data to Axon Cloud Services.

12. **TASER Data Science Program.** Axon will provide a quantitative evaluation on the performance and effectiveness of TASER energy weapons in the field across a variety of circumstances.

If Customer purchases the TASER Data Science Program, Customer grants Axon, its affiliates, and assignees an irrevocable, perpetual, fully paid, royalty-free, and worldwide right and license to use Provided Data solely for the purposes of this Agreement and to create Transformed Data. Customer shall own all rights and title to Provided Data. Axon shall own all rights and title to Transformed Data and any derivatives of Transformed Data.

Axon grants to Customer an irrevocable, perpetual, fully paid, royalty-free, license to use to TASER Data Science report provided to Customer for its own internal purposes. **The Data Science report is provided "as is" and without any warranty of any kind.**

In the event Customer seeks Axon's deletion of Provided Data, it may submit a request to [privacy@axon.com](mailto:privacy@axon.com). Where reasonably capable of doing so, Axon will implement the request but at a minimum will not continue to collect Provided Data from Customer.

13. **Axon Records.** Axon Records is the software-as-a-service product that is generally available at the time Customer purchases an OSP 7 or OSP 10 bundle. During Customer's Axon Records Subscription Term, if any, Customer will be entitled to receive Axon's Update and Upgrade releases on an if-and-when available basis.

- a. The Axon Records Subscription Term will end upon the completion of the Axon Records Subscription as documented in the Quote, or if purchased as part of an OSP 7 or OSP 10 bundle, upon completion of the OSP 7 or OSP 10 Term ("**Axon Records Subscription**")

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- b. An "**Update**" is a generally available release of Axon Records that Axon makes available from time to time. An "**Upgrade**" includes (i) new versions of Axon Records that enhance features and functionality, as solely determined by Axon; and/or (ii) new versions of Axon Records that provide additional features or perform additional functions. Upgrades exclude new products that Axon introduces and markets as distinct products or applications.
  - c. New or additional Axon products and applications, as well as any Axon professional services needed to configure Axon Records, are not included. If Customer purchases Axon Records as part of a bundled offering, the Axon Record subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Records to Customer.
  - d. Users of Axon Records at the Customer may upload files to entities (incidents, reports, cases, etc) in Axon Records with no limit to the number of files and amount of storage. Notwithstanding the foregoing, Axon may limit usage should the Customer exceed an average rate of one-hundred (100) GB per user per year of uploaded files. Axon will not bill for overages.
14. **Axon Cloud Services Restrictions.** Customer and Customer end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:
- a. reverse engineer, disassemble, or decompile Axon Cloud Services or apply any process to derive any source code included in Axon Cloud Services, or allow others to do the same;
  - b. copy, modify, tamper with, repair, or create derivative works of any part of Axon Cloud Services;
  - c. access or use Axon Cloud Services with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
  - d. use Axon Cloud Serves as a service bureau, or as part of an Customer infrastructure as a service;
  - e. use trade secret information contained in Axon Cloud Services, except as expressly permitted in this Agreement;
  - f. access Axon Cloud Services to build a competitive device or service or copy any features, functions, or graphics of Axon Cloud Services;
  - g. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within Axon Cloud Services; or
  - h. use Axon Cloud Services to store or transmit infringing, libelous, or other unlawful or tortious material; material in violation of third-party privacy rights; or malicious code.
15. **Draft One** Axon may impose usage restrictions if a single user generates more than one hundred (100) reports per month for two or more consecutive months.
16. **After Termination.** Axon will not delete Customer Content for ninety (90) days following termination. Axon Cloud Services will not be functional during these ninety (90) days other than the ability to retrieve Customer Content. Customer will not incur additional fees if Customer downloads Customer Content from Axon Cloud Services during this time. Axon has no obligation to maintain or provide Customer Content after these ninety (90) days and will thereafter, unless legally prohibited, delete all Customer Content. Upon request, Axon will provide written proof that Axon successfully deleted and fully removed all Customer Content from Axon Cloud Services.
17. **Post-Termination Assistance.** Axon will provide Customer with the same post-termination data retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Customer Content, including requests for Axon's data egress service, will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.
18. **U.S. Government Rights.** If Customer is a U.S. Federal department or using Axon Cloud Services on behalf of a U.S. Federal department, Axon Cloud Services is provided as a "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data", as defined in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement. If Customer is using Axon Cloud Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Customer will immediately discontinue use of Axon Cloud Services.

19. **Survival.** Upon any termination of this Agreement, the following sections in this Appendix will survive: Customer Owns Customer Content, Privacy, Storage, Axon Cloud Services Warranty, Customer Responsibilities and Axon Cloud Services Restrictions.

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**Axon Customer Experience Improvement Program Appendix**

1. **Axon Customer Experience Improvement Program (ACEIP).** The ACEIP is designed to accelerate Axon's development of technology, such as building and supporting automated features, to ultimately increase safety within communities and drive efficiency in public safety. To this end, subject to the limitations on Axon as described below, Axon, where allowed by law, may make limited use of Customer Content from all of its customers to provide, develop, improve, and support current and future Axon products (collectively, "ACEIP Purposes"). However, at all times, Axon will comply with its obligations pursuant to the Axon Cloud Services Terms of Use Appendix to maintain a comprehensive data security program (including compliance with the CJIS Security Policy for Criminal Justice Information), privacy program, and data governance policy, including high industry standards of de-identifying Personal Data, to enforce its security and privacy obligations for the ACEIP. ACEIP has 2 tiers of participation, Tier 1 and Tier 2. By default, Customer will be a participant in ACEIP Tier 1. If Customer does not want to participate in ACEIP Tier 1, Customer can revoke its consent at any time. If Customer wants to participate in Tier 2, as detailed below, Customer can check the ACEIP Tier 2 box below. If Customer does not want to participate in ACEIP Tier 2, Customer should leave box unchecked. At any time, Customer may revoke its consent to ACEIP Tier 1, Tier 2, or both Tiers.
2. **ACEIP Tier 1.**
  - 2.1. When Axon uses Customer Content for the ACEIP Purposes, Axon will extract from Customer Content and may store separately copies of certain segments or elements of the Customer Content (collectively, "**ACEIP Content**"). When extracting ACEIP Content, Axon will use commercially reasonable efforts to aggregate, transform or de-identify Customer Content so that the extracted ACEIP Content is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to a particular individual ("**Privacy Preserving Technique(s)**"). For illustrative purposes, some examples are described in footnote 1<sup>1</sup>. For clarity, ACEIP Content will still be linked indirectly, with an attribution, to the Customer from which it was extracted. This attribution will be stored separately from the data itself, but is necessary for and will be solely used to enable Axon to identify and delete all ACEIP Content upon Customer request. Once de-identified, ACEIP Content may then be further modified, analyzed, and used to create derivative works. At any time, Customer may revoke the consent granted herein to Axon to access and use Customer Content for ACEIP Purposes. Within 30 days of receiving the Customer's request, Axon will no longer access or use Customer Content for ACEIP Purposes and will delete any and all ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to Customer. In addition, if Axon uses Customer Content for the ACEIP Purposes, upon request, Axon will make available to Customer a list of the specific type of Customer Content being used to generate ACEIP Content, the purpose of such use, and the retention, privacy preserving extraction technique, and relevant data protection practices applicable to the Customer Content or ACEIP Content ("**Use Case**"). From time to time, Axon may develop and deploy new Use Cases. At least 30 days prior to authorizing the deployment of any new Use Case, Axon will provide Customer notice (by updating the list of Use Case at <https://www.axon.com/aceip> and providing Customer with a mechanism to obtain notice of that update or another commercially reasonable method to Customer designated contact) ("**New Use Case**").
  - 2.2. **Expiration of ACEIP Tier 1.** Customer consent granted herein will expire upon termination of the Agreement. In accordance with section 1.1.1, within 30 days of receiving the Customer's request, Axon will no longer access or use Customer Content for ACEIP Purposes and will delete ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to, Customer.
3. **ACEIP Tier 2.** In addition to ACEIP Tier 1, if Customer wants to help further improve Axon's services, Customer may choose to participate in Tier 2 of the ACEIP. ACEIP Tier 2 grants Axon certain additional rights to use Customer

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<sup>1</sup> For example; (a) when extracting specific text to improve automated transcription capabilities, text that could be used to directly identify a particular individual would not be extracted, and extracted text would be disassociated from identifying metadata of any speakers, and the extracted text would be split into individual words and aggregated with other data sources (including publicly available data) to remove any reasonable ability to link any specific text directly or indirectly back to a particular individual; (b) when extracting license plate data to improve Automated License Plate Recognition (ALPR) capabilities, individual license plate characters would be extracted and disassociated from each other so a complete plate could not be reconstituted, and all association to other elements of the source video, such as the vehicle, location, time, and the surrounding environment would also be removed; (c) when extracting audio of potential acoustic events (such as glass breaking or gun shots), very short segments (<1 second) of audio that only contains the likely acoustic events would be extracted and all human utterances would be removed.



## Master Services and Purchasing Agreement for Customer

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Content, in addition to those set forth in Tier 1 above, without the guaranteed deployment of a Privacy Preserving Technique to enable product development, improvement, and support that cannot be accomplished with aggregated, transformed, or de-identified data.

Check this box if Customer wants to help further improve Axon's services by participating in ACEIP Tier 2 in addition to Tier 1. Axon will not enroll Customer into ACEIP Tier 2 until Axon and Customer agree to terms in writing providing for such participation in ACEIP Tier 2.

**Professional Services Appendix**

If any of the Professional Services specified below are included on the Quote, this Appendix applies.

- Utilization of Services.** Customer must use professional services as outlined in the Quote and this Appendix within six (6) months of the Effective Date.
- Axon Full Service (Axon Full Service).** Axon Full Service includes advance remote project planning and configuration support and up to four (4) consecutive days of on-site service and a professional services manager to work with Customer to assess Customer’s deployment and determine which on-site services are appropriate. If Customer requires more than four (4) consecutive on-site days, Customer must purchase additional days. Axon Full Service options include:

<p><b>System set up and configuration</b></p> <ul style="list-style-type: none"> <li>Instructor-led setup of Axon View on smartphones (if applicable)</li> <li>Configure categories and custom roles based on Customer need</li> <li>Register cameras to Customer domain</li> <li>Troubleshoot IT issues with Axon Evidence and Axon Dock ("Dock") access</li> <li>One on-site session included</li> </ul>
<p><b>Dock configuration</b></p> <ul style="list-style-type: none"> <li>Work with Customer to decide the ideal location of Docks and set configurations on Dock</li> <li>Authenticate Dock with Axon Evidence using admin credentials from Customer</li> <li>On-site assistance, not to include physical mounting of docks</li> </ul>
<p><b>Best practice implementation planning session</b></p> <ul style="list-style-type: none"> <li>Provide considerations for the establishment of video policy and system operations best practices based on Axon’s observations with other agencies</li> <li>Discuss the importance of entering metadata in the field for organization purposes and other best practices for digital data management</li> <li>Provide referrals of other agencies using the Axon camera devices and Axon Evidence</li> <li>Recommend rollout plan based on review of shift schedules</li> </ul>
<p><b>System Admin and troubleshooting training sessions</b> Step-by-step explanation and assistance for Customer’s configuration of security, roles &amp; permissions, categories &amp; retention, and other specific settings for Axon Evidence</p>
<p><b>Axon instructor training (Train the Trainer)</b> Training for Customer’s in-house instructors who can support Customer’s Axon camera and Axon Evidence training needs after Axon has fulfilled its contractual on-site obligations</p>
<p><b>Evidence sharing training</b> Tailored workflow instruction for Investigative Units on sharing Cases and Evidence with local prosecuting agencies</p>
<p><b>End user go-live training and support sessions</b></p> <ul style="list-style-type: none"> <li>Assistance with device set up and configuration</li> <li>Training on device use, Axon Evidence, and Evidence Sync</li> </ul>
<p><a href="#">Implementation document packet</a> Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories &amp; roles guide</p>
<p><b>Post go-live review</b></p>

- Body-Worn Camera Starter Service (Axon Starter).** Axon Starter includes advance remote project planning and configuration support and one (1) day of on-site Services and a professional services manager to work closely with Customer to assess Customer’s deployment and determine which Services are appropriate. If Customer requires more than one (1) day of on-site Services, Customer must purchase additional on-site Services. The Axon Starter options include:

<p><b>System set up and configuration (Remote Support)</b></p>
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<ul style="list-style-type: none"> <li>• Instructor-led setup of Axon View on smartphones (if applicable)</li> <li>• Configure categories &amp; custom roles based on Customer need</li> <li>• Troubleshoot IT issues with Axon Evidence and Dock access</li> </ul>
<p><b>Dock configuration</b></p> <ul style="list-style-type: none"> <li>• Work with Customer to decide the ideal location of Dock setup and set configurations on Dock</li> <li>• Authenticate Dock with Axon Evidence using "Administrator" credentials from Customer</li> <li>• Does not include physical mounting of docks</li> </ul>
<p><b>Axon instructor training (Train the Trainer)</b>            Training for Customer's in-house instructors who can support Customer's Axon camera and Axon Evidence training needs after Axon's has fulfilled its contracted on-site obligations</p>
<p><b>End user go-live training and support sessions</b></p> <ul style="list-style-type: none"> <li>• Assistance with device set up and configuration</li> <li>• Training on device use, Axon Evidence, and Evidence Sync</li> </ul>
<p><b><a href="#">Implementation document packet</a></b>            Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories &amp; roles guide</p>

4. **Body-Worn Camera Virtual 1-Day Service (Axon Virtual).** Axon Virtual includes all items in the BWC Starter Service Package, except one (1) day of on-site services.

5. **CEW Services Packages.** CEW Services Packages are detailed below:

<p><b>System set up and configuration</b></p> <ul style="list-style-type: none"> <li>• Configure Axon Evidence categories &amp; custom roles based on Customer need.</li> <li>• Troubleshoot IT issues with Axon Evidence.</li> <li>• Register users and assign roles in Axon Evidence.</li> <li>• <b>For the CEW Full Service Package:</b> On-site assistance included</li> <li>• <b>For the CEW Starter Package:</b> Virtual assistance included</li> </ul>
<p><b>Dedicated Project Manager</b>            Assignment of specific Axon representative for all aspects of planning the rollout (Project Manager). Ideally, Project Manager will be assigned to Customer 4–6 weeks before rollout</p>
<p><b>Best practice implementation planning session to include:</b></p> <ul style="list-style-type: none"> <li>• Provide considerations for the establishment of CEW policy and system operations best practices based on Axon's observations with other agencies</li> <li>• Discuss the importance of entering metadata and best practices for digital data management</li> <li>• Provide referrals to other agencies using TASER CEWs and Axon Evidence</li> <li>• <b>For the CEW Full Service Package:</b> On-site assistance included</li> <li>• <b>For the CEW Starter Package:</b> Virtual assistance included</li> </ul>
<p><b>System Admin and troubleshooting training sessions</b>            On-site sessions providing a step-by-step explanation and assistance for Customer's configuration of security, roles &amp; permissions, categories &amp; retention, and other specific settings for Axon Evidence</p>
<p><b>Axon Evidence Instructor training</b></p> <ul style="list-style-type: none"> <li>• Provide training on the Axon Evidence to educate instructors who can support Customer's subsequent Axon Evidence training needs.</li> <li>• <b>For the CEW Full Service Package:</b> Training for up to 3 individuals at Customer</li> <li>• <b>For the CEW Starter Package:</b> Training for up to 1 individual at Customer</li> </ul>
<p><b>TASER CEW inspection and device assignment</b>            Axon's on-site professional services team will perform functions check on all new TASER CEW Smart weapons and assign them to a user on Axon Evidence.</p>
<p><b>Post go-live review</b>  <b>For the CEW Full Service Package:</b> On-site assistance included.  <b>For the CEW Starter Package:</b> Virtual assistance included.</p>

6. **Smart Weapon Transition Service.** The Smart Weapon Transition Service includes:

<p><b>Archival of CEW Firing Logs</b>            Axon's on-site professional services team will upload CEW firing logs to Axon Evidence from all TASER CEW</p>
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Smart Weapons that Customer is replacing with newer Smart Weapon models.

**Return of Old Weapons**

Axon's on-site professional service team will ship all old weapons back to Axon's headquarters. Axon will provide Customer with a Certificate of Destruction

\*Note: CEW Full Service packages for TASER 7 or TASER 10 include Smart Weapon Transition Service instead of 1-Day Device Specific Instructor Course.

- 7. **VR Services Package.** VR Service includes advance remote project planning and configuration support and one (1) day of on-site service and a professional services manager to work with Customer to assess Customer's deployment and determine which Services are appropriate. The VR Service training options include:

**System set up and configuration (Remote Support)**

- Instructor-led setup of Axon VR headset content
- Configure Customer settings based on Customer need
- Troubleshoot IT issues with Axon VR headset

**Axon instructor training (Train the Trainer)**

Training for up to five (5) Customer's in-house instructors who can support Customer's Axon VR CET and SIM training needs after Axon's has fulfilled its contracted on-site obligations

**Classroom and practical training sessions**

Step-by-step explanation and assistance for Customer's configuration of Axon VR CET and SIM functionality, basic operation, and best practices

- 8. **Axon Air, On-Site Training.** Axon Air, On-Site training includes advance remote project planning and configuration support and one (1) day of on-site Services and a professional services manager to work closely with Customer to assess Customer's deployment and determine which Services are appropriate. If Customer's requires more than one (1) day of on-site Services, Customer must purchase additional on-site Services. The Axon Air, On-Site training options include:

**System set up and configuration (Remote Support)**

- Instructor-led setup of Axon Air App (ASDS)
- Configure Customer settings based on Customer need
- Configure drone controller
- Troubleshoot IT issues with Axon Evidence

**Axon instructor training (Train the Trainer)**

Training for Customer's in-house instructors who can support Customer's Axon Air and Axon Evidence training needs after Axon's has fulfilled its contracted on-site obligations

**Classroom and practical training sessions**

Step-by-step explanation and assistance for Customer's configuration of Axon Respond+ livestreaming functionality, basic operation, and best practices

- 9. **Axon Air, Virtual Training.** Axon Air, Virtual training includes all items in the Axon Air, On-Site Training Package, except the practical training session, with the Axon Instructor training for up to four hours virtually.

10. **Signal Sidearm Installation Service.**

- a. **Purchases of 50 SSA units or more:** Axon will provide one (1) day of on-site service and one professional services manager and will provide train the trainer instruction, with direct assistance on the first of each unique holster/mounting type. Customer is responsible for providing a suitable work/training area.
- b. **Purchases of less than 50 SSA units:** Axon will provide a 1-hour virtual instruction session on the basics of installation and device calibration.

- 11. **Out of Scope Services.** Axon is only responsible to perform the professional services described in the Quote and this Appendix. Any additional professional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.

- 12. **Delivery of Services.** Axon personnel will work Monday through Friday, 8:30 a.m. to 5:30 p.m., except holidays. Axon will perform all on-site tasks over a consecutive timeframe. Axon will not charge Customer travel time by Axon

personnel to Customer premises as work hours.

13. **Access Computer Systems to Perform Services.** Customer authorizes Axon to access relevant Customer computers and networks, solely for performing the Services. Axon will work to identify as soon as reasonably practicable resources and information Axon expects to use and will provide an initial itemized list to Customer. Customer is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Customer.
14. **Site Preparation.** Axon will provide a hardcopy or digital copy of current user documentation for the Axon Devices ("**User Documentation**"). User Documentation will include all required environmental specifications for the professional services and Axon Devices to operate per the Axon Device User Documentation. Before installation of Axon Devices (whether performed by Customer or Axon), Customer must prepare the location(s) where Axon Devices are to be installed ("**Installation Site**") per the environmental specifications in the Axon Device User Documentation. Following installation, Customer must maintain the Installation Site per the environmental specifications. If Axon modifies Axon Device User Documentation for any Axon Devices under this Agreement, Axon will provide the update to Customer when Axon generally releases it
15. **Acceptance.** When Axon completes professional services, Axon will present an acceptance form ("**Acceptance Form**") to Customer. Customer will sign the Acceptance Form acknowledging completion. If Customer reasonably believes Axon did not complete the professional services in substantial conformance with this Agreement, Customer must notify Axon in writing of the specific reasons for rejection within seven (7) calendar days from delivery of the Acceptance Form. Axon will address the issues and re-present the Acceptance Form for signature. If Axon does not receive the signed Acceptance Form or written notification of reasons for rejection within seven (7) calendar days of delivery of the Acceptance Form, Axon will deem Customer to have accepted the professional services.
16. **Customer Network.** For work performed by Axon transiting or making use of Customer's network, Customer is solely responsible for maintenance and functionality of the network. In no event will Axon be liable for loss, damage, or corruption of Customer's network from any cause.

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**Technology Assurance Plan Appendix**

If Technology Assurance Plan ("TAP") or a bundle including TAP is on the Quote, this appendix applies.

1. **TAP Warranty.** The TAP warranty is an extended warranty that starts at the end of the one- (1-) year hardware limited warranty.
2. **Officer Safety Plan.** If Customer purchases an Officer Safety Plan ("OSP"), Customer will receive the deliverables detailed in the Quote. Customer must accept delivery of the TASER CEW and accessories as soon as available from Axon.
3. **OSP 7 or OSP 10 Term.** OSP 7 or OSP 10 begins on the date specified in the Quote ("OSP Term").
4. **TAP BWC Upgrade.** If Customer has no outstanding payment obligations and purchased TAP, Axon will provide Customer a new Axon body-worn camera ("BWC Upgrade") as scheduled in the Quote. If Customer purchased TAP, Axon will provide a BWC Upgrade that is the same or like Axon Device, at Axon's option. Axon makes no guarantee the BWC Upgrade will utilize the same accessories or Axon dock.
5. **TAP Dock Upgrade.** If Customer has no outstanding payment obligations and purchased TAP, Axon will provide Customer a new Axon Dock as scheduled in the Quote ("Dock Upgrade"). Accessories associated with any Dock Upgrades are subject to change at Axon discretion. Dock Upgrades will only include a new Axon dock bay configuration unless a new Axon dock core is required for BWC compatibility. If Customer originally purchased a single-bay Axon dock, the Dock Upgrade will be a single-bay Axon dock model that is the same or like Axon Device, at Axon's option. If Customer originally purchased a multi-bay Axon dock, the Dock Upgrade will be a multi-bay Axon dock that is the same or like Axon Device, at Axon's option.
6. **Upgrade Delay.** Axon may ship the BWC and Dock Upgrades as scheduled in the Quote without prior confirmation from Customer unless the Parties agree in writing otherwise at least ninety (90) days in advance. Axon may ship the final BWC and Dock Upgrade as scheduled in the Quote sixty (60) days before the end of the Subscription Term without prior confirmation from Customer.
7. **Upgrade Change.** If Customer wants to upgrade Axon Device models from the current Axon Device to an upgraded Axon Device, Customer must pay the price difference between the MSRP for the current Axon Device and the MSRP for the upgraded Axon Device. If the model Customer desires has an MSRP less than the MSRP of the offered BWC Upgrade or Dock Upgrade, Axon will not provide a refund. The MSRP is the MSRP in effect at the time of the upgrade.
8. **Return of Original Axon Device.** Within thirty (30) days of receiving a BWC or Dock Upgrade, Customer must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon including serial numbers for the destroyed Axon Devices. If Customer does not return or destroy the Axon Devices, Axon will deactivate the serial numbers for the Axon Devices received by Customer.
9. **Termination.** If Customer's payment for TAP, OSP, or Axon Evidence is more than thirty (30) days past due, Axon may terminate TAP or OSP. Once TAP or OSP terminates for any reason:
  - 9.1. TAP and OSP coverage terminate as of the date of termination and no refunds will be given.
  - 9.2. Axon will not and has no obligation to provide the Upgrade Models.
  - 9.3. Customer must make any missed payments due to the termination before Customer may purchase any future TAP or OSP.



TASER Device Appendix

This TASER Device Appendix applies to Customer’s TASER 7/10, OSP 7/10, OSP Plus, or OSP 7/10 Plus Premium purchase from Axon, if applicable.

- 1. Duty Cartridge Replenishment Plan. If the Quote includes "Duty Cartridge Replenishment Plan", Customer must purchase the plan for each CEW user. A CEW user includes officers that use a CEW in the line of duty and those that only use a CEW for training. Customer may not resell cartridges received. Axon will only replace cartridges used in the line of duty.
2. Training. If the Quote includes a TASER On Demand Certification subscription, Customer will have on-demand access to TASER Instructor and TASER Master Instructor courses only for the duration of the TASER Subscription Term. Axon will issue a maximum of ten (10) TASER Instructor vouchers and ten (10) TASER Master Instructor vouchers for every thousand TASER Subscriptions purchased. Customer shall utilize vouchers to register for TASER courses at their discretion however Customer may incur a fee for cancellations less than 10 business days prior to a course date or failure to appear to a registered course. The voucher has no cash value. Customer cannot exchange voucher for any other device or service. Any unused vouchers at the end of the Term will be forfeited. A voucher does not include any travel or other expenses that might be incurred related to attending a course.
3. Extended Warranty. If the Quote includes an extended warranty, the extended warranty coverage period warranty will be for a five- (5-) year term, which includes the hardware manufacturer’s warranty plus the four- (4-) year extended term.
4. Trade-in. If the Quote contains a discount on CEW-related line items and that discount is contingent upon the trade-in of hardware, Customer must return used hardware and accessories associated with the discount ("Trade-In Units") to Axon within the below prescribed timeline. Customer must ship batteries via ground shipping. Axon will pay shipping costs of the return. If Axon does not receive Trade-In Units within the timeframe below, Axon will invoice Customer the value of the trade-in credit. Customer may not destroy Trade-In Units and receive a trade-in credit.

Table with 2 columns: Customer Size, Days to Return from Start Date of TASER 10 Subscription. Rows include: Less than 100 officers (60 days), 100 to 499 officers (90 days), 500+ officers (180 days).

- 5. TASER Device Subscription Term. The TASER Device Subscription Term for a standalone TASER Device purchase begins on shipment of the TASER Device. The TASER Device Subscription Term for OSP 7/10 begins on the OSP 7/10 start date.
6. Access Rights. Upon Axon granting Customer a TASER Device Axon Evidence subscription, Customer may access and use Axon Evidence for the storage and management of data from TASER Devices devices during the TASER Device Subscription Term. Customer may not exceed the number of end users the Quote specifies.
7. Customer Warranty. If Customer is located in the US, Customer warrants and acknowledges that TASER 10 is classified as a firearm and is being acquired for official Customer use pursuant to a law enforcement Customer transfer under the Gun Control Act of 1968.
8. Purchase Order. To comply with applicable laws and regulations, Customer must provide a purchase order to Axon prior to shipment of TASER 10.
9. Apollo Grant (US only). If Customer has received an Apollo Grant from Axon, Customer must pay all fees in the Quote prior to upgrading to any new TASER Device offered by Axon.
10. Termination. If payment for TASER Device is more than thirty (30) days past due, Axon may terminate Customer’s TASER Device plan by notifying Customer. Upon termination for any reason, then as of the date of termination:
10.1. TASER Device extended warranties and access to Training Content will terminate. No refunds will be given.
10.2. Axon will invoice Customer the remaining MSRP for TASER Devices received before termination. If terminating for non-appropriations, Axon will not invoice Customer if Customer returns the TASER Device, rechargeable battery, holster, dock, core, training suits, and unused cartridges to Axon within thirty (30) days of the date of

termination.

10.3. Customer will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future TASER Device plan.



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**Axon Auto-Tagging Appendix**

If Auto-Tagging is included on the Quote, this Appendix applies.

1. **Scope.** Axon Auto-Tagging consists of the development of a module to allow Axon Evidence to interact with Customer's Computer-Aided Dispatch ("**CAD**") or Records Management Systems ("**RMS**"). This allows end users to auto-populate Axon video meta-data with a case ID, category, and location-based on data maintained in Customer's CAD or RMS.
2. **Support.** For thirty (30) days after completing Auto-Tagging Services, Axon will provide up to five (5) hours of remote support at no additional charge. Axon will provide free support due to a change in Axon Evidence, if Customer maintains an Axon Evidence and Auto-Tagging subscription. Axon will not provide support if a change is required because Customer changes its CAD or RMS.
3. **Changes.** Axon is only responsible to perform the Services in this Appendix. Any additional Services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule.
4. **Customer Responsibilities.** Axon's performance of Auto-Tagging Services requires Customer to:
  - 4.1. Make available relevant systems, including Customer's current CAD or RMS, for assessment by Axon (including remote access if possible);
  - 4.2. Make required modifications, upgrades or alterations to Customer's hardware, facilities, systems and networks related to Axon's performance of Auto-Tagging Services;
  - 4.3. Provide access to the premises where Axon is performing Auto-Tagging Services, subject to Customer safety and security restrictions, and allow Axon to enter and exit the premises with laptops and materials needed to perform Auto-Tagging Services;
  - 4.4. Provide all infrastructure and software information (TCP/IP addresses, node names, network configuration) necessary for Axon to provide Auto-Tagging Services;
  - 4.5. Promptly install and implement any software updates provided by Axon;
  - 4.6. Ensure that all appropriate data backups are performed;
  - 4.7. Provide assistance, participation, and approvals in testing Auto-Tagging Services;
  - 4.8. Provide Axon with remote access to Customer's Axon Evidence account when required;
  - 4.9. Notify Axon of any network or machine maintenance that may impact the performance of the module at Customer; and
  - 4.10. Ensure reasonable availability of knowledgeable staff and personnel to provide timely, accurate, complete, and up-to-date documentation and information to Axon.
5. **Access to Systems.** Customer authorizes Axon to access Customer's relevant computers, network systems, and CAD or RMS solely for performing Auto-Tagging Services. Axon will work diligently to identify the resources and information Axon expects to use and will provide an initial list to Customer. Customer is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Customer.



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**Axon Fleet Appendix**

If Axon Fleet is included on the Quote, this Appendix applies.

1. Customer Responsibilities.
  - 1.1. Customer must ensure its infrastructure and vehicles adhere to the minimum requirements to operate Axon Fleet 2 Axon Fleet 3 or a future Fleet iteration (collectively, "**Axon Fleet**") as established by Axon during the qualifier call and on-site assessment at Customer and in any technical qualifying questions. If Customer's representations are inaccurate, the Quote is subject to change.
  - 1.2. Customer is responsible for providing a suitable work area for Axon or Axon third-party providers to install Axon Fleet systems into Customer vehicles. Customer is responsible for making available all vehicles for which installation services were purchased, during the agreed upon onsite installation dates, Failure to make vehicles available may require an equitable adjustment in fees or schedule.
2. **Cradlepoint**. If Customer purchases Cradlepoint Enterprise Cloud Manager, Customer will comply with Cradlepoint's end user license agreement. The term of the Cradlepoint license may differ from the Axon Evidence Subscription. If Customer requires Cradlepoint support, Customer will contact Cradlepoint directly.
3. **Third-party Installer**. Axon will not be liable for the failure of Axon Fleet hardware to operate per specifications if such failure results from installation not performed by, or as directed by Axon.
4. Wireless Offload Server.
  - 4.1. **License Grant**. Axon grants Customer a non-exclusive, royalty-free, worldwide, perpetual license to use Wireless Offload Server ("**WOS**"). "Use" means storing, loading, installing, or executing WOS solely for data communication with Axon Devices for the number of licenses purchased. The WOS term begins upon the start of the Axon Evidence Subscription.
  - 4.2. **Restrictions**. Customer may not: (a) modify, alter, tamper with, repair, or create derivative works of WOS; (b) reverse engineer, disassemble, or decompile WOS, apply any process to derive the source code of WOS, or allow others to do so; (c) access or use WOS to avoid incurring fees or exceeding usage limits; (d) copy WOS in whole or part; (e) use trade secret information contained in WOS; (f) resell, rent, loan or sublicense WOS; (g) access WOS to build a competitive device or service or copy any features, functions or graphics of WOS; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within WOS.
  - 4.3. **Updates**. If Customer purchases WOS maintenance, Axon will make updates and error corrections to WOS ("**WOS Updates**") available electronically via the Internet or media as determined by Axon. Customer is responsible for establishing and maintaining adequate Internet access to receive WOS Updates and maintaining computer equipment necessary for use of WOS. The Quote will detail the maintenance term.
  - 4.4. **WOS Support**. Upon request by Axon, Customer will provide Axon with access to Customer's store and forward servers solely for troubleshooting and maintenance.
5. Axon Vehicle Software.
  - 5.1. **License Grant**. Axon grants Customer a non-exclusive, royalty-free, worldwide, perpetual license to use ViewXL or Dashboard (collectively, "**Axon Vehicle Software**".) "Use" means storing, loading, installing, or executing Axon Vehicle Software solely for data communication with Axon Devices. The Axon Vehicle Software term begins upon the start of the Axon Evidence Subscription.
  - 5.2. **Restrictions**. Customer may not: (a) modify, alter, tamper with, repair, or create derivative works of Axon Vehicle Software; (b) reverse engineer, disassemble, or decompile Axon Vehicle Software, apply any process to derive the source code of Axon Vehicle Software, or allow others to do so; (c) access or use Axon Vehicle Software to avoid incurring fees or exceeding usage limits; (d) copy Axon Vehicle Software in whole or part; (e) use trade secret information contained in Axon Vehicle Software; (f) resell, rent, loan or sublicense Axon Vehicle Software; (g) access Axon Vehicle Software to build a competitive device or service or copy any features, functions or graphics of Axon Vehicle Software; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Axon Vehicle Software.





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6. **Acceptance Checklist.** If Axon provides services to Customer pursuant to any statement of work in connection with Axon Fleet, within seven (7) days of the date on which Customer retrieves Customer's vehicle(s) from the Axon installer, said vehicle having been installed and configured with tested and fully and properly operational in-car hardware and software identified above, Customer will receive a Professional Services Acceptance Checklist to submit to Axon indicating acceptance or denial of said deliverables.
7. **Axon Fleet Upgrade.** If Customer has no outstanding payment obligations and has purchased the "Fleet Technology Assurance Plan" (Fleet TAP), Axon will provide Customer with the same or like model of Fleet hardware ("**Axon Fleet Upgrade**") as scheduled on the Quote.
  - 7.1. If Customer would like to change models for the Axon Fleet Upgrade, Customer must pay the difference between the MSRP for the offered Axon Fleet Upgrade and the MSRP for the model desired. The MSRP is the MSRP in effect at the time of the upgrade. Customer is responsible for the removal of previously installed hardware and installation of the Axon Fleet Upgrade.
  - 7.2. Within thirty (30) days of receiving the Axon Fleet Upgrade, Customer must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon, including serial numbers of the destroyed Axon Devices. If Customer does not destroy or return the Axon Devices to Axon, Axon will deactivate the serial numbers for the Axon Devices received by Customer.
8. **Axon Fleet Termination.** Axon may terminate Customer's Fleet subscription for non-payment. Upon any termination:
  - 8.1. Axon Fleet subscription coverage terminates, and no refunds will be given.
  - 8.2. Axon will not and has no obligation to provide the Axon Fleet Upgrade.
  - 8.3. Customer will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future Fleet TAP.



**Axon Respond Appendix**

This Axon Respond Appendix applies to both Axon Respond and Axon Respond Plus, if either is included on the Quote.

1. **Axon Respond Subscription Term.** If Customer purchases Axon Respond as part of a bundled offering, the Axon Respond subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Respond to Customer. If Customer purchases Axon Respond as a standalone, the Axon Respond subscription begins the later of the (1) date Axon provisions Axon Respond to Customer, or (2) first day of the month following the Effective Date. The Axon Respond subscription term will end upon the completion of the Axon Evidence Subscription associated with Axon Respond.
2. **Scope of Axon Respond.** The scope of Axon Respond is to assist Customer with real-time situational awareness during critical incidents to improve officer safety, effectiveness, and awareness. In the event Customer uses Axon Respond outside this scope, Axon may initiate good-faith discussions with Customer on upgrading Customer's Axon Respond to better meet Customer's needs.
3. **Axon Body LTE Requirements.** Axon Respond is only available and usable with an LTE enabled body-worn camera. Axon is not liable if Customer utilizes the LTE device outside of the coverage area or if the LTE carrier is unavailable. LTE coverage is only available in the United States, including any U.S. territories. Axon may utilize a carrier of Axon's choice to provide LTE service. Axon may change LTE carriers during the Term without Customer's consent.
4. **Axon Fleet LTE Requirements.** Axon Respond is only available and usable with a Fleet system configured with LTE modem and service. Customer is responsible for providing LTE service for the modem. Coverage and availability of LTE service is subject to Customer's LTE carrier.
5. **Axon Respond Service Limitations.** Customer acknowledges that LTE service is made available only within the operating range of the networks. Service may be temporarily refused, interrupted, or limited because of: (a) facilities limitations; (b) transmission limitations caused by atmospheric, terrain, other natural or artificial conditions adversely affecting transmission, weak batteries, system overcapacity, movement outside a service area or gaps in coverage in a service area, and other causes reasonably outside of the carrier's control such as intentional or negligent acts of third parties that damage or impair the network or disrupt service; or (c) equipment modifications, upgrades, relocations, repairs, and other similar activities necessary for the proper or improved operation of service.
  - 5.1. **With regard to Axon Body, Partner networks are made available as-is and the carrier makes no warranties or representations as to the availability or quality of roaming service provided by carrier partners, and the carrier will not be liable in any capacity for any errors, outages, or failures of carrier partner networks. Customer expressly understands and agrees that it has no contractual relationship whatsoever with the underlying wireless service provider or its affiliates or contractors and Customer is not a third-party beneficiary of any agreement between Axon and the underlying carrier.**
6. **Termination.** Upon termination of this Agreement, or if Customer stops paying for Axon Respond or bundles that include Axon Respond, Axon will end Axon Respond services, including any Axon-provided LTE service.

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**Add-on Services Appendix**

This Appendix applies if Axon Community Request, Axon Redaction Assistant, and/or Axon Performance are included on the Quote.

1. **Subscription Term.** If Customer purchases Axon Community Request, Axon Redaction Assistant, or Axon Performance as part of OSP 7 or OSP 10, the subscription begins on the later of the (1) start date of the OSP 7 or OSP 10 Term, or (2) date Axon provisions Axon Community Request Axon Redaction Assistant, or Axon Performance to Customer.
  - 1.1. If Customer purchases Axon Community Request, Axon Redaction Assistant, or Axon Performance as a standalone, the subscription begins the later of the (1) date Axon provisions Axon Community Request, Axon Redaction Assistant, or Axon Performance to Customer, or (2) first day of the month following the Effective Date.
  - 1.2. The subscription term will end upon the completion of the Axon Evidence Subscription associated with the add-on.
2. **Axon Community Request Storage.** For Axon Community Request, Customer may store an unlimited amount of data submitted through the public portal ("**Portal Content**"), within Customer's Axon Evidence instance. The post-termination provisions outlined in the Axon Cloud Services Terms of Use Appendix also apply to Portal Content.
3. **Performance Auto-Tagging Data.** In order to provide some features of Axon Performance to Customer, Axon will need to store call for service data from Customer's CAD or RMS.

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**Axon Auto-Transcribe Appendix**

This Appendix applies if Axon Auto-Transcribe is included on the Quote.

1. **Subscription Term.** If Customer purchases Axon Auto-Transcribe as part of a bundle or Axon Cloud Services subscription, the subscription begins on the later of the (1) start date of the bundle or Axon Cloud Services license term, or (2) date Axon provisions Axon Auto-Transcribe to Customer. If Customer purchases Axon Auto-Transcribe minutes as a standalone, the subscription begins on the date Axon provisions Axon Auto-Transcribe to Customer.
  - 1.1. If Customer cancels Auto-Transcribe services, any amounts owed by the Parties will be based on the amount of time passed under the annual subscription, rather than on the number of minutes used, regardless of usage.
2. **Auto-Transcribe A-La-Carte Minutes.** Upon Axon granting Customer a set number of minutes, Customer may utilize Axon Auto-Transcribe, subject to the number of minutes allowed on the Quote. Customer will not have the ability to roll over unused minutes to future Auto-Transcribe terms. Axon may charge Customer additional fees for exceeding the number of purchased minutes. Axon Auto-Transcribe minutes expire one year after being provisioned to Customer by Axon.
3. **Axon Unlimited Transcribe.** Upon Axon granting Customer an Unlimited Transcribe subscription to Axon Auto-Transcribe, Customer may utilize Axon Auto-Transcribe with no limit on the number of minutes. Unlimited Transcribe includes automatic transcription of all Axon BWC and Axon Capture footage. With regard to Axon Interview Room, Axon Fleet, Axon Citizen, or third-party transcription, transcription must be requested on demand. Notwithstanding the foregoing, Axon may limit usage after 5,000 minutes per user per month for multiple months in a row. Axon will not bill for overages.
4. **Warranty.** Axon disclaims all warranties, express or implied, for Axon Auto-Transcribe.



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**Axon Virtual Reality Content Terms of Use Appendix**

If Virtual Reality is included on the Quote, this Appendix applies.

1. **Term.** The Quote will detail the products and license duration, as applicable, of the goods, services, and software, and contents thereof, provided by Axon to Customer related to virtual reality (collectively, "**Virtual Reality Media**").
2. **Headsets.** Customer may purchase additional virtual reality headsets from Axon. In the event Customer decides to purchase additional virtual reality headsets for use with Virtual Reality Media, Customer must purchase those headsets from Axon.
3. **License Restrictions.** All licenses will immediately terminate if Customer does not comply with any term of this Agreement. If Customer utilizes more users than stated in this Agreement, Customer must purchase additional Virtual Reality Media licenses from Axon. Customer may not use Virtual Reality Media for any purpose other than as expressly permitted by this Agreement. Customer may not:
  - 3.1. modify, tamper with, repair, or otherwise create derivative works of Virtual Reality Media;
  - 3.2. reverse engineer, disassemble, or decompile Virtual Reality Media or apply any process to derive the source code of Virtual Reality Media, or allow others to do the same;
  - 3.3. copy Virtual Reality Media in whole or part, except as expressly permitted in this Agreement;
  - 3.4. use trade secret information contained in Virtual Reality Media;
  - 3.5. resell, rent, loan or sublicense Virtual Reality Media;
  - 3.6. access Virtual Reality Media to build a competitive device or service or copy any features, functions, or graphics of Virtual Reality Media; or
  - 3.7. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Virtual Reality Media or any copies of Virtual Reality Media.
4. **Privacy.** Customer's use of the Virtual Reality Media is subject to the Axon Virtual Reality Privacy Policy, a current version of which is available at <https://www.axon.com/axonvrprivacypolicy>.
5. **Termination.** Axon may terminate Customer's license immediately for Customer's failure to comply with any of the terms in this Agreement.

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**Axon Evidence Local Software Appendix**

This Appendix applies if Axon Evidence Local is included on the Quote.

1. **License.** Axon owns all executable instructions, images, icons, sound, and text in Axon Evidence Local. All rights are reserved to Axon. Axon grants a non-exclusive, royalty-free, worldwide right and license to use Axon Evidence Local. "Use" means storing, loading, installing, or executing Axon Evidence Local exclusively for data communication with an Axon Device. Customer may use Axon Evidence Local in a networked environment on computers other than the computer it installs Axon Evidence Local on, so long as each execution of Axon Evidence Local is for data communication with an Axon Device. Customer may make copies of Axon Evidence Local for archival purposes only. Axon shall retain all copyright, trademark, and proprietary notices in Axon Evidence Local on all copies or adaptations.
2. **Term.** The Quote will detail the duration of the Axon Evidence Local license, as well as any maintenance. The term will begin upon installation of Axon Evidence Local.
3. **License Restrictions.** All licenses will immediately terminate if Customer does not comply with any term of this Agreement. Customer may not use Axon Evidence Local for any purpose other than as expressly permitted by this Agreement. Customer may not:
  - 3.1. modify, tamper with, repair, or otherwise create derivative works of Axon Evidence Local;
  - 3.2. reverse engineer, disassemble, or decompile Axon Evidence Local or apply any process to derive the source code of Axon Evidence Local, or allow others to do the same;
  - 3.3. access or use Axon Evidence Local to avoid incurring fees or exceeding usage limits or quotas;
  - 3.4. copy Axon Evidence Local in whole or part, except as expressly permitted in this Agreement;
  - 3.5. use trade secret information contained in Axon Evidence Local;
  - 3.6. resell, rent, loan or sublicense Axon Evidence Local;
  - 3.7. access Axon Evidence Local to build a competitive device or service or copy any features, functions, or graphics of Axon Evidence Local; or
  - 3.8. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Axon Evidence Local or any copies of Axon Evidence Local.
4. **Support.** Axon may make available updates and error corrections ("**Updates**") to Axon Evidence Local. Axon will provide Updates electronically via the Internet or media as determined by Axon. Customer is responsible for establishing and maintaining adequate access to the Internet to receive Updates. Customer is responsible for maintaining the computer equipment necessary to use Axon Evidence Local. Axon may provide technical support of a prior release/version of Axon Evidence Local for six (6) months from when Axon made the subsequent release/version available.
5. **Termination.** Axon may terminate Customer's license immediately for Customer's failure to comply with any of the terms in this Agreement. Upon termination, Axon may disable Customer's right to login to Axon Evidence Local.



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## Axon Application Programming Interface Appendix

This Appendix applies if Axon's API Services or a subscription to Axon Cloud Services is included on the Quote.

### 1. **Definitions.**

- 1.1. **"API Client"** means the software that acts as the interface between Customer's computer and the server, which is already developed or to be developed by Customer.
- 1.2. **"API Interface"** means software implemented by Customer to configure Customer's independent API Client Software to operate in conjunction with the API Service for Customer's authorized Use.
- 1.3. **"Axon Evidence Partner API, API or Axon API"** (collectively **"API Service"**) means Axon's API which provides a programmatic means to access data in Customer's Axon Evidence account or integrate Customer's Axon Evidence account with other systems.
- 1.4. **"Use"** means any operation on Customer's data enabled by the supported API functionality.

### 2. **Purpose and License.**

- 2.1. Customer may use API Service and data made available through API Service, in connection with an API Client developed by Customer. Axon may monitor Customer's use of API Service to ensure quality, improve Axon devices and services, and verify compliance with this Agreement. Customer agrees to not interfere with such monitoring or obscure from Axon Customer's use of API Service. Customer will not use API Service for commercial use.
- 2.2. Axon grants Customer a non-exclusive, non-transferable, non-sublicensable, worldwide, revocable right and license during the Term to use API Service, solely for Customer's Use in connection with Customer's API Client.
- 2.3. Axon reserves the right to set limitations on Customer's use of the API Service, such as a quota on operations, to ensure stability and availability of Axon's API. Axon will use reasonable efforts to accommodate use beyond the designated limits.

### 3. **Configuration.** Customer will work independently to configure Customer's API Client with API Service for Customer's applicable Use. Customer will be required to provide certain information (such as identification or contact details) as part of the registration. Registration information provided to Axon must be accurate. Customer will inform Axon promptly of any updates. Upon Customer's registration, Axon will provide documentation outlining API Service information.

### 4. **Customer Responsibilities.** When using API Service, Customer and its end users may not:

- 4.1. use API Service in any way other than as expressly permitted under this Agreement;
- 4.2. use in any way that results in, or could result in, any security breach to Axon;
- 4.3. perform an action with the intent of introducing any viruses, worms, defect, Trojan horses, malware, or any items of a destructive nature to Axon Devices and Services;
- 4.4. interfere with, modify, disrupt or disable features or functionality of API Service or the servers or networks providing API Service;
- 4.5. reverse engineer, decompile, disassemble, or translate or attempt to extract the source code from API Service or any related software;
- 4.6. create an API Interface that functions substantially the same as API Service and offer it for use by third parties;
- 4.7. provide use of API Service on a service bureau, rental or managed services basis or permit other individuals or entities to create links to API Service;
- 4.8. frame or mirror API Service on any other server, or wireless or Internet-based device;
- 4.9. make available to a third-party, any token, key, password or other login credentials to API Service;
- 4.10. take any action or inaction resulting in illegal, unauthorized or improper purposes; or
- 4.11. disclose Axon's API manual.

### 5. **API Content.** All content related to API Service, other than Customer Content or Customer's API Client content, is considered Axon's API Content, including:

- 5.1. the design, structure and naming of API Service fields in all responses and requests;
  - 5.2. the resources available within API Service for which Customer takes actions on, such as evidence, cases, users, or reports;
  - 5.3. the structure of and relationship of API Service resources; and
  - 5.4. the design of API Service, in any part or as a whole.
6. **Prohibitions on API Content**. Neither Customer nor its end users will use API content returned from the API Interface to:
- 6.1. scrape, build databases, or otherwise create permanent copies of such content, or keep cached copies longer than permitted by the cache header;
  - 6.2. copy, translate, modify, create a derivative work of, sell, lease, lend, convey, distribute, publicly display, or sublicense to any third-party;
  - 6.3. misrepresent the source or ownership; or
  - 6.4. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices).
7. **API Updates**. Axon may update or modify the API Service from time to time ("**API Update**"). Customer is required to implement and use the most current version of API Service and to make any applicable changes to Customer's API Client required as a result of such API Update. API Updates may adversely affect how Customer's API Client access or communicate with API Service or the API Interface. Each API Client must contain means for Customer to update API Client to the most current version of API Service. Axon will provide support for one (1) year following the release of an API Update for all depreciated API Service versions.



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## Advanced User Management Appendix

This Appendix applies if Axon Advanced User Management is included on the Quote.

1. **Scope.** Advanced User Management allows Customer to (a) utilize bulk user creation and management, (b) automate user creation and management through System for Cross-domain Identity Management ("**SCIM**"), and (c) automate group creation and management through SCIM.
2. **Advanced User Management Configuration.** Customer will work independently to configure Customer's Advanced User Management for Customer's applicable Use. Upon request, Axon will provide general guidance to Customer, including documentation that details the setup and configuration process.



FUSUS APPENDIX

- 1. **Access.** Upon Axon granting Customer a subscription to FUSUS cloud services in the Quote, Customer may access and use FūsusONE Real Time Interoperability Solution services to for the purpose of viewing and managing Customer Content. Some Customer content contained in Axon’s Evidence.com may not be accessible or transferable to the FUSUS cloud services.
- 2. **Product Limits.** The following limitations apply to the below products:

	Lite	Basic	Pro	Enterprise	Enterprise Plus
<b>Total Number of Managed End Points</b>	150	150	500	1500	4500
<b>Max Number of Video Streams Connected</b>	0	150	500	1500	4500
<b>Indefinite Cloud Storage</b>		2TB	5TB	10TB	30TB

Overages may result in additional fees or the need to upgrade products.

- 3. **Disclaimer.** Customer is responsible for use of any internet access devices and/or all third-party hardware, software, services, telecommunication services (including Internet connectivity), or other items used by Customer to access the service (“Third-Party Components”) are the sole and exclusive responsibility of Customer, and Axon has no responsibility for such Third-party Components, FUSUS cloud services, or Customer relationships with such third parties. Customer agrees to at all times comply with the lawful terms and conditions of agreements with such third parties. Axon does not represent or warrant that the FUSUS cloud services and the Customer Content are compatible with any specific third-party hardware or software or any other Third-Party Components. Customer is responsible for providing and maintaining an operating environment as reasonably necessary to accommodate and access the FUSUS cloud services.
- 4. **Data Privacy.** Axon may collect, use, transfer, disclose and otherwise process Customer Content in the context of facilitating communication of data with Customer through their use of FUSUS cloud services FUSUS app (iOS or Android interface), complying with legal requirements, monitoring the Customer’s use of FUSUS systems, and undertaking data analytics. Customer Content saved in Axon Cloud Services is the sole property of Customer and may not be distributed by Axon to any third parties outside of the Customer’s organization without the Customer’s expressed written consent.



**Axon Channel Services Appendix**

This Appendix applies if Customer purchases Axon Channel Service, as set forth on the Quote.

1. Definitions.
  - 1.1. **"Axon Digital Evidence Management System"** means Axon Evidence or Axon Evidence Local, as specified in the attached Channel Services Statement of Work.
  - 1.2. **"Active Channel"** means a third-party system that is continuously communicating with an Axon Digital Evidence Management System.
  - 1.3. **"Inactive Channel"** means a third-party system that will have a one-time communication to an Axon Digital Evidence Management System.
2. **Scope.** Customer currently has a third-party system or data repository from which Customer desires to share data with Axon Digital Evidence Management. Axon will facilitate the transfer of Customer's third-party data into an Axon Digital Evidence Management System or the transfer of Customer data out of an Axon Digital Evidence Management System as defined in the Channel Services Statement of Work ("**Channel Services SOW**"). Channel Services will not delete any Customer Content. Customer is responsible for verifying all necessary data is migrated correctly and retained per Customer policy.
3. **Changes.** Axon is only responsible to perform the Services described in this Appendix and Channel Services SOW. Any additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.
4. **Purpose and Use.** Customer is responsible for verifying Customer has the right to share data from and provide access to third-party system as it relates to the Services described in this Appendix and the Channel Services SOW. For Active Channels, Customer is responsible for any changes to a third-party system that may affect the functionality of the channel service. Any additional work required for the continuation of the Service may require additional fees. An Axon Field Engineer may require access to Customer's network and systems to perform the Services described in the Channel Services SOW. Customer is responsible for facilitating this access per all laws and policies applicable to Customer.
5. **Project Management.** Axon will assign a Project Manager to work closely with Customer's project manager and project team members and will be responsible for completing the tasks required to meet all contract deliverables on time and budget.
6. **Warranty.** Axon warrants that it will perform the Channel Services in a good and workmanlike manner.
7. **Monitoring.** Axon may monitor Customer's use of Channel Services to ensure quality, improve Axon devices and services, prepare invoices based on the total amount of data migrated, and verify compliance with this Agreement. Customer agrees not to interfere with such monitoring or obscure from Axon Customer's use of channel services.
8. **Customer's Responsibilities.** Axon's successful performance of the Channel Services requires Customer:
  - 8.1. Make available its relevant systems for assessment by Axon (including making these systems available to Axon via remote access);
  - 8.2. Provide access to the building facilities and where Axon is to perform the Channel Services, subject to safety and security restrictions imposed by the Customer (including providing security passes or other necessary documentation to Axon representatives performing the Channel Services permitting them to enter and exit Customer premises with laptop personal computers and any other materials needed to perform the Channel Services);
  - 8.3. Provide all necessary infrastructure and software information (TCP/IP addresses, node names, and network configuration) for Axon to provide the Channel Services;
  - 8.4. Ensure all appropriate data backups are performed;
  - 8.5. Provide Axon with remote access to the Customer's network and third-party systems when required for Axon to perform the Channel Services;
  - 8.6. Notify Axon of any network or machine maintenance that may impact the performance of the Channel Services; and
  - 8.7. Ensure the reasonable availability by phone or email of knowledgeable staff, personnel, system administrators,



## Master Services and Purchasing Agreement for Customer

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and operators to provide timely, accurate, complete, and up-to-date documentation and information to Axon (these contacts are to provide background information and clarification of information required to perform the Channel Services).

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VIEVU Data Migration Appendix

This Appendix applies if Customer purchases Migration services, as set forth on the Quote.

1. **Scope.** Customer currently has legacy data in the VIEVU solution from which Customer desires to move to Axon Evidence. Axon will work with Customer to copy legacy data from the VIEVU solution into Axon Evidence ("**Migration**"). Before Migration, Customer and Axon will work together to develop a Statement of Work ("**Migration SOW**") to detail all deliverables and responsibilities. The Migration will require the availability of Customer resources. Such resources will be identified in the SOW. On-site support during Migration is not required. Upon Customer's request, Axon will provide on-site support for an additional fee. Any request for on-site support will need to be pre-scheduled and is subject to Axon's resource availability.
  - 1.1. A small amount of unexposed data related to system information will not be migrated from the VIEVU solution to Axon Evidence. Upon request, some of this data can be manually exported before Migration and provided to Customer. The Migration SOW will provide further detail.
2. **Changes.** Axon is only responsible to perform the Services described in this Appendix and Migration SOW. Any additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.
3. **Project Management.** Axon will assign a Project Manager to work closely with Customer's project manager and project team members and will be responsible for completing the tasks required to meet all contract deliverables on time and budget.
4. **Downtime.** There may be downtime during the Migration. The duration of the downtime will depend on the amount of data that Customer is migrating. Axon will work with Customer to minimize any downtime. Any VIEVU mobile application will need to be disabled upon Migration.
5. **Functionality Changes.** Due to device differences between the VIEVU solution and the Axon's Axon Evidence solution, there may be functionality gaps that will not allow for all migrated data to be displayed the same way in the user interface after Migration.
6. **Acceptance.** Once the Migration is complete, Axon will notify Customer and provide an acceptance form. Customer is responsible for verifying that the scope of the project has been completed and all necessary data is migrated correctly and retained per Customer policy. Customer will have ninety (90) days to provide Axon acceptance that the Migration was successful, or Axon will deem the Migration accepted.
  - 6.1. In the event Customer does not accept the Migration, Customer agrees to notify Axon within a reasonable time. Customer also agrees to allow Axon a reasonable time to resolve any issue. In the event Customer does not provide Axon with a written rejection of the Migration during these ninety (90) days, Customer may be charged for additional monthly storage costs. After Customer provides acceptance of the Migration, Axon will delete all data from the VIEVU solution ninety (90) days after the Migration.
7. **Post-Migration.** After Migration, the VIEVU solution may not be supported and updates may not be provided. Axon may end of life the VIEVU solution in the future. If Customer elects to maintain data within the VIEVU solution, Axon will provide Customer ninety (90) days' notice before ending support for the VIEVU solution.
8. **Warranty.** Axon warrants that it will perform the Migration in a good and workmanlike manner.
9. **Monitoring.** Axon may monitor Customer's use of Migration to ensure quality, improve Axon Devices and Services, prepare invoices based on the total amount of data migrated, and verify compliance with this Agreement. Customer agrees not to interfere with such monitoring or obscure Customer's use of Migration from Axon.

10.

**Axon Technical Account Manager Appendix**

This Appendix applies if Axon Support Engineer services are included on the Quote.

1. **Axon Technical Account Manager Payment.** Axon will invoice for Axon Technical Account Manager ("TAM") services, as outlined in the Quote, when the TAM commences work on-site at Customer.

2. **Full-Time TAM Scope of Services.**

- 2.1. A Full-Time TAM will work on-site four (4) days per week, unless an alternate schedule or reporting location is mutually agreed upon by Axon and Customer.
- 2.2. Customer's Axon sales representative and Axon's Customer Success team will work with Customer to define its support needs and ensure the Full-Time TAM has skills to align with those needs. There may be up to a six- (6-) month waiting period before the Full-Time TAM can work on-site, depending upon Customer's needs and availability of a Full-Time TAM.
- 2.3. The purchase of Full-Time TAM Services includes two (2) complimentary Axon Accelerate tickets per year of the Agreement, so long as the TAM has started work at Customer, and Customer is current on all payments for the Full-Time TAM Service.
- 2.4. The Full-Time TAM **Service options are listed below:**

<p><b>Ongoing System Set-up and Configuration</b>          Assisting with assigning cameras and registering docks          Maintaining <b>Customer's Axon Evidence account</b>          Connecting Customer to "Early Access" programs for new devices</p>
<p><b>Account Maintenance</b>          Conducting on-site training on new features and <b>devices for Customer leadership team(s)</b>          Thoroughly documenting issues and workflows and suggesting new workflows to improve <b>the effectiveness of the Axon program</b>          Conducting weekly meetings to cover current issues and program status</p>
<p><b>Data Analysis</b>          Providing on-demand Axon usage data to identify trends and insights for improving daily workflows          Comparing <b>Customer's Axon usage and trends to peers to establish best practices</b>          Proactively monitoring the health of Axon equipment and coordinating returns when needed</p>
<p><b>Direct Support</b>          Providing on-site, Tier 1 and Tier 2 (as defined in Axon's Service Level Agreement) technical support for Axon Devices          Proactively monitoring the health of <b>Axon equipment</b>          Creating and monitoring RMAs <b>on-site</b>          Providing Axon app support          Monitoring and testing new firmware and workflows before they are released to Customer's production environment</p>
<p><b>Customer Advocacy</b>          Coordinating <b>bi-annual voice of customer meetings with Axon's Device Management team</b>          Recording and tracking Customer feature requests and major bugs</p>

3. **Regional TAM Scope of Services**

- 3.1. A Regional TAM will work on-site for three (3) consecutive days per quarter. Customer must schedule the on-site days at least two (2) weeks in advance. The Regional TAM will also be available by phone and email during regular business hours up to eight (8) hours per week.
- 3.2. There may be up to a six- (6-) month waiting period before Axon assigns a Regional TAM to Customer, depending upon the availability of a Regional TAM.
- 3.3. The purchase of Regional TAM Services includes two (2) complimentary Axon Accelerate tickets per year of the Agreement, so long as the TAM has started work at Customer and Customer is current on all payments for the Regional TAM Service.
- 3.4. The Regional TAM service options are listed below:

**Account Maintenance**

Conducting remote training on new features and **devices for Customer’s leadership**  
Thoroughly documenting issues and workflows and suggesting new **workflows to improve the effectiveness of the Axon program**  
Conducting weekly conference calls to cover **current issues and program status**  
Visiting Customer quarterly (up to 3 consecutive days) to perform a quarterly business review, discuss Customer's goals for your Axon program, and continue to ensure a successful deployment of Axon Devices

**Direct Support**

**Providing remote, Tier 1 and Tier 2 (As defined Axon's Service Level Agreement) technical support for Axon Devices**  
Creating and monitoring RMAs remotely

**Data Analysis**

Providing quarterly Axon **usage data to identify trends and program efficiency opportunities**  
Comparing an **Customer's Axon usage and trends to peers to establish best practices**  
Proactively monitoring the health of Axon equipment and coordinating returns when needed

**Customer Advocacy**

Coordinating bi-yearly Voice of **Customer meetings with Device Management team**  
Recording and tracking Customer feature requests and major bugs

4. **Out of Scope Services.** The TAM is responsible to perform only the Services described in this Appendix. Any additional Services discussed or implied that are not defined explicitly in this Appendix will be considered out of the scope.
5. **TAM Leave Time.** The TAM will be allowed up seven (7) days of sick leave and up to fifteen (15) days of vacation time per each calendar year. The TAM will work with Customer to coordinate any time off and will provide Customer with at least two (2) weeks' notice before utilizing any vacation days.

**Axon Investigate Appendix**

If the Quote includes Axon's On Prem Video Suite known as Axon Investigate or Third Party Video Support License, the following appendix shall apply.

1. **License Grant.** Subject to the terms and conditions specified below and upon payment of the applicable fees set forth in the Quote, Axon grants to Customer a nonexclusive, nontransferable license to install, use, and display the Axon Investigate software ("**Software**") solely for its own internal use only and for no other purpose, for the duration of subscription term set forth in the Quote. This Agreement does not grant Customer any right to enhancements or updates, but if such are made available to Customer and obtained by Customer they shall become part of the Software and governed by the terms of this Agreement.
2. **Third-Party Licenses.** Axon licenses several third-party codecs and applications that are integrated into the Software. Users with an active support contract with Axon are granted access to these additional features. By accepting this agreement, Customer agrees to and understands that an active support contract is required for all of the following features: DNxHD output formats, decoding files via the "fast indexing" method, proprietary file metadata, telephone and email support, and all future updates to the software. If Customer terminates the annual support contract with Axon, the features listed above will be disabled within the Software. It is recommended that users remain on an active support contract to maintain the full functionality of the Software.
3. **Restrictions on Use.** Customer may not permit any other person to use the Software unless such use is in accordance with the terms of this Agreement. Customer may not modify, translate, reverse engineer, reverse compile, decompile, disassemble or create derivative works with respect to the Software, except to the extent applicable laws specifically prohibit such restrictions. Customer may not rent, lease, sublicense, grant a security interest in or otherwise transfer Customer's rights to or to use the Software. Any rights not granted are reserved to Axon.
4. **Term.** For purchased perpetual Licenses only—excluding Licenses leased for a pre-determined period, evaluation licenses, companion licenses, as well as temporary licenses--the license shall be perpetual unless Customer fails to observe any of its terms, in which case it shall terminate immediately, and without additional prior notice. The terms of Paragraphs 1, 2, 3, 5, 6, 8 and 9 shall survive termination of this Agreement. For licenses leased for a pre-determined period, for evaluation licenses, companion licenses, as well as temporary licenses, the license is granted for a period beginning at the installation date and for the duration of the evaluation period or temporary period as agreed between Axon and Customer.
5. **Title.** Axon and its licensors shall have sole and exclusive ownership of all right, title, and interest in and to the Software and all changes, modifications, and enhancements thereof (including ownership of all trade secrets and copyrights pertaining thereto), regardless of the form or media in which the original or copies may exist, subject only to the rights and privileges expressly granted by Axon. This Agreement does not provide Customer with title or ownership of the Software, but only a right of limited use.
6. **Copies.** The Software is copyrighted under the laws of the United States and international treaty provisions. Customer may not copy the Software except for backup or archival purposes, and all such copies shall contain all Axon's notices regarding proprietary rights as contained in the Software as originally provided to Customer. If Customer receives one copy electronically and another copy on media, the copy on media may be used only for archival purposes and this license does not authorize Customer to use the copy of media on an additional server.
7. **Actions Required Upon Termination.** Upon termination of the license associated with this Agreement, Customer agrees to destroy all copies of the Software and other text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Software that are provided by Axon to Customer ("**Software Documentation**") or return such copies to Axon. Regarding any copies of media containing regular backups of Customer's computer or computer system, Customer agrees not to access such media for the purpose of recovering the Software or online Software Documentation.
8. **Export Controls.** None of the Software, Software Documentation or underlying information may be downloaded or otherwise exported, directly or indirectly, without the prior written consent, if required, of the office of Export Administration of the United States, Department of Commerce, nor to any country to which the U.S. has embargoed goods, to any person on the U.S. Treasury Department's list of Specially Designated Nations, or the U.S. Department of Commerce's Table of Denials.
9. **U.S. Government Restricted Rights.** The Software and Software Documentation are Commercial Computer Software provided with Restricted Rights under Federal Acquisition Regulations and Customer supplements to them. Use, duplication or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFAR 255.227-7013 et. Seq. or 252.211-7015, or





## Master Services and Purchasing Agreement for Customer

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subparagraphs (a) through (d) of the Commercial Computer Software Restricted Rights at FAR 52.227-19, as applicable, or similar clauses in the NASA FAR Supplement. Contractor/manufacturer is Axon Enterprise, Inc., 17800 North 85th Street, Scottsdale, Arizona 85255.

## My90 Terms of Use Appendix

### Definitions.

- 1.1. "**My90**" means Axon's proprietary platform and methodology to obtain and analyze feedback, and other related offerings, including, without limitation, interactions between My90 and Axon products.
- 1.2. "**Recipient Contact Information**" means contact information, as applicable, including phone number or email address (if available) of the individual whom Customer would like to obtain feedback.
- 1.3. "**Customer Data**" means
  - 1.3.1. "My90 Customer Content" which means data, including Recipient Contact Information, provided to My90 directly by Customer or at their direction, or by permitting My90 to access or connect to an information system or similar technology. My90 Customer Content does not include My90 Non-Content Data.
  - 1.3.2. "My90 Non-Content Data" which means data, configuration, and usage information about Customer's My90 tenant, and client software, users, and survey recipients that is Processed (as defined in Section 1.6 of this Appendix) when using My90 or responding to a My90 Survey. My90 Non-Content Data includes data about users and survey recipients captured during account management and customer support activities. My90 Non-Content Data does not include My90 Customer Content.
  - 1.3.3. "Survey Response" which means survey recipients' response to My90 Survey.
- 1.4. "**My90 Data**" means
  - 1.4.1. "My90 Survey" which means surveys, material(s) or content(s) made available by Axon to Customer and survey recipients within My90.
  - 1.4.2. "Aggregated Survey Response" which means Survey Response that has been de-identified and aggregated or transformed so that it is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to, a particular individual.
- 1.5. "**Personal Data**" means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person.
- 1.6. "**Processing**" means any operation or set of operations which is performed on data or on sets of data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure, or destruction.
- 1.7. "**Sensitive Personal Data**" means Personal Data that reveals an individual's health, racial or ethnic origin, sexual orientation, disability, religious or philosophical beliefs, or trade union membership.
2. **Access.** Upon Axon granting Customer a subscription to My90, Customer may access and use My90 to store and manage My90 Customer Content, and applicable My90 Surveys and Aggregated Survey Responses. This Appendix is subject to the Terms and Conditions of Axon's Master Service and Purchasing Agreement or in the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern.
3. **IP address.** Axon will not store survey respondents' IP address.
4. **Customer Owns My90 Customer Content.** Customer controls or owns all right, title, and interest in My90 Customer Content. Except as outlined herein, Axon obtains no interest in My90 Customer Content, and My90 Customer Content is not Axon's business records. Except as set forth in this Agreement, Customer is responsible for uploading, sharing, managing, and deleting My90 Customer Content. Axon will only have access to My90 Customer Content for the limited purposes set forth herein. Customer agrees to allow Axon access to My90 Customer Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of My90 and other Axon products.

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5. **Details of the Processing.** The nature and purpose of the Processing under this Appendix are further specified in Schedule 1 Details of the Processing, to this Appendix.
  6. **Security.** Axon will implement commercially reasonable and appropriate measures to secure Customer Data against accidental or unlawful loss, access, or disclosure. Axon will maintain a comprehensive information security program to protect Customer Data including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; security education; and data protection. Axon will not treat Customer Data in accordance with FBI CJIS Security Policy requirements and does not agree to the CJIS Security Addendum for this engagement or any other security or privacy related commitments that have been established between Axon and Customer, such as ISO 27001 certification or SOC 2 Reporting.
  7. **Privacy.** Customer use of My90 is subject to the My90 Privacy Policy, a current version of which is available at <https://www.axon.com/legal/my90privacypolicy>. Customer agrees to allow Axon access to My90 Non-Content Data from Customer to (a) perform troubleshooting, maintenance, or diagnostic screenings; (b) provide, develop, improve, and support current and future Axon products including My90 and related services; and (c) enforce this Agreement or policies governing the use of My90 or other Axon products.
  8. **Location of Storage.** Axon may transfer Customer Data to third-party subcontractors for Processing. Axon will determine the locations for Processing of Customer Data. For all Customer, Axon will Process and store Customer Data within the country Customer is based. Ownership of My90 Customer Content remains with Customer.
  9. **Required Disclosures.** Axon will not disclose Customer Data that Customer shares with Axon except as compelled by a court or administrative body or required by any law or regulation. Axon will notify Customer if any disclosure request is received for Customer Data so Customer may file an objection with the court or administrative body, unless prohibited by law.
  10. **Data Sharing.** Axon may share data only with entities that control or are controlled by or under common control of Axon, and as described below:
    - 10.1. Axon may share Customer Data with third parties it employs to perform tasks on Axon's behalf to provide products or services to Customer.
    - 10.2. Axon may share Aggregated Survey Response with third parties, such as other Axon customers, local city agencies, private companies, or members of the public that are seeking a way to collect analysis on general policing and community trends. Aggregated Survey Response will not be reasonably capable of being associated with or reasonably be linked directly or indirectly to a particular individual.
  11. **License and Intellectual Property.** Customer grants Axon, its affiliates, and assignees the irrevocable, perpetual, fully paid, royalty-free, and worldwide right and license to use Customer Data for internal use including but not limited to analysis and creation of derivatives. Axon may not release Customer Data to any third party under this right that is not aggregated and de-identified. Customer acknowledges that Customer will have no intellectual property right in any media, good or service developed or improved by Axon. Customer acknowledges that Axon may make any lawful use of My90 Data and any derivative of Customer Data including, without limitation, the right to monetize, redistribute, make modification of, and make derivatives of the surveys, survey responses and associated data, and Customer will have no intellectual property right in any good, service, media, or other product that uses My90 Data.
  12. **Customer Use of Aggregated Survey Response.** Axon will make available to Customer Aggregated Survey Response and rights to use for any Customer purpose.
  13. **Data Subject Rights.** Taking into account the nature of the Processing, Axon shall assist Customer by appropriate technical and organizational measures, insofar as this is reasonable, for the fulfilment of Customer's obligation to respond to a Data Subject Request regarding any Personal Data contained within My90 Customer Content. If in regard to My90 Customer Content, Axon receives a Data Subject Request from Customer's data subject to exercise one or more of its rights under applicable Data Protection Law, Axon will redirect the data subject within seventy-two (72) hours, to make its request directly to Customer. Customer will be responsible for responding to any such request.
  14. **Assistance with Requests Related to My90 Customer Content.** With regard to the processing of My90 Customer Content, Axon shall, if not prohibited by applicable law, notify Customer without delay after receipt, if Axon: (a) receives a request for information from the Supervisory Authority or any other competent authority regarding My90 Customer Content; (b) receives a complaint or request from a third party regarding the obligations of Customer or Axon under applicable Data Protection Law; or (c) receives any other communication which directly or indirectly pertains to My90 Customer Content or the Processing or protection of My90 Customer Content. Axon
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shall not respond to such requests, complaints, or communications, unless Customer has given Axon written instructions to that effect or if such is required under a statutory provision. In the latter case, prior to responding to the request, Axon shall notify Customer of the relevant statutory provision and Axon shall limit its response to what is necessary to comply with the request.

15. **Axon Evidence Partner Sharing.** If Axon Evidence partner sharing is used to share My90 Customer Content, Customer will manage the data sharing partnership with Axon and access to allow only for authorized data sharing with Axon. Customer acknowledges that any applicable audit trail on the original source data will not include activities and processing performed against the instances, copies or clips that has been shared with Axon. Customer also acknowledges that the retention policy from the original source data is not applied to any data shared with Axon. Except as provided herein, data shared with Axon may be retained indefinitely by Axon.
16. **Data Retention.** Phone numbers provided to Axon directly by Customer or at their direction, or by permitting My90 to access or connect to an information system or similar technology will be retained for twenty-four (24) hours. Axon will not delete Aggregated Survey Response for four (4) years following termination of this Agreement. There will be no functionality of My90 during these four (4) years other than the ability to submit a request to retrieve Aggregated Survey Response. Axon has no obligation to maintain or provide Aggregated Survey Response after these four years and may thereafter, unless legally prohibited, delete all Aggregated Survey Response.
17. **Termination.** Termination of an My90 Agreement will not result in the removal or modification of previously shared My90 Customer Content or the potential monetization of Survey Response and Aggregated Survey Response.
18. **Managing Data Shared.** Customer is responsible for:
  - 18.1. Ensuring My90 Customer Content is appropriate for use in My90. This includes, prior to sharing: (a) applying any and all required redactions, clipping, removal of metadata, logs, etc. and (b) coordination with applicable public disclosure officers and related legal teams;
  - 18.2. Ensuring that only My90 Customer Content that is authorized to be shared for the purposes outlined is shared with Axon. Customer will periodically monitor or audit this shared data;
  - 18.3. Using an appropriately secure data transfer mechanism to provide My90 Customer Content to Axon;
  - 18.4. Immediately notifying Axon if My90 Customer Content that is not authorized for sharing has been shared. Axon may not be able to immediately retrieve or locate all instances, copies or clips of My90 Customer Content in the event Customer requests to un-share previously shared My90 Customer Content;
19. **Prior to enrollment in My90.** Prior to enrolling in My90, Customer will:
  - 19.1. determine how to use My90 in accordance with applicable laws and regulations including but not limited to consents, use of info or other legal considerations;
  - 19.2. develop a set of default qualification criteria of what My90 Customer Content may be shared with Axon; and
  - 19.3. assign responsibilities for managing what My90 Customer Content is shared with Axon and educate users on what data may or not be shared with Axon.
20. **Customer Responsibilities.** Customer is responsible for:
  - 20.1. ensuring no My90 Customer Content or Customer end user's use of My90 Customer Content or My90 violates this Agreement or applicable laws;
  - 20.2. providing, and will continue to provide, all notices and has obtained, and will continue to obtain, all consents and rights necessary under applicable laws for Axon to process Customer Data in accordance with this Agreement; and
  - 20.3. maintaining necessary computer equipment and Internet connections for use of My90. If Customer becomes aware of any violation of this Agreement by an end user, Customer will immediately terminate that end user's access to My90. Customer will also maintain the security of end usernames and passwords and security and access by end users to My90 Customer Content. Customer is responsible for ensuring the configuration and utilization of My90 meets applicable Customer regulations and standards. Customer may not sell, transfer, or sublicense access to any other entity or person. Customer shall contact Axon

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immediately if an unauthorized party may be using Customer's account or My90 Customer Content or if account information is lost or stolen.

- 21. Suspension.** Axon may temporarily suspend Customer's or any end user's right to access or use any portion or all of My90 immediately upon notice, if Customer or end user's use of or registration for My90 may (a) pose a security risk to Axon products including My90, or any third-party; (b) adversely impact My90, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent. Customer remains responsible for all fees, if applicable, incurred through suspension. Axon will not delete My90 Customer Content or Aggregated Survey Response because of suspension, except as specified in this Agreement.
- 22. My90 Restrictions.** Customer and Customer end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:
- 22.1. copy, modify, tamper with, repair, or create derivative works of any part of My90;
  - 22.2. reverse engineer, disassemble, or decompile My90 or apply any process to derive any source code included in My90, or allow others to do the same;
  - 22.3. access or use My90 with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
  - 22.4. use trade secret information contained in My90, except as expressly permitted in this Agreement;
  - 22.5. access My90 to build a competitive product or service or copy any features, functions, or graphics of My90;
  - 22.6. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within My90; or
  - 22.7. use My90 to store or transmit infringing, libelous, or other unlawful or tortious material; to store or transmit material in violation of third-party privacy rights; or to store or transmit malicious code.

## Schedule 1- Details of the Processing

1. **Nature and Purpose of the Processing.** To help Customer obtain feedback from individuals, such as members of their community, staff, or officers. Features of My90 may include:
  - 1.1. Survey Tool where Customer may create, distribute, and analyze feedback from individuals it designates. Customer may designate members of the community, staff or officers from whom they would like to obtain feedback;
  - 1.2. Creation of custom forms for surveys. Customer may select questions from a list of pre-drafted questions or create their own;
  - 1.3. Distribution of survey via multiple distribution channels such as text message;
  - 1.4. Ability to access and analyze Survey Response. Axon may also provide Customer Aggregated Survey Responses which contain analysis and insights from the Survey Response;
  - 1.5. Direct integrations into information systems including Computer Aided Dispatch ("**CAD**"). This will enable Customer to share contact information easily and quickly with Axon of any individuals from whom it wishes to obtain feedback, enabling Axon to communicate directly with these individuals;
  - 1.6. Data Dashboard Beta Test ("**Data Dashboard**") where Survey Response and Aggregated Survey Response will be displayed for Customer use. Customer will be able to analyze, interpret, and share results of the Survey Response. My90 may provide beta versions of the Data Dashboard that are specifically designed for Customer to test before they are publicly available;
  - 1.7. Survey Responses will be aggregated and de-identified and may be subsequently distributed and disclosed through various mediums to: (1) Customer; (2) other Axon Customer; (3) private companies; and (4) members of the public. The purpose of disclosure is to provide ongoing insights and comparisons on general policing and community trends. Prior to disclosing this information, Axon will ensure that the Survey Response has been de-identified and aggregated or transformed so that it is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to a particular individual; and
  - 1.8. Provide services and materials to engage Customer stakeholders, market the partnership to the public, and facilitate training.

**Axon Event Offer Appendix**

If the Agreement includes the provision of, or Axon otherwise offers, ticket(s), travel and/or accommodation for select events hosted by Axon (“Axon Event”), the following shall apply:

1. **General.** Subject to the terms and conditions specified below and those in the Agreement, Axon may provide Customer with one or more offers to fund Axon Event ticket(s), travel and/or accommodation for Customer-selected employee(s) to attend one or more Axon Events. By entering into the Agreement, Customer warrants that it is appropriate and permissible for Customer to receive the referenced Axon Event offer(s) based on Customer’s understanding of the terms and conditions outlined in this Axon Event Offer Appendix.
2. **Attendee/Employee Selection.** Customer shall have sole and absolute discretion to select the Customer employee(s) eligible to receive the ticket(s), travel and/or accommodation that is the subject of any Axon Event offer(s).
3. **Compliance.** It is the intent of Axon that any and all Axon Event offers comply with all applicable laws, regulations and ethics rules regarding contributions, including gifts and donations. Axon’s provision of ticket(s), travel and/or accommodation for the applicable Axon Event to Customer is intended for the use and benefit of Customer in furtherance of its goals, and not the personal use or benefit of any official or employee of Customer. Axon makes this offer without seeking promises or favoritism for Axon in any bidding arrangements. Further, no exclusivity will be expected by either party in consideration for the offer. Axon makes the offer with the understanding that it will not, as a result of such offer, be prohibited from any procurement opportunities or be subject to any reporting requirements. If Customer’s local jurisdiction requires Customer to report or disclose the fair market value of the benefits provided by Axon, Customer shall promptly contact Axon to obtain such information, and Axon shall provide the information necessary to facilitate Customer’s compliance with such reporting requirements.
4. **Assignability.** Customer may not sell, transfer, or assign Axon Event ticket(s), travel and/or accommodation provided under the Agreement.
5. **Availability.** The provision of all offers of Axon Event ticket(s), travel and/or accommodation is subject to availability of funds and resources. Axon has no obligation to provide Axon Event ticket(s), travel and/or accommodation.
6. **Revocation of Offer.** Axon reserves the right at any time to rescind the offer of Axon Event ticket(s), travel and/or accommodation to Customer if Customer or its selected employees fail to meet the prescribed conditions or if changes in circumstances render the provision of such benefits impractical, inadvisable, or in violation of any applicable laws, regulations, and ethics rules regarding contributions, including gifts and donations

**Axon Training Pod**

1. **Customer Responsibilities.** Customer is responsible for: (i) all permits to use the Axon Training Pod; (ii) complying with all applicable laws pertaining to the use of the Axon Training Pod; (iii) any maintenance required for the Axon Training Pod; and (iv) disposal of the Axon Training Pod.
2. **Warranties. TO THE EXTENT NOT PROHIBITED BY LAW, AXON TRAINING POD IS SOLD “AS IS” WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.**
3. **Placement.** Axon will make its best efforts to work with Customer on the initial placement of the Axon Training Pod. After the initial placement, it is the Customer’s responsibility to make any adjustments to the Axon Training Pod’s placement.





**Weaver, Amber**

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**From:** Jacob Patterson <jacob.patterson.esq@gmail.com>  
**Sent:** Sunday, January 26, 2025 12:24 PM  
**To:** City Clerk  
**Cc:** Whippy, Isaac; Cervenka, Neil  
**Subject:** Public Comment -- 1/27/25 CC Mtg., Item No. 8E, PD Vehicle Cameras

City Council, Manager & Chief,

I want to fully endorse Neil's recommendation for the Council to approve the PD implementing the use of PD vehicle cameras and to fund at least this first year with asset forfeiture funds. We have been implementing various equipment and technology improvements through the City and PD and this is another important tool to ensure the safety of our officers as well as members of the community. Just like body-worn cameras, vehicle cameras help clear-up any situations or legal disputes that may arise so this will also reduce the chances of city liability. Moreover, some portions of our community have frequent and sometimes unfounded complaints about alleged officer misconduct.

These cameras will increase transparency and public confidence because, in such situations, we won't just have to rely on the recollections of those involved but it will be right there on video. This is particularly the case for traffic stops, which have generated a lot of community complaints and allegations. In my opinion, having such encounters on video will go a great way toward dispelling rumors or allegations of misconduct and demonstrate the integrity of our officers. On the other hand, it will also provide a strong deterrent for the rare situations where an officer might not be following protocol or might be tempted to act in a manner that is against department policy. In short, it improves safety, public confidence, and trust in government, all of which are worth the relatively minor expense of this additional technology.

Speaking of policy, since these cameras are activated automatically when the emergency lights are on, it should capture all traffic encounters. In other situations, the cameras require manual activation so we should consider a department policy requiring the manual activation of vehicle cameras for all other PD interactions with members of the public that do not involve the use of the vehicle's emergency lights and sirens.

I thank Neil and Isaac for their leadership in this matter and support the implementation of in-vehicle cameras.

Best regards,

--Jacob



Fort Bragg Police Association  
P.O. Box 368  
Fort Bragg, CA 95437

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**To:** City Council

**Date:** 01/10/2025

**RE:** Support for the Implementation of Dashboard Cameras

On behalf of the Fort Bragg Police Association, I am writing to express our strong support for the implementation of dash cameras in every law enforcement vehicle within our agency. We believe that adopting this technology is a critical step toward building and maintaining trust between law enforcement and the community, while also offering valuable cost-saving benefits for the city.

One of the advantages of dash cameras is the ability to ensure greater transparency in interactions with law enforcement. While our officers are performing excellently in serving and protecting the community with integrity and professionalism, implementation of dash cameras will further solidify and document the positive actions of officers during encounters. Video recordings will offer an objective, unbiased account of these interactions, providing support to both officers and civilians to ensure equitable treatment. This not only engenders trust within the community but also strengthens the resolve of officers to adhere to high standards of conduct.

Moreover, dash cameras can greatly reduce the instances an officer needs to make an appearance in court, which helps to save time and resources. With proof in the form of video evidence, cases can often be wrapped up faster, thus limiting the number of appearances the officers need to make to court, translating to reduced overtime costs since the officers will not be spending much time off their regular duties for court appearances but will actually be out in the field, engaging the community in securing public safety.

We believe that the implementation of dash cameras will not only improve transparency and build trust with the community but will also bring practical financial benefits by reducing overtime costs associated with court appearances. We respectfully urge the City Council to prioritize this initiative and allocate the necessary resources to equip every patrol vehicle with this vital technology.

Respectfully submitted on behalf of the entire Fort Bragg Police Association

A handwritten signature in black ink, appearing to read 'Jarod Frank', is written over a horizontal line. The signature is fluid and cursive.

Association President, Jarod Frank

## Weaver, Amber

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**Sent:** Sunday, January 26, 2025 12:24 PM  
**To:** City Clerk  
**Cc:** Whippy, Isaac; Cervenka, Neil  
**Subject:** Public Comment -- 1/27/25 CC Mtg., Item No. 8E, PD Vehicle Cameras

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I thank Neil and Isaac for their leadership in this matter and support the implementation of in-vehicle cameras.

Best regards,

--Jacob