

PROFESSIONAL SERVICES AGREEMENT

AGREEMENT

This Agreement is made and entered into this 9th day of November, 2015 by and between the City of Fort Bragg & Fort Bragg Redevelopment Successor Agency of Fort Bragg, 416 N. Franklin Street, Fort Bragg, California, 95437 ("City/Agency"), and TRC Solutions Inc., One Concord Center, 2300 Clayton Road, Suite 610, Concord, CA 94520, a California Corporation ("Consultant").

RECITALS

WHEREAS, City/Agency has determined that it requires the following professional services from a consultant: to provide ongoing peer review and environmental consulting services involving remediation and redevelopment activities for the Georgia-Pacific (GP) Mill Site; 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 bodies of the City/Agency on November 9, 2015, by joint resolution (Resolution No. _____-2015 and Resolution No. _____-2015) authorized execution of this Agreement on behalf of the City/ Agency in accordance with Chapter 3.20 of the Fort Bragg Municipal Code and/or other applicable law;

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

1. DESCRIPTION OF SERVICES OR SCOPE OF WORK

The services to be performed under this Agreement ("Services") are as follows: 1) Assessment reports, feasibility studies, and work plans; 2) City/Agency correspondence and meetings, including public meetings; 3) Stakeholder meetings and correspondence, including meetings with CalEPA's Department of Toxic Substances Control (DTSC) and various resource agencies; 4) Risk assessment, toxicology, remedial action, and other technical services; 5) Miscellaneous consulting and project management services. The Services are further described in Consultant's proposal (the "Proposal"), which is attached to and made a part of this Agreement as Exhibit A.

2. TERM

The Agreement term will commence on November 9, 2015 and expire on January 30, 2017 unless the Agreement term is amended or the Agreement is terminated in accordance with its terms.

3. PAYMENT TERMS AND NOT TO EXCEED AMOUNT

City/Agency 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/Agency and list the Services performed and the amounts to be paid according to the cost categories and prices in the Proposal. In no event will the City/Agency's obligation to pay the Consultant under this Agreement exceed **\$75,000.00** (the "Not to Exceed Amount"), unless this Agreement is first modified in accordance with its terms. Where the Proposal provides for compensation on a time and materials basis, Consultant must maintain adequate records to permit inspection and audit of Consultant's time and material charges under this Agreement. Consultant will make such records available to the City/Agency during normal business hours upon reasonable notice. In accordance with California Government Code § 8546.7, if the Not to Exceed Amount 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/Agency or as part of any audit of the City/Agency, for a period of three (3) years after final payment under the Agreement.

4. TIME OF COMPLETION

Consultant must commence performance of the Services upon receipt of written direction to proceed from City/Agency. 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 7 below and to satisfy Consultant's obligations hereunder. Consultant will complete the Services in accordance with this Agreement by **December 31, 2016** (the "Time of Completion"). The Time of Completion may only be modified by an amendment of the Agreement in accordance with its terms.

5. INDEPENDENT CONTRACTOR

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

6. SUBCONTRACTING

Consultant may subcontract portions of the Services upon the prior written approval of the City/Agency. Consultant will be solely responsible for payment of such subcontract Services. No contractual relationship will exist between any such subcontractors of the Consultant and the City/Agency.

Subcontractor agrees to be bound to Consultant and City/Agency in the same manner and to the same extent as Consultant is bound to City/Agency under the Agreement. 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/Agency indemnity and insurance provisions will be furnished to the subcontractor upon request.

7. 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/Agency, 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. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City/Agency, 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/Agency of such desire of City/Agency, reassign such person or persons.

8. 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/Agency is bound by the terms of such fiscal assistance program.

9. 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.

10. INDEMNITY

To the maximum extent permitted by law, Consultant shall, at its own expense, indemnify, defend with counsel acceptable to the City/Agency, (which acceptance will not be unreasonably withheld), and hold harmless City/Agency 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, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of 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.

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/Agency, unless the time for responding is extended by an authorized representative of the City/Agency 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/ Agency, may be retained by the City/Agency until disposition has been made of the matter subject to tender, or until the Consultant accepts the tender, whichever occurs first.

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/ Agency, Consultant shall indemnify, defend, and hold harmless City/Agency 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/Agency.

The defense and indemnification obligations of this agreement shall 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.

11. INSURANCE

a. Before commencing performance of the Services, Consultant, at its own cost and expense, must: a) 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 b) submit to the City/Agency 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/Agency.

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/Agency.

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/Agency and its officials, officers, employees, and volunteers for loss arising from or related to the Services.

c. Consultant, at its own cost and expense, must maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, TWO MILLION DOLLARS (\$2,000,000.00) aggregate, combined single limit coverage for risks

associated with Services. 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/Agency 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/Agency 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/Agency's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

e. The requirements for coverage and limits shall be the coverage and limits specified in this Agreement.

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/Agency (if agreed to in a written contract or agreement) before the City/Agency'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/Agency 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/Agency.

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/Agency.

j. The City/Agency 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/Agency's interests are otherwise fully protected.

k. All self-insured retentions (SIR) must be disclosed to City/Agency 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/Agency. City/Agency 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.

12. 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, sex, 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, sex or age.

13 LICENSES & PERMITS

a. BUSINESS LICENSE

Before the City/Agency 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/Agency 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.

14. OWNERSHIP OF WORK PRODUCTS AND TREATMENT OF DOCUMENTS

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

15. TERMINATION AND REMEDIES

a. City/Agency may terminate this Agreement for convenience by giving at least 10 days written notice to Consultant specifying the termination effective date. Upon receipt of such notice, Consultant may continue performance of the Services through the date of termination. City/Agency 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 Agency may have at law or equity, the City/Agency 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/Agency, 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.

16. BINDING EFFECT AND ASSIGNMENT PROHIBITION

This Agreement is binding upon City/Agency, Consultant, and their successors. Except as otherwise provided herein, neither City/Agency nor Consultant may assign, sublet or

transfer its 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.

17. REPRESENTATIVES

a. The City/Agency representative for purposes of this Agreement will be City Manager/Agency Director Linda Ruffing. Consultant representative for purposes of this Agreement will be Glenn S. Young, PG, LEED AP, Senior Project Manager. 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:

TRC Solutions Inc.
Glenn S. Young, PG, LEED AP, Senior Project Manager
One Concord Center
2300 Clayton Road, Suite 610
Concord, CA 94520

Any written notice to City/Agency shall be sent to:

Linda Ruffing, City Manager/Agency Director
City of Fort Bragg/ Fort Bragg Redevelopment Successor Agency
416 N. Franklin Street
Fort Bragg, California 95437

18. INTEGRATION AND AMENDMENT

This Agreement represents the entire and integrated agreement between City/Agency and Consultant and supersedes all prior negotiations, representations or agreements, 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/Agency.

19. CONFLICT OF INTEREST PROHIBITION

City/Agency and Consultant will comply with the requirements of the City/Agency'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/Agency Secretary a completed Form 700 before commencing performance of the Services unless the City Clerk/Agency Secretary determines that completion of a Form 700 is not required, pursuant to City/Agency's Conflict of Interest Code. Form 700 forms are available from the City Clerk/Agency Secretary.

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/Agency and to provide any necessary and appropriate information requested by City/Agency 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/Agency official, officer or employee in the performance of the Services, nor may any official, officer or employee of City/Agency 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/Agency. If Consultant was an employee, agent, appointee, or official of Agency 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/Agency for any sums paid to Consultant under this Agreement. Consultant understands that, in addition to the foregoing, penalties for violating Government Code §1090 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/Agency reserves all its rights and remedies at law and equity concerning any such violations.

20. 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.

21. RECOVERY OF ATTORNEYS' FEES

If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret any term of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

22. 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.

23. 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 HEREOF, the parties have caused their authorized representative to execute this Agreement on the date first written above.

CITY/AGENCY

CONSULTANT

By: _____
Linda Ruffing
Its: City Manager/ Agency Director

By:  _____
Amy Wilson
Its: Practice Lead

ATTEST:

By: _____
June Lemos
City Clerk/Agency Secretary

APPROVED AS TO FORM:

By: _____
Samantha W. Zutler, City Attorney/Agency Attorney

Exhibits: Exhibit A – Consultant's Proposal