



CITY OF FORT BRAGG

REQUEST FOR PROPOSALS FOR WATER SYSTEMS DISTRIBUTION

MASTER PLAN

The City of Fort Bragg is seeking proposals from qualified consultants interested in contracting with the City to prepare a Water Systems Distribution Master Plan. The purpose of the distribution master plan is to identify and prioritize critical water system improvements to the City of Fort Bragg treated water distribution system to ensure that a resilient system with adequate water facilities necessary to meet current and future demand remains available to customers in perpetuity.

BACKGROUND

The City of Fort Bragg owns and operates its water utility from source water to customer delivery. The City of Fort Bragg has a Water System Study and Master Plan that was completed by John Carollo Engineers, and adopted by the City Council on April 14, 1986 (36 years ago). The purpose of the study and master plan was to evaluate several aspects of the water supply system including present and future water supply sources; water treatment plant components; bypassing Newman Reservoir; physical improvement of existing sources; and computer simulation of the existing and future distribution systems using University of Kentucky's "Computer Analysis of Flow in Pipe Networks." Recommendations within the plan were based on information contained within the 1980 General Plan and were estimated to include development through the year 2000.

Much of the work recommended from the 1986 plan has been completed and numerous changes within the community have taken place affecting current water usage as well as future demand. The City has since adopted new General Plans (2008 and 2012), installed numerous capital improvements to the water system, and worked on a reuse plan for the Mill Site property covering about 1/3 of the City that upon development will create new demands on the water system.

In November 2013, the City contracted with KASL Engineers to prepare a Water Facilities Study, which includes existing water collection, distribution, and capacity. This study also identified and prioritized critical improvements to the City water supply and treated water distribution systems, network modeling of the existing treated water distribution system, and evaluated the capacity of raw water and treated water systems. They created an in-house Network Hydraulic Model of the City's distribution system for the analysis. That model was updated with the proposed industrial north side water extension in 2019.

The City's economic base has been undergoing a major transition for many years. The Georgia Pacific (GP) Lumber Mill (Mill Site), previously the City's largest employer, ceased operations in 2002. To this day, the undeveloped area of the Mill Site occupying 315 acres is zoned Timber Industrial. Over this same time, the regional fishing industry has been in decline while the local tourism sector has been growing and has roughly offset these economic losses. Consequently, there has been little to no net growth in the City's population for 20 years or more.

The City of Fort Bragg (including the GP property) relies entirely on surface water to meet water demands.

The City's water system includes:

- The **Water Treatment Plant** is located within the City's Corporation Yard at 31301 Cedar Street in Fort Bragg.
- Water supply comes from **three (3) surface water sources**.
 - Two are spring fed; sourced from Waterfall Gulch and Newman Gulch. These two surface diversions flow via gravity through the raw water pipeline to the water treatment plant.
 - The third is a pump drawing water from the Noyo River. The Noyo River diversion includes a wet well at the Noyo River and a pump station that is a separate conduit that carries raw water to the treatment plant.
- A **45-Acre-Foot Reservoir** at the end of Summers Lane that provides emergency water storage during low flow conditions. The reservoir draws and stores water from Waterfall Gulch.
- A **Small Desalination Plant** has been operational since the fall of 2021. The desalination intake is the same as the Noyo River pump. Brackish water in the river occurring during low flows and high ocean tides is pumped to a storage tank at the water treatment plant. The desalination plant treats this brackish water before discharge to the raw water ponds where it is sent to the treatment plant for further processing.
- There are **four (4) Finished Water Tanks: three (3)** 1.5-million-gallon tanks are located at the Corporation Yard, and **one (1)** 0.3-million-gallon tank located on Highway 20 just outside the City Limits.
- Water is supplied to customers primarily via gravity flow through the water **Distribution System**.
 - Gravity delivery uses water service pressures controlled by water surface elevations in the water treatment plant storage.
 - One area of the City referred to as the East Fort Bragg Pressure Zone (EFBPZ) is located where the elevations are too high to be served by gravity. The EFBPZ is served by a pump station located on Willow Street.
- **Smart Meters**. The City recently began the upgrade of all customer meters to **Badger E-Series** Ultrasonic Plus with Integrated Shutoff Valve (installation contract in progress at time of writing RFP).

Update of the existing plan is essential to direct City staff in developing a plan for future needs. The City's water distribution system is critical to the City's water security, so having a relevant master planning document is crucial to understanding and strategically rehabilitating the system. The proposals should anticipate providing support to the City from Master Planning through Preliminary Engineering Reporting, which culminates in a comprehensive document that can be used to facilitate funding applications, environmental analysis, project design, and construction.

Other Background Variables for Consideration:

- a. The City of Fort Bragg is located in an area subject to **seismic activity**.
 - While there are no active earthquake faults in the City, the San Andreas Fault is located approximately nine (9) miles to the west, and the Mayacama fault is 22 miles to the east.
 - Should the Pudding Creek or Noyo River Bridges become unusable following a seismic event, people may not be able to evacuate, emergency access would be blocked, and there is high potential for water distribution line damage/failure in these locations.
 - One of the primary Water Master Plan goals is to create resiliency in the City's water system and thus should address seismic protection of the system against risks associated with the effects of earthquakes, landslides, slope instability, subsidence, tsunami and other hazards including flood and fire.
- b. The City's **Water Treatment Plant** is currently undergoing rehabilitation (2022) and includes rehab of water tank #2.
 - The City is transitioning to **Smart Water Meters** and the installation contract is in progress. The new meters will provide 100% reading accuracy (up from the current 94.2% accuracy), and include early leak detection alarms both to the City and customers, helping to prevent water loss and increase cost savings. The project will replace all existing meters (up to 2,700 residential water meters and 300 commercial water meters) in existing water meter boxes.
- c. The City is preparing to commence design of the **Water and Sewer Line Extension** for the industrial area north of Pudding Creek to the edge of the City limits. The selected consultant should plan to coordinate with the design engineer selected for this project if it is underway simultaneously with Master Planning. Preliminary hydraulic modelling was performed by KASL in 2019.
- d. The City does not have a **Programmatic EIR** for its utility master plans or Capital Improvement Program (CIP). Historically, City practice has been to undertake environmental review as part of each project. The City is interested in understanding the benefits and risks of the timing of the environmental review for utility master planning.
- e. The following facilities and infrastructure are **Not Planned for Consideration** with this study, unless distribution system investigation deems necessary:
 - a. Existing water sources
 - b. Existing raw water transmission pipes
 - c. Water treatment facilities

- d. Existing water storage facilities
- e. Waste Water Treatment Plant
- f. Storm drainage facilities

PROJECT DESCRIPTION AND GOALS

The Water Master Plan update is expected to consist of review of the existing Master Plan document. The selected Consultant will need to gain a clear understanding of the current issues and plan for the future by examining the existing customer base, permitted water resources, and anticipating future connections. The project includes updates to modeling/mapping of the water distribution infrastructure via computer modeling to provide recommended improvement projects to ensure resiliency to the City's water infrastructure and improve automation and valve isolation capabilities for better control of the system as a whole. Preliminary Engineering Reports will identify projects with detailed project descriptions, priority ranking, schedules, and budgets. Additionally, the City is seeking recommended strategies for climate change, improving water efficiency, and conservation so the City can efficiently maintain existing infrastructure and plan for the future.

Specific issues that the project should address include maximizing planning potential; minimizing water waste; prioritizing crucial infrastructure needs; identifying leaks in water supply lines; improving automation and isolation capabilities, scheduling of water line replacements; coordinating water draws with other users in the area to maintain instream water resources; and working with local watershed groups to maximize the protection of sensitive fish and other members of native river community.

Implementation of this project is also expected to provide the City with itemized project cost estimates that will be used to coordinate investments in maintaining the City's water system into the future utilizing existing permitted water resources and maintaining ecological integrity in our local watersheds.

SCOPE OF WORK

This contract would consist of the following four (4) major tasks:

All Tasks 1-4 and Alternates assume the consultant will work closely with staff both virtually and on-site for **working meetings** as needed to coordinate and complete the various tasks and deliverables.

TASK 1: MASTER PLAN

Review of the existing Master Plan to gain a clear understanding of capacity planning needs, and prepare a distribution system condition assessment including pressure zones, pumps, potentially failing/leaking lines, and all other appurtenances.

TASK 1: DELIVERABLES

1. Technical report on the existing conditions and constraints of the pipeline and appurtenances, with copies of all data in an appendix.
2. Draft Master Plan Report.

3. Attendance and presentation at up to three (3) City Council meetings, including preparation of staff reports, meeting notes that incorporate all agency comments, and recommendations to Council regarding adoption of the Final Master Plan.
4. Final Master Plan Report including all other deliverables (listed below) both digitally and three (3) bound hard-copy reports.

TASK 2: MAPPING AND MODELING

Work with staff to evaluate robustness of the City's mapping resources (GIS/AutoCAD) to handle a new Master Plan modeling, recommend the appropriate system software, and update the distribution System Map Modeling accordingly. This task will include fieldwork, surveying, geotechnical evaluations, potholing utilities, etc., sufficient for mapping deliverables.

TASK 2: DELIVERABLES

1. Technical memo evaluating acquisition of existing model (and database) prepared by KASL vs. creating a new distribution system model or some combination of each. The report should analyze staff capabilities and capacity, associated cost of varying options, and benefits or consequences of each.
2. Identify and map existing distribution system by researching and reviewing maps and by performing fieldwork and surveying.
3. Complete a field investigation and assessment of existing conditions and constraints of the pipeline and appurtenances.
4. Survey data: Raw data points and processed data.
5. Complete distribution system database (delivered in selected software) including:
 - a. Attributes like mains, valves, hydrants, water meter laterals, pressure zones, pumps, and all other appurtenances; and
 - b. Condition Assessment Data of mapped attributes like pipe size, material, coordinates, age (if known), condition index, priority for replacement, etc.
6. Updated modeling/mapping of water infrastructure packaged and delivered to the City staff in the selected program medium.
7. Use the Risk Assessment Condition Index criteria (established in Task 4 Deliverable 3) to the model database to help improve project prioritization.

TASK 3: ANALYZING ENVIRONMENTAL VARIABLES

Evaluate the existing and proposed water sources and the distribution system in relation to existing and proposed water needs to ensure the system is sized for reasonably Expected Growth, Water Shortage Contingency Planning, and Climate Mitigation Strategies given the City's existing water sources and potential alternate sources and given the City's distribution system.

- Review the City's most up-to-date Municipal Services Review report and evaluate reasonably expected Growth Factors for future potable water delivery to:
 - The GP Mill site;
 - North Fort Bragg industrial water line extension from Pudding Creek to edge of City Limits (a 2022/23 programmed CIP project);
 - Further development/annexation of the Harbor areas; and
 - One (1) additional future annexation area, as defined in most updated LAFCO Municipal Services Review. This will likely be east Fort Bragg area.

- Review the City's General Plan (inland and coastal) Element 7 Safety and other Emergency Contingency Planning documents and consider Disaster Mitigation strategies and other environmental factors impacting the City's water resiliency planning including:
 - Impacts of climate change and sea level rise;
 - Analyze geotechnical sensitive areas most subject to seismic activity including earthquakes, landslides, slope instability, subsidence, tsunami, other geologic hazards, flood, and fire;
 - Environmental factors; including soil corrosiveness, pH, ground water, etc.;
 - Environmental Practices; including improving water efficiency, conservation, and working with local watershed groups to maximize the protection of sensitive fish and other members of the native river community.

TASK 3: DELIVERABLES

1. Technical Report including analysis of future water demand, resiliency planning, and consideration of environmental factors. The report should recommend strategies for Climate Change and other disaster preparedness, address water efficiency and conservation in keeping with environmental constructs and ethical practices, discuss new, innovative, or emerging pipe/water system technologies.
2. Prepare a memo analyzing the cost/benefits of preparing a Programmatic EIR for City utility master plans and proposed Capital Improvement Projects (CIP) and risks of the timing of the environmental review on a project-by-project basis without a comprehensive environmental document.

TASK 4: CAPITAL PROJECT PLANNING

Identify and prioritize critical water system improvements to ensure strategic approach to rehabilitating the system. The study should analyze and prioritize improvements based on information gathered from data analysis, Tasks 1, 2, and 3, meetings with Staff, and ensure first water security of existing customers, followed by recommended improvements for future demand. Improvement strategy should consider:

- Ensuring that adequate water facilities are available to meet current maximum day demands and fire flow demands.
- Capacity Planning and Improvements: Identification of new water demand within the City and recommendations of necessary system modifications to ensure the water demands of future projected growth can be accommodated.
- Analyze the City's current asset management practices for the water distribution system scoping and prioritize future asset management procedures (tracking, evaluating, and replacing aging infrastructure).
- Project Funding Opportunities and funding streams.

TASK 4: DELIVERABLES

1. Project Practicability Report including hydraulic analysis of any proposed replacement pipeline using material and diameter alternatives based on verified capacity and operational needs.
 - a. This task will require either coordination with the consultant (KASL Engineers) who maintains the City's existing proposed projects to run data through existing hydraulic

analysis model, procurement of the existing mode from KASL, or creation of a new model based on recommendations from Task 2 Deliverable 1.

- b. Include operations and maintenance costs over anticipated service life. Include maintenance specifications and schedules when new materials are proposed for introduction into City system.
- c. Environmental factors; including soil corrosiveness, pH, ground water, etc.;
2. Technical memo of risk-based analysis of likelihood of failure and consequence of failure assessing the existing infrastructure conditions and defined risk assessment condition index criteria to help improve the capital project prioritization.
3. Recommended projects which include for new, innovative, and emerging water system technology as deemed appropriate for given location, budget, and other factors analyzed herein (i.e. pipe-lining, seismic retrofits, flexible piping, grooved systems, grooved pipe joining methods, flexible coupling housing, expansion joints, C909, etc.).
4. Schedule of distribution system rehabilitation projects based on identified priorities funding availability, and feasibility of successful project implementation including factors like staffing.
5. Preliminary Engineering Report for all recommended projects needed to bring the system infrastructure into a fully rehabilitated state including, mapping, detailed project descriptions to support environmental review and permitting analysis for seeking project funding from a variety of State and Federal sources; schedules; cost estimates associated with such improvements; grant funding competitiveness analysis; constructability and performance; and priority ranking.
6. Asset Management Planning recommendations including a valuation of current Assets for use by staff to maintain the system day to day and into the future beyond the proposed rehabilitation projects.

ALTERNATE TASKS

1. Preparation of CEQA/NEPA determinations and associated studies needed for grant applications.
2. Preparation of Programmatic EIR for CIP projects associated with Utility Master Plans.

AVAILABLE REFERENCE DOCUMENTS

The following reports and records are available for review and background information:

1. The current Water Master Plan (1986) and Water Facilities Study (2013).
2. Planning and Engineering reports and documents, operational data, geographic information data, regulatory standards and policies, jurisdictional land use documents, proposed developments, City's General Plan (inland and coastal), population projections, Supervisory Control and Data Acquisition (SCADA) settings and controls, meter records, and all other data pertinent to the project.
3. City's Standard Specifications and Standard Plans (2009).
4. Existing water hydraulic distribution model (under ownership of a private engineering firm, but can facilitate information gathering).
5. Existing water distribution maps (ArcGIS and AutoCAD).
6. Historical billing records.
7. Summary of chronic problems by type and locations (e.g. old and weak pipes, unknown pipe alignments, inadequate water pressure issues, water valves not exercised, etc.).

8. Emergency Preparedness planning documents.
9. Other relevant studies as needed.

PROPOSAL SUBMITTAL REQUIREMENTS

1. Proposers should send a complete digital proposal, collated into one PDF document, two (2) printed copies of the completed proposals and cost bid so that it is received by the City no later than **2:00 p.m. on December 16, 2022** to:
City of Fort Bragg
Attention: June Lemos, MMC, City Clerk
416 North Franklin Street
Fort Bragg, CA 95437
jlemos@fortbragg.com
2. Format: Printed proposal should be 8 ½ x 11 inches, printed two-sided on recycled and recyclable paper with removable bindings, bound in a single document and organized in sections following the order specified under contents.
3. Contents: Proposal shall contain the following information:
 - a. Introductory Letter: Indicate the name of the firm submitting the proposal, its mailing address, telephone number, and name of principal contact and email address. The letter should contain a general statement of the firm's basic understanding of the RFP and an expression of the firm's interest in the work and any other summary information that may be useful or informative to the City. The proposal shall be signed by an official authorized to bind the consulting firm and shall expressly state the length of time the proposal is valid for.
 - b. Firm Description: Provide a description of your firm and list relevant information about capabilities, size, rate of services, and length of time in existence.
 - c. Project Team Qualifications: Identify key personnel who would work on the project as assigned and their respective roles. Provide a list of relevant projects demonstrating sufficient experience of proposed staff. Any changes in staff members assigned to City projects shall be approved by the City.
 - d. References: List of public agencies or clients for whom similar work has been performed, with the name, title and phone number of a contact person. The City may request a copy of a similar report prepared previously by the firm for another agency.
 - e. Scope of Work: Provide a narrative description of the Consultant's understanding of the required tasks and deliverables. The description shall include details to implement all minimum tasks described in the Scope of Work and any recommended additions to the list of tasks. Highlight tasks that are required or prudent, in the consultant's opinion, but were not specifically described in this RFP. All assumptions and significant exclusions shall be clearly identified. Identify any unique approaches to the work or strengths related to the identified services.
 - f. Budget and Schedule of Charges: Provide a "Not to Exceed" amount and a list of Personnel Rates, Equipment Charges, Travel Reimbursement Costs, and Job Descriptions for Personnel. Please be aware that prevailing wage rates apply to preconstruction work, such as inspection and land surveying, for public works projects.
 - g. Proprietary Information: Firms submitting a proposal must provide a statement that nothing contained in the submitted proposal will be proprietary. All proposals shall become property of the City once submitted.
 - h. Work Schedule: Provide a time schedule for completion of work.
 - i. Insurance: The individual or firm receiving the contract shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, employees or subcontracts as set forth in Section 5.0 of

Exhibit A which is attached hereto and incorporated by reference herein. Any requests for reduction in the insurance amount shall be included in the proposal. **The cost of such insurance shall be included in the consultant's proposal.**

- j. Consultant Agreement: The City's standard consultant services agreement is attached as Exhibit A. Please identify if your firm would have any issues with the provisions of the City's standard consulting services agreement. All requests for amendments to language in the agreement **must** be included in the proposal.

EVALUATION CRITERIA

Proposals will be evaluated on the basis of the following criteria:

- Quality and adequacy of the proposal
- Understanding of the desired services including quality control
- Experience and qualifications of the Firm
- Work Plan / Scope of Work
- Ability to respond to the City's requests
- Cost and Schedule of Fees

The above selection criteria are provided to assist proposers and are not meant to limit other considerations that may become apparent during the course of the selection process.

Proposals will be reviewed and evaluated by the City of Fort Bragg and a recommendation for award of contract will be presented to the Fort Bragg City Council.

OTHER CONSIDERATIONS

The City of Fort Bragg reserves the right to reject any and all proposals. This Request for Proposals does not commit the City to award contract, pay any costs incurred in the preparation of proposals, or to procure or contract for supplies or services.

The City of Fort Bragg reserves the right to negotiate with any qualified source or to cancel, in part or in its entirety, this Request for Proposals, if it is in the best interest of the City to do so. The City may require the selected consultant to participate in negotiations, and submit such price, technical or other revisions of the proposal that may result from negotiations.

RFP SCHEDULE

RFP Release	October 26, 2022
Deadline for Written Questions	December 9, 2022
Proposals Due	December 16, 2022 - 2:00 PM
Interviews	TBD
Selection	January 9, 2023

QUESTIONS

Questions should be directed to:

Chantell O'Neal
City of Fort Bragg
416 North Franklin Street
Fort Bragg, CA 95437
(707) 961-2823 ext. 133
Email: coneal@fortbragg.com

ATTACHMENTS

Exhibit A – City's standard Professional Services Agreement

EXHIBIT A to RFP

CITY OF FORT BRAGG PROFESSIONAL SERVICES AGREEMENT WITH

THIS AGREEMENT is made and entered into this ____ day of _____, ____ [date, date & year] (“Effective Date”), by and between the CITY OF FORT BRAGG, a municipal corporation, 416 N. Franklin Street, Fort Bragg, California 95437 (“City”), and _____, a [state] [type of corporation] [address] (“Consultant”).

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to _____ [project description], as more fully described herein; and

B. WHEREAS, Consultant represents that it is a “design professional” as that term is defined by California Civil Code Section 2782.8 and has that degree of specialized expertise contemplated within California Government Code Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

C. 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

D. 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.

E. WHEREAS, the legislative body of the City on _____, [date] by Resolution No. _____ authorized execution of this Agreement on behalf of the City in accordance with Chapter 3.20 of the City Municipal Code and/or other applicable law;

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

1.0. SERVICES PROVIDED BY CONSULTANT

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

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

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

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

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

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

Consultant shall, in all solicitations and advertisements for employees placed by, or on behalf of Consultant, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender, sexual orientation, or disability. Consultant shall cause the paragraphs contained in this Section to be inserted in all subcontracts for any work covered by the Agreement, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

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

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written

consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense. All insurance requirements contained in this Agreement are independently applicable to any and all subcontractors that Consultant may engage during the term of this Agreement.

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

2.0. COMPENSATION AND BILLING

2.1. Compensation. Consultant's total compensation shall not exceed _____ Dollars (\$ _____ .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 _____, 20____. 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 _____, 20____, [3 months after Completion Date in 3.1] 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 [REDACTED]. 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 [redacted] 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:

[redacted]
[redacted]
[redacted]
[redacted]
Tel: [redacted]
Fax: [redacted]

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 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.14. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090.

During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.15. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.16. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.

6.17. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, the conflict shall be resolved by giving precedence in the following order, if applicable: This Agreement, the City's Request for Proposals, the Consultant's Proposal.

6.18. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.19. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.20. Headings. Paragraph and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.21. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.22. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.23. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative

of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.24. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.25. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.26. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

6.27. Use of Recycled Paper Products. In the performance of this Agreement, Consultant shall use paper products and printing and writing paper that meets Federal Trade Commission recyclability standards as defined in 16 CFR 260.12.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY

CONSULTANT

By: _____
Peggy Ducey
Its: City Manager

By: _____

Its: _____

ATTEST:

By: _____
June Lemos, MMC
City Clerk

APPROVED AS TO FORM:

By: _____
Keith F. Collins
City Attorney

EXHIBIT A

CONSULTANT'S PROPOSAL
(Scope of Work, Fee Schedule and Time Table)

EXHIBIT B
CERTIFICATES OF INSURANCE AND ENDORSEMENTS