

# PROFESSIONAL SERVICES AGREEMENT

## AGREEMENT

This Agreement is made and entered into this 27th day of November, 2017 by and between the City of Fort Bragg, a California Municipal Corporation, 416 N. Franklin Street, Fort Bragg, California, 95437 ("City"), and Coleman Engineering, Inc., a California Corporation, 1358 Blue Oaks Boulevard, Suite 200, Roseville, CA 95678 ("Consultant").

## RECITALS

**WHEREAS**, City has determined that it requires the following professional services from a consultant: to conduct a brackish water desalination plant feasibility study; and

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

**WHEREAS**, the legislative body of the City on November 27, 2017, by Resolution No. \_\_\_\_-2017 authorized execution of this Agreement on behalf of the City in accordance with Chapter 3.20 of the City Municipal Code and/or other applicable law;

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

### 1. CONTRACT DOCUMENTS

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

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

### 2. DESCRIPTION OF SERVICES OR SCOPE OF WORK

The services to be performed under this Agreement ("Services") are as follows: Consultant is to provide the City with a brackish water desalination plant feasibility study. The Services are further described in Consultant's proposal (the "Proposal"), which is attached to and made a part of this Agreement as Exhibit 1. Changes in the scope, character, or complexity of the Services, if such changes become desirable or necessary as the work progresses, shall be agreed upon by both parties in a written change order. For special cases where it is essential that the extra work be performed

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

### 3. TERM

The Agreement term will commence on December 1, 2017, and expire on March 31, 2018, unless the Agreement term is amended or the Agreement is terminated in accordance with its terms.

### 4. PAYMENT TERMS

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

b. NOT TO EXCEED CONTRACT: In no event will the City's obligation to pay the Consultant under this Agreement exceed **Thirty-five Thousand Dollars (\$35,000.00)** (the "Not to Exceed Amount"), unless this Agreement is first modified in accordance with its terms. The Not to Exceed Amount includes salary, fringe benefits, overhead, profit, and all other expenses incurred by the Consultant in completing its Services under this Agreement.

c. [THIS SECTION REMOVED.]

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

e. COST PRINCIPLES. The Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., are the governing factors regarding allowable elements of cost. Also the administrative requirements set forth in 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments are also included in this Agreement. This also applies to all subcontracts in excess of \$25,000.

### 5. TIME OF COMPLETION

Consultant must commence performance of the Services upon receipt of written direction to proceed from City. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 8 below and to satisfy Consultant's obligations hereunder. Consultant will complete the Services in accordance with this Agreement by **March 31, 2018** (the "Time of Completion"), subject to extension for

delays caused by factors outside the control of the Consultant. The Time of Completion may only be modified by a written amendment of the Agreement signed by both the City and the Consultant and in accordance with its terms.

## 6. INDEPENDENT CONTRACTOR

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

## 7. SUBCONTRACTING

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

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

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

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

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

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

## 8. RECORD RETENTION

For the purpose of determining compliance with Public Contracts Code §§ 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, §§ 2500 *et seq.*, when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code § 8546.7, the Consultant, subcontractors, and the City

shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement. The State, the State Auditor, City, Federal Highway Administration ("FHWA"), or any duly authorized representative of the federal government shall have access to any books, records, and documents of the Consultant and its subcontractors that are pertinent to the Agreement for audit, examination, excerpts, and transactions, and copies thereof shall be furnished if requested.

## 9. STANDARD OF PERFORMANCE

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

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

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

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

## 10. OTHER GOVERNMENTAL REGULATIONS

To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable

rules and regulations to which City is bound by the terms of such fiscal assistance program.

## 11. USE OF RECYCLED PRODUCTS

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

## 12. INDEMNITY

To the maximum extent permitted by law, Consultant shall, at its own expense, indemnify, , and hold harmless (but not defend) City and its officers, officials, employees, and volunteers ("Indemnitees") from and against any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, expenses and costs (including, without limitation, claims expenses, reasonable attorneys' fees and costs and litigation costs recoverable under applicable law) (collectively, "Liability") of every nature, whether actual, alleged or threatened, and to the extent caused by consultants negligent acts, errors and omissions, or Consultant's negligent failure to comply with any of the terms of this Agreement, regardless of any fault or alleged fault of the Indemnitees but excepting the negligence or willful misconduct of the Indemnitees.

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

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

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

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

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

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

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

### 13. INSURANCE

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

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

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

b. Workers Compensation Insurance. Consultant must, at its sole cost and expense, maintain Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. Workers' Compensation Insurance as required by the State of California, with coverage providing Statutory Limits, and Employer's Liability Insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence must be provided. The insurance must be endorsed to waive all rights of subrogation against City and its officials, officers, employees, and volunteers for loss arising from or related to the Services.

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

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

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

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

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

coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.

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

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

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

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

h. Consultant, at its own cost and expense, must maintain for the period covered by this Agreement professional liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per claim and TWO MILLION DOLLARS (\$2,000,000) annual aggregate covering negligent errors and omissions. Any deductible or self-insured retention under the required professional liability insurance may not exceed \$150,000 per claim.

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

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

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

l. To the extent this Agreement is a "construction contract" as defined by California Civil Code § 2783, as may be amended from time to time, Consultant shall



maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following completion of the Services. In the event Consultant fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Consultant.

#### 14. NON DISCRIMINATION

During the performance of this Agreement, Consultant will not discriminate against any employee of the Consultant or applicant for employment because of race, religion, creed, color, national origin, 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.

#### 15. FAIR EMPLOYMENT PRACTICES ADDENDUM AND NON-DISCRIMINATION ASSURANCES

The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement, or such other remedy as recipient deems appropriate.

#### 16. DISADVANTAGED BUSINESS ENTERPRISE CONSIDERATION

Consultants must give consideration to DBE firms as specified in 23 CFR §172.5(b), 49 CFR, Part 26, and in Exhibit 10-I "Notice to Proposers Disadvantaged Business Enterprise Information." If the contract has a DBE goal, the consultant must meet the DBE goal by using DBEs as subconsultants or document a good faith effort to have met the goal. If a DBE subconsultant is unable to perform, the consultant must make a good faith effort to replace him/her with another DBE subconsultant if the goal is not otherwise met. LAPM Exhibits 10-I, 10-J, 10-O1, 10-O2, 15-H and 17-F are to be included in the consultant contract.

#### 17. LICENSES & PERMITS

##### a. BUSINESS LICENSE

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

##### b. OTHER LICENSES AND PERMITS

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

#### 18. CONSULTANT REPORTS AND/OR MEETINGS

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

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

#### 19. DOCUMENTATION, OWNERSHIP OF WORK PRODUCTS, AND TREATMENT OF DOCUMENTS

a. Consultant shall document the results of the work to the satisfaction of the City, and if applicable, the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the agreement objectives.

b. The Consultant shall sign all plans, specifications, estimates, and engineering data furnished by him/her, and where appropriate, indicate his/her California registration number.

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

#### 20. DISPUTES

a. Any dispute, other than an audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by a committee consisting of the City's Contract Manager and the City Manager, who may consider written or verbal information submitted by the Consultant.

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

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

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

## 21. TERMINATION AND REMEDIES

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

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

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

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

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

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

## 22. BINDING EFFECT AND ASSIGNMENT PROHIBITION

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

## 23. REPRESENTATIVES

a. City representative for purposes of this Agreement will be Diane O'Connor, Engineering Technician. Consultant's representative for purposes of this Agreement will be Chad R. Coleman, PE, Project Manger. 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:

Chad R. Coleman, PE  
Principal in Charge and Project Manger  
Coleman Engineering, Inc.  
1358 Blue Oaks Boulevard, Suite 200  
Roseville, CA 95678

Any written notice to City shall be sent to:

Diane O'Connor  
Engineering Technician  
City of Fort Bragg  
416 N. Franklin Street  
Fort Bragg, California 95437

## 24. INTEGRATION AND AMENDMENT

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

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

a. The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the consultant, to solicit or secure this agreement; and that it has not paid or agreed to pay any company or person other than a bona fide employee any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or

formation of this agreement. For breach or violation of this covenant, the City shall have the right to annul this agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

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

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

## 26. CONFLICT OF INTEREST PROHIBITION

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

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

Consultant may not employ any City official, officer, or employee in the performance of the Services, nor may any official, officer, or employee of City have any financial interest in this Agreement that would violate California Government Code § 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of City. If Consultant was an employee, agent, appointee, or official of City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Consultant's performance of the Services, including reimbursement of

expenses, and Consultant will be required to reimburse City for any sums paid to Consultant under this Agreement. Consultant understands that, in addition to the foregoing, penalties for violating Government Code § 1090 *et seq.* may include criminal prosecution and disqualification from holding public office in the State of California.

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

## 27. APPLICABLE LAW AND VENUE

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

## 28. SEVERABILITY

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

## 29. COUNTERPARTS

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

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

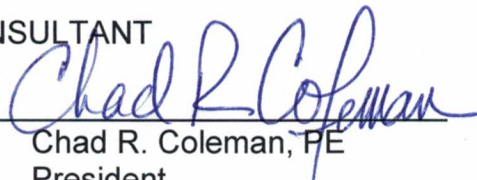
CITY

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

Linda Ruffing  
Its: City Manager

CONSULTANT

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

  
Chad R. Coleman, PE  
Its: President

[Attach Notary Acknowledgment Page]

ATTEST:

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

June Lemos, CMC  
City Clerk

APPROVED AS TO FORM:

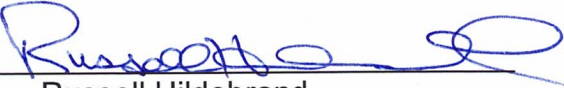
By:   
Russell Hildebrand  
City Attorney

Exhibit 1: Consultant's Proposal

## EXHIBIT 1

### Scope of Work

#### Scope of Services

Client: City of Fort Bragg

Project: Brackish Water Desalination Plant Feasibility Study

Project Location: Fort Bragg, CA

Summary of Services: Feasibility Study

Utility Systems: Potable Water

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#### Project Background

The City of Fort Bragg (City, Client) requires a feasibility study for a small brackish water Reverse Osmosis (RO) desalination plant. The City is interested in exploring desalination as an option to supplement the City water supply due to a number of factors that may constrain the City's water supply in the future, including:

- Future development on the Mill Site may increase demand by up to 20%, which is approximately equal to 200,000 gallons per day.
- Climate change may result in a long-term change to the quality and quantity of annual rainfall.
- Climate change may result in sea level rise of up to 2.5-feet by 2050, which could lead to more salt water intrusion into the City's water collector on the Noyo River during periods of high tide and low river water flow. Because the City is currently unable to treat brackish water, this salt water intrusion would constrain the City's ability to use water from the Noyo River.
- Regulatory changes by the Department of Fish and Wildlife may further reduce City diversion rates or pumping periods on one or more of the surface water sources.

The purpose of the Scope of Services described below is for the Coleman Engineering team to assist the City by analyzing options, making calculations and projections, and summarizing findings in a Feasibility Study that may be used to guide City policy and planning for future capital improvements.



# EXHIBIT 1

## **Services and Data to be Provided to Coleman Engineering by City**

Prior to commencing pre-design services, the City will provide the following services and data to Coleman Engineering.

- Confirm all design assumptions listed above are valid and approved for inclusion in the study
- Confirm City Water Appropriations published in the RFP are correct and available for use in the study
- Confirm the current City WWTP Discharge Permit
- Provide detailed raw water quality information that should be considered for desalination
- Provide input on facility siting criteria, including knowledge of any specific available parcels, existing City domestic water transmission lines
- Provide available information on facility siting constraints, such as known/mapped sensitive resources or known groundwater pumping restriction zones
- Provide contacts for existing local, state and federal regulatory agency staff that the City has been working with on water supply or other issues (no third-party contacts would be made without prior City authorization and discussion)
- Existing WTP Site Plan showing available space and constraints to co-locating the RO Facility at this site

## **Scope of Services**

### **TASK 1 – System Sizing**

The Coleman Engineering team will work with the City of Fort Bragg to develop a “right sized” definition of a desalination package that offers the technical capability to meet the City’s future water needs, given: 1) the anticipated water demand for existing and future development; 2) potential changes to current water supply that result from climate change; and 3) potential regulatory changes that may further restrict available water supplies.

This task will include a Kick-Off Meeting at the City with the Coleman Engineering project manager. The purpose of the meeting will be to transfer as much information and data as possible from the City to the team. In addition, site visits to the wet well, the existing water treatment plant, and the Noyo River locations will be made.

Based on telephone discussions with City staff and based on the site visit above, the Coleman Engineering team will develop the conceptual definition of the target desalination package that includes the following basic criteria:

- Flow

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- Influent raw water quality assumptions
- Effluent treated water quality assumptions
- Waste stream water quality assumptions
- Site requirements

### ***Task 1 Deliverables:***

- *System Sizing Technical Memo*

### ***Task 1 Information to be Provided by the Client, if available:***

- *Influent raw water quality data*
- *Effluent water quality requirements*
- *Information on any potential RO-WTP sites that the City would like considered in the analysis*

## TASK 2 – Regulatory Issues

The Coleman Engineering team will prepare an overview of the regulatory process, challenges, and ROM permitting costs for a small brackish water desalination facility located within the California Coastal Zone. The focus of this task will be to provide an understanding of the agencies which would have authority over the project, what permits would be required, what studies would need to be completed, a general timeline for the permitting process, and an overview of the primary regulatory issues.

Key agencies anticipated to be referenced for this task include the California Coastal Commission, State Lands Commission, Regional Water Quality Control Board, State Water Resources Control Board, California Department of Water Resources Division of Drinking Water, California Department of Fish and Wildlife, U.S. Fish and Wildlife Service, and U.S. Army Corps of Engineers.

This task will identify potential regulatory constraints and issues to be further defined, as well as environmental resource benefits of the project which should facilitate the regulatory approval process. In addition to providing water security for the City of Fort Bragg by developing a hydrologically independent and locally controlled water supply that avoids many of the reliability and regulatory constraints associated with current surface water supplies, the project's potential environmental benefits include reducing pressure on existing surface water supplies (these limited surface water supplies are often constrained by setting aside minimum flows for wildlife resources) and ensuring a safe, reliable water supply for local agriculture, businesses and residences.

The Coleman Engineering team will identify agencies that require consultation and coordination together with permits that are anticipated to be required. This permitting information will be coupled with anticipated timelines for project design and

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development to create an integrated project development schedule. This task will include recommended strategies to minimize regulatory permitting risk, and optimize the overall project development process, including identification of critical path and interdependent tasks where multiple agencies are involved.

### ***Task 2 Deliverables:***

- *Regulatory Issues Technical Memo*

### TASK 3 – Wet Well Analysis

The Coleman Engineering team will analyze the feasibility of utilizing and existing wet well as the water source for the brackish water desalination plant. The wet well provides 800 gallons per minute, or 1.1 million gallons per day. The Coleman Engineering team will assess and describe physical challenges to using this water source.

Much of the analysis will be based on the site visit described above in Task 1. Because the target flow rate for the RO plant is 200,000 gpd, the size and capacity of the wet well is not in question. This analysis will focus on other issues such as:

- Site opportunities and constraints
- Location relative to other potential infrastructure that is likely to be required
- Other sites that may be more advantageous
- Stability of water quality
- Durability of structure in salt water environment

### ***Task 3 Deliverables:***

- *Wet Well Analysis Technical Memo*

### TASK 4 – Schematic Design

The Coleman Engineering team will prepare a schematic design for the facility that emphasizes flexibility, and possibility a modular system so that the system can be increased in size as demand warrants and/or operated at below maximum capacity to reduce costs associated with desalinized water when it is not needed.

The schematic design will be depicted using the following two conceptual level drawings:

- Conceptual Process Flow Diagram
- Conceptual Site Plan

The purpose of these conceptual drawings will be to provide a very basic understanding of the anticipated facility that should be planned. This level of design will aid in the determination of the likely costs of the planned facility as well as site planning goals that should be considered in the future.

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### ***Task 4 Deliverables:***

- *Conceptual Process Flow Diagram*
- *Conceptual Site Plan*

### TASK 5 – Technical Issues

The Coleman Engineering team will identify and analyze technical issues associated with the conceptual desalination project including consideration of the following topics:

- Brackish raw water intake and conveyance to the RO Facility
- Power requirements and sources
- Alternative power supply options (such as solar PV, fuel cells, natural gas fired turbines)
- Plant siting analysis (anticipated to consist of an initial preliminary screening of up to 5 sites based on siting criteria to be developed in coordination with the City)
- Connecting the plant with the existing City water collection storage and treatment system
- Brine waste discharge, treatment and/or disposal (including adequacy of the existing WWTP ocean outfall both in terms of capacity and diffuser capability to meet Ocean Plan salinity requirements)
- Product water quality and blending considerations, including potential effects on the existing WWTP NPDES permit

Technical issues will be non-site specific since site selection is not a part of this study. Instead, the analysis and discussion for this task will be conceptual only and will address characteristics that may be critical to the success of a future RO Facility but will not address how those characteristics apply to a specific site.

### ***Task 5 Deliverables:***

- *Technical Issues Technical Memo*

### ***Task 5 Information to be Provided by the Client, if available:***

- *Identification of the location and sizing of existing wastewater treatment and disposal infrastructure*
- *Identification of the location and sizing of existing water supply, treatment, and transmission infrastructure*
- *Identification of any City owned properties that should be considered as potential plant locations*

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### TASK 6 – Construction Cost Estimate

The Coleman Engineering team will prepare a conceptual level opinion of probable construction cost (OPCC) for the construction and installation of the plant.

This OPCC will be suitable for use in setting budgets for future studies and planning but will not include sufficient detail to set actual construction budgets. The purpose of this OPCC will be to help City Officials to understand order of magnitude level costs so that future planning and design activities can be reasonably considered.

This task will also include a brief discussion of available funding and project delivery methods, including potential for state or federal grants or low interest loans, as well as public/private partnerships or design/build.

***Task 6 Deliverables:***

- *Conceptual Level Opinion of Probable Construction Cost*

### TASK 7 – Operating Cost Estimate

The Coleman Engineering team will prepare a conceptual level opinion of annual operating cost that provides a detailed understanding of how the facility will impact maintenance and operations costs in terms of labor, maintenance and power costs for the City's Water Enterprise.

This conceptual level opinion of annual operating cost will be suitable for use in setting budgets for future studies and planning but will not include sufficient detail to set actual operating budgets. The purpose of this conceptual level opinion of annual operating cost will be to help City Officials to understand order of magnitude level costs so that future planning and design activities can be reasonably considered.

***Task 7 Deliverables:***

- *Conceptual Level Opinion of Annual Operating Cost*

***Task 7 Information to be Provided by the Client, if available:***

- *Unit costs for City staff that should be used in the analysis*
- *Staffing level*
- *Administration costs included in water production costs*
- *Any remaining capital repayment burden in water production costs*

### TASK 8 – Compile Final Feasibility Study and Presentation

The Coleman Engineering team will compile the deliverables described in the tasks above into a single report. The report will not include any unique or reformatted text

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but will be an assembly of the memos, and deliverables produced in the tasks above. It is anticipated that the report will be organized using the memos above in the following order:

- System Sizing Technical Memo
- Regulatory Issues Technical Memo
- Wet Well Technical Memo
- Conceptual Site Plan
- Conceptual Process Flow Diagram
- Technical Issues Technical Memo
- Conceptual Opinion of Probable Construction Cost
- Conceptual Opinion of Annual Operating Cost

Following preparation of the Final Feasibility Study, Coleman Engineering will attend one City Council Meeting to assist City Staff in making a presentation to the Council to summarize the findings of the study.

### ***Task 8 Deliverables:***

- *No independent deliverables to be produced in Task 8. Task 8 will only include assembly of previously prepared deliverables.*

### **Tasks Not Included in this Scope of Services**

This Scope of Services is intended to outline the services offered to the Client by Coleman Engineering. The list below is offered as a clarification of the services that are not included, not anticipated, or that will be completed by others.

1. No detailed design is included in this phase of the services. No plans or specifications will be prepared during this phase.
2. Coleman Engineering CAD standards to be used.
3. The only coordination for approvals that will be made are with the City of Fort Bragg. No other agencies will be consulted, coordinated with, or sought out for approvals.
4. Neighborhood meetings and public relations activities are not included in the scope of services.
5. Pipeline modeling, including surge analysis, is not anticipated to be required and is not provided.
6. CEQA/NEPA review or other environmental consulting including environmental technical studies or field surveys (may be coordinated under a separate contract).
7. Permit applications and necessary services to prepare, process or obtain permits, including meetings and fees, are not included in this scope of services. This includes CEQA, NEPA and CA-DDW approvals for the project.