



## **FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT NO. 1**

### **REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES FOR WASTEWATER TREATMENT PLANT UPGRADE PROJECT**

The Fort Bragg Municipal Improvement District No. 1 is seeking proposals from qualified engineering firms interested in contracting with the District to provide design and related services for the Fort Bragg Wastewater Treatment Plant Upgrade Project.

Fort Bragg's Wastewater Treatment Plant (WWTP) is an aging facility which is to be renovated and upgraded to current technological standards utilizing an activated sludge treatment process.

The current WWTP has a permitted average dry weather flow capacity of 1.0 million gallons per day (MGD). The WWTP was constructed in 1970. Unit processes at the WWTP include: mechanical screening, grit removal, primary clarification, two-stage trickling filters (primary and secondary), secondary clarification, chlorine disinfection, sludge thickening, anaerobic digestion, sludge dewatering, and sludge drying, (see attached process flow diagram). During 40 years of operation, the WWTP has undergone various expansions and upgrades. However, most equipment has reached a 25-30 year service life. The long-term viability of several unit processes in achieving treatment objectives is becoming increasingly difficult and the current WWTP is not able to accommodate future growth.

Preliminary engineering for these upgrades was performed and contained in the, "Fort Bragg Municipal Improvement District No. 1 Predesign Study for Fort Bragg Wastewater Treatment Plant Upgrade Project – Predesign Summary Report" prepared by Nolte Associates, Inc., (a NV5, Inc. Company), September 2013. The report is available on the City of Fort Bragg website at <http://ca-fortbragg.civicplus.com/ArchiveCenter/ViewFile/Item/562>. The report's primary recommendations include the following:

- replacement of the existing trickling filters with an activated sludge system (Aero-Mod SEQUOX),
- re-purposing of the clarifiers into emergency/surge storage,
- treatment of on-site storm water.

Other portions of the treatment train will be renovated. The following Scope of Work is structured in the same fashion as the Predesign Summary Report to aid in referencing relevant items of work.

In addition, the pre-design technical memoranda as well as applicable geotechnical reports and other relevant background information will be made available for review.

### **SCOPE OF WORK**

#### **This contract consists of the following tasks:**

##### Chapter 2, Regulatory setting:

- Review recent and reasonably anticipated actions of the Regional Water Quality Board (RWQCB) for regulations that may apply to this project.

##### Chapter 3, Wastewater Characterization:

- See 2013 and 2014 effluent data, attached, for additional background information

Chapter 4, Recommended Design Criteria:

- The Predesign Summary Report bases the design criteria on a 10-year time-line. Extrapolate as reasonable for the new treatment plant to have at least a 20 year design life.
- Estimated growth in loading and/or flows, supplemental to the data in Table 4-1 will be provided design is started. As noted in the Predesign Summary Report, wet weather, low BODs and TSS concentrations, may reduce effluent reduction processes. This shall be accounted for in the design.
- The design shall consider process system redundancy that can be economically provided to ensure reliable plant performance

Chapter 5, Mechanical Screening:

- For the purposes of the WWTP upgrade project this work will be complete at the time of construction. Consultant shall review what has been built for proper integration into the upgrade project design.

Chapter 6, Grit Handling:

- For the purposes of the WWTP upgrade project this work will be complete at the time of construction. Consultant shall review what has been built for proper integration into the upgrade project design.

Chapter 7, Storm-water Handling:

- The perimeter of the existing WWTP site has been graded to eliminate run-on water from adjacent lands. The storm water handling analysis in the Predesign Summary Report should be modified to reflect this change.
- Designers should consider infiltration trenches or similar improvements in-lieu of tight line storm drain pipes. The intent is minimize the amount of storm water to be conveyed on-site and treated.
- The possibility of eliminating on site pumping of storm-water shall be analyzed. If needed, pump efficiencies shall be optimized.
- The Predesign Summary report storm water handling pipe layout shall be reviewed to minimize the size and scope of this piping system.

Chapter 8, Activated Sludge System:

- Preliminary design is based on the Aero-Mod SEQUOX. For bidding and contract purposes, provision for an approved equal will be necessary. Designer shall consider the possibility of generalizing the specification for activated sludge systems to make this practical.
- The RWQCB has noted that a possible modification to the Ocean Plan may trigger future standards for phosphorus and/or nitrogen limits. Consultant shall ascertain if this is a reasonable likelihood.
- The control systems for the new improvements to the WWTP shall be designed for ease of incorporation into a future Supervisory Control and Data Acquisition System (SCADA).
- The design shall provide for additional room to accommodate and expansion of activated sludge system facilities.
- Consultant shall identify the constraints, if any, created by other elements of the treatment process elements affecting the expansion of the activated sludge system.
- Review hydraulic profile; any significant improvements possible?
- Consultant shall examine the feasibility of lowering the grade(s) of activated sludge units. The Predesign Summary Report notes that lowering these units 15 to 20 feet could potentially eliminate pumping, but is cost prohibitive. Is there some intermediate lowering that would be cost effective?
- The Consultant shall analyze the feasibility of achieving Title 22 water recycling status. Use of this reclaimed effluent will initially be for on-site utility water. However, the plant improvements shall accommodate an easy addition of this capability in the future.

#### Chapter 9, Disinfection:

- For the purposes of the WWTP upgrade project the generation of both sodium hypochlorite for disinfection and sodium bisulfate for dechlorination will be complete at the time of construction. Consultant shall review what has been built for proper integration into the upgrade project design.
- The Predesign Summary Report notes that chlorine contact time was not evaluated; this shall be included in final design.
- The design proposal shall include an additive alternate to design a replacement of the existing chlorine contact basin.

#### Chapter 10, Solids Handling:

- Consultant shall analyze the feasibility of what may be necessary, (e.g. extra treatment), to reach a Class A Bio-Solids standard for the sludge.
- Consultant shall analyze and make recommendations for other, practical re-use of the treated sludge as a raw material or finished product.
- The design shall consider sufficient de-watering of solids suitable for alternate uses
- Consultant shall review the Predesign Summary Report recommendations for the dewatering process. The three processes examined, (centrifuge, screw press, and volute press), are roughly equivalent. An appropriate dewatering method shall be recommended for incorporation into the design.

#### Chapter 11, Power Requirements:

- The Consultant shall review overall energy needs for new plant and make recommendations for practical efficiency improvements to be incorporated into the design.
- The Predesign Summary Report has already considered several alternate methods for generating energy. The Consultant shall analyze the feasibility of using wind power on site.
- The design shall include adequate provision for back-up power to ensure reliable operation of the WWTP.

#### Chapter 12, Construction Sequencing:

- The current estimate is 18 to 24 months for construction. The Consultant shall refine this timeline as part of the design and provide an updated estimate to construct. Consideration shall be made for cost effective ways to reduce this timeline.

#### Chapter 13, Probable Construction Costs:

- Update and refine with final design

#### Other Tasks.

- Review Predesign Report for significant opportunities to improve design. Significant improvements typically include: construction cost decrease, operation cost decrease, improved operational efficiencies, reduce power requirements, reasonably anticipated regulatory changes, etc. This is not direction to scrap the Predesign Report or start design from scratch.
- Review existing documents including predesign report, technical memoranda, previously developed improvement drawings for WWTP improvements, and any available mapping which defines improvements or project site.
- The design proposal shall include an additive alternate to design replacement of three existing sanitary sewer lift stations.
- The design proposal shall include an additive alternate for the design of a septage receiving station. This will not be a public facility.
- Coordinate work with City staff throughout all phases of contract work.

### Other Tasks, (continued)

- Kick off meeting and site visits.
- Meet and discuss options with City staff (and possibly with a Council subcommittee).
- Meetings with: staff, Fort Bragg City Council or committees. Up to five meetings.
- Surveying or other field investigations as needed to refine predesign report to plans and construction documents.
- Provide project support, (including preparation of technical materials), to aid with environmental review and environmental document preparation.
- Provide project support, (including preparation of technical materials) to prepare permits.
- Provide project support for funding assistance.
- Professional services/support during the bid period, including: any pre-bid meetings, site walks, answering bidder questions, preparation of bid addenda for technical issues.
- Prepare 100% plans, specifications and engineer's estimate. Assume that State or Federal funding will be part of the project include appropriate language and provisions in the contract documents. Bid schedule shall be developed with unit prices. Contract documents shall include a requirement of Contractor to supply all operations, maintenance manuals, as well as training.
- Construction services, including: project management, staking, etc. are specifically excluded.

### **PROPOSAL SUBMITTAL REQUIREMENTS**

1. Proposers should send 3 copies of the completed proposals and cost bid so that it is received by the City no later than 5:00 p.m. on February 27, 2015 to:  
City of Fort Bragg  
Attention: Cynthia M. VanWormer, MMC, City Clerk  
416 North Franklin Street  
Fort Bragg, CA 95437
2. Format: 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. Firm Description  
Provide a description of your firm and list relevant information about capabilities, size rate of services, and length of time in existence.
  - B. Relevant Experience  
Describe relevant experience in providing Construction Inspection Services for public agencies.
  - C. Key Personnel Qualifications  
Identify key personnel who would work on the project, as assigned their respective roles and a synopsis of relevant experience.
  - 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 may request a copy of a similar report prepared previously by the firm for another agency.
  - E. Scope of Work  
Provide an explanation of tasks associated with the project, including how you propose to complete each task.
  - G. 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. The proposal will include two additive, alternate tasks: (1) design of a replacement chlorine contact basin, and (2) design of replacement for three sewer lift stations.
  - H. Work Schedule  
Provide 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 11 of Exhibit "A" which is attached hereto and incorporated by reference herein. 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.

### **EVALUATION CRITERIA**

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

- Capabilities and resources of the firm.
- Qualifications and experience of key individuals.
- Schedule for completion of work.
- Rate Schedule for Services.
- Utilize of local subcontractors.

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.

### **QUESTIONS**

Questions should be directed to:

City of Fort Bragg  
416 North Franklin Street  
Fort Bragg CA 95437

Tom Z. Varga  
Director of Public Works  
(707) 961-2823, x 117  
[tvarga@fortbragg.com](mailto:tvarga@fortbragg.com)

### **ATTACHMENTS**

Exhibit "A" – City's Professional Services Agreement

## PROFESSIONAL SERVICES AGREEMENT

### AGREEMENT

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by and between the Fort Bragg Municipal Improvement District, a California Municipal Corporation, 416 N. Franklin Street, Fort Bragg, California, 95437 ("District"), and \_\_\_\_\_ name/address \_\_\_\_\_, a \_\_\_\_\_, ("Consultant").

### RECITALS

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

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

**WHEREAS**, the legislative body of the District on \_\_\_\_\_, 2015, by Resolution No. \_\_\_\_\_-2015 authorized execution of this Agreement on behalf of the District in accordance with Chapter 3.20 of the City Municipal Code and/or other applicable law;

**NOW, THEREFORE**, District 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:

\_\_\_\_\_.  
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 \_\_\_\_\_ and expire on \_\_\_\_\_ unless the Agreement term is amended or the Agreement is terminated in accordance with its terms.

#### 3. PAYMENT TERMS AND NOT TO EXCEED AMOUNT

District 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 District 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 District's obligation to pay the Consultant under this Agreement exceed \$\_\_\_\_\_ (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 District 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 District or as part of any audit of the District, 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 District. 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 \_\_\_\_\_ (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 District agree that the Consultant will perform the Services as an independent contractor and not as an employee or agent of the District. Persons employed or utilized by Consultant in the performance of the Services will not be employees or agents of the District. 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 District. 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 District.

Subcontractor agrees to be bound to Consultant and City in the same manner and to the same extent as Consultant is bound to City under the Agreement. Subcontractor further 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 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 District, 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 District, 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 District of such desire of District, 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 District 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 District, (which acceptance will not be unreasonably withheld), and hold harmless District 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 or in

connection with the Services or Consultant's failure to comply with any of the terms of this Agreement, regardless of any fault or alleged fault of the Indemnitees.

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

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

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

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

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of District, Consultant shall indemnify, defend, and hold harmless District 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 District.

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

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

## 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 District 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 District.

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 District.

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 District 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) District 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 District 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 District's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

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

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

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 District.

j. The District 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 District's interests are otherwise fully protected.

k. All self-insured retentions (SIR) must be disclosed to District 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 District. District reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

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

## 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 District will issue a notice to proceed with the Services, Consultant and any subcontractors must acquire, at their expense, a business license from the City of Fort Bragg 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 District 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 District. Any modification or reuse of such documents by the District without Consultant's prior written consent will be at the District'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 District.

#### 15. TERMINATION AND REMEDIES

a. District 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. District 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 District may have at law or equity, the District 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 District, 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 District, Consultant, and their successors. Except as otherwise provided herein, neither District 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. District representative for purposes of this Agreement will be \_\_\_\_\_. Consultant representative for purposes of this Agreement will be \_\_\_\_\_. The parties' designated representatives will be the primary contact persons regarding the performance of the Services. The parties intend that their designated representatives will cooperate in all matters regarding this Agreement and in such manner so as to achieve performance of the Services in a timely and expeditious fashion.

b. Notices:

Any written notice to Consultant shall be sent to:

[CONSULTANT'S NAME, ADDRESS]

Any written notice to District shall be sent to:

[NAME]  
Fort Bragg Municipal Improvement District  
416 N. Franklin Street  
Fort Bragg, California 95437

## 18. INTEGRATION AND AMENDMENT

This Agreement represents the entire and integrated agreement between District 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 District.

## 19. CONFLICT OF INTEREST PROHIBITION

District and Consultant will comply with the requirements of the District'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 District Clerk a completed Form 700 before commencing performance of the Services unless the District Clerk determines that

completion of a Form 700 is not required, pursuant to District's Conflict of Interest Code. Form 700 forms are available from the District Clerk.

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

Consultant may not employ any District official, officer or employee in the performance of the Services, nor may any official, officer or employee of District 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 District. If Consultant was an employee, agent, appointee, or official of District 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 District 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 District 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.

DISTRICT

CONSULTANT

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

Linda Ruffing

Its: District Manager

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

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

ATTEST:

[Attach Notary Page]

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

Cynthia M. VanWormer, MMC  
District Clerk

APPROVED AS TO FORM:

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

Samantha W. Zutler, District Counsel

Exhibits: Exhibit A – Consultant's Proposal

987116v4 (Jan 2014)