

PROFESSIONAL SERVICES AGREEMENT

AGREEMENT

This Agreement is made and entered into this 11th day of December, 2017 by and between the City of Fort Bragg, a California Municipal Corporation, 416 N. Franklin Street, Fort Bragg, California, 95437 ("City"), and 4LEAF, Inc., a California Corporation, 8896 Winding Way, Fair Oaks, California 95628 ("Consultant").

RECITALS

WHEREAS, City has determined that it requires the following professional services from a consultant: to provide construction management, staking, and materials testing services for the 1.5 MG New Water Tank Project, City Project No. 2017-08, CDBG Grant No. 16-CDBG-11140; 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 December 11, 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); and
- c. Required Contract Provisions for CDBG-Aided Consultant Contracts (Exhibit 2)

2. DESCRIPTION OF SERVICES OR SCOPE OF WORK

The services to be performed under this Agreement ("Services") are as follows: Construction management, staking, and materials testing services for the 1.5MG New Water Tank Installation Project, City Project No. 2017-08. 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 26, 2017**, and expire on **August 26, 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 **Ninety-nine Thousand Seven Hundred Fifty-three Dollars (\$99,753.00)** (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.

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 **May 26, 2018** (the "Time of Completion"). The Time of Completion may only be modified by a written amendment of the Agreement signed by both the City and the Consultant and in accordance with its terms.

6. INDEPENDENT CONTRACTOR

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

7. SUBCONTRACTING

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

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

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

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

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

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

8. STANDARD OF PERFORMANCE

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

b. The Consultant should not substitute key personnel (Project Manager and others listed by name in the cost proposal) or subcontractors without prior written approval from the City. The Consultant must request and justify the need for the

substitution and obtain approval from the City prior to use of a different subcontractor on the Agreement. The proposed substituted person or subcontractor must be as qualified as the original, and at the same or lower cost.

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

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

9. 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.

Required contract provisions for Community Development Block Grant (CDBG)-Aided Consultant Contracts are attached as Exhibit 2, and said provisions are incorporated into this Agreement by reference.

All forms provided in Exhibit 2 are to be completed and attached to this Agreement.

10. 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.

11. INDEMNITY

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

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

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

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

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

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

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

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

12. INSURANCE

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

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

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

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

c. For the Term of this Agreement, Consultant, at its own cost and expense, must maintain: (1) commercial general liability insurance in an amount not less than 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 TWO MILLION DOLLARS (\$2,000,000) covering errors and omissions. Any deductible or self-insured retention under the required professional liability insurance may not exceed \$150,000 per claim.

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

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

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

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

13. DISADVANTAGED BUSINESS ENTERPRISE CONSIDERATION

The Grantee will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701(u)) and the Department of Housing and Urban Development's implementing regulations in 24 CFR, Part 135. The responsibilities of the Grantee are outlined in 24 CFR § 135.32 and 24 CFR § 85.36(e) and further described in Exhibit 2.

14. 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.

15. 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 the Department of Housing and Community Development ("HCD"). 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, documents, and work product prepared by Consultant pursuant to this Agreement shall be and remain the property of the City. Any modification or reuse of such documents or work product 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, documents, or work product pertaining to the Services without the prior written consent of City.

16. 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 if 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.

17. 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, other design documents, and work product 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.

18. 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.

19. 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 Bert Gross, PE, Vice President. 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:

Bert Gross, PE
Vice President
4LEAF, Inc.
8896 Winding Way
Fair Oaks, California 95628

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

20. 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, except for Exhibit 2, the terms of which shall remain. 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.

21. 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. The Consultant further warrants that it has not engaged in any activities barred by the provisions of Exhibit 2, § 9. 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 prohibited by Exhibit 2, Consultant's/Sub-Consultant's Certification Concerning Anti-Lobbying and that any lobbying activities of Consultant are properly disclosed in Exhibit 2, Disclosure of Lobbying Activities Form.

22. CONFLICT OF INTEREST PROHIBITION

City and Consultant will comply with the requirements of all State and Local ethics laws, ordinances, and regulations applicable to the performance of the Services and/or this Agreement, including, but not limited to, 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.* . 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.

City and Consultant will comply with the requirements of all Federal ethics laws and regulations applicable to the performance of the Services and/or this Agreement. Federal conflict of interest provisions are outlined in Exhibit 2 and the related form: Consultant's/Sub-Consultant's Certification Concerning Anti-Lobbying.

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.

23. 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.

24. 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.

25. 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.

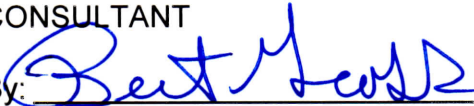
CITY

By: _____
Linda Ruffing
Its: City Manager

ATTEST:

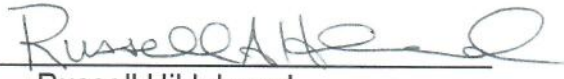
By: _____
June Lemos, CMC
City Clerk

CONSULTANT

By:  _____
Bert Gross, PE
Its: Vice President

[Attach Notary Acknowledgment Page]

APPROVED AS TO FORM:

By: 
Russell Hildebrand
City Attorney

Exhibits: Exhibit 1 – Consultant's Proposal
Exhibit 2 – Required Contract Provisions for CDBG–Aided Consultant Contracts

EXHIBIT 1

Construction Management, Staking & Materials Testing Services for 1.5 MG New Water Tank – City Project No. 2017-08



FORT BRAGG
On California's Spectacular Mendocino Coast

SCOPE OF WORK SUMMARY

PRE-CONSTRUCTION	CONSTRUCTION	POST CONSTRUCTION
Review/Interpret Plans/Specs <ul style="list-style-type: none">Identify conflicts/issuesPermitting/Environmental	Establish relationships with: <ul style="list-style-type: none">ContractorDesign TeamCity Reps	Final Inspection Prepare As-Built Drawings, Caltrans Documentation
City Meetings <ul style="list-style-type: none">Scope, schedule, issues, etc.	Review/Interpret: <ul style="list-style-type: none">Contract documents, note errors/omissionsShop drawings, Material CertificationsFalsework drawings	Perform Close-out <ul style="list-style-type: none">Fiscal CloseoutDocument Closeout
Pre-Construction Meeting <ul style="list-style-type: none">Plan and ConductDistribute minutes	Conduct Progress Meetings <ul style="list-style-type: none">Plan and ConductDistribute minutes	Compile field and laboratory data into bound submittal for the City
Submittal process	Provide Project Coordination <ul style="list-style-type: none">AdministrativeInspectionTesting	Issue Notice of Substantial/ Final Completion
Review Contractor CPM Schedule	Monitor Schedule and Budget	Produce electronic copy of finished produce in MS Word or Excel.
	Perform Inspections <ul style="list-style-type: none">Daily ReportsPhoto/Video	
	Maintain As-Built drawings	
	Perform Sampling and Material Testing according to City QAP	
	Survey Verification	
	Process/Submit Pay Applications	
	Prepare Change Orders	
	Environmental Monitoring (dust, noise) Coordinate w/Native American monitors	
	Review and enforce traffic control plan.	
	Claims Support <ul style="list-style-type: none">AnalysisCoordination/AdministerRecommendations	
	Caltrans compliance: <ul style="list-style-type: none">Compile field and laboratory dataRequired Contract languageSection 3 requirements, etc.	

EXHIBIT 1

Construction Management, Staking & Materials Testing Services for
1.5 MG New Water Tank – City Project No. 2017-08



FORT BRAGG
On California's Spectacular Mendocino Coast

SECTION F – BUDGET AND SCHEDULE OF CHARGES

CONSTRUCTION MANAGEMENT, STAKING AND MATERIALS TESTING SERVICES 1.5 MG NEW WATER TANK PROJECT - CITY PROJECT NO. 2017-08

ANALYSIS BY TASK		CM	PM /Asst CM	Principal	TOTALS
		\$160	\$165	\$190	
1	Pre-Construction Tasks: 12/2017				
	Hours	24	20	0	
	Cost	\$3,840	\$3,300	0	\$7,140
2	Construction Phase: 1/2018 - 5/2018				
	90 working days				
	Hours	312	50	0	
	Cost	\$49,920	\$8,250	\$0	\$58,170
3	Post-Construction Tasks: 6/2018				
	Hours	16	2	0	
	Cost	\$2,560	\$330	\$0	\$2,890
	TOTAL HOURS	352	72	0	
	TOTAL COST	\$56,320	\$11,880	\$0	\$68,200
Construction Staking Allowance (Subconsultant)					\$10,500
Materials Testing / Special Inspection Allowance (Subconsultant)					\$19,300
Miscellaneous Reimbursable Expenses (Mileage, Office, Supplies, etc.)					\$250
Markup (5%)					\$1,503
GRAND TOTAL					\$99,753

Basis of Charges

- A.** Rates shown assume projects under this on-call contract will require compliance with California Prevailing Wage rate law, and assumes the City will be filing a PWC-100 Form to the California Department of Industrial Relations (DIR) for the project.
- B.** Rates for prevailing wage categories are subject to annual escalations in accordance with the bi-annual wage determinations from the California DIR. Rates based on California DIR's wage determinations dated 08-22-15.
- C.** Per the new requirements being enforced under SB 854 and because it is assumed that a PWC-100 Form will be filed by the City to the CA DIR for each project, 4LEAF is required to notify an authorized Apprenticeship Committee through submittal of a DAS-140 form. We are then required to make an official request to an authorized Apprenticeship Committee for an apprentice by submitting a DAS-142 form. We are not assured the apprenticeship committee will be able to provide a suitable/qualified apprentice for the project. Per the apprenticeship requirements, the hours worked by the apprentice must be in a ratio of 1:5 for apprentice to journeyman hours. 4LEAF will not know the labor classification of the Public Works Apprentice until an Apprentice is dispatched to the site; therefore, the rates for the five periods listed under the California DIR's Wage determination for Building Construction Inspector issued 08-22-2015 were used to determine the range of Calendar Year 2017 hourly rates for Public Works Inspector Apprentice.
- D.** Overtime and Premium time will be charged as follows:
- | | |
|---|---------------------|
| - Regular time (work begun after 5AM or before 4PM) | 1 x hourly rate |
| - Night Time (work begun after 4PM or before 5AM) | 1.125 x hourly rate |
| - Overtime (over 8 hour M-F or Saturdays) | 1.5 x hourly rate |
| - Overtime (over 8 hours Sat or 1 st 8 hour Sun) | 2 x hourly rate |
| - Overtime (over 8 hours Sun or Holidays) | 2.5 x hourly rate |
- E.** All work with less than 8 hours rest between shifts will be charged the appropriate overtime rate.
- F.** Site work is subject to an 8 hour minimum per day unless stated otherwise.
- G.** All billable expenses will be charged at cost plus 10%.

EXHIBIT 2

CITY OF FORT BRAGG
416 Franklin Street
Fort Bragg, California 95437

REQUIRED CONTRACT PROVISIONS for CDBG-Aided Consultant Contracts

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1. General Provisions

- 1.1 This project is funded wholly or in part by the State of California Community Development Block Grant Program and is subject to both Federal and State regulatory requirements. The consultant and its sub-contractors agree to comply with all State and Federal laws and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Consultant and any subcontractors. The consultant further agrees to comply with all Federal laws and regulations applicable to the CDBG Program and with other Federal provisions as set forth below.
- 1.2 These contract provisions shall apply to all work performed on the contract by the consultant's own organization and with the assistance of workers under the consultant's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
- 1.3 Except as otherwise provided for in each section, the consultant shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions for CDBG-Aided Consultant Contracts, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions for CDBG-Aided Consultant Contracts shall not be incorporated by reference in any case. The prime consultant shall be responsible for compliance by any sub-consultant or lower tier sub-consultant with these Required Contract Provisions for CDBG-Aided Consultant Contracts.
- 1.4 The consultant and its sub-consultants shall perform the project in accordance with Federal, State and local housing and building codes as are applicable.
- 1.5 All data and design and engineering work created under this Agreement shall be owned by the Subgrantee / owner of the subject property and shall not be subject to copyright protection. The rights to any invention which is developed in the course of this Agreement shall be the property of the Subgrantee/subject property owner.
- 1.6 The consultant and its sub-consultants shall maintain at least the minimum State-required Worker's Compensation Insurance for those employees who will perform the contract activity(ies) or any part of it.
- 1.7 The consultant and its sub-consultants shall maintain, if so required by law, unemployment insurance, disability insurance and liability insurance in an amount to be determined by the State which is reasonable to compensate any person, firm, or corporation who may be injured or damaged by the consultant or any sub-consultant in performing the project or any part of it.
- 1.8 The consultant and its sub-consultants shall retain all books, records, accounts, documentation, and all other materials relevant to the agreement for a period of five (5) years from date of termination of the agreement, or five (5) years from the conclusion or resolution of any and all audits or litigation relevant to the agreement and any amendments, whichever is later.
- 1.9 The consultant and its sub-consultants shall permit the State, Federal government, the Bureau of State Audits, the Department of Housing and Community Development, the City of Fort Bragg and/or their representatives, upon reasonable notice, unrestricted access to any or all books, records, accounts, documentation,

EXHIBIT 2

and all other materials relevant to the agreement for the purpose of monitoring, auditing, or otherwise examining said materials.

2. Conflict of Interest Provisions.

2.1 Conflict of Interest of Members, Officers, or Employees of Consultants, Members of Local Governing Body, or other Public Officials

Pursuant to 24 CFR 570.611, no member, officer, or employee of the Consultant, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to a CDBG-assisted activity or its proceeds, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one (1) year thereafter.

2.2 Conflict of Interest of Certain Federal Officials

No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

3. Affirmative Action:

The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the United States Department of Housing and Urban Development (HUD) and subject to 24 CFR 85.36(e). All bidders are notified that the CDBG grantee and all sub-grantees will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged, minority and women's business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, religious creed, sex, or nation origin in consideration for an award. Minority and women-owned and operated businesses are encouraged to apply.

4. Non Discrimination Clause

The Civil Rights, Housing and Community Development, and Age Discrimination Acts Assurances:

During the performance of this Agreement, the Consultant assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, handicap, religion, familial status, or religious preference, under any program or activity funded by this contract, as required by Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of 1974, as amended, the Age Discrimination Act of 1975, the Fair Housing Amendment Act of 1988, and all implementing regulations.

5. Section 3 Clauses: The Training, Employment, and Contracting Opportunities for Business and Lower Income Persons Assurance of Compliance

EXHIBIT 2

- 5.1 The work to be performed under this Agreement is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Recipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of Section 3 covered assistance to Section 3 residents in other order of priority provided in 24 CFR 135.34(a)(2).
- 5.2 The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- 5.3 The consultant will include these Section 3 clauses in every contract and subcontract for work in connection with the project and will, at the direction of the State or City, take appropriate action pursuant to the contract upon a finding that any consultant or sub-consultant is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135 and will not let any contract unless the Consultant or consultant or sub-consultant has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- 5.4 Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Agreement shall be a condition of the Federal financial assistance provided to the project, binding upon the consultant, its successors, and assigns. Failure to fulfill these requirements shall subject the consultant and its sub-consultants, its successors, and assigns to those sanctions specified by the grant or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

6. Equal Opportunity

During the performance of this Contract, the Contractor agrees as follows:

- 6.1 The Contractor with comply with Executive Order 11246 of September 24, 1965 entitled Equal Employment Opportunity as amended by Executive Order 11375 of October 1967 as supplemented in Department of Labor regulations (41 CFR chapter 60).
- 6.2 The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion, transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City Setting forth the provisions of this nondiscrimination clause.

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- 6.3 The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.
- 6.4 The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 6.5 The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 6.6 In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No.11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No.11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 6.7 The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- 6.8 The Contractor shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.
- 6.9 Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.
- 6.10 Whenever the Contractor or subcontractor has a collective bargaining agreement or other Contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and

EXHIBIT 2

policies affecting compliance as the Secretary of Labor may prescribe: Provided, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

- 6.11 The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.
- 6.12 The Contractor will cause the foregoing provisions to be inserted in all subcontracts for work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

7. Rehabilitation Act of 1973 and the "504 Coordinator"

The Consultant further agrees to implement the Rehabilitation Act of 1973, as amended, and its regulations, 24 CFR Part 8, including, but not limited to, for Consultants with fifteen(15) or more permanent full or part time employees, the local designation of a specific person charged with local enforcement of this Act, as the "504 Coordinator."

8. Disadvantaged/Minority/Women Business Enterprise Federal Regulatory Requirements Under 24 CFR 85.36(e):

The Contractor will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

Affirmative steps shall include:

- 8.1 Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- 8.2 Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- 8.3 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- 8.4 Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

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8.5 Using the services/assistance of the Small Business Administration (SBA), and the Minority Business Development Agency (MBDA) of the Department of Commerce.

9. Copeland "Anti-Kickback" Act (18 U.S.C. 874)

Contractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

10. Compliance with Clean Air Act and Clean Water Act.

Contractor shall comply with all applicable standards, orders and requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)).

10.1 Contractor shall comply with all applicable standards, orders and requirements issued under Section 508 of the Clean Air Act (33 U.S.C. 1368).

10.2 Contractor shall comply with Executive Order 11738 and Environmental Protection Agency regulations (40 CFR Part 15).

11. Compliance with Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871)

The Contractor shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

12. Prevailing Wages

12.1 Where funds provided through this Agreement are used for construction work, or in support of construction work, the Consultant shall ensure that the requirements of California Labor Code (LC), Chapter 1, commencing with Section 1720, Part 7 (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.

12.2 For the purposes of this requirement "construction work" includes, but is not limited to rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this Agreement. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "construction contract"). Where the construction contract will be between the Consultant and a licensed building contractor, the Consultant shall serve as the "awarding body" as that term is defined in the Labor Code. Where the Consultant will provide funds to a third party that will enter into the construction contract with a licensed building contractor, the third party shall serve as the "awarding body." Prior to any disbursement of funds, including but not limited to release of any final retention payment, the Department may require a certification from the awarding body that prevailing wages have been or will be paid.

13. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330)

Contractor will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). Requires the contracting officer to insert the clauses set forth in 29 CFR Part 5, Construction contracts awarded by grantees and subgrantees in excess of \$2000,

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and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers).

14. Bonus or Commission, Prohibition Against Payments of

The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of:

- A. Obtaining the Department's approval of the application for such assistance; or
- B. The Department's approval of the applications for additional assistance; or
- C. Any other approval or concurrence of the Department required under this Agreement, Title I of the Housing and Community Development Act of 1974, or the State regulations with respect thereto; provided, however, that reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

15. Labor Standards—Federal Labor Standards Provisions

Contractor shall comply with all provisions contained in the form HUD-1040, Federal Labor Standards Provisions. The Consultant shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of:

- 15.1 Davis-Bacon Act (40 U.S.C. 3141-3148) requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Department of Labor and are issued in the form of federal wage decisions for each classification of work. The law applies to most construction, alteration, or repair contracts over \$2,000.
- 15.2 "Anti-Kickback Act of 1986" (41 U.S.C. 51-58) prohibits any person from:
 - (1) providing, attempting to provide, or offering to provide any kickback;
 - (2) soliciting, accepting, or attempting to accept any kickback; or
 - (3) including directly or indirectly, the amount of any kickback prohibited by clause (1) or (2) in the contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in the contract price charged by a prime contractor to the United States.
- 15.3 Contract Work Hours and Safety Standards Act - CWHSSA (40 U.S.C. 3702) requires that workers receive "overtime" compensation at a rate of one to one-half (1-1/2) times their regular hourly wage after they have worked forty (40) hours in one week.
- 15.4 Title 29, Code of Federal Regulations, Subtitle A, Parts I, 3 and 5 are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

16. Labor Standards—State Labor Standards Provisions

State prevailing wage rates shall apply when the State wage rate is higher than the Federal wage rate. All contractors and subcontractors are subject to the application of Section 1720

EXHIBIT 2

et seq. of the California Labor Code which details the regulations and procedures governing the payment of State prevailing wages.

All contractors and subcontractors are subject to the provisions of Section 3700 of the California Labor Code which requires that every employer be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the code.

All contractors and subcontractors are subject to the provisions of Sections 1810-1814 of the California Labor Code which provide that the maximum hours a worker is to be employed is limited to eight hours a day and 40 hours a week and the contractor or subcontractor shall forfeit, as a penalty, \$25 for each worker employed in the execution of the contract for each calendar day during which a worker is required or permitted to labor more than eight hours in any calendar day or more than 40 hours in any calendar week and is not paid overtime.

Section 1815 of the California Labor Code requires that notwithstanding the provisions of Sections 1810-1814, employees of contractors who work in excess of eight hours per day and 40 hours per week shall be compensated for all hours worked in excess of eight hours per day at not less than 1½ times the basic rate of pay.

17. Anti-Lobbying Certification

The consultant shall require that the language included in the Consultant's/Sub-consultant's Certification concerning Anti-Lobbying form be included in all subcontracts entered into in connection with this activity and that consultant and all subconsultants shall certify and disclose per the requirements of that form.

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CITY OF FORT BRAGG
416 North Franklin Street
Fort Bragg, California 95437

DISADVANTAGED/MINORITY/WOMEN BUSINESS ENTERPRISE FEDERAL REGULATORY REQUIREMENTS UNDER 24 CFR 85.36(E)

Pursuant to HUD reporting requirements for CDBG recipients and subrecipients, all contractors and subcontractors must submit the following information to the City of Fort Bragg for annual CDBG reporting:

1. Is Consultant's business Women Owned? ☐ Yes ☐ No

A woman-owned business enterprise (WBE) is defined as a business that is at least 51% owned, operated and controlled on a daily basis by one or more (in combination) female American citizens.

2. Is Consultant's business a Section 3 Business? ☐ Yes ☐ No

Section 3 businesses are those that can provide evidence of meeting one of the following three criteria:

a) 51 percent or more owned by Section 3 residents; or

b) At least 30 percent of its full time employees include persons that are currently Section 3 residents, or were Section 3 residents within three years of the date of first hire*; or

c) Provides evidence, as required, of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to businesses that meet the qualifications of a) or b) above.

3. Consultant's Employer Identification Number: _____

4. Consultant's business Racial/Ethnic Code: _____

CODES:

11-White	16-American Indian/Alaskan Native & White
12-Black/African American	17-Asian & White
13-Asian	18-Black/African American & White
14-American Indian/Alaskan American	19-American Indian/Alaskan Native & Black/African Amer.
15-Native Hawaiian/other Pacific Islander	20-Other Multi-Racial

5. Will any subcontractors be hired by consultant in order to accomplish the contract scope of work? ☐ Yes ☐ No

If YES, list known subcontractors: _____
(use additional page if needed)

If YES, a copy of this form must be provided to each subcontractor and submitted to the City of Fort Bragg within 10 days of contract/subcontract date.

Signed _____
(Contractor representative)

Company name: _____

By: _____
(Print Name and Title)

Date: _____

EXHIBIT 2

CITY OF FORT BRAGG
416 North Franklin Avenue
Fort Bragg, California 95437

CONSULTANT'S/SUB-CONSULTANT'S CERTIFICATION CONCERNING ANTI-LOBBYING

The Consultant shall require that the language of this certification be included in all contracts or subcontracts entered into in connection with this grant activity(ies) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and no more than \$100,000 for such failure. "The undersigned certifies, to the best of his or her knowledge or belief, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit the "Disclosure of Lobbying Activities" form in accordance with its instructions.

(Consultant/Sub-consultant)

By _____
Signature

Typed Name and Title

Date

EXHIBIT 2

DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action: <input type="checkbox"/> a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application b. initial award c. post-award	3. Report Type: <input type="checkbox"/> a. initial b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known Congressional District, if known	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable _____	
8. Federal Action Number, if known:	9. Award Amount, if known:	
10. a. Name and Address of Lobby Entity (If individual, last name, first name, MI)	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI)	
(attach Continuation Sheet(s) if necessary)		
11. Amount of Payment (check all that apply) \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment (check all that apply) <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____	
12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11: (attach Continuation Sheet(s) if necessary)		
15. Continuation Sheet(s) attached: Yes <input type="checkbox"/> No <input type="checkbox"/>		
16. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		
Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		

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INSTRUCTIONS FOR COMPLETION OF DISCLOSURE OF LOBBYING ACTIVITIES FORM

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of covered Federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered Federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence, the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant. or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

EXHIBIT 2

- (b) Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
 12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
 13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
 14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with Federal officials. Identify the Federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
 15. Check whether or not a continuation sheet(s) is attached.
 16. The certifying official shall sign and date the form, print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

EXHIBIT 2

CITY OF FORT BRAGG
416 North Franklin Avenue
Fort Bragg, California 95437

CONSULTANT'S CERTIFICATION CONCERNING CONFLICT OF INTEREST

By submitting its proposal the consultant certifies as follows:

I am aware and in compliance with the following provisions regarding Conflict of Interest of Consultants:

1. Conflict of Interest of Members, Officers, or Employees of Contractors, Members of Local Governing Body, or other Public Officials

Pursuant to 24 CFR 570.611, no member, officer, or employee of the City, or its designees or agents, no member of the governing body of the locality in which the project is situated, and no other public official of such locality or localities who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to a CDBG-assisted activity or its proceeds, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one (1) year thereafter.

2. Conflict of Interest of Certain Federal Officials

No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Contract or to any benefit to arise from the same.

Signed _____
(Consultant)

By _____
Print Name and Title

Date: _____

EXHIBIT 2

STATE OF CALIFORNIA
Department of Housing and Community Development
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) Program

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 24 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

(BEFORE COMPLETING THIS CERTIFICATION, READ INSTRUCTIONS BELOW)

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Grant Number: _____

Name of Participant: _____

Address of Participant: _____

Name and Title of Authorized Representative	Signature	Date
<p>1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.</p> <p>2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.</p> <p>3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.</p> <p>4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.</p> <p>5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.</p> <p>6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.</p> <p>7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may check the non-procurement List.</p> <p>8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.</p> <p>9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.</p>		