

PROFESSIONAL SERVICES AGREEMENT

AGREEMENT

This Agreement is made and entered into this 25th day of March, 2019 by and between the City of Fort Bragg Municipal Improvement District No. 1 (City,) a California Municipal Corporation, 416 N. Franklin Street, Fort Bragg, California, 95437 ("City"), and SHN Consulting Engineers & Geologists, Inc., a California Corporation, 335 S. Main Street, Willits, CA 95490-3977 ("Consultant").

RECITALS

WHEREAS, City has determined that it requires the following professional services from a consultant: to provide construction management and inspection services for the Fort Bragg Sewer Lift Station Project, Project #2019-01; and

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

WHEREAS, the legislative body of the City on March 25, 2019, by Resolution No. ____-2019 authorized execution of this Agreement on behalf of the City in accordance with Chapter 3.20 of the City Municipal Code and/or other applicable law;

NOW, THEREFORE, City and Consultant, for the consideration hereinafter described, mutually agree as follows:

1. CONTRACT DOCUMENTS

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

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

2. DESCRIPTION OF SERVICES OR SCOPE OF WORK

The services to be performed under this Agreement ("Services") are as follows: Provide construction management and inspection services CM for the Fort Bragg Sewer Lift Station Project, Project #2019-01. The Services are further described in Consultant's proposal (the "Proposal"), which is attached to and made a part of this Agreement as Exhibit 1. Changes in the scope, character, or complexity of the Services, if such changes become desirable or necessary as the work progresses, shall be agreed upon by both parties in a written change order. For special cases where it is essential that the

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

3. TERM

The Agreement term will commence on April 1, 2019, and expire on December 30, 2020 unless the Agreement term is amended or the Agreement is terminated in accordance with its terms.

4. PAYMENT TERMS

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

b. NOT TO EXCEED CONTRACT: In no event will the City's obligation to pay the Consultant under this Agreement exceed **Forty-nine Thousand Five Hundred Dollars (\$49,500.00)** (the "Not to Exceed Amount"), unless this Agreement is first modified in accordance with its terms. The Not to Exceed Amount includes salary, fringe benefits, overhead, profit, and all other expenses incurred by the Consultant in completing its Services under this Agreement.

c. [SECTION REMOVED.]

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

e. [SECTION REMOVED.]

5. TIME OF COMPLETION

Consultant must commence performance of the Services upon receipt of written direction to proceed from City. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 9 below and to satisfy Consultant's obligations hereunder. Consultant will complete the Services in accordance with this Agreement by **September 30, 2020** (the "Time of Completion"). The Time of Completion may only be modified by a written amendment of the Agreement signed by both the City and the Consultant and in accordance with its terms.

6. INDEPENDENT CONTRACTOR

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

7. SUBCONTRACTING

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

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

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

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

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

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

8. RECORD RETENTION

For the purpose of determining compliance with Public Contracts Code §§ 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, §§ 2500 *et seq.*, when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code § 8546.7, the Consultant, subcontractors, and the City shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3)

years from the date of final payment under the Agreement. The State, the State Auditor, City, Federal Highway Administration (“FHWA”), or any duly authorized representative of the federal government shall have access to any books, records, and documents of the Consultant and its subcontractors that are pertinent to the Agreement for audit, examination, excerpts, and transactions, and copies thereof shall be furnished if requested.

9. STANDARD OF PERFORMANCE

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

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

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

d. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

10. OTHER GOVERNMENTAL REGULATIONS

To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

11. USE OF RECYCLED PRODUCTS

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

12. INDEMNITY

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

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

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

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

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

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

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

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

13. INSURANCE

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

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

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

b. Workers Compensation Insurance. Consultant must, at its sole cost and expense, maintain Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. Workers' Compensation Insurance as required by the State of California, with coverage providing Statutory Limits, and Employer's Liability Insurance with limits of not less than

ONE MILLION DOLLARS (\$1,000,000.00) per occurrence must be provided. The insurance must be endorsed to waive all rights of subrogation against City and its officials, officers, employees, and volunteers for loss arising from or related to the Services.

c. For the Term of this Agreement, Consultant, at its own cost and expense, must maintain: (1) commercial general liability insurance in an amount not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence, FOUR MILLION DOLLARS (\$4,000,000.00) aggregate, combined single limit coverage for risks associated with Services; and (2) automobile liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit coverage. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Services or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include, but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

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

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

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

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

f. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess

insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

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

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

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

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

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

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

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

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

14. NON DISCRIMINATION

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

15. SECTION REMOVED

16. SECTION REMOVED

17. LICENSES & PERMITS

a. BUSINESS LICENSE

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

b. OTHER LICENSES AND PERMITS

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

18. CONSULTANT REPORTS AND/OR MEETINGS

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

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

19. [SECTION REMOVED.]

20. DISPUTES

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

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

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

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

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

21. TERMINATION AND REMEDIES

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

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

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

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

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

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

22. BINDING EFFECT AND ASSIGNMENT PROHIBITION

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

23. REPRESENTATIVES

a. City Contract Manager for purposes of this Agreement will be John Smith, Assistant Director of Public Works. Consultant's representative for purposes of this Agreement will be Thomas M. Herman, PLS, Project Manager and Principal-in-Charge. The parties' designated representatives will be the primary contact persons regarding the performance of the Services. The parties intend that their designated representatives will cooperate in all matters regarding this Agreement and in such manner so as to achieve performance of the Services in a timely and expeditious fashion.

b. Notices:

Any written notice to Consultant shall be sent to:

Thomas M. Herman, PLS
Project Manager and Principal-in-Charge
SHN Consulting Engineers and Geologists, Inc.
335 S. Main Street
Willits, CA 95490-3977

Any written notice to City shall be sent to:

John Smith
Assistant Director of Public Works
City of Fort Bragg
416 N. Franklin Street
Fort Bragg, CA 95437

24. INTEGRATION AND AMENDMENT

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

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

a. The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the consultant, to solicit or secure this agreement; and that it has not paid or agreed to pay any company or person other than a bona fide employee any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this agreement. For breach or violation of this covenant, the City shall have the right to annul this agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

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

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

26. CONFLICT OF INTEREST PROHIBITION

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

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

Consultant may not employ any City official, officer, or employee in the performance of the Services, nor may any official, officer, or employee of City have any financial interest in this Agreement that would violate California Government Code § 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of City. If Consultant was an employee, agent, appointee, or official of City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Consultant's performance of the Services, including reimbursement of expenses, and Consultant will be required to reimburse City for any sums paid to Consultant under this Agreement. Consultant understands that, in addition to the foregoing, penalties for violating Government Code § 1090 *et seq.* may include criminal prosecution and disqualification from holding public office in the State of California.

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

27. APPLICABLE LAW AND VENUE

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

28. SEVERABILITY

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

29. COUNTERPARTS

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


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

Signatures on Next Page

CITY

By: _____
Tabatha Miller
Its: District Manager

CONSULTANT

By:  _____
Thomas M. Herman, PLS
Its: Project Manager and
Principal-in-Charge

ATTEST:

[Attach Notary Acknowledgment Page]

By: _____
June Lemos, CMC
District Clerk

APPROVED AS TO FORM:

By: _____
Russell Hildebrand
District Counsel

Exhibit 1: Consultant's Proposal

CITY

By: _____
Tabatha Miller
Its: District Manager

CONSULTANT

By: _____
Thomas M. Herman, PLS
Its: Project Manager and
Principal-in-Charge

[Attach Notary Acknowledgment Page]

ATTEST:

By: _____
June Lemos, CMC
District Clerk

APPROVED AS TO FORM:


By: 
Russell Hildebrand
District Counsel

Exhibit 1: Consultant's Proposal

E. Scope of Work



Our project understanding and scope of work is based upon a review of the Project plans and specifications and the specific items of work identified in the Request for Proposal (RFP) Construction Management and Inspection Services (CM) for the Fort Bragg Lift Station Project—City Project No. 2019-01. We agree with the City that all tasks as listed in the RFP are necessary, and this proposal includes all the bullet point tasks by reference. We are providing additional information below to describe SHN’s approach to specific tasks.

Pre-construction Assistance

SHN’s familiarity with the City’s needs, procedures, and staff will allow pre-construction assistance to progress smoothly and efficiently. We plan to thoroughly review and familiarize ourselves with the project specifications and design plans prior to the CM contract start date to prepare for pre-construction tasks. We will coordinate with City staff and HDR Engineering, Inc. (HDR) as we review the design plans and project specifications, and we will obtain any needed clarifications. If agreed to by the City, we could continue our established lines of communication.

We are familiar with the City’s standard contract document format and will draw on this knowledge and our own experience with contract documents for comparable wastewater treatment projects. The order of work requirements will be reviewed and discussed with City staff prior to the pre-construction meeting to identify critical path items, and to schedule flexibility with regard to product delivery, installation sequencing and seasonal weather constraints. CEQA mitigation measures (CDP 2-16) will be reviewed and relevant team members will be briefed by the Resident Engineer (Jason Island, PE) to ensure that all conditions are understood and communicated effectively to the Contractor. If the Contractor, City, or Resident Engineer have questions on a mitigation measure’s implementation or efficacy, Mr. Island can contact SHN’s in-house planning and permitting department for advice and recommendations.

As the City is aware, SHN's proposed Resident Engineer/Construction Manager (Jason Island, PE) lives and works within minutes of the project site. As stated in the RFP, our team's Construction Inspector (Steve Peckham) will be onsite to provide daily inspections of construction activities. SHN's Willits office, where additional technical and administrative staff work, is less than an hour's drive from Fort Bragg. Our close proximity allows us to be responsive, prepared, and actively engaged in pre-bid conferences and other impromptu meetings. Prior to the pre-construction conference, we will have completed the project review described above, establishing a good rapport with the selected Contractor and setting the standard for a well-managed project. Submittal and Request for Information (RFI) processing will be timely and thorough, with our Resident Engineer consulting our staff technical advisors when needed to verify adherence to project specifications and sound design interpretation. In our review of submittal and RFIs, we will coordinate with the City and Contractor as needed and respond in a timely manner. We anticipate regular discussions on design intent and solutions to any necessary design modifications with City staff and HDR; because keeping to a schedule is important, SHN's proximity to City staff allows face-to-face meetings and better communication.

Schedule management will occur at a daily level, and, most importantly, at regular construction meetings to keep the project on schedule. Project phasing will also be reviewed and understood prior to any meetings with the Contractor and discussed at the pre-construction meeting. We will work diligently to gain a full understanding how the new systems will be integrated into the existing facility to maintain daily facility operations.

Construction Management

Excellent construction management depends on the ability to limit unforeseen circumstances, and to respond to them quickly and efficiently by being prepared. SHN will limit unforeseen circumstances by relying on our construction management experience of projects of similar size and scope, with prepared staff who have many years of construction management and inspections experience. We will utilize our existing WWTP Upgrade Project administrative documentation structure and distribution channels that comply with all construction and contract administration requirements.



SHN has assisted with the procurement and management of funding for several USDA-RD-funded projects, including projects for the City of Willits and the Mendocino City CSD.

Further, we will rely on in-house staff for construction and specialty inspections for electrical and instrumentation, mechanical systems, construction safety, and structural steel, wood framing and concrete. Relying on in-house staff provides continuity and uniformity in data and documentation. The diverse experiences held by our project team and technical advisors insure that we understand the code requirements, field inspection requirements, and operational and acceptance testing (where applicable) that pertain to these specialty tasks. We will complete the required inspections accurately and efficiently.

Besides engineering and construction management, SHN's in-house capabilities also include:

- materials testing and special inspections
- surveying and construction staking
- environmental planning and permitting

Use of our in-house certified materials testing laboratory will guarantee that samples are processed and handled properly. Once entered into our lab's sample system, we will also guarantee timely and consistent testing. Our inspectors and field technicians are cross-trained and hold numerous certifications, so often a single person can perform tests and/or collect samples. This allows for a smooth and efficient work flow because a single person, such as Steve Peckham, is responsible for this work.

Although the project's environmental permitting is completed, we are prepared for unforeseen environmental issues through our familiarity with applicable regulations and guidelines, regulatory staff, and successful mitigations measures. SHN's in-house environmental planning and permitting staff is available for quick consultation, so that construction schedules are impacted as little as possible. We will verify compliance with environmental permitting and mitigation measures in accordance with the requirements of the applicable documents and regulatory permits. We will rely on our good reputation with local environmental regulators to troubleshoot any issues that may arise during construction. Having a readily accessible environmental planning and permitting department is another way we prepare for a smooth and uneventful construction management project.



SHN inspector verifying rebar placement and dimensions to assure consistence with project plans.

We have successfully worked with local Native American monitors. We have worked with Jeremy Center, the Sherwood Pomo Tribal Monitor, on the City's Coastal Trail project. Although we assume a biologist will not be needed, Warren Mitchell in our Willits office would offer his expertise; Mr. Mitchell's experience in Fort Bragg includes stream habitat typing for fish and macroinvertebrates.

Limiting change orders, resolving conflicts, and managing claims is best approached by identifying potential issues or ambiguities early in the project, and then developing cost effective solutions by close coordination between HDR, the City, the Contractor, and SHN. Communications and realistic expectations need to be clear so that change orders and claims are limited. In the construction management phase, we will function as the point-of-contact for processing RFIs and change orders, if any. In the case of change orders, we will coordinate with City staff to process change orders and manage the construction budget. For example, our Field Inspector will provide daily on-site inspections of construction activities and coordinate with the Resident Engineer and Contractor as needed to discuss construction-related questions and issues. The Resident Engineer will then work with City staff and HDR if needed to provide guidance to the Contractor. Our goal is to keep the City well informed so that a change order is never a surprise.



Jason Island served as Project Manager for the City of Ukiah's Grace Hudson Nature Education Center project which included planning and design of parking lots, walkways, and trails surrounding the museum. SHN provided design and construction management for this effort under budget despite several challenging deadlines met ahead of schedule.

During four previous construction management projects with the City, we have prepared and submitted all paperwork and documentation to the City's Project Analyst for her review. This process seems to have worked well and we propose to continue this approach. SHN will process progress payments, coordinate payment management, and assist with labor compliance as needed. We will verify classifications and rates for all contractors at the project outset, verify online payroll submissions to the Department of Industrial Relations, assist with Certified Payroll Verifications as needed, and verify compliance with Apprentice requirements. Due to the size of this project, we propose to dedicate an experienced administrative assistant to these tasks.

The image shows two overlapping forms. The top form is an 'Inspection Record' from SHN Consulting Engineers & Designers, Inc. It includes fields for Project No., Date, Project Name, Basis, Date, Time, Day, and Site. It also has sections for 'CONTRACTOR'S REPORT' and 'INSPECTOR'S REPORT'. The bottom form is a 'Punch List Completion Report' with columns for 'Description of Repair', 'Closed By', 'Inspected By', and 'Date Completed'.

These are examples of SHN's documentation forms. Our team understands the importance of reporting during construction projects and how proper record keeping reduces risk for our clients.

An essential part of a construction management role is to regularly chair construction meetings, prepare agendas, and distribute meeting minutes. As we have proved in previous projects, our ability to run efficient and productive meetings will contribute to the Project's success by providing a forum to cover critical items including schedule, budget, administrative issues, and design concerns.

Our Inspector will verify that field conditions match those required by the design and inspect existing facilities throughout the course of construction to ensure that they remain operable and are not damaged. Our Inspector and Resident Engineer (RE) will schedule and attend warranty inspections with the Contractor before the end of the one-year warranty period. We are familiar with this process and have experience from similar past projects.

Daily Field Inspection and Documentation

Our approach to daily field inspection and documentation will be to continue procedures that have been successful with the City in the past, which is to provide reports that are comprehensive, clear, and timely. We strive to be responsive and have at times modified our field report formats to address a specific need of the City. Our Inspector will provide all the required daily documentation from the project site. The reports will be completed throughout the course of the day and distributed to the project team on a weekly basis, or as needed. We will document the following in our Daily Field Reports: construction activities, anticipated changes, important conversations, weather conditions, names of all workers, equipment used, hours of work, safety concerns or accidents, quality of work and materials, materials testing performed, a record of any other significant information, information for record drawings (as-builts), preservation/ protection of sensitive habitat and areas of other environmental concern, preservation/ protection of historically and archeologically sensitive areas, , construction video and photos, construction schedule, a record of visitors to the site, DEE verifications, and daily quantities (agreed upon with Contractor daily).

Reporting

As construction managers, our top priorities are:

- reporting to the City as the project dictates;
- responding to City-generated questions and concerns;
- ensuring that coordination between the Contractor, the City, and applicable agencies is as fluid as possible;
- adherence to verification and documentation of AIS requirements; and
- adherence to certified payroll verification and documentation.

We will document construction and safety issues with the use of Daily Inspection Reports, phone calls, emails, and correspondence, progress meeting agendas and minutes, Weekly Statement of Working Days, Weekly Construction Summary Report, weekly look-ahead schedules, monthly as-built plans prior to payment of Contractor's invoices, and press releases as requested. SHN is well-versed in the use and application of all the reporting methods described above. Our Inspector and Resident Engineer will carefully prepare the reports and our administrative team will disseminate the information according to the agreed-upon schedule. We take communication seriously and believe that is a critical element of successful project management.

Close-out

Similar to our approach on daily field inspections, our approach close-out will be to continue procedures that have been successful in the past. Project close-out will commence as the project nears completion. SHN has successfully closed-out many large construction projects and we are familiar with standard-of-practice procedures. The Inspector and Resident Engineer will prepare a punch list for the project manager and coordinate the completion of the preliminary and final punch lists with the Contractor and the City. All punch lists will be discussed with City staff for input prior to being shared with the Contractor.

We will verify completion of the punch list and facility improvements and schedule a walk-through and final inspection with City staff and funding agency representatives within the pre-determined time limit. SHN will document end-of-project procedures and coordinate meeting funding source requirements for project close-out.

Remaining close-out requirements, including furnishing the City with a photo log, information for record drawings, Operations and Maintenance (O&M) manual via the Contractor, and all record drawings made by the Contractor and HDR during construction, will be completed within thirty days of project acceptance by the City and funding agencies. Final documents will be delivered to the City electronically to be the sole property of the City in approved formats such as Microsoft Word, Excel, and AutoCad DWG.

Project close-out is as important as every other task under the Construction Management scope of work. We will be timely and efficient in our close-out procedures.



F. Cost

The following Not-to-Exceed Cost Proposal is based upon the understanding that the potential construction period for the Project will be 260 working days (or 8.6 months). At this time, the means, methods, schedule and competency of the chosen contractor for the Project are unknown. If the contractor is able to complete construction of the Project in a reduced period, the final cost for the these services will be only the cost incurred to that point; conversely, if the contractor works beyond the allotted construction period, an adjustment to this cost may be required.

The personnel assigned to the Project are identified in a previous section of this proposal. Personnel Rates, Equipment Charges, and Travel Reimbursement are inclusive in this Cost Proposal and outlined in the attached Schedule of Charges (Appendix B). This cost includes travel expenses from our Willits office and does not include costs associated with living expenses for out-of-town staff.

SHN’s Not-to-Exceed cost to provide Construction Management and Inspection Services for the Fort Bragg Lift Station Project is **Forty-Nine Thousand Five Hundred Dollars (\$49,500)**.

G. Work Schedule

For the City’s upcoming project, SHN proposes the following work schedule, which will include 30 days for pre-construction preparation activities, 260 prevailing wage working days (not including weekends or public holidays), and 30 days for post-construction project closeout activities.

A pointed discussion of the these activities are described within the previous Scope of Work section.

Starting Date	Activity	Ending Date
May 1, 2019	Pre-Construction Activities	May 31, 2019
June 3, 2019	Construction Activities	June 12, 2020
June 15, 2020	Post-Construction Closeout Activities	July 14, 2020

If the City chooses to award SHN with this project, we believe that this will be an ideal use of our team’s resources because SHN will already be in the area, working on the City’s wastewater treatment plant project. The City does not need to worry about our team’s availability because we have already committed our team’s resources to the City for the duration of the wastewater treatment plant’s construction, and we will have the latitude to provide services for both projects, as needed.