



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Meeting Agenda City Council

**THE FORT BRAGG CITY COUNCIL MEETS CONCURRENTLY
AS THE FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT
NO. 1 AND THE FORT BRAGG REDEVELOPMENT SUCCESSOR
AGENCY**

Monday, June 10, 2024

6:00 PM

Town Hall, 363 N. Main Street and Via Video
Conference

Amended

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

COUNCILMEMBERS PLEASE TAKE NOTICE

Councilmembers are reminded that pursuant to the Council policy regarding use of electronic devices during public meetings adopted on November 28, 2022, all cell phones are to be turned off and there shall be no electronic communications during the meeting. All e-communications such as texts or emails from members of the public received during a meeting are to be forwarded to the City Clerk after the meeting is adjourned.

ZOOM WEBINAR INVITATION

This meeting is being presented in a hybrid format, both in person at Town Hall and via Zoom.

You are invited to a Zoom webinar.

When: Jun 10, 2024 06:00 PM Pacific Time (US and Canada)

Topic: City Council Meeting

Please click the link below to join the webinar:

<https://us06web.zoom.us/j/89094899969>

*Or Telephone: 1 669 444 9171 US (*6 mute/unmute, *9 raise hand)*

Webinar ID: 890 9489 9969

To speak during public comment portions of the agenda via zoom, please join the meeting and use the raise hand feature when the Mayor or Acting Mayor calls for public comment on the item you wish to address.

CLOSED SESSION REPORT

AGENDA REVIEW

1. MAYOR'S RECOGNITIONS AND ANNOUNCEMENTS

- 1A. [24-692](#) National Pollinator Week Proclamation

Attachments: [11- National Pollinator Week](#)

- 1B. [24-694](#) Juneteenth Freedom Day Proclamation

Attachments: [13- Juneteenth Freedom Day](#)

- 1C. [24-805](#) Mendocino Coast Humane Society Presentation

2. PUBLIC COMMENTS ON: (1) NON-AGENDA, (2) CONSENT CALENDAR & (3) CLOSED SESSION ITEMS

MANNER OF ADDRESSING THE CITY COUNCIL: All remarks and questions shall be addressed to the City Council; no discussion or action will be taken pursuant to the Brown Act. No person shall speak without being recognized by the Mayor or Acting Mayor. Public comments are restricted to three (3) minutes per speaker.

TIME ALLOTMENT FOR PUBLIC COMMENT ON NON-AGENDA ITEMS: Thirty (30) minutes shall be allotted to receiving public comments. If necessary, the Mayor or Acting Mayor may allot an additional 30 minutes to public comments after Conduct of Business to allow those who have not yet spoken to do so. Any citizen, after being recognized by the Mayor or Acting Mayor, may speak on any topic that may be a proper subject for discussion before the City Council for such period of time as the Mayor or Acting Mayor may determine is appropriate under the circumstances of the particular meeting, including number of persons wishing to speak or the complexity of a particular topic. Time limitations shall be set without regard to a speaker's point of view or the content of the speech, as long as the speaker's comments are not disruptive of the meeting.

BROWN ACT REQUIREMENTS: The Brown Act does not allow action or discussion on items not on the agenda (subject to narrow exceptions). This will limit the Council's response to questions and requests made during this comment period.

WRITTEN PUBLIC COMMENTS: Written public comments received after agenda publication are forwarded to the Councilmembers as soon as possible after receipt and are available for inspection at City Hall, 416 N. Franklin Street, Fort Bragg, during normal business hours. All comments will become a permanent part of the agenda packet on the day after the meeting or as soon thereafter as possible, except comments that are in an unrecognized file type or too large to be uploaded to the City's agenda software application. Public comments may be submitted to City Clerk Diana Sanchez, dsanchez@fortbragg.com

3. STAFF COMMENTS

4. MATTERS FROM COUNCILMEMBERS

5. CONSENT CALENDAR

All items under the Consent Calendar will be acted upon in one motion unless a Councilmember requests that an individual item be taken up under Conduct of Business.

- 5A. [24-732](#) Accept Bainbridge Park Playground Replacement Project as Complete and Direct City Clerk to File Notice of Completion

Attachments: [Notice of Completion 2024](#)

- 5B.** [24-801](#) Approve Release of Request for Proposals (RFP) for the Reservoir Design and the Preparation of an Environmental Impact Report Supporting Reservoir Construction and Community Forest Development for the Reservoir Project
- Attachments:** [RFP Reservoir Design](#)
[RFP Reservoir Environmental](#)
[Exhibit A - Standard PSA](#)
- 5C.** [24-806](#) Adopt Resolution of the Fort Bragg City Council Approving Professional Services Agreement with Dudek for On-call, As-needed Expertise to Assist City with LCP 22-07 Grant Project, and Authorizing the City Manager to Execute Contract (Amount Not To Exceed \$90,000; Account 337-5080-0630)
- Attachments:** [RESO Dudek](#)
[RESO Exhibit A](#)
[Dudek Contract](#)
[Dudek Contract Exhibit B](#)
- 5D.** [24-803](#) Adopt City Council Resolution Approving Budget Amendment 2013/24-17 for the Raw Water Line Replacement Project and Amend Fiscal Year 2023-24 Budget (Amount Not to Exceed \$6,518,087)
- Attachments:** [RESO Raw Water Budget Amendment](#)
[EX A - Budget Amendment 2023/24-17](#)
- 5E.** [24-804](#) Adopt Resolution of the Fort Bragg City Council Accepting the Qualified Consultant List for As-Needed, On-Call Professional Services (Active Through December 2026) to Assist with LCP-22-07 Grant Project (Account No. 337-5080-0630)
- Attachments:** [RESO Noyo Harbor Qualified Consultants](#)
[Exhibit A](#)
- 5F.** [24-785](#) Adopt Resolution of Fort Bragg City Council Authorizing an Application for Grant Funding by the Bureau of Reclamation's WaterSMART Planning and Project Design FY 2024 for the Water Storage Resilience Project (Reservoir Project, Project WTR-00024)
- Attachments:** [RESO BR WaterSmart Grant Authorization](#)
- 5G.** [24-786](#) Adopt Resolution of the Fort Bragg City Council Approving Parcel Map for Minor Subdivision 1-23 (DIV 1-23); Carlos and Heather Franco (Owner/Applicant); Minor Subdivision of a 0.7 Acre Parcel Into Three Parcels of 10,664, 12,119, and 7,998 Square Feet and Accepting the 5 Foot Wide Public Utility Easement and Parcel "A" as Shown on the Parcel Map
- Attachments:** [RESO Franco Subdivision](#)
[Parcel Map](#)
[Public Comment 5G](#)

- 5H. [24-788](#) Consider Adoption of City Council Resolution Approving Budget Amendment 2023/24-18 for the Fort Bragg Special Election Held on November 7, 2023 (Amount not to Exceed \$33,988.00, Account No.110-4110-0315)

Attachments: [RESO 2023 Election Budget Amendment](#)
[Exhibit A](#)
[Special Election Invoice 2023](#)

- 5I. [24-802](#) Approve Minutes of May 28, 2024

Attachments: [CC2024-05-28 City Council](#)

6. DISCLOSURE OF EX PARTE COMMUNICATIONS ON AGENDA ITEMS

7. PUBLIC HEARING

When a Public Hearing has been underway for a period of 60 minutes, the Council must vote on whether to continue with the hearing or to continue the hearing to another meeting.

- 7A. [24-793](#) Receive Report, Conduct Public Hearing, and Consider Adoption of City Council Resolution Approving Contract with Syserco Energy Solutions Inc. for the Purchase and Installation of Solar Power at Multiple City Facilities; Exempt from CEQA Pursuant to Public Resource Code 21080.35

Attachments: [Solar PV Staff Report](#)
[Solar PV Resolution](#)
[Presentation-Solar PV](#)
[Energy Services Contract](#)
[Exhibit A - Energy Services Proposal](#)

8. CONDUCT OF BUSINESS

- 8A. [24-787](#) Receive Report and Consider Adoption of City Council Resolution Approving the Contract with GOC Construction, for the Replacement of the Fire Station Roof, City Project PWP-00138; Authorizing City Manager to Execute Contract (Amount Not to Exceed \$177,430.00); Authorizing Budget Amendment 2023/24-16; and Finding the Project Exempt from CEQA under 14 CCR 15301

Attachments: [061024 GOC Fire Station Roof Award](#)
[Att 1 - RESO Fire Station Roof](#)
[Att 2 - GOC Fire Station Quote](#)
[Att 3 - Budget Amendment 2023-24-16](#)
[Att 4 - GOC Contract](#)
[Att 5 - Fire Station Bid Opening](#)

8B. [24-769](#) Approve Purchase Agreement with Oneka Technologies for the Oneka Desalination Buoy Project, and Authorizing City Manager to Execute Agreement

- Attachments:** [06102024 Oneka Staff Report](#)
[Oneka Purchase agreement](#)
[Presentation Oneka](#)
[Reso Oneka](#)

8C. 24-812 Continuation of Fiscal Year 2025 Budget Workshop and Provide Direction to Staff

9. CLOSED SESSION

ADJOURNMENT

The adjournment time for all Council meetings is no later than 10:00 p.m. If the Council is still in session at 10:00 p.m., the Council may continue the meeting upon majority vote.

**NEXT REGULAR CITY COUNCIL MEETING:
6:00 P.M., MONDAY, JUNE 24, 2024**

STATE OF CALIFORNIA)
)ss.
COUNTY OF MENDOCINO)

I declare, under penalty of perjury, that I am employed by the City of Fort Bragg and that I caused this agenda to be posted in the City Hall notice case on June 7, 2024.

Amber Weaver
City Clerk

NOTICE TO THE PUBLIC:

DISTRIBUTION OF ADDITIONAL INFORMATION FOLLOWING AGENDA PACKET DISTRIBUTION:

- *Materials related to an item on this Agenda submitted to the Council/District/Agency after distribution of the agenda packet are available for public inspection upon making reasonable arrangements with the City Clerk for viewing same during normal business hours.*
- *Such documents are also available on the City of Fort Bragg’s website at <https://city.fortbragg.com> subject to staff’s ability to post the documents before the meeting.*

ADA NOTICE AND HEARING IMPAIRED PROVISIONS:

It is the policy of the City of Fort Bragg to offer its public programs, services and meetings in a manner that is readily accessible to everyone, including those with disabilities. Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities.

If you need assistance to ensure your full participation, please contact the City Clerk at (707) 961-2823. Notification 48 hours in advance of any need for assistance will enable the City to make reasonable arrangements to ensure accessibility.

This notice is in compliance with the Americans with Disabilities Act (28 CFR, 35.102-35.104 ADA Title II).



City of Fort Bragg

416 N Franklin Street
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Text File

File Number: 24-692

Agenda Date: 6/10/2024

Version: 1

Status: Mayor's Office

In Control: City Council

File Type: Proclamation

Agenda Number: 1A.

National Pollinator Week Proclamation

PROCLAMATION
National Pollinator Week
June 17-23, 2024

WHEREAS, pollinator species such as thousands of species of bees are essential partners in producing much of our food supply; and

WHEREAS, pollinator species provide significant environmental benefits that are necessary for maintaining healthy, diverse urban and suburban ecosystems; and

WHEREAS, pollination plays a vital role for the trees and plants of our community, enhancing our quality of life, and creating recreational and economic development opportunities; and

WHEREAS, in the last year, the City of Fort Bragg has managed urban landscapes and public lands that include many municipal parks and greenways, as well as wildlife habitats; and

WHEREAS, the City of Fort Bragg encourages developers and residents to use bee friendly landscaping and promote wise conservation stewardship, including the protection of pollinators and maintenance of their habitats in urban and suburban environments;

NOW, THEREFORE, I, Bernie Norvell, Mayor of the City of Fort Bragg, on behalf of the entire City Council, do hereby proclaim the Week of June 17-23, 2024 as National Pollinator Week in the City of Fort Bragg and urge all citizens to recognize this observance.

SIGNED this 10th day of June, 2024

BERNIE NORVELL, Mayor

ATTEST:

Diana Sanchez, City Clerk



City of Fort Bragg

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Text File

File Number: 24-694

Agenda Date: 6/10/2024

Version: 1

Status: Mayor's Office

In Control: City Council

File Type: Proclamation

Agenda Number: 1B.

Juneteenth Freedom Day Proclamation

PROCLAMATION
JUNETEENTH DAY

WHEREAS, Juneteenth, also known as “Juneteenth Independence Day,” “Emancipation Day,” “Emancipation Celebration” and “Freedom Day,” is the oldest known celebration commemorating the ending of slavery in the United States and has been celebrated by the Black Community for over 150 years; and

WHEREAS, President Abraham Lincoln issued the Emancipation Proclamation on January 1, 1863, declaring that “all persons held as slaves within the rebellious states are, and henceforward shall be free,” paving the way for the passing of the thirteenth amendment which formally abolished slavery in the United States of America; and

WHEREAS, Juneteenth, or June 19, 1865, is considered the date when the last slaves in America were freed when General Gordon Granger rode into Galveston, Texas, and issued General Order No. 3, almost two and a half years after President Lincoln issued the Emancipation Proclamation; and

WHEREAS, June 19 symbolizes freedom, celebrates the abolishment of slavery, reminds all Americans of the significant contributions of African Americans to our society, and is a time for reflection and rejoicing, assessment, self-improvement, and planning for the future; and

WHEREAS, Juneteenth celebrations are a tribute to those African Americans, then and now, who fought so long and worked so hard to make the dream of equality a reality; and

WHEREAS, President Biden called upon Americans to recommit together to the work of equity, equality, and justice; and commit together to eradicate systemic racism that still undermines our founding ideals and collective prosperity;

NOW THEREFORE, I, Bernie Norvell, Mayor of the City of Fort Bragg, on behalf of the entire City Council, do hereby proclaim Juneteenth Day in the City of Fort Bragg and urge all residents to become more aware and continually educated on the significance of this celebration in Black History and in the heritage of our nation.

SIGNED this 10th day of June, 2024

BERNIE NORVELL, Mayor

ATTEST:

Diana Sanchez, City Clerk



No. 13-2024



City of Fort Bragg

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Text File

File Number: 24-805

Agenda Date: 6/10/2024

Version: 1

Status: Mayor's Office

In Control: City Council

File Type:
Recognition/Announcements

Agenda Number: 1C.

Mendocino Coast Humane Society Presentation



City of Fort Bragg

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Text File

File Number: 24-732

Agenda Date: 6/10/2024

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Certificate of
Completion

Agenda Number: 5A.

Accept Bainbridge Park Playground Replacement Project as Complete and Direct City Clerk to File Notice of Completion

RECORDING REQUESTED BY:

City of Fort Bragg

AND WHEN RECORDED, RETURN TO:

City of Fort Bragg
416 North Franklin Street
Fort Bragg, California 95437
Attention: Diana Sanchez, City Clerk

The City is exempt from recordation fees per Government Code §27383.

NOTICE OF COMPLETION

1. The undersigned is the duly authorized agent of the owner, City of Fort Bragg.
2. The full name of the owner is City of Fort Bragg, a municipal corporation.
3. The nature of the interest of the owner is a [fee interest, a right-of-way, an easement, etc.].
4. This project was constructed in accordance with the Construction Agreement entitled **Bainbridge Park Playground Replacement Project, Project Number PWP-00096** dated February 14, 2023.
5. The name of the contractor of the improvement work is Akeff Construction Services Inc. 32205 N. Mitchell Creek Rd., Fort Bragg, California 95437. The contract was awarded to this firm on February 13, 2023, pursuant to Resolution 4658-2023 by the Fort Bragg City Council.
6. The address of the owner is City of Fort Bragg, 416 North Franklin Street, Fort Bragg, California 95437.
7. On February 10, 2024, Chantell O’Neal, Assistant Director of Engineering, performed a final inspection and recommends Council accept work as complete.

State of California)
County of Mendocino)

I hereby certify under penalty of perjury that the forgoing is true and correct:

City Council Approval

CITY OF FORT BRAGG

(Date)

By: _____
Diana Sanchez
City Clerk

PROOF OF SERVICE BY MAIL
(Code of Civil Procedure Sections 1013a, 2015.5)

I am over the age of 18 years, employed in the County of Mendocino, and not a party to the within action; my business address is Fort Bragg City Hall, 416 North Franklin Street, Fort Bragg, California 95437.

On _____, 2024, I served the attached document by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, via Certified Mail, Return Receipt Requested, in the United States mail at Fort Bragg, California addressed as follows:

Executed on _____, 2024, at Fort Bragg, Mendocino County, California.

I declare, under penalty of perjury, that the foregoing is true and correct.

ATTEST:

Diana Sanchez
City Clerk



City of Fort Bragg

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Text File

File Number: 24-801

Agenda Date: 6/10/2024

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Scope of Work

Agenda Number: 5B.

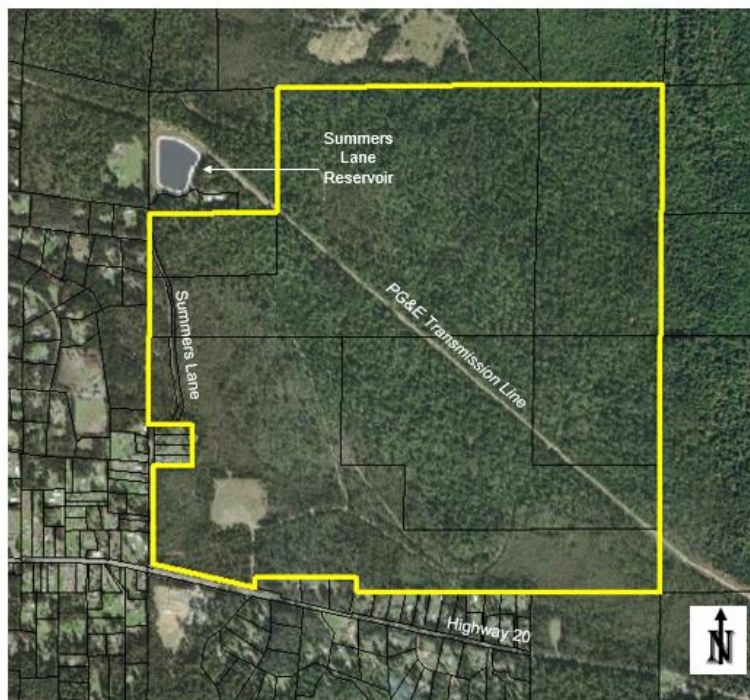
Approve Release of Request for Proposals (RFP) for the Reservoir Design and the Preparation of an Environmental Impact Report Supporting Reservoir Construction and Community Forest Development for the Reservoir Project

The City released the RFP for the combined reservoir design and environmental studies on May 25, 2023 after approval of Council at the May 22 meeting, but only received one proposal despite sending it to numerous firms, and the cost was significantly higher than anticipated. It is common practice for a consulting firm to include a significant mark-up of subcontracted costs, which can be avoided by separating the tasks. The new RFPs have separated the environmental studies from the engineering design work, which should result in significant cost savings to the City. It may also provide more options available for the City. The City has reached out to additional firms to help ensure a good response to this new solicitation.



CITY OF FORT BRAGG
REQUEST FOR PROPOSALS FOR RESERVOIR DESIGN
FORT BRAGG RESERVOIR PROJECT FOR WATER STORAGE RESILIENCE
PROJECT WTR-00024
30900 HIGHWAY 20

Figure 1



Not to Scale

The City of Fort Bragg (City) is seeking proposals from qualified consultants interested in contracting with the City to design 3 (three) 45-acre-foot reservoirs within a fenced compound (Project) and to prepare construction drawings and contract documents supporting their construction. The reservoirs will occupy approximately 30 acres of land within a forested area purchased by the City, which is comprised of six (6) parcels and totals 582 acres. These parcels are located adjacent to the City's Summers Lane Reservoir, which is an existing 45-acre-foot reservoir. (Figure 1). The proposed reservoir compound shall also include a caretaker unit and a storage building. The proposed caretaker unit will be constructed in the disturbed area in the northwest portion of the property, and a fenced parking lot and pit toilets will be constructed in the highly disturbed area off Highway 20.

This project is critical to ensure a reliable supply of water to residents during periods of drought. The reservoirs will be filled during winter with water pumped up from the Noyo River or via gravity flow from the Waterfall Gulch source when flows are high. Water will be drawn from the reservoirs during summer when flows in the channels are low, reducing the impact on aquatic species. The water will flow primarily by gravity to the City's Water Treatment Plant.

The new reservoirs shall be similar to the existing Summers Lane Reservoir, which has a depth of up to 18 ft., fill heights of up to 16 ft., with 2:1 external and 3:1 internal side slopes. Construction of new piping to and from the reservoirs and conveyance piping to existing infrastructure will be needed. The projects proposed dam heights and storage capacities should be such that the project does not fall within the jurisdiction of the California Division of Safety of Dams.

It is assumed that the reservoirs will need to be lined with HDPE due to high groundwater and that floating covers will be required to reduce evaporation and algae growth. The design shall consider the future installation of floating solar panels on at least one of the proposed reservoirs. At least one of the reservoirs shall be accessible for a helicopter to draw water from for fire suppression.

The site includes the endemic and rare sensitive natural habitat of the Mendocino Cypress Woodland, as mapped by the California Department of Fish and Wildlife, as well as the more traditional redwood forest associations. Preliminary biologic studies to optimize reservoir siting and minimize impacts to special status species have recently been completed. The RFP for the Environmental Impact Report will be issued in parallel with this design RFP and the winning consultants for both contracts will be expected to work closely together to achieve the project objectives. The overall project is anticipated to include mitigation measures for impacts due to project construction, and the City intends to use the remainder of the property to create a community forest.

A. SCOPE OF WORK

The City intends to retain a qualified and committed professional engineering consultant for the design of the new reservoir property, including 100% plans and specifications. The successful consultant shall demonstrate the availability of qualified personnel to perform the required engineering services. Consultants shall develop an appropriate work plan for design services and will utilize that work plan to successfully develop construction documents that provide sufficient information to contractors to adequately prepare and submit accurate bid proposals while minimizing construction change orders. For all work products, the engineering consultant shall perform all work necessary to define the Project and produce all necessary documents required to obtain approval of the design from the City. The City will be seeking the services of an environmental firm for the preparation of the Environmental Impact Report (EIR), simultaneous to the design, so frequent coordination with the selected firm will be required.

Listed below is a general description of the scope of services/tasks that are anticipated to comprise this Project. Proposing consultants are encouraged to expand upon this outline and recommend additional value-based services as part of the approach while also being cognizant of costs.

Task 1 – Meetings and Project Management

1. Project Administration.
2. Project Quality Assurance/Quality Control Program.
3. Progress Meetings and Reporting. Project progress meetings and reporting will include virtual meetings through Zoom or mutually agreed upon locations between City staff and the consultant. Meetings shall be held, as often as deemed necessary and at a minimum, the consultant shall report monthly on work accomplished in the previous month and the status of the project progress, project schedule, project budget, and any modifications. The Consultant is expected to work in regular coordination with the Environmental Consulting team, especially for the timing and phasing of deliverables. Project Team meetings with other project stakeholders will be held as needed. Minutes of all the meetings will also be prepared by the Consultant and furnished to attendees and concerned parties within five working days of the meeting.
4. Jurisdictional Agency Coordination, as needed.
5. Design Review Workshops/Public Outreach. Up to two (2) meetings are to be held either virtually or in person.
6. Preparation of Presentations and participation at Meetings.

Task 2 – Preliminary Engineering Report

Develop and submit a preliminary engineering report (PER) with sufficient information to complete environmental documentation and initiate detailed design. At a minimum, the PER shall:

1. Recommend a preferred site layout, with emphasis on biological and preliminary geotechnical evaluations. Designate proposed areas for development, conservation, and mitigation.
2. Provide reservoir site plan, and profile – complete with site access, parking, utilities, fencing, and drainage information.
3. Provide a project description sufficient to support the project environmental documentation for CEQA. NEPA may be necessary depending on grant funding.
4. Summarize primary design elements.
5. Summarize permits required for the Project and include a workflow and schedule to obtain the permits. Coordinate with Environmental Firm for permit listing.
6. Prepare construction cost estimates for the proposed reservoirs and site layout and develop innovative solutions to minimize cost impacts.
7. Identify construction access and potential equipment and material lay-down areas.
8. Prepare an anticipated schedule for construction, including the number of working days, phasing, and potential mitigations related to environmental seasonality.

Task 3 – Survey

Following approval of the Preliminary Engineering Report by the City, a survey of the proposed reservoir compound area, secondary caretaker unit area, and recommended conveyance piping alignment shall be completed. The survey work shall cover all areas of proposed

disturbance and include the following:

1. One-foot contours
2. 50-ft survey corridor along the proposed pipe centerline
3. Tree size and type
4. Identify all affected easements, facilities, and property boundaries
5. Identification of all visible above-grade features and obstructions to the proposed piping, as well as any marked, below-grade utilities
6. Survey limits to include sufficient data for environmental compliance (CEQA)

Deliverables:

- Survey data: Raw data points and processed data
- Topographic/existing conditions maps, PDF and digital format

Task 4 – Geotechnical

Geotechnical investigation for the Project shall be designed to collect data that is sufficient to ensure optimum project design for the site conditions. **Deliverable** will be a geotechnical report.

Task 5 – Environmental/CEQA Compliance Coordination

The work related to the completion of an environmental impact report for this project will be contracted separately from the design; however, the consultant is expected to be in close communication with the City and the environmental consultant throughout the project design.

Task 6 – Design

The design team will be responsible for the complete design phase culminating with design documents, plans, specifications, a schedule of bid item costs, suitable for public bidding, and construction of the work. The design shall assume that construction will be required to be compliant with “Buy America” and “American Iron and Steel”. All construction documents shall be fully compliant with all of the requirements of any funding source. Consultant is responsible for thoroughly reviewing and understanding the design and construction requirements imposed by funding sources, and to ensure they are fully incorporated into the construction documents. Consultant shall work with City staff to ensure that the contract documents reflect all the funding source requirements.

1. Design issues to be addressed:
 - a. Avoidance of special status species
 - b. Earthwork balance
 - c. Intake design
 - d. Conveyance piping
 - e. Site access, security, and drainage
 - f. Environmental SWPPP and BMPs
 - g. Construction cost containment
 - h. Maintenance Issues
2. Design deliverables: Complete detailed construction drawings, specifications to facilitate permitting, and bidding of the Project. Submit for City review at 30%, 60%, 90% and 100%. The city shall have 2 weeks to review. Completed

construction documents shall be designed and organized in such a way as to make updating them convenient and yet maintain internal consistency

- a. 60% design shall include drawings, the outline of specifications, and a preliminary cost estimate (3 sets of paper copies).
- b. 90% design shall include drawings, specifications, and cost estimate (3 sets of paper copies).
- c. Bid set (100%) shall include wet-signed drawings, wet-signed specifications, and cost estimate (1 set of paper copies plus digital).
- d. Electronic copies of plans, specifications, and estimates at each submittal stage.
- e. Drawings shall include:
 1. Civil design including reservoir compound, secondary caretaker unit, and access road
 2. Structural design
 3. Mechanical piping design
 4. Cathodic protection design
 5. Electrical and instrumentation design
 6. Landscape and irrigation design
 7. Fencing
 8. Demolition and/or timber harvest
 9. Sedimentation control and site drainage improvements design

3. Quality control strategies.

Task 7 - Project Schedule

The design schedule shall be updated to accurately reflect the current Project status and shall include coordination with the jurisdiction having authority.

1. The construction schedule shall include post-construction activities.
2. Coordinate with the County of Mendocino and other regulatory agencies as required to obtain all permits necessary for the project on behalf of the City.

Task 8 – Bidding Assistance

1. Attend a pre-bid meeting hosted by the City for prospective bidders and/or contractors and be available to answer questions.
2. Review and prepare written responses addressing technical questions submitted by the prospective bidders during the bid phase for inclusion in the bid addenda.

Task 9 - Quality Control/Quality Assurance

All submittals (plans, calculations, reports, and associated documents) shall adhere to a City approved quality assurance/quality control (QA/QC) program. The selected consultant shall identify major reviews and procedures that are specific to this Project. A successful QA/QC program is one in which the consultant does not use the City as “plan checkers” for the work.

Alternate 1 – Noyo River Crossing Lining or Replacement – A large portion of the Raw Water Line that brings untreated water to the Water Treatment Plant (WTP) is currently undergoing replacement. The Noyo River Crossing, which lies south of the WTP, needs either replacement or refurbishment via lining to ensure 1) the longevity and reliability of the system and 2) appropriate restraints are added to areas of the transmission line that were not replaced with the Raw Water Line Replacement Project. While the line currently flows via gravity to the WTP, the City plans to reverse the flow via pumping to transport water to the upstream reservoirs during periods of high river flow. The current crossing is 12” in size but is bounded on each side of the river by a 10” pipe. Please propose the most cost-effective but least environmentally damaging method of construction to accomplish those goals. Plans for the existing crossing and the adjoining portions of the Raw Water Line Replacement Project are available on request.

Alternate 2 – Culvert replacement for Segment 2 – Segment 2 of the Raw Water Line Project that is currently in construction runs from the WTP down to the Noyo River. The pipeline crosses five (5) culverts ranging in size from 12” to 30” in diameter that need replacement, and the California Department of Fish and Wildlife is requiring that the culverts be redesigned to ensure adequate capacity for stormwater as well as allowing for fish passage. Please describe the tasks and provide associated costs for all work necessary to redesign the roadway culvert system. Plans for Segment 2 of the project are available on request.

B. STANDARDS

The Project must adhere to the City and County of Mendocino design standards if applicable, regulations, policies, and procedures for all work at the time of Project advertisement. All work must be performed and work products prepared in such a fashion to be approved by the appropriate agency, i.e. County of Mendocino.

Additionally, the Project must adhere to the following:

1. Design shall comply with the latest City and County of Mendocino ordinances.
2. Digital formats for use in plan development, plats, and record drawings shall be delivered utilizing AutoCAD/Civil3D (.dwg) 2021 release or lower.
3. All electronic text document deliverables shall be in the Microsoft Office platform (Word, Excel, PowerPoint, Project, Visio, etc.) version 2016 or newer.
4. All Geographical Information System (GIS) files shall be delivered in acceptable vector spatial data formats which are geodatabase (.gdb), personal geodatabases (.mdb), and shapefiles (.dbf, .prj, .sbn, .sbx, .shp, .xml, .shx).
5. All horizontal data (X, Y coordinates) shall be delivered using the California State Plane Coordinate System (NAD 83, Zone II, feet).
6. Specifications shall be in Construction Specification Institute (CSI) format and in conformance with the City’s Standard Specifications.
7. All reports should be submitted electronically and provided in Word for review, with the final version provided in Adobe PDF format with OCR and indexed.

C. Proposal Requirements:

The proposal should be concise, well organized, and demonstrate the responders’

qualifications and experience applicable to the Project. Responses will be evaluated based on the information submitted.

1. Proposers should send a complete digital proposal, collated into one PDF document, three (3) printed copies of the completed proposals, and a cost bid so that it is received no later than 2:00 PM on July 23, 2024, to:
City of Fort Bragg
ATTN: City Clerk
416 N Franklin Street
Fort Bragg, CA 95437
cityclerk@fortbragg.com
2. Format: The proposal shall be printed on double-sided, 8.5" x 11" pages, printed on recycled and recyclable paper with removable bindings, bound in a single document, and organized in sections following the order specified under Contents.
3. Contents: Proposals shall contain the following:
 - a. Transmittal Letter: The proposal shall be transmitted with a cover letter describing the consultant's interest and commitment to the proposed Project. The letter shall include the name, title, address, and telephone number of the individual to whom correspondence and other contacts should be directed during the consultant selection process.
 - b. Firm Description: Describe your firm and list relevant information about capabilities, size, rate of services, and length of time in existence. Include the same for any sub-consultant proposed. Indicate the roles of prime and all sub-consultants.
 - c. Relevant Experience: Describe relevant experience designing reservoir and other water capital improvement projects and preparing technical specifications for public works projects for other public agencies. Indicate roles of prime and all sub-consultants
 - d. Key Personnel Qualifications: Identify key personnel who would work on the project as assigned, their respective roles, and a synopsis of relevant experience. Provide resumes of the Project Manager and other key Project team members. Resumes shall include relevant experience, proposed role, education, and licenses. The resume for each individual shall not exceed two pages in length and can be included in an appendix. For the Project Manager, provide at least three references (names and current phone numbers) from recent work (previous five years) similar in size and scope to this Project. Include a brief description of each project associated with the reference and the role and responsibility of the Project Manager. Replacement of key team members will not be permitted without prior consultation with and approval by the City. All work shall be performed under the supervision of an engineer licensed in the State of California, who has substantial experience with projects of similar size and scope
 - e. References: List of public agencies or clients for whom similar work has been

- performed, with the name, title, and phone number of a contact person. For the Project Manager, provide at least three references (names and current phone numbers) from recent work (previous five years) similar in size and scope to this Project. Include a brief description of each project associated with the reference and the role and responsibility of the Project Manager. The City may request a copy of a similar report prepared previously by the firm for another agency.
- f. Scope of Work: Explain tasks associated with the project, including how you propose to complete each task. Include a breakdown of recommended tasks, including tasks not identified above that could benefit the project.
- i. Provide a narrative that identifies key Project issues/challenges and describe the consultant's understanding of and ways to mitigate and effectively address, these key Project issues/challenges in design and during construction. Include detailed descriptions of innovative or alternative ideas and approaches to the Project design and construction in a cost-efficient manner.
 - ii. Discuss, if applicable, elements that have not been considered by the City (new ideas).
 - iii. Provide prioritization of tasks and permit requirements.
 - iv. Discuss the consultant's approach to budget control and minimizing construction change orders or how their design (approach) considers minimizing construction change.
 - v. Summarize value-engineering opportunities.
 - vi. Provide a discussion of how the QA/QC program manages sub-consultants' efforts to ensure technical accuracy and successful completion of the Project.
 - vii. Provide information summarizing measures that will be implemented to monitor the project schedule and budget.
- g. Budget and Schedule of Charges: Provide a "Not to Exceed" amount and a list of Personnel Rates, Equipment Charges, Travel Reimbursement Costs, and Job Descriptions for Personnel. Please be aware that prevailing wage rates apply to preconstruction work, such as inspection and land surveying, for public works projects.
- h. Work Schedule: Provide a schedule for the completion of work. This Project is a priority for the City's Capital Improvement Program. As such, it is imperative that the design of this Project is completed and ready to bid by January 5, 2026. Proposing consultants shall demonstrate they are capable of delivering the final bid documents to the City by this deadline. The proposing consultants shall describe the critical path items and summarize an approach that demonstrates successful completion in an expeditious fashion.
- i. Insurance: The individual or firm receiving the contract shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the

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

G. QUESTIONS

Questions regarding this solicitation shall be directed in writing to Diane O'Connor at doconnor@fortbragg.com. All inquiries shall be received by July 12, 2024. Responses to the inquiries will be posted on the City's website at www.city.fortbragg.com on July 16, 2024.

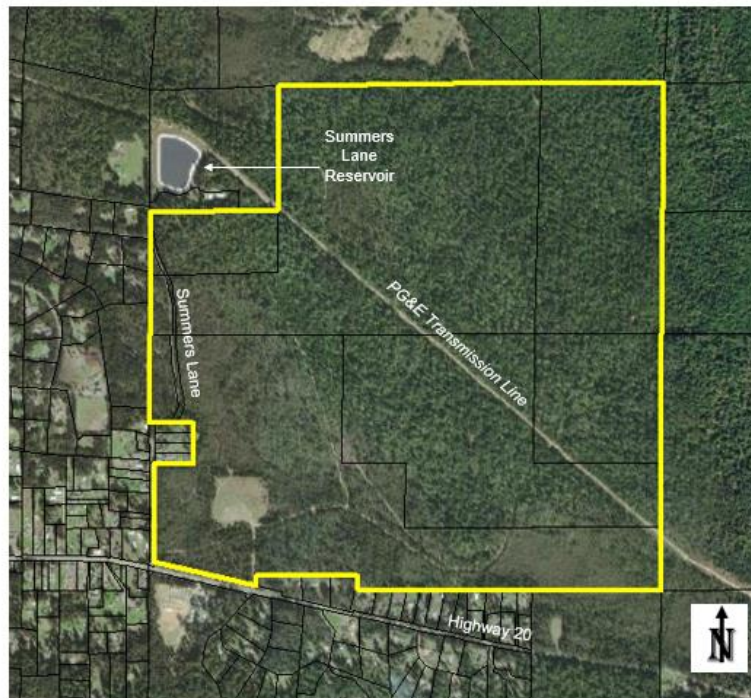
H. ATTACHMENTS

Exhibit A – City's Standard Professional Services Agreement



CITY OF FORT BRAGG
REQUEST FOR PROPOSALS FOR THE PREPARATION OF AN
ENVIRONMENTAL IMPACT REPORT FOR CONSTRUCTION OF
RESERVOIRS AND COMMUNITY FOREST
FORT BRAGG RESERVOIR PROJECT FOR WATER STORAGE RESILIENCE
PROJECT WTR-00024
30900 HIGHWAY 20

Figure 1



Not to Scale

The City of Fort Bragg (City) is seeking proposals from qualified consultants interested in contracting with the City to perform environmental work in compliance with California Environmental Quality Act (CEQA) regulations in support of the construction of 3 (three) 45-acre-foot reservoirs within a fenced compound and to prepare appropriate environmental documentation. The reservoirs will occupy approximately 30 acres of land within a forested area purchased by the City, which is comprised of 6 parcels and totals 582 acres. These parcels are located adjacent to the City's Summers Lane Reservoir, which is an existing 45-

acre-foot reservoir. (Figure 1). The majority of the parcel is intended to be developed as a community forest. The proposed Project will include environmental work supporting both the reservoir project and the early stages of development of the community forest.

The site includes the endemic and rare sensitive natural habitat of the Mendocino Cypress Woodland, as mapped by the California Department of Fish and Wildlife, as well as the more traditional redwood forest associations. Preliminary biologic studies have recently been completed to optimize reservoir siting and minimize impacts to special status species. The project is anticipated to include mitigation measures for impacts due to project construction. It will be important to the Project to clearly define areas to be used for development, conservation, and mitigation sufficiently early in the process in order to develop an appropriate environmental evaluation and documentation strategy.

Project Objectives: This project is critical to ensure a reliable supply of water to residents during periods of drought. The reservoirs will be filled during the winter months with water pumped up from the Noyo River or via gravity flow from the Waterfall Gulch source when flows are high. Water will be drawn from the reservoirs during summer months when flows in the channels are low, reducing the impact on aquatic species. The water will flow primarily by gravity to the City's Water Treatment Plant. The overall objectives herein include 1) the project is consistent with the regulatory requirements of the Lead Agency and the Responsible Agencies; 2) the project will result in a more reliable supply of water under drought conditions; 3) the project minimizes and reduces impacts to the environment by A) optimizing reservoir location and B) increasing summer and fall in-stream flows by filling the reservoirs in the winter; and 4) the projects protects sensitive species through the creation of conservation easements and a community forest.

The new reservoirs shall be similar to the existing Summers Lane Reservoir, which has a depth of up to 18 ft., fill heights of up to 16 ft., with 2:1 external and 3:1 internal side slopes. Construction of new piping to and from the reservoirs and conveyance piping to existing infrastructure will be needed. The projects proposed dam heights and storage capacities should be such that the project does not fall within the jurisdiction of the California Division of Safety of Dams. The proposed reservoir compound shall also include a caretaker unit and a storage building, and a fenced parking lot and pit toilets are proposed to be constructed in the highly disturbed area off Highway 20.

In addition to the reservoir construction, an important aspect of this project will be the creation of a community forest that will preserve and protect this unique and special woodland, while making it available to the community.

A. SCOPE OF WORK

The City intends to retain a qualified and committed professional environmental consultant. The successful consultant shall demonstrate the availability of qualified personnel to perform required environmental services. Consultants shall develop an appropriate work plan for services and will utilize that work plan to successfully develop documents that provide sufficient information to obtain project approval from the appropriate review agencies and comply with all CEQA requirements.

For all work products, the engineering consultant shall perform all work necessary to define the Project and produce all necessary documents required to obtain approval of the design from the City. In addition, the environmental consultant shall be responsible for the preparation, submittal, and approval of any permits required for construction activities.

Listed below is a general description of the scope of services/tasks that are anticipated to comprise this Project. Proposing consultants are encouraged to expand upon this outline and recommend additional value-based services as part of the approach while also being cognizant of costs.

1. **Project Planning and Management**

- a. **Document Review and Additional Information Request:** The consultant shall request and review existing documents related to the Project and project area.
- b. **Project Initiation and Scoping:** The consultant shall organize and facilitate a Project kick-off meeting with City staff and the Design Engineer to discuss the project scope, areas, design features, construction methods, and anticipated limits of disturbance, identify/confirm project purpose, needs, and objectives, discuss any areas of controversy and potential strategies; and expectations for deliverables and meetings
- c. **Meetings:** Key members of the consultant team shall participate in meetings (at minimum monthly) with City Staff and the Design Engineering Team. Meetings may take place in person or virtually. Project Team meetings with other project stakeholders will be held as needed. The consultant shall participate in up to five (5) additional meetings as determined necessary by the City (several meetings specified throughout the scope of work).
 - At least four days in advance, the consultant shall prepare the agenda and update the Project schedule for distribution and review. Minutes of each meeting shall be submitted within one week for City review.
 - The Consultant is expected to work in regular coordination with the Design Engineering team, especially for the timing and phasing of deliverables.

Deliverables: Electronic copies of meeting agendas, minutes, and action items with responsible parties and due dates.

2. **Environmental Impact Report (EIR)**

- a. **Notice of Preparation (NOP):** The consultant will prepare and submit a draft NOP for the Project. The NOP shall be prepared in conformance with State CEQA Guidelines 15082 and Federal NEPA Guidelines. It will discuss the focus of the EIR and issues that are proposed to be “scoped out” and why. The consultant will incorporate comments from the City into the draft NOP and will prepare a final version for distribution.
 - The consultant, in conjunction with the City, will develop a distribution list to facilitate public and agency noticing during the review of the draft NOP. Consultant shall develop a project mailing list with the City including the adjacent landowners.

- City Staff will circulate the NOP to the State Clearinghouse, Responsible Agencies, and other interested organizations and individuals in coordination with publication in the newspaper and filing with the clearinghouse.
- A minimum of one scoping meeting will be conducted at a city-provided facility following the circulation of the Initial Study/NOP.
- The consultant will also prepare the Notice of Completion (NOC) for filing with the State Clearinghouse.
- City staff will electronically file the NOP with the State Clearinghouse along with the NOC.

Deliverables: Electronic version of draft NOP and NOC for City review, project mailing list, electronic version of final NOP and NOC.

3. **Draft Project Description:** The consultant shall prepare and submit an electronic draft of the project description to the City for review and comment. The description shall be sufficiently detailed and contain the information necessary to conduct the impact analysis to support the EIR. Description shall include a discussion of regional and local setting, project history and background, Project purpose, need, and objectives, general project design characteristics; all known discretionary actions required by the City; important project details including construction methods and maintenance activities; and any environmental protection measures that will be incorporated into project design, construction, and operation to reduce impacts to sensitive environmental resources. The project description shall provide a list of agencies expected to use the EIR, a list of permits and other approvals that will be required a list of the environmental review and consultation requirements, and a list of all decisions that are subject to CEQA.

Deliverables: Electronic version of draft Project Description.

4. **Final Project Description:** After receiving the comments from the City, the consultant shall discuss any comments with the City and agree on revisions to the draft project description accordingly. The consultant shall incorporate agreed-upon revisions and finalize the Project Description for incorporation into the draft EIR.

Deliverables: Electronic version of final Project Description.

5. **Technical Reports:** The consultant shall conduct studies and prepare reports as necessary to identify potential impacts and mitigation measures for the appropriate environmental factors as identified in the NOP and in compliance with CEQA Guidelines.

- A preliminary biologic report has been conducted over the area proposed for the construction of the reservoirs and is available on request to supplemental biologic studies necessary for the EIR.
- A geotechnical investigation will be conducted as part of the Engineering Design RFP and will be made available to the consultant, who will determine if further geotechnical work might be needed outside of the proposed reservoir area.
- The consultant shall include a description of the scope and content of the anticipated

analysis to be performed to address each resource identified in Appendix G of the CEQA Guidelines.

- Whenever appropriate, existing information shall be used from previous environmental documentation processes or other sources.
- a. **Community Forest Technical Report:** In addition to any technical reports needed for specific chapters of the EIR, the consultant shall prepare a technical report that evaluates the property and makes recommendations on areas to be set aside for mitigation, restoration, and preservation, to assist the City in establishing the community forest. The City has retained Mendocino Land Trust (MLT) under a separate contract to assist with the community forest aspects of the project, including the acquisition of any conservation easements. The Consultant shall work with MLT to assist the City with those efforts.
- The Community Forest Technical Report shall document efforts to determine which areas of the property are most suitable for various aspects of the overall development and make recommendations such as which existing access roads should be retained or improved and which should be abandoned and restored.
 - Any areas of the property deserving of special attention or proposed to be designated for special uses should be identified in this report.
 - The Consultant should plan on organizing and actively participating in at least one public meeting to elicit public input for consideration in the planning process.
 - It is important to the City that the creation of the community forest be included as part of the overall project, however, it is anticipated that not all of the potential recommendations for development that will be discussed or recommended in the Community Forest Technical Report will be included in this first phase of community forest implementation occurring concurrent with reservoir construction.

Deliverables: Electronic version of draft technical studies and reports for City review. Final technical studies and reports will be included as attachments to the Draft EIR and the results of those technical studies will be incorporated into the Draft EIR, which will be posted to the City's website and filed, with the State Clearinghouse by City staff.

6. **Draft EIR:** Consultant shall evaluate impacts utilizing the baseline physical conditions for a threshold of significance for each topic. The significance of Project-related impacts will then be determined for the project area. The EIR shall be prepared in compliance with CEQA/NEPA statutes and guidelines, consider the appropriate environmental factors included in the NOP, and consider comments received during the public scoping process. Direct and indirect significant effects of the Project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. Analysis of project alternatives and cumulative impacts shall be included. Consultant shall provide electronic copies of the Draft EIR for in-house review and comment by staff. Consultant will revise the draft as necessary to reflect City comments. The

resulting Draft EIR will be published and circulated for agency and public review according to the provisions of the CEQA Guidelines. City anticipates at least one public comment meeting will be scheduled during the review period of the Draft EIR.

Deliverables: Electronic versions of Draft EIR (Word and PDF) that is ready for reproduction.

a. **Public Circulation and Comment Period:** The Draft EIR shall be published and circulated for agency and public review according to the provisions of CEQA Guidelines. The Consultant shall prepare the Notice of Availability (NOA) and newspaper notice, which the City will distribute. The Project mailing list shall be updated as needed and provided to the City. The city anticipates that one public comment meeting will be scheduled during the review period of the Draft EIR, and the Consultant may be required to attend one or more Public Hearings.

- The consultant is expected to prepare written responses to comments raised at hearings by members of the Public, Commissioners, or City Council members.
- Consultant shall track comments and responses using an Excel spreadsheet or similar approved form.
- Comments and responses to comments, along with any amendments or alterations to the Draft EIR made in response to those comments and the list of commenting agencies, organizations, and individuals will be published, as a separate volume of the EIR, which when combined with the Draft EIR will constitute the Final EIR.

Deliverables: Electronic version NOA and newspaper notice, updated Project mailing list, electronic version of spreadsheet of comments with notes regarding approach/response, agenda and meeting notes for meetings or hearings, including public comments received, and an electronic version of any presentations or handouts.

7. **Final EIR, CEQA Findings, and Mitigation Monitoring and Reporting Program:** The consultant shall prepare a Final EIR consistent with the CEQA statutes and Guidelines for the City's public distribution and comments. The draft CEQA/NEPA findings shall be prepared and submitted to the City for review and comment, along with the Mitigation Monitoring and Reporting Program (MMRP) as required by CEQA. The Findings will consist of information required by CEQA/NEPA, including findings of fact regarding each potentially significant environmental impact, mitigation measures, significance after mitigation, disposition of alternatives, and statement of overriding considerations (if necessary). After receiving comments, the Consultant shall produce a final version of the CEQA/NEPA Findings and the MMRP. The MMRP shall be included in the Final EIR.

Deliverables: Electronic version of Final EIR that is ready for publication. The electronic version of Findings.

8. **Notice of Determination (NOD):** The consultant shall prepare the draft and final NOD for review by the City, who will upload the final version to the Clearinghouse.

Deliverables: *Electronic version of NOD.*

9. **EIR Certification Meetings:** Attendance in support of EIR at up to two (2) City Council

meetings.

Additional Services:

- 10. Permit Acquisition** - Provide environmental services to assist in permit acquisition. Please describe how your firm can assist with environmental permit acquisition. What would be the anticipated timeline for the process?
- 11. Preparation of a Timber Harvest Plan** – Construction is anticipated to include the removal of trees, which may require a Timber Harvest Plan. Describe how your firm or sub-consultant can accomplish this task.
- 12. Supplemental work in support of the replacement or refurbishment via the lining of the Noyo River Crossing and the culvert replacements for Segment 2 of the Raw Water Line Replacement Project** – The Raw Water Line Replacement Project is replacing much of the transmission line that brings untreated water to the Water Treatment Plant (WTP) and is currently in construction. The Noyo River Crossing lies between Segments 2 and 3 of that project. The Segment 2 pipeline crosses over five (5) culverts that are in need of replacement, which requires redesign and possible upsizing. They range in size from 12” to 30”. Biologic studies that were performed in support of the Raw Water Line Replacement Project may need to be supplemented for the additional work being proposed. Those project plans and studies are available on request. Please describe what work your firm would anticipate being required to obtain the permits and approvals needed for construction.

B. STANDARDS

The Project must adhere to the City and County of Mendocino design standards if applicable, regulations, policies, and procedures for all work at the time of Project advertisement. All work must be performed and work products prepared in such a fashion to be approved by the appropriate agency.

Additionally, the Project must adhere to the following:

1. Design shall comply with the latest City and County of Mendocino ordinances.
2. Digital formats for use in plan development, plats, and record drawings shall be delivered utilizing AutoCAD/Civil3D (.dwg) 2021 release or lower.
3. All electronic text document deliverables shall be in the Microsoft Office platform (Word, Excel, PowerPoint, Project, Visio, etc.) version 2016 or newer.
4. All Geographical Information System (GIS) files shall be delivered in acceptable vector spatial data formats, which are geodatabase (.gdb), personal geodatabases (.mdb), and shapefiles (.dbf, .prj, .sbn, .sbx, .shp, .xml, .shx).
5. All horizontal data (X, Y coordinates) shall be delivered using the California State Plane Coordinate System (NAD 83, Zone II, feet).
6. Specifications shall be in Construction Specification Institute (CSI) format and in conformance with the City's Standard Specifications.
7. All reports should be submitted electronically and provided in Word for review, with the final version provided in Adobe PDF format with OCR and indexed.

C. PROPOSAL REQUIREMENTS:

The proposal should be concise, well organized, and demonstrate the responders' qualifications and experience applicable to the Project. Responses will be evaluated based on the information submitted.

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 - c. Relevant Experience: Describe relevant experience preparing Environmental Impact Reports for other water capital improvement projects and preparing technical specifications for public works projects for other public agencies. Indicate roles of prime and all sub-consultants
 - d. Key Personnel Qualifications: Identify key personnel who would work on the project as assigned, their respective roles, and a synopsis of relevant experience. Provide resumes of the Project Manager and other key Project team members. Resumes shall include relevant experience, proposed role, education, and licenses. The resume for each individual shall not exceed two pages in length and can be included in an appendix. For the Project Manager, provide at least three references (names and current phone numbers) from recent work (previous five years) similar in size and scope to this Project. Include a brief description of each project associated with the reference and the role and responsibility of the Project Manager. Replacement of key team members will not be permitted without prior consultation with and approval by the City. All work shall be performed under the

supervision of an engineer licensed in the State of California, who has substantial experience with projects of similar size and scope

- e. References: List of public agencies or clients for whom similar work has been performed, with the name, title and phone number of a contact person. For the Project Manager, provide at least three references (names and current phone numbers) from recent work (previous five years) similar in size and scope to this Project. Include a brief description of each project associated with the reference and the role and responsibility of the Project Manager. The City may request a copy of a similar report prepared previously by the firm for another agency.
- f. Scope of Work: Provide an explanation of tasks associated with the project, including how you propose to complete each task. Include a breakdown of recommended tasks, including tasks not identified above that could benefit the project.
 - i. Provide a narrative that clearly identifies key Project issues/challenges and describes the consultant's understanding of, and ways to mitigate and effectively address these key Project issues/challenges in design and during construction. Include detailed descriptions of innovative or alternative ideas and approaches to the Project design and construction in a cost-efficient manner.
 - ii. Discuss, if applicable, elements that have not been considered by the City (new ideas).
 - iii. Provide prioritization of tasks and permit requirements.
 - iv. Discuss the consultant's approach to budget control and minimizing construction change orders or how their design (approach) considers minimizing construction change.
 - v. Summarize value-based services.
 - vi. Provide a discussion of how the QA/QC program manages sub-consultants efforts to ensure technical accuracy and successful completion of the Project.
 - vii. Provide information summarizing measures that will be implemented to monitor the project schedule and budget.
- g. Budget and Schedule of Charges: Provide a "Not to Exceed" amount and a list of Personnel Rates, Equipment Charges, Travel Reimbursement Costs, and Job Descriptions for Personnel. Please be aware that prevailing wage rates apply to preconstruction work, such as inspection and land surveying, for public works projects.
- h. Work Schedule: Provide a time schedule for completion of work. This Project is a priority for the City's Capital Improvement Program. As such, it is imperative that the design of this Project is completed and ready to bid by January 5, 2026. Proposing consultants shall demonstrate they are capable of delivering the final bid documents to the City by this deadline. The proposing consultants shall provide a description of the critical path items and summarize an

approach that demonstrates successful completion in an expeditious fashion.

- i. Insurance: The individual or firm receiving the contract shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, employees or subcontracts as set forth in Section 5.0 of Exhibit A which is attached hereto and incorporated by reference herein. Any requests for a reduction in the insurance amount shall be included in the proposal. The cost of such insurance shall be included in the consultant's proposal.
- j. Consultant Agreement: The City's standard consultant services agreement is attached as Exhibit A. Please identify if your firm would have any issues with the provisions of the City's standard consulting services agreement. All requests for amendments to language in the agreement must be included in the proposal.

D. EVALUATION CRITERIA

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

- Understanding of the work to be completed
- Experience with similar kinds of work
- Capabilities and resources of the firm and qualifications key project personnel
- Schedule for completion of work
- Proposed cost

The above selection criteria are provided to assist proposers and are not meant to limit other considerations that may become apparent during the course of the selection process. The Consultant awarded the contract will be chosen based on the apparent greatest benefit to the City. The City will make the final determination of the Consultant selected, as it deems appropriate, in its sole discretion, and in the best interests of the services provided.

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

Each Consultant will be notified in writing whether or not they have been selected as the preferred Consultant.

E. SCHEDULE FOR SELECTION AND AWARD

Advertise RFP	June 11, 2024
Last Day to Submit Written Inquiries	July 12, 2024
Proposal Due Date	July 23, 2024
City Council Contract Award	August 12, 2024
Ready for Construction	January 5, 2026

F. OTHER CONSIDERATIONS

The City of Fort Bragg reserves the right to reject any and all proposals. This Request for

Proposals does not commit the City to award contract, pay any costs incurred in the preparation of proposals, or procure or contract for supplies or services.

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

G. QUESTIONS

Questions regarding this solicitation shall be directed in writing to Diane O'Connor at doconnor@fortbragg.com. All inquiries shall be received by July 12, 2024. Responses to the inquiries will be posted on the City's website at www.city.fortbragg.com on July 16, 2025.

H. ATTACHMENTS

Exhibit A – City's Standard Professional Services Agreement

**CITY OF FORT BRAGG
PROFESSIONAL SERVICES AGREEMENT
WITH**

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

WITNESSETH:

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

B. WHEREAS, Consultant represents that it is a “design professional” as that term is defined by California Civil Code Section 2782.8 and has that degree of specialized expertise contemplated within California Government Code Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and **[Delete if not design professional and renumber paragraphs]**

C. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit “A” (the “Project”) and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, no official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

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

[Delete whichever Paragraph E doesn’t apply]

E. WHEREAS, the City Manager is authorized by Fort Bragg Municipal Code Section 3.20.040 to negotiate contracts in an amount not to exceed \$25,000.

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

1.0. SERVICES PROVIDED BY CONSULTANT

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

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect

Consultant's performance of this Agreement. Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. City officers and employees shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

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

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

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

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

Consultant shall, in all solicitations and advertisements for employees placed by, or on behalf of Consultant, state that all qualified applicants will receive

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

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

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense. All insurance requirements contained in this Agreement are independently applicable to any and all subcontractors that Consultant may engage during the term of this Agreement.

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

2.0. COMPENSATION, BILLING AND PREVAILING WAGES

2.1. Compensation. Consultant's total compensation shall not exceed _____ Dollars (\$ _____.00).

[Delete whichever paragraph 2.1 does not apply.]

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in **Exhibit A**, for a total amount not to exceed _____ Dollars (\$ _____.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of work specified in the Consultant's Proposal or which is inconsistent with or in violation of the provisions of this Agreement unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable. Should the City request in writing additional services that increase the hereinabove described "Scope of Work," an additional fee based upon the Consultant's standard hourly rates shall be paid to the Consultant for

such additional services. The City Manager may approve contract change orders not exceeding a total of 10% of the approved contract or up to the contingency amount whichever amount is less for any one project.

2.3. Method of Billing. Consultant may submit invoices to the City for approval on a progress basis, but not more often than monthly. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the date of final payment.

[Delete this section if it does not apply.]

2.5 Prevailing Wage Requirements In accordance with California Labor Code Section 1720, this project is subject to prevailing wage compliance monitoring and enforcement by the Department of Industrial Regulation. The Consultant and subcontractors engaged in performance of the Work must comply with Labor Code Section 1771.1.

(a) Payment of Prevailing Wages: In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the Work is to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the Public Works Department and shall be made available on request. The Consultant and subcontractors engaged in the performance of the Work shall pay no less than these rates to all persons engaged in performance of the Work.

(b) Legal Working Days: In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the Work is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.

(c) Payroll Records: Pursuant to Labor Code Section 1776, Consultant and any subcontractor(s) shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day

and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Consultant or any subcontractor in connection with this Agreement. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (1) The information contained in the payroll record is true and correct; and (2) The employer has complied with the requirements of Sections 1771, 1881, and 1815 of the Labor Code for any work performed by his or her employees on this Project. The payroll records shall be certified and shall be available for inspection at all reasonable hours in accordance with the requirements of Labor Code Section 1776. Consultant shall also furnish each week to CITY's Project Administration Division a statement with respect to the wages of each of its employees during the preceding weekly payroll period.

(d) Registration with DIR: Consultant and any subcontractor(s) of Consultant shall comply with the provisions of Labor Code Section 1771 and Labor Code Section 1725.5 requiring registration with the DIR.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the issuance of Notice to Proceed. Said services shall be performed in strict compliance with the schedule set forth in the Scope of Work attached hereto as **Exhibit A**. Consultant will complete the services in accordance with this Agreement by _____, 20____. The Time of Completion may only be modified by a written amendment of the Agreement signed by both the City and the Consultant and in accordance with its terms.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party. If a delay beyond the control of the Consultant is encountered, a time extension may be mutually agreed upon in writing by the City and the Consultant. The Consultant shall present documentation satisfactory to the City to substantiate any request for a time extension.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and expire on _____, 20____, [3 months after Completion Date in 3.1] unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing at least ten (10) days prior written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City. If the City suspends, terminates or abandons a

portion of this Agreement, such suspension, termination or abandonment shall not make void or invalidate the remainder of this Agreement.

If the Consultant defaults in the performance of any of the terms or conditions of this Agreement, it shall have ten (10) days after service upon it of written notice of such default in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

The City shall have the right, notwithstanding any other provisions of this Agreement, to terminate this Agreement, at its option and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement, immediately upon service of written notice of termination on the Consultant, if the latter should:

- a. Be adjudged a bankrupt;
- b. Become insolvent or have a receiver of its assets or property appointed because of insolvency;
- c. Make a general assignment for the benefit of creditors;
- d. Default in the performance of any obligation or payment of any indebtedness under this Agreement;
- e. Suffer any judgment against it to remain unsatisfied or unbonded of record for thirty (30) days or longer; or
- f. Institute or suffer to be instituted any procedures for reorganization or rearrangement of its affairs.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination within thirty-five (35) days after service of the notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant. City shall not be liable for any claim of lost profits.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery

of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Broad-form commercial general liability, in a form at least as broad as ISO form #CG 20 01 04 13, including premises-operations, products/ completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) aggregate, combined single limits. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit. If Consultant maintains higher limits than the specified minimum limits, City requires and shall be entitled to coverage for the high limits maintained by the Consultant.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, each incident for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California and Employers Liability Insurance with a minimum limit of \$1,000,000 per accident for any employee or employees of Consultant. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officials, officers, agents, employees, and volunteers for losses arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

Before execution of this Agreement by the City, the Consultant shall file with the City Clerk the following signed certification:

I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work.

The Consultant shall also comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect for the duration of this Agreement, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to the City Clerk before execution of this Agreement by the City. The City, its officers and employees shall not be responsible for any claims in law or equity occasioned by failure of the consultant to comply with this section.

- (d) Professional errors and omissions (“E&O”) liability insurance with policy limits of not less than Two Million Dollars (\$2,000,000.00), combined single limits, per occurrence and aggregate. Architects’ and engineers’ coverage shall be endorsed to include contractual liability. If the policy is written as a “claims made” policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

Neither the City nor any of its elected or appointed officials, officers, agents, employees, or volunteers makes any representation that the types of insurance and the limits specified to be carried by Consultant under this Agreement are adequate to protect Consultant. If Consultant believes that any such insurance coverage is insufficient, Consultant shall provide, at its own expense, such additional insurance as Consultant deems adequate.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Fort Bragg and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant."
- (b) Notice: "Consultant shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, Consultant shall forthwith obtain and submit proof of substitute insurance. Should Consultant fail to immediately procure other insurance, as specified, to substitute for any canceled policy, the City may procure such insurance at Consultant’s sole cost and expense."

- (c) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Fort Bragg, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Fort Bragg shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Fort Bragg, its officers, officials, agents, employees, and volunteers.
- (e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self-Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement. The certificates of insurance and endorsements shall be attached hereto as **Exhibit B** and incorporated herein by this reference.

5.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on

behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. The Project Manager designated to work directly with Consultant in the performance of this Agreement will be [REDACTED]. It shall be the Consultant's responsibility to assure that the Project Manager is kept informed of the progress of the performance of the services and the Consultant shall refer any decision, which must be made by City, to the Project Manager. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Project Manager.

Consultant designates [REDACTED] as its Project Manager, who shall represent it and be its agent in all consultations with City during the term of this Agreement and who shall not be changed by Consultant without the express written approval by the City. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or if mailed, shall be addressed as set forth below and placed in a sealed envelope, postage prepaid, and deposited in the United States Postal Service. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 72 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Tel: [REDACTED]
Fax: [REDACTED]

IF TO CITY:

City Clerk
City of Fort Bragg
416 N. Franklin St.
Fort Bragg, CA 95437
Tel: 707-961-2823
Fax: 707-961-2802

6.5. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.6. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Mendocino County, California. Consultant agrees to submit to the personal jurisdiction of such court in the event of such action.

6.7. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.8. Indemnification and Hold Harmless.

If Consultant is not a design professional performing "design professional" services under this Agreement, as that term is defined in Civil Code Section 2782.8, Consultant agrees to defend, indemnify, hold free and harmless the City, its elected and appointed officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings brought against the City, its elected and appointed officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply whenever any claim, action, complaint or suit asserts liability against the City, its elected and appointed officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

If Consultant is a design professional performing "design professional" services under this Agreement, as that term is defined in Civil Code Section 2782.8, Consultant agrees to defend, indemnify, hold free and harmless the City, its elected and appointed officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant. The defense obligation provided for hereunder shall apply whenever any claim, action, complaint or suit asserts liability against the City, its elected and appointed officials, officers, agents and employees based upon the negligence, recklessness, or willful misconduct of the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

6.9. Independent Contractor. Consultant is and shall be acting at all times as an

independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

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

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.11. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.12. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, preliminary notes, working documents, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City, but shall be made available to the City within ten (10) days of request or within ten (10) days

of termination. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, preliminary notes and working documents, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City. Consultant or Consultant's agents shall execute such documents as may be necessary from time to time to confirm City's ownership of the copyright in such documents.

6.13. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 7920.000 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 7924.510, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.14. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

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

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

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

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

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

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

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

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

6.23. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.24. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party,

is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

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

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

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

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

CITY

CONSULTANT

By: _____
Isaac Whippy
Its: City Manager

By: _____

Its: _____

ATTEST:

By: _____
Diana Sanchez
City Clerk

APPROVED AS TO FORM:

By: _____
Baron J. Bettenhausen
City Attorney

EXHIBIT A

CONSULTANT'S PROPOSAL

(Scope of Work, Fee Schedule and Time Table)

EXHIBIT B
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Text File

File Number: 24-806

Agenda Date: 6/10/2024

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: 5C.

Adopt Resolution of the Fort Bragg City Council Approving Professional Services Agreement with Dudek for On-call, As-needed Expertise to Assist City with LCP 22-07 Grant Project, and Authorizing the City Manager to Execute Contract (Amount Not To Exceed \$90,000; Account 337-5080-0630)

On January 23, 2024 the City circulated a Request for Qualifications for as-needed, on-call professional services to assist staff with LCP 22-07 Grant Project. On February 23, 2024, the City received fourteen (14) timely proposals, which were reviewed and evaluated by representatives from the City, Noyo Harbor District, and California Sea Grant on the basis of capabilities, qualifications, and responsiveness. Dudek is included in list of qualified consultants for the project.

RESOLUTION NO. ____-2024

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL
APPROVING PROFESSIONAL SERVICES AGREEMENT WITH DUDEK
TO PROVIDE ON-CALL, AS-NEEDED EXPERTISE TO ASSIST WITH
LCP 22-07 GRANT PROJECT, AND AUTHORIZING THE CITY
MANAGER TO EXECUTE CONTRACT (AMOUNT NOT TO EXCEED
\$90,000; ACCOUNT 337-5080-0630)**

WHEREAS, the California Coastal Commission awarded the City of Fort Bragg \$898,990 in Local Coastal Program Grant funds (LCP 22-07); and

WHEREAS, on January 23, 2024 the City circulated a Request for Qualifications for as-needed, on-call professional services to assist staff with LCP 22-07 Grant Project (“Project”); and

WHEREAS, on February 23, 2024, the City received fourteen (14) timely proposals to provide as-needed, on-call professional services to inform the Project; and

WHEREAS, proposals were reviewed and evaluated by representatives from the City, Noyo Harbor District, and California Sea Grant on the basis of capabilities, qualifications, and responsiveness; and

WHEREAS, the resulting Qualified List is included herein as Exhibit A and will remain active through the grant term of December 2026; and

WHEREAS, Dudek provided a comprehensive proposal and is well qualified to assist the City with Special Districts Analysis and general project support; and

WHEREAS, the Project is exempt pursuant to the California Environmental Quality Act (“CEQA”) and Title 14, the California Code of Regulations (“CEQA Guidelines”), Section 15301 (c).

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby approve a Professional Services Agreement with Dudek for as-needed, on-call services associated with LCP 22-07 Grant Project, and authorizes the City Manager to execute contract (Amount Not to Exceed \$90,000; Account No. 337-5080-0630).

The above and foregoing Resolution was introduced by Councilmember _____, seconded by Councilmember _____, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 10th day of June, 2024, by the following vote:

**AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSED:**

BERNIE NORVELL
Mayor

ATTEST:

Diana Sanchez
City Clerk

Exhibit A: Qualified Consultant List for LCP 22-07 Grant Project - active through grant term, December 2026

Submitted By:	1) Surveying & Mapping	2) Civil/Hydrological Engineering	3) Habitat Restoration, Design, Permitting, etc.	4) Nature-based Shoreline Protection	5) Water Quality Assessment	6) Structural Analysis	7) Pre-Project Feasibility Analysis	8) Economic Analysis	9) Hazardous/Toxic Substance Investigations	10) Watershed, Intertidal, Subtidal Investigations	11) Archeological Studies	12) Climate Change Issues (species migrations, seasonal flooding, SLR, etc.	13) Botanical Studies	14) Agricultural Studies	15) Soil and Marine Sediment Analysis	16) Site and Land Use Planning	17) SLR and Coastal Erosion Modeling	18) Environmental Modeling	19) Graphic Design for Educational Materials	20) Traditional Ecological Knowledge	21) Local Working Waterfront Skills	22) Harbor District Special Analysis	23) Other Environmental Services (appraisals for restoration purposes)
BRUNSING ASSOCIATES, INC. 5468 Skyline Blvd. Suite 201 Santa Rosa, CA 95403 T: 707-528-6108 Keith A Colorado kcolorado@brunsing.com		X					X	X															
R.E.Y. ENGINEERS, INC. 905 Sutter St. #200 Folsom, CA 95630 T: 916-366-3040 F: 916-366-3303 Joe Feyder, PLS Project Manager jfeyder@reyengineers.com	X																						
RINCON CONSULTANTS, INC. 449 15th St., Suite 303 Oakland, CA 94612 T: 510-834-4455 Colby J. Boggs, Principal cboggs@rinconconsultants.com			X	X	X				X	X	X	X	X		X		X	X	X	X		X	
EMC PLANNING GROUP, INC. 601 Abrego St. Monterey, CA 93940 T: 831-649-1799 F: 831-649-8399 Anastazia Aziz, AICP, Principal aziz@emcplanning.com			X				X				X				X	X							X

DUDEK 725 Front St., Suite 400 Santa Cruz, CA 95060 T: 831-600-1400 Ann Sansevero, AICP, Principal asansevero@dudek.com	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X		X	X	X
MOFFAT & NICHOL 2185 N California Blvd., Suite 500 Walnut Creek, CA 94596 T: 925-956-4943 Dilip Trivedo, Dr. Eng, PE, Principal		X	X	X		X	X			X	X					X	X	X			X		
MENDOCINO SURVEYORS INC PO Box 1162 Mendocino, CA 95460 T: 707-937-9900 Forrest Francis, PLS, Principal C: 707-813-4746 forrest@mendocinosurveyors.com	X																						
WYNN COASTAL PLANNING & BIOLOGY 703 N. Main St. Fort Bragg, CA 95437 T: 707-964-2537 F: 707-964-2622 Amy Wynn, Principal							X									X							
HDR ENGINEERING, INC. 3003 Oak Rd., Suite 500 Walnut Creek, CA 94597 T: 925-465-2700 F: 925-465-2701 Christian LaPann-Johannessen, Project Manager Christian.lapann-johannessen@hdrinc.com		X	X	X		X	X				X												
MARIE JONES CONSULTING T: 707-357-6480 Marie Jones, Principal								X	X							X							
SHN 329 E. Redwood Ave. Fort Bragg, CA 95437 T: 707-962-3140 Jason Island, Principal	X	X	X				X									X						X	
BEST BEST & KRIEGER LLP Address not provided in packet T: 213-787-2569 Ruben Duran, Partner Ruben.duran@bbklaw.com																						X	

CINQUINI & PASSARINO, INC. 1360 n Dutton Ave., Suite 150 Santa Rosa, CA 95401 T: 707-542-6268 F:707-542-2106 Anthony Cinquini, P.E., P.L.S., Principal	X																							
KOSMONT 1601 Sepulveda Blvd., Suite 382 Manhattan Beach, CA 90266 T: 424-297-1070 Larry Kosmont, CRE, Chairman & CEO								X														X		

**CITY OF FORT BRAGG
PROFESSIONAL SERVICES AGREEMENT
WITH DUDEK**

THIS AGREEMENT is made and entered into this ___ day of June, 2024 (“Effective Date”), by and between the CITY OF FORT BRAGG, a municipal corporation, 416 N. Franklin Street, Fort Bragg, California 95437 (“City”), and Dudek, a California B corporation, 605 Third Street, Encinitas, California, 92024 (“Consultant”).

WITNESSETH:

A. WHEREAS, the City entered into grant agreement number LCP 22-07 with the California Coastal Commission, which is attached to this agreement as Exhibit A and incorporated by reference; and

B. WHEREAS, the City proposes to utilize the services of Consultant as an independent contractor to provide as-needed, on-call services to support development of the Noyo Harbor Blue Economy Visioning, Resiliency and Implementation Plan, as more fully described in Exhibit “B” (the “Project”); and

C. WHEREAS, the City and Consultant desire to contract for the specific services described in the Project and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, no official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

E. WHEREAS, the legislative body of the City on June 10, 2024 by Resolution No. ____-2024 authorized execution of this Agreement on behalf of the City in accordance with Chapter 3.20 of the City Municipal Code and/or other applicable law;

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

1.0. SERVICES PROVIDED BY CONSULTANT

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

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

to comply with this section.

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

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

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

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

Consultant shall, in all solicitations and advertisements for employees placed by, or on behalf of Consultant, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender, sexual orientation, or disability. Consultant shall cause the paragraphs contained in this Section to be inserted in all subcontracts for any work covered by the Agreement, provided that

the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

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

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense. All insurance requirements contained in this Agreement are independently applicable to any and all subcontractors that Consultant may engage during the term of this Agreement.

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

2.0. COMPENSATION, BILLING AND PREVAILING WAGES

2.1. Compensation. Consultant's total compensation shall not exceed Ninety Thousand Dollars (\$90,000.00), and shall be paid in accordance with the fee schedule set forth in **Exhibit B**.

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of work specified in the Consultant's Proposal or which is inconsistent with or in violation of the provisions of this Agreement unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable. Should the City request in writing additional services that increase the hereinabove described "Scope of Work," an additional fee based upon the Consultant's standard hourly rates shall be paid to the Consultant for such additional services. The City Manager may approve contract change orders not exceeding a total of 10% of the approved contract or up to the contingency amount whichever amount is less for any one project.

2.3. Method of Billing. Consultant may submit invoices to the City for approval on a progress basis, but not more often than monthly. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives

said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as “Additional Services” and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant’s services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the date of final payment.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the issuance of Notice to Proceed. Said services shall be performed in strict compliance with the schedule set forth in the Scope of Work attached hereto as **Exhibit B**. Consultant will complete the services in accordance with this Agreement by December 31, 2026. The Time of Completion may only be modified by a written amendment of the Agreement signed by both the City and the Consultant and in accordance with its terms.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party. If a delay beyond the control of the Consultant is encountered, a time extension may be mutually agreed upon in writing by the City and the Consultant. The Consultant shall present documentation satisfactory to the City to substantiate any request for a time extension.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and expire on March 31, 2027 unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing at least ten (10) days prior written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City. If the City suspends, terminates or abandons a portion of this Agreement, such suspension, termination or abandonment shall not make void or invalidate the remainder of this Agreement.

If the Consultant defaults in the performance of any of the terms or conditions of

this Agreement, it shall have ten (10) days after service upon it of written notice of such default in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

The City shall have the right, notwithstanding any other provisions of this Agreement, to terminate this Agreement, at its option and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement, immediately upon service of written notice of termination on the Consultant, if the latter should:

- a. Be adjudged a bankrupt;
- b. Become insolvent or have a receiver of its assets or property appointed because of insolvency;
- c. Make a general assignment for the benefit of creditors;
- d. Default in the performance of any obligation or payment of any indebtedness under this Agreement;
- e. Suffer any judgment against it to remain unsatisfied or unbonded of record for thirty (30) days or longer; or
- f. Institute or suffer to be instituted any procedures for reorganization or rearrangement of its affairs.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination within thirty-five (35) days after service of the notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant. City shall not be liable for any claim of lost profits.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Broad-form commercial general liability, in a form at least as broad as ISO form #CG 20 01 04 13, including premises-operations, products/ completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) aggregate, combined single limits. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit. If Consultant maintains higher limits than the specified minimum limits, City requires and shall be entitled to coverage for the high limits maintained by the Consultant.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, each incident for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California and Employers Liability Insurance with a minimum limit of \$1,000,000 per accident for any employee or employees of Consultant. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officials, officers, agents, employees, and volunteers for losses arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

Before execution of this Agreement by the City, the Consultant shall file with the City Clerk the following signed certification:

I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work.

The Consultant shall also comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect for the duration of this Agreement, complete Workers' Compensation

Insurance, and shall furnish a Certificate of Insurance to the City Clerk before execution of this Agreement by the City. The City, its officers and employees shall not be responsible for any claims in law or equity occasioned by failure of the consultant to comply with this section.

- (d) Professional errors and omissions (“E&O”) liability insurance with policy limits of not less than Two Million Dollars (\$2,000,000.00), combined single limits, per occurrence and aggregate. Architects’ and engineers’ coverage shall be endorsed to include contractual liability. If the policy is written as a “claims made” policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

Neither the City nor any of its elected or appointed officials, officers, agents, employees, or volunteers makes any representation that the types of insurance and the limits specified to be carried by Consultant under this Agreement are adequate to protect Consultant. If Consultant believes that any such insurance coverage is insufficient, Consultant shall provide, at its own expense, such additional insurance as Consultant deems adequate.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Fort Bragg and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant."
- (b) Notice: "Consultant shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, Consultant shall forthwith obtain and submit proof of substitute insurance. Should Consultant fail to immediately procure other insurance, as specified, to substitute for any canceled policy, the City may procure such insurance at Consultant’s sole cost and expense."
- (c) Other insurance: "The Consultant’s insurance coverage shall be primary insurance as respects the City of Fort Bragg, its officers, officials, agents, employees, and volunteers. Any other insurance

maintained by the City of Fort Bragg shall be excess and not contributing with the insurance provided by this policy."

- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Fort Bragg, its officers, officials, agents, employees, and volunteers.
- (e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self-Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement. The certificates of insurance and endorsements shall be attached hereto as **Exhibit C** and incorporated herein by this reference.

5.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. The Project Manager designated to work directly with

Consultant in the performance of this Agreement will be the Special Projects Manager. It shall be the Consultant's responsibility to assure that the Project Manager is kept informed of the progress of the performance of the services and the Consultant shall refer any decision, which must be made by City, to the Project Manager. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Project Manager.

Consultant designates Ann Sanservo as its Project Manager, who shall represent it and be its agent in all consultations with City during the term of this Agreement and who shall not be changed by Consultant without the express written approval by the City. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or if mailed, shall be addressed as set forth below and placed in a sealed envelope, postage prepaid, and deposited in the United States Postal Service. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 72 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:
Ann Sanservo
Dudek
725 Front Street, Suite 400
Santa Cruz, CA 95060
Tel: 831-600-1400

IF TO CITY:
City Clerk
City of Fort Bragg
416 N. Franklin St.
Fort Bragg, CA 95437
Tel: 707-961-2823
Fax: 707-961-2802

6.5. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.6. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Mendocino County, California. Consultant agrees to submit to the personal jurisdiction of such court in the event of such action.

6.7. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or

encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.8. Indemnification and Hold Harmless.

If Consultant is not a design professional performing “design professional” services under this Agreement, as that term is defined in Civil Code Section 2782.8, Consultant agrees to defend, indemnify, hold free and harmless the City, its elected and appointed officials, officers, agents and employees, at Consultant’s sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings brought against the City, its elected and appointed officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply whenever any claim, action, complaint or suit asserts liability against the City, its elected and appointed officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City’s specifications or Consultant’s Proposal, which shall be of no force and effect.

If Consultant is a design professional performing “design professional” services under this Agreement, as that term is defined in Civil Code Section 2782.8, Consultant agrees to defend, indemnify, hold free and harmless the City, its elected and appointed officials, officers, agents and employees, at Consultant’s sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant. The defense obligation provided for hereunder shall apply whenever any claim, action, complaint or suit asserts liability against the City, its elected and appointed officials, officers, agents and employees based upon the negligence, recklessness, or willful misconduct of the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City’s specifications or Consultant’s Proposal, which shall be of no force and effect.

6.9. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of

Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

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

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.11. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.12. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, preliminary notes, working documents, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City, but shall be made available to the City within ten (10) days of request or within ten (10) days of termination. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless

Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, preliminary notes and working documents, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City. Consultant or Consultant's agents shall execute such documents as may be necessary from time to time to confirm City's ownership of the copyright in such documents.

6.13. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 7920.000 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 7924.510, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.14. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

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

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

6.17. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If,

and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, the conflict shall be resolved by giving precedence in the following order, if applicable: This Agreement, the City's Request for Proposals, the Consultant's Proposal.

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

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

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

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

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

6.23. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

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

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

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

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

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

CITY

CONSULTANT

By: _____
Isaac Whippy
Its: City Manager

By: _____
Joseph Monaco
Its: President/CEO

ATTEST:

By: _____
Diana Sanchez
City Clerk

APPROVED AS TO FORM:

By: _____
Baron J. Bettenhausen
City Attorney

EXHIBIT A
LCP 22-07 GRANT AGREEMENT

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

EXHIBIT C
CERTIFICATES OF INSURANCE AND ENDORSEMENTS

B. Scope of Services

Table 2 outlines the services our multidisciplinary team can provide to support the Noyo Harbor planning effort. The Dudek team can support most service areas listed in the Scope of Services section of the RFQ. The only exceptions are items No. 8, Economic Analyses, and No. 20, Traditional Ecological Knowledge.

Table 2. Dudek Services

Requested Service	Dudek Team Capabilities and Qualifications	Relevance to Grant and Contract
<p>1. Surveying and mapping, including lidar, CAD and/or GIS</p>	<ul style="list-style-type: none"> ▪ In-house team of experienced licensed land surveyors based in California ▪ Surveying specialties include topo design surveys, boundary and ALTA surveys, bathymetric surveys, easement plotting/design (legal description/plat maps), terrestrial lidar scanning, AutoCAD drafting and Civil 3D Surfaces ▪ Mapping services specializing in UAV aerial imagery, lidar, multispectral collection, site planimetric feature drafting ▪ Web-based mapping solutions including the Esri suite of online tools and software 	<ul style="list-style-type: none"> ▪ Community mapping for public events and workshops ▪ Mapping to support plan development ▪ Evaluation of existing Noyo Harbor conditions, including topography and bathymetry ▪ Creation of “digital twin” of Noyo Harbor environment utilizing hybrid approach of terrestrial lidar and UAV lidar/imagery ▪ Ability to view all survey data within the web-Based Esri software, enabling a wide variety of interested parties to view data without any software download requirements
<p>2. Civil and hydrological engineering</p>	<ul style="list-style-type: none"> ▪ Team of experienced civil engineers, hydrologists, and geomorphologists in California ▪ Experience in hydrologic assessment and modeling, channel and storm drain hydraulic modeling incorporating tidal influences, stormwater management and infrastructure design, site development and design, water/wastewater infrastructure assessment/rehabilitation/design 	<ul style="list-style-type: none"> ▪ Experience identifying opportunities and limitations for proposed developments and infrastructure needs via expertise in storm-, potable-, recycled-, and wastewater ▪ Experience incorporating tidal influences into storm drain and surface water modeling
<p>3. Habitat restoration design, permitting, construction, and monitoring for integrated habitats and multiple benefits</p>	<ul style="list-style-type: none"> ▪ Team of environmental landscape architects, botanists, biologists, environmental planners, permitting specialists, and restoration construction specialists ▪ Ability to synthesize a broad array of data; design projects that take advantage of natural processes and balance environmental, equity, and economic considerations; and monitor projects to evaluate success 	<ul style="list-style-type: none"> ▪ Experience collecting baseline technical information to understand opportunities and constraints and translate understanding to climate ready projects ▪ Expertise coordinating with resource agencies and processing permits for multi-benefit, restoration projects

Table 2. Dudek Services

Requested Service	Dudek Team Capabilities and Qualifications	Relevance to Grant and Contract
<p>4. Natural and nature-based shoreline protection design</p>	<ul style="list-style-type: none"> ▪ Siting, designing, and implementing nature-based adaptation projects ▪ Thoughtful design and monitoring plans to support permitting 	<ul style="list-style-type: none"> ▪ Experience with design, implementation, and monitoring within regulatory environment ▪ Prioritization of phased strategies and emphasis of concept design and alternative development approaches that integrate a functional landscape approach
<p>5. Water quality assessment</p>	<ul style="list-style-type: none"> ▪ Team of engineers, hydrologists, biologists, and wetland scientists ▪ Expertise preparing application packages and required documentation to obtain state and/or federal permits, including Section 404 and 401 Permits ▪ Expertise in developing/implementing long-term water quality monitoring programs evaluating seasonal fluctuations in pollutant concentrations and suitability of water quality conditions for providing habitat for aquatic species at various life stages 	<ul style="list-style-type: none"> ▪ Evaluation of existing and potential water quality conditions for proposed Noyo Harbor projects following the state’s Surface Water Ambient Monitoring Program protocol (e.g., aquaculture, pathogens [per FDA] and TMDLs levels [per RWQCB]) ▪ Possible development and implementation of a bivalve bioaccumulation study ▪ Coordination of laboratory analyses with any number of labs certified through California’s Environmental Laboratory Accreditation Program (ELAP) that either Dudek or the City have established agreements with ▪ Design of water quality monitoring programs
<p>6. Structural analyses</p>	<ul style="list-style-type: none"> ▪ Team of licensed professional civil engineers with structural engineering experience, specifically in harbors and other waterfront structures ▪ Key project experience includes design of bulkheads, levees, dock systems, piers, revetments, piles and other foundations, and all related steel, concrete, and wood structural members and components 	<ul style="list-style-type: none"> ▪ Assessment of structural integrity of the harbor’s shoreline structures ▪ Determination of feasible structural solutions for enhancing coastal resilience ▪ Interpretation of coastal hazards and sea level rise impacts to structures

Table 2. Dudek Services

Requested Service	Dudek Team Capabilities and Qualifications	Relevance to Grant and Contract
<p>7. Pre-project feasibility analyses</p>	<ul style="list-style-type: none"> ▪ Team of uniquely experienced planners and regulatory permit experts with specific aquaculture and other blue economy experience ▪ Have worked closely with UCSB Brenn School and NOAA NCCOS on spatial modelling for diving locations suitable for aquaculture within specific regions (Ventura and San Diego) ▪ Have developed/conducted numerous feasibility studies for aquatic species/wetland features incorporating Dudek’s diverse range of expertise to identify major constraints including, but not limited to, hazards assessments, cultural surveys, biological surveys, hydrology and water quality studies, wildfire studies, and evaluation of anticipated climate change impacts 	<ul style="list-style-type: none"> ▪ Determination of aquaculture feasibility by working with engineering conditions assessments of existing infrastructure, economists, and studies underway by the City, California Sea Grant, and the Noyo Center for Marine Science ▪ Performance of water quality analyses to evaluate suitability of proposed aquaculture (i.e., oysters, kelp, sunflower sea stars, etc.) ▪ Assessment of suitable characteristics for potential species in water and opportunities for facilities on land, as well as Floating Upweller System (FLUPSY) similar to that piloted in San Diego Bay.
<p>9. Hazardous or toxic substance investigations</p>	<ul style="list-style-type: none"> ▪ Credentialed environmental engineers, geologists, hydrologists, and permitting specialists ▪ Experience with ESAs, site investigations, remediation activities, regulatory permitting and compliance, and regulatory closure for numerous sites 	<ul style="list-style-type: none"> ▪ Thorough environmental site assessments identifying historical, existing, and potential sources of pollutants that could impact proposed Noyo Harbor projects and/or require significant remediation ▪ Remediation programs (soil, soil vapor, groundwater, and water) to address issues associated with hazardous or toxic substances
<p>10. Watershed, intertidal, and subtidal assessments</p>	<ul style="list-style-type: none"> ▪ Watershed specialists, including hydrologists, geomorphologists, water and forest resiliency planners, and GIS analysts who conduct various levels of watershed assessments supporting management of supply, water quality, habitat, and flooding ▪ Team of marine biologists that conduct marine habitat assessments, including underwater dive assessments on hard- and soft-bottom habitats within the nearshore throughout California 	<ul style="list-style-type: none"> ▪ Characterization of existing and model-projected watershed, intertidal, and subtidal conditions supporting and/or inhibiting possible Noyo Harbor projects ▪ Collection of baseline information on existing marine conditions to support blue economy initiatives while protecting and enhancing marine habitats
<p>11. Archaeological studies</p>	<ul style="list-style-type: none"> ▪ Team of archaeologists, architectural historians, historians, ethnographers, and paleontologists 	<ul style="list-style-type: none"> ▪ Collection of appropriate existing-conditions information for Noyo Harbor to support planning process

Table 2. Dudek Services

Requested Service	Dudek Team Capabilities and Qualifications	Relevance to Grant and Contract
<p>12. Climate change issues such as species migrations, seasonal coastal and fluvial flooding, and sea-level rise</p>	<ul style="list-style-type: none"> ▪ Experienced in identification, significance assessment, mitigation, and preservation ▪ Diverse team of climate change specialists familiar with hazards such as ocean acidification, increased fluvial flooding, and sea level rise ▪ Experienced in helping communities adapt through community engagement and visioning, which drive policy changes and project implementation 	<ul style="list-style-type: none"> ▪ Ability to synthesize site-specific climate hazard analysis ▪ Ability to identify infrastructure and community needs and recommend adaptation pathways for resilient harbor
<p>13. Botanical studies</p>	<ul style="list-style-type: none"> ▪ Team of botanists with wide-ranging botanical expertise and deep ecological restoration knowledge ▪ Ability to identify, describe, classify, and assess vegetation communities and habitat types, environmental conditions, and the potential for special-status species to occur in identified habitats 	<ul style="list-style-type: none"> ▪ Collection of appropriate existing-conditions information for Noyo Harbor to support planning process.
<p>14. Agricultural Studies (Aquaculture Studies)*</p>	<ul style="list-style-type: none"> ▪ See scope items No. 5 and No. 7 above ▪ Team of marine biologists and water quality specialists with experience in evaluating suitability of habitat for aquaculture and developing long-term water quality monitoring studies characterizing suitability of habitat for aquatic flora and fauna 	<ul style="list-style-type: none"> ▪ See scope items No. 5 and No. 7 above ▪ Performance of anticipated studies for oysters, kelp, and/or star fish, which will require an understanding of the best-available science (e.g., FDA’s assessment of human health hazards with shellfish) for conducting water quality and bioaccumulation analyses ▪ Incorporation of input from interested parties and outside entities invested in this region
<p>15. Soil and marine sediment analyses</p>	<ul style="list-style-type: none"> ▪ Team of environmental engineers and geologists with experience in developing soil sampling programs for identifying and quantifying impacted substrate 	<ul style="list-style-type: none"> ▪ Identification of impacted soils for both projects on land and in the harbor to support feasibility assessments and/or determine level of remediation. ▪ Coordination of laboratory analyses to be with any number of labs certified through California’s Environmental Laboratory Accreditation Program (ELAP) that either Dudek or the City have established agreements with
<p>16. Site and land use planning</p>	<ul style="list-style-type: none"> ▪ Team of urban designers, coastal planners, and regulatory experts including ex-agency staff (e.g., USACE, CCC, PoSD, et al.) 	<ul style="list-style-type: none"> ▪ Native Spanish speakers to assist with community outreach and engagement

Table 2. Dudek Services

Requested Service	Dudek Team Capabilities and Qualifications	Relevance to Grant and Contract
	<ul style="list-style-type: none"> ▪ Practical, implementation-focused plans that offer a platform for real change 	<ul style="list-style-type: none"> ▪ Former California Coastal Commission staff who can provide guidance on updates to the City’s LCPA
<p>17. Sea-level rise and coastal erosion modeling</p>	<ul style="list-style-type: none"> ▪ Team of engineers, coastal scientists, and GIS specialists ▪ Model animations and graphics to communicate coastal hazard pathways and impacts 	<ul style="list-style-type: none"> ▪ Two-dimensional tidal and fluvial modeling to identify pathways of inundation, depth, and duration ▪ Ability to inform and prioritize adaptation projects
<p>18. Environmental monitoring</p>	<ul style="list-style-type: none"> ▪ Team of engineers, hydrologists, biologists, and wetland scientists that provide comprehensive environmental monitoring and compliance services ▪ Expertise in developing/implementing long-term water quality monitoring programs, as described under scope item No. 5 above 	<ul style="list-style-type: none"> ▪ Support of project feasibility assessment, implementation, and operations, as necessary
<p>19. Graphic design for educational materials</p>	<ul style="list-style-type: none"> ▪ Team of graphic designers and visual storytellers ▪ Powerful products that communicate complex information through graphics, audio/visual, and printed materials (see Appendix B) 	<ul style="list-style-type: none"> ▪ Design of materials that promote community engagement ▪ Production of a high-quality plan that translates technical subjects simply and effectively
<p>21. Local working waterfront skills</p>	<ul style="list-style-type: none"> ▪ Expertise in projects and locations with working waterfronts and assessment of current and proposed uses of waterfront space 	<ul style="list-style-type: none"> ▪ Data gathering and assessment of historical and current use of waterfront space at Noyo Harbor
<p>22. Harbor District and Special District Analysis</p>	<ul style="list-style-type: none"> ▪ Team of environmental specialists and coastal planners with experience in visionary plan development and Master Plan amendments ▪ In-depth understanding of the complex issues and rigorous environmental requirements involved in port and harbor projects 	<ul style="list-style-type: none"> ▪ Evaluation of City’s and partnering and/or adjacent agencies’ authority and geographical limits, as well as opportunities for revisions thereto and additional agency approvals needed for such ▪ Evaluation of the leasing authorities, policies, and regulations that may affect aquaculture leasing, specifically for in-water activities

Table 2. Dudek Services

Requested Service	Dudek Team Capabilities and Qualifications	Relevance to Grant and Contract
<p>23. Other related environmental services, such as appraisals for restoration purposes</p>	<ul style="list-style-type: none"> ▪ Team of environmental specialists that provide comprehensive environmental services throughout California at numerous harbor, bay, and coastal locations ▪ CEQA and NEPA review, coastal permitting (CDPs/CDs), USCG PATON, USACE permits (s10 R&HA and 404 CWA) RWQCB CWA permits, and habitat restoration, among other services ▪ Extensive site assessments performed in evaluating a site’s suitability for restoration ▪ Ability to examine a site’s potential value as a restoration project by estimating the costs to plan, implement, and monitor a site 	<ul style="list-style-type: none"> ▪ Ability to help the City discern information gaps, documentation needs, permitting, and comprehensive considerations for plan success through our deep bench of multiprogram-literate professionals ▪ Ability to gather appropriate existing-conditions information for Noyo Harbor to support planning process ▪ If plan implementation requires restoration, ability to review and assess site suitability for restoration

Note:

* Per the RFQ Response to Written Questions, the intent is that this item relates to aquaculture studies, not agricultural studies.

Budget and Schedule of Charges

Figure 2 lists Dudek’s proposed lead personnel and their rates. Figure 3 details Dudek’s 2024 schedule of charges, which includes all personnel rates, travel costs, and other fees. Figure 4 details GHD’s schedule of charges.

Name and Role	Hourly Rate
Project Manager , Ann Sansevero, AICP	\$300
Coastal Planning Lead , Sarah Richmond, PG	\$210
Coastal Engineering Lead , Patrick Miskel, PE	\$260
Biological Resources Lead , Mike Henry, PhD	\$300
Aquaculture Lead , Matthew Valerio	\$300
Climate Change Lead , Rose Newberry, AICP, WEDG	\$210
Land Use Planning Lead , Carolyn Groves, AICP	\$185
Hydrology and Water Quality Lead , Jonathan Martin	\$265
Civil and Hydrological Engineering Lead , Josh Cato, PE, CFM	\$250
Structural Engineering Lead , Satish Chilka, PE (GHD)	\$320
Nature-Based Shoreline Design Lead , Brian Leslie (GHD)	\$290
Sea Level Rise Modeling Lead , Brett Vivyan, PE, QSD/P (GHD)	\$270
Mapping and Surveying Lead , Dustin Gaessner	\$220
Permitting Lead , Laurie Monarres	\$285
Hazardous Materials Lead , Glenna McMahon, PE	\$310
Environmental Planning Lead , Catherine Wade, PhD	\$210
Archaeological and Built Environment Studies Lead , Ryan Brady, RPA	\$210
Habitat Restoration Lead , Mike Sweesy, RLA, CERP	\$330
Community Engagement Lead , Jane Gray	\$285
Graphic Design Lead , Raoul Rañoa	\$175

Figure 3. Dudek Schedule of Charges

DUDEK 2024 Standard Schedule of Charges

Engineering Services		Hydrogeology/HazWaste Services	
Project Director	\$335.00/hr	Project Director	\$335.00/hr
Principal Engineer III	\$310.00/hr	Principal Hydrogeologist/Engineer III	\$310.00/hr
Principal Engineer II	\$290.00/hr	Principal Hydrogeologist/Engineer II	\$300.00/hr
Principal Engineer I	\$280.00/hr	Principal Hydrogeologist/Engineer I	\$290.00/hr
Program Manager	\$265.00/hr	Senior Hydrogeologist V/Engineer V	\$265.00/hr
Senior Project Manager	\$265.00/hr	Senior Hydrogeologist IV/Engineer IV	\$255.00/hr
Project Manager	\$255.00/hr	Senior Hydrogeologist III/Engineer III	\$245.00/hr
Senior Engineer III	\$250.00/hr	Senior Hydrogeologist II/Engineer II	\$235.00/hr
Senior Engineer II	\$240.00/hr	Senior Hydrogeologist I/Engineer I	\$225.00/hr
Senior Engineer I	\$230.00/hr	Project Hydrogeologist V/Engineer V	\$215.00/hr
Project Engineer IV/Technician IV	\$220.00/hr	Project Hydrogeologist IV/Engineer IV	\$205.00/hr
Project Engineer III/Technician III	\$210.00/hr	Project Hydrogeologist III/Engineer III	\$195.00/hr
Project Engineer II/Technician II	\$200.00/hr	Project Hydrogeologist II/Engineer II	\$185.00/hr
Project Engineer I/Technician I	\$180.00/hr	Project Hydrogeologist I/Engineer I	\$175.00/hr
3D Production Manager	\$210.00/hr	Hydrogeologist/Engineering Assistant	\$140.00/hr
Senior Designer II	\$200.00/hr	HazMat Field Technician	\$125.00/hr
Senior Designer I	\$195.00/hr		
Designer	\$185.00/hr	District Management & Operations	
Assistant Designer	\$180.00/hr	District General Manager	\$225.00/hr
CADD Operator III	\$175.00/hr	District Engineer	\$215.00/hr
CADD Operator II	\$165.00/hr	Operations Manager	\$165.00/hr
CADD Operator I	\$145.00/hr	District Secretary/Accountant	\$140.00/hr
CADD Drafter	\$130.00/hr	Collections System Manager	\$140.00/hr
CADD Technician	\$120.00/hr	Grade V Operator	\$130.00/hr
Project Coordinator	\$155.00/hr	Grade IV Operator	\$115.00/hr
Engineering Assistant	\$125.00/hr	Grade III Operator	\$105.00/hr
		Grade II Operator	\$85.00/hr
		Grade I Operator	\$80.00/hr
		Operator in Training	\$75.00/hr
		Collection Maintenance Worker	\$75.00/hr
Environmental Services		Creative Services	
Senior Project Director	\$330.00/hr	Creative Services IV	\$165.00/hr
Project Director	\$285.00/hr	Creative Services III	\$150.00/hr
Senior Specialist V	\$260.00/hr	Creative Services II	\$135.00/hr
Senior Specialist IV	\$245.00/hr	Creative Services I	\$120.00/hr
Senior Specialist III	\$235.00/hr		
Senior Specialist II	\$225.00/hr	Publications Services	
Senior Specialist I	\$210.00/hr	Technical Editor IV	\$165.00/hr
Specialist V	\$195.00/hr	Technical Editor III	\$150.00/hr
Specialist IV	\$185.00/hr	Technical Editor II	\$135.00/hr
Specialist III	\$175.00/hr	Technical Editor I	\$120.00/hr
Specialist II	\$165.00/hr	Publications Specialist IV	\$125.00/hr
Specialist I	\$145.00/hr	Publications Specialist III	\$115.00/hr
Analyst V	\$145.00/hr	Publications Specialist II	\$105.00/hr
Analyst IV	\$135.00/hr	Publications Specialist I	\$95.00/hr
Analyst III	\$125.00/hr	Clerical Administration	\$90.00/hr
Analyst II	\$115.00/hr		
Analyst I	\$105.00/hr	Expert Witness – Court appearances, depositions, and interrogatories as expert witness will be billed at 2.00 times normal rates.	
Technician III	\$90.00/hr	Emergency and Holidays – Minimum charge of two hours will be billed at 1.75 times the normal rate.	
Technician II	\$80.00/hr	Material and Outside Services – Subcontractors, rental of special equipment, special reproductions and blueprinting, outside data processing and computer services, etc., are charged at 1.15 times the direct cost.	
Technician I	\$70.00/hr	Travel Expenses – Mileage at current IRS allowable rates. Per diem where overnight stay is involved is charged at cost	
Mapping and Surveying Services		Invoices, Late Charges – All fees will be billed to Client monthly and shall be due and payable upon receipt. Invoices are delinquent if not paid within 30 days from the date of the invoice. Client agrees to pay a monthly late charge equal to 1% per month of the outstanding balance until paid in full.	
Application Developer II	\$220.00/hr	Annual Increases – Unless identified otherwise, these standard rates will increase in line with the CPI-U for the nearest urban area per the Department of Labor Statistics to where the work is being completed) or by 3% annually, whichever is higher.	
Application Developer I	\$155.00/hr	The rates listed above assume prevailing wage rates does not apply. If this assumption is incorrect Dudek reserves the right to adjust its rates accordingly.	
GIS Analyst V	\$205.00/hr		
GIS Analyst IV	\$170.00/hr		
GIS Analyst III	\$150.00/hr		
GIS Analyst II	\$135.00/hr		
GIS Analyst I	\$125.00/hr		
UAS Pilot	\$145.00/hr		
Survey Lead	\$235.00/hr		
Survey Manager	\$210.00/hr		
Survey Crew Chief	\$165.00/hr		
Survey Rod Person	\$95.00/hr		
Survey Mapping Technician	\$95.00/hr		
Construction Management Services			
Principal/Manager	\$195.00/hr		
Senior Construction Manager	\$185.00/hr		
Senior Project Manager	\$180.00/hr		
Construction Manager	\$175.00/hr		
Project Manager	\$170.00/hr		
Resident Engineer	\$175.00/hr		
Construction Engineer	\$170.00/hr		
On-site Owner's Representative	\$160.00/hr		
Prevailing Wage Inspector	\$155.00/hr		
Construction Inspector	\$145.00/hr		
Administrator/Labor Compliance	\$120.00/hr		



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Text File

File Number: 24-803

Agenda Date: 6/10/2024

Version: 2

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: 5D.

Adopt City Council Resolution Approving Budget Amendment 2013/24-17 for the Raw Water Line Replacement Project and Amend Fiscal Year 2023-24 Budget (Amount Not to Exceed \$6,518,087)

RESOLUTION NO. XXXX-2024

RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING BUDGET AMENDMENT 2023/24-17 FOR THE RAW WATER LINE REPLACEMENT PROJECT AND AMENDING FISCAL YEAR 2023-24 BUDGET (AMOUNT NOT TO EXCEED \$6,518,087)

WHEREAS, on February 12, 2024 City Council awarded the contract for the construction of the Raw Water Line Replacement Project to T & S Construction Company, Inc. in the amount of \$5,958,087; and

WHEREAS, on February 12, 2024 City Council awarded the contract for the construction management of the Raw Water Line Replacement Project to SHN Consulting Engineers & Geologists, Inc. in the amount of \$560,000; and

WHEREAS, funds in the amount of \$8,797,500 were awarded by State Department of Water Resources Urban and Multibenefit Drought Relief Grant, and sufficient funds are available for this project; and

WHEREAS, project funding was spread over two fiscal years in the capital improvement program; and

WHEREAS, Budget Amendment 2023/24-17 is needed to move funds to the current fiscal year in order to process purchase orders for executed contracts for the construction and construction management; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby amend the previously adopted FY 2023-24 Budget to incorporate the changes enumerated in Exhibit A and does hereby authorize the City Manager to execute the Amendment.

The above and foregoing Resolution was introduced by Councilmember _____, seconded by Councilmember _____, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 10th day of June 2024, by the following vote:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**
- RECUSED:**

BERNIE NORVELL
Mayor

ATTEST:

**Diana Sanchez
City Clerk**

BUDGET AMENDMENT FY 2022/23

Budget Adjustment #: **2022/23-04**
 Budget FY: **FY 2022/23**

Account Description	Account #		FY 22/23	Current Budget	Increase (+) Budget Amt	Decrease (-) Budget Amt	Revised Total Budget Amt	Description
Expenditures								
1 Salaries & Wages - IT Lead	521	4394	0101	\$ 123,693	\$ 15,915		\$ 139,608	
Medical Premium - CE Officer	521	4394	0211	\$ 26,112	\$ -		\$ 26,112	
Dental Premium - CE Officer	521	4394	0213	\$ 1,928	\$ -		\$ 1,928	
VSP Premium - CE Officer	521	4394	0214	\$ 459	\$ -		\$ 459	
PERS - CE Officer	521	4394	0220	\$ 10,150	\$ 2,829		\$ 12,979	
Worker's Comp - CE Officer	521	4394	0231	\$ 2,037	\$ 749		\$ 2,786	
FICA/Medicare - IT Lead	521	4394	0252	\$ 9,258	\$ 3,434		\$ 12,692	
2 Transfer Code Enforcement Budget from the Community Development Department to the Police Department								
Salaries & Wages -Code Enforcement	110	4320	0101	\$ 299,956	\$ 76,609		\$ 223,347	Transfer of CE Officer Budget to PD
Medical Premium - CE Officer	110	4320	0211	\$ 51,350	\$ 17,674		\$ 33,677	Transfer of CE Officer Budget to PD
Dental Premium - CE Officer	110	4320	0213	\$ 3,733	\$ 1,212		\$ 2,521	Transfer of CE Officer Budget to PD
VSP Premium - CE Officer	110	4320	0214	\$ 917	\$ 229		\$ 688	Transfer of CE Officer Budget to PD
PERS - CE Officer	110	4320	0220	\$ 24,518	\$ 5,946		\$ 18,572	Transfer of CE Officer Budget to PD
Worker's Comp - CE Officer	110	4320	0231		\$ 1,276		\$ (1,276)	Transfer of CE Officer Budget to PD
FICA/Medicare - CE Officer	110	4320	0252	\$ 22,761	\$ 5,861		\$ 16,901	Transfer of CE Officer Budget to PD
Salaries & Wages -Code Enforcement	110	4200	0101	\$ 1,865,705	\$ 76,609		\$ 1,942,314	Transfer of CE Officer Budget to PD
Medical Premium - CE Officer	110	4200	0211	\$ 337,999	\$ 17,674		\$ 355,673	Transfer of CE Officer Budget to PD
Dental Premium - CE Officer	110	4200	0213	\$ 24,765	\$ 1,212		\$ 25,977	Transfer of CE Officer Budget to PD
VSP Premium - CE Officer	110	4200	0214	\$ 4,816	\$ 229		\$ 5,045	Transfer of CE Officer Budget to PD
PERS - CE Officer	110	4200	0220	\$ 374,904	\$ 5,946		\$ 380,850	Transfer of CE Officer Budget to PD
Worker's Comp - CE Officer	110	4200	0231	\$ 123,024	\$ 1,276		\$ 124,301	Transfer of CE Officer Budget to PD
FICA/Medicare - CE Officer	110	4200	0252	\$ 157,175	\$ 5,861		\$ 163,036	Transfer of CE Officer Budget to PD
3 Budget for a 2nd Code Enforcement Officer (November 2021-June 2022)								
Salaries & Wages - 2nd CE Officer	110	4200	0101	\$ 1,865,705	\$ 47,144		\$ 1,912,849	Budget- 2nd CE Officer
Medical Premium - 2nd CE Officer	110	4200	0211	\$ 337,999	\$ 10,876		\$ 348,875	Budget- 2nd CE Officer
Dental Premium - 2nd CE Officer	110	4200	0213	\$ 24,765	\$ 746		\$ 25,511	Budget- 2nd CE Officer
VSP Premium - 2nd CE Officer	110	4200	0214	\$ 4,816	\$ 141		\$ 4,957	Budget- 2nd CE Officer
PERS - 2nd CE Officer	110	4200	0220	\$ 374,904	\$ 3,659		\$ 378,563	Budget- 2nd CE Officer
Worker's Comp - 2nd CE Officer	110	4200	0231	\$ 123,024	\$ 786		\$ 123,810	Budget- 2nd CE Officer
FICA/Medicare - 2nd CE Officer	110	4200	0252	\$ 157,175	\$ 3,607		\$ 160,782	Budget- 2nd CE Officer
4 Revenues								
CDD- Grant Staff Time Reimb	110	4320	3318	\$ 98,000		\$ 98,000	\$ -	Transfer of CDD Grant Revenue-CE
PD- Grant Staff Time Reimb	110	4200	3318	\$ 268,420	\$ 98,000		\$ 366,420	Transfer of CDD Grant Revenue-CE
PD- Grant Staff time Reimb	110	4200	3318	\$ 268,420	\$ 66,958		\$ 335,378	Budget 2nd CE Grant Reimb
				\$ 340,724	\$ 206,807		\$ 6,948,770	

Reason for Amendment: RESOLUTION # : _____

Authorization:

Requested By: Finance/Admin Dept _____ Signature: _____ Date: _____

Approval: Isaac Whippy _____

Finance Use: Adriana Moreno Ramos _____

Attach copies of Resolution or other documentation



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Text File

File Number: 24-804

Agenda Date: 6/10/2024

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: 5E.

Adopt Resolution of the Fort Bragg City Council Accepting the Qualified Consultant List for As-Needed, On-Call Professional Services (Active Through December 2026) to Assist with LCP-22-07 Grant Project (Account No. 337-5080-0630)

On January 23, 2024, the City circulated a request for qualifications (RFQ) for as-needed, on-call professional services to provide City staff with needed expertise and technical assistance to implement the LCP 22-07 Grant Project for Noyo Harbor. Fourteen (14) timely responses were received, and reviewed by representatives from the City, Noyo Harbor District, and California Sea Grant. All proposals were deemed qualified and the list is to remain active through the grant time frame - December 2026.

RESOLUTION NO. ____-2024

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL
APPROVING QUALIFIED, AS-NEEDED, ON-CALL PROFESSIONAL
SERVICES LIST TO ASSIST WITH LCP 22-07 GRANT PROJECT
(ACCOUNT 337-5080-0630)**

WHEREAS, the California Coastal Commission awarded the City of Fort Bragg \$898,990 in Local Coastal Program Grant Program funds (LCP 22-07); and

WHEREAS, on January 22, 2024 City Council approved a scope of work to solicit qualifications for as-needed, on-call professional services to assist staff with LCP 22-07 Grant Project (“Project”); and

WHEREAS, on February 23, 2024, the City received fourteen (14) timely proposals to provide as-needed, on-call professional services to inform the Project; and

WHEREAS, proposals were reviewed and evaluated by representatives from the City, Noyo Harbor District, and California Sea Grant on the basis of capabilities, qualifications, and responsiveness; and

WHEREAS, the resulting Qualified List is included herein as Exhibit A and will remain active through the grant term of December 2026; and

WHEREAS, the Project is exempt pursuant to the California Environmental Quality Act (“CEQA”) and Title 14, the California Code of Regulations (“CEQA Guidelines”), Section 15301 (c).

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby accept the list of qualified firms and individuals to contract with for on-call, as-needed services and expertise for LCP 22-07 Project (Account No. 337-5080-0630).

The above and foregoing Resolution was introduced by Councilmember _____, seconded by Councilmember _____, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 10^h day of June, 2024, by the following vote:

**AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSED:**

**BERNIE NORVELL
Mayor**

ATTEST:

Diana Sanchez
City Clerk

Exhibit A: Qualified Consultant List for LCP 22-07 Grant Project - active through grant term, December 2026

Submitted By:	1) Surveying & Mapping	2) Civil/Hydrological Engineering	3) Habitat Restoration, Design, Permitting, etc.	4) Nature-based Shoreline Protection	5) Water Quality Assessment	6) Structural Analysis	7) Pre-Project Feasibility Analysis	8) Economic Analysis	9) Hazardous/Toxic Substance Investigations	10) Watershed, Intertidal, Subtidal Investigations	11) Archeological Studies	12) Climate Change Issues (species migrations, seasonal flooding, SLR, etc.	13) Botanical Studies	14) Agricultural Studies	15) Soil and Marine Sediment Analysis	16) Site and Land Use Planning	17) SLR and Coastal Erosion Modeling	18) Environmental Modeling	19) Graphic Design for Educational Materials	20) Traditional Ecological Knowledge	21) Local Working Waterfront Skills	22) Harbor District Special Analysis	23) Other Environmental Services (appraisals for restoration purposes)
BRUNING ASSOCIATES, INC. 5468 Skyline Blvd. Suite 201 Santa Rosa, CA 95403 T: 707-528-6108 Keith A Colorado kcolorado@bruning.com		X					X	X															
R.E.Y. ENGINEERS, INC. 905 Sutter St. #200 Folsom, CA 95630 T: 916-366-3040 F: 916-366-3303 Joe Feyder, PLS Project Manager jfeyder@reyengineers.com	X																						
RINCON CONSULTANTS, INC. 449 15th St., Suite 303 Oakland, CA 94612 T: 510-834-4455 Colby J. Boggs, Principal cboggs@rinconconsultants.com			X	X	X				X	X	X	X	X		X		X	X	X	X		X	
EMC PLANNING GROUP, INC. 601 Abrego St. Monterey, CA 93940 T: 831-649-1799 F: 831-649-8399 Anastazia Aziz, AICP, Principal aziz@emcplanning.com			X				X				X				X	X							X

DUDEK 725 Front St., Suite 400 Santa Cruz, CA 95060 T: 831-600-1400 Ann Sansevero, AICP, Principal asansevero@dudek.com	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X		X	X	X
MOFFAT & NICHOL 2185 N California Blvd., Suite 500 Walnut Creek, CA 94596 T: 925-956-4943 Dilip Trivedi, Dr. Eng, PE, Principal		X	X	X		X	X			X	X					X	X	X			X		
MENDOCINO SURVEYORS INC PO Box 1162 Mendocino, CA 95460 T: 707-937-9900 Forrest Francis, PLS, Principal C: 707-813-4746 forrest@mendocinosurveyors.com	X																						
WYNN COASTAL PLANNING & BIOLOGY 703 N. Main St. Fort Bragg, CA 95437 T: 707-964-2537 F: 707-964-2622 Amy Wynn, Principal							X									X							
HDR ENGINEERING, INC. 3003 Oak Rd., Suite 500 Walnut Creek, CA 94597 T: 925-465-2700 F: 925-465-2701 Christian LaPann-Johannessen, Project Manager Christian.lapann-johannessen@hdrinc.com		X	X	X		X	X				X												
MARIE JONES CONSULTING T: 707-357-6480 Marie Jones, Principal								X	X							X							
SHN 329 E. Redwood Ave. Fort Bragg, CA 95437 T: 707-962-3140 Jason Island, Principal	X	X	X				X									X						X	
BEST BEST & KRIEGER LLP Address not provided in packet T: 213-787-2569 Ruben Duran, Partner Ruben.duran@bbklaw.com																						X	

CINQUINI & PASSARINO, INC. 1360 n Dutton Ave., Suite 150 Santa Rosa, CA 95401 T: 707-542-6268 F:707-542-2106 Anthony Cinquini, P.E., P.L.S., Principal	X																						
KOSMONT 1601 Sepulveda Blvd., Suite 382 Manhattan Beach, CA 90266 T: 424-297-1070 Larry Kosmont, CRE, Chairman & CEO							X														X		



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Text File

File Number: 24-785

Agenda Date: 6/10/2024

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Consent Calendar

Agenda Number: 5F.

Adopt Resolution of Fort Bragg City Council Authorizing an Application for Grant Funding by the Bureau of Reclamation's WaterSMART Planning and Project Design FY 2024 for the Water Storage Resilience Project (Reservoir Project, Project WTR-00024)

The Bureau of Reclamation's WaterSMART Program is offering financial assistance in the form of grant funding that will require a 50% match. The City has submitted an application for funding for the Reservoir Project to cover an estimated \$470,000 in design costs, which requires a City Council Resolution in support of the application. If awarded, the program will provide \$235,000, which the City will match.

RESOLUTION NO. ____-2024

**A RESOLUTION OF THE CITY OF FORT BRAGG CITY COUNCIL
AUTHORIZING AN APPLICATION FOR GRANT FUNDING BY THE
BUREAU OF RECLAMATION'S WATERSMART PLANNING AND
PROJECT DESIGN FY2024 FOR THE WATER STORAGE RESILIENCE
PROJECT (RESERVOIR PROJECT)**

WHEREAS, the City of Fort Bragg (the "City") has completed analysis for the sizing and location of the Water Storage Resilience Project (the "Project") that will be located on newly acquired land purchased from the Mendocino Coast Recreation and Park District (MCRPD); and

WHEREAS, the MCRPD property was selected as the best-fit location as it provides sufficient space for the construction of three 45-acre foot (AF) raw water reservoirs and is located for convenient connection to the City's raw water line that conveys water to the City's water treatment plant; and

WHEREAS, the United States Department of the Interior offers financial assistance in the form of grant funding through its Bureau of Reclamation's WaterSMART (Sustain and Manage America's Resources for Tomorrow) Planning and Project Design FY2024 for this type of project. The program provides up to \$400,000 in grant funding, with either a 0%, 25%, or 50% non-federal cost share, depending on the type of project. The Project falls under the project category that requires a 50 percent cost share; and

WHEREAS, the City desires to fund part of the cost of the Project with grant funding from the WaterSMART Planning and Project Design Program; and

NOW, THEREFORE, the City of Fort Bragg City Council (the "Council") hereby finds, determines, declares and resolves as follows:

Section 1. The Council hereby supports a grant application to the WaterSMART Planning and Project Design Program for the Project.

Sections 2. The Council hereby authorizes and directs the City Manager, or his or her designee, to complete, review, sign, and submit, for and on behalf of the City, a grant application from the Bureau of Reclamation's WaterSMART Planning and Project Design Program for the Project for \$235,000.

Section 2. The City Manager, or his or her designee, is designated to provide the assurances, certifications, and commitments required for the grant application, including executing a financial assistance or similar agreement with the Bureau of Reclamation within established deadlines and any amendments or changes thereto.

Section 3. The City Manager, or his or her designee, is designated to represent the City in carrying out the City’s responsibilities under the grant agreement, including certifying disbursement requests on behalf of the City and compliance with applicable state and federal laws.

Section 4. If a grant award is made by the Bureau of Reclamation, the City commits to providing matching funds of \$235,000 for the Project, and up to the balance of funds needed to complete the construction of the Project.

Section 6. This Resolution shall take effect immediately.

The above and foregoing Resolution was introduced by Councilmember _____, seconded by Councilmember _____, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on June 10, 2024, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSED:

BERNIE NORVELL
Mayor

ATTEST:

DIANA SANCHEZ
City Clerk



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Text File

File Number: 24-786

Agenda Date: 6/10/2024

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: 5G.

Adopt Resolution of the Fort Bragg City Council Approving Parcel Map for Minor Subdivision 1-23 (DIV 1-23); Carlos and Heather Franco (Owner/Applicant); Minor Subdivision of a 0.7 Acre Parcel Into Three Parcels of 10,664, 12,119, and 7,998 Square Feet and Accepting the 5 Foot Wide Public Utility Easement and Parcel "A" as Shown on the Parcel Map

The DIV 1-23 Parcel Map is technically correct and complies with the requirements of Section 18.82.040. The map is submitted for City Council approval in accordance with Section 18.82.0360 and for acceptance of Parcel "A" and the 5-foot wide Public Utility Easement.

RESOLUTION NO. ____-2024

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL
APPROVING PARCEL MAP FOR MINOR DIVISION 1-23 (DIV-1-23); CARLOS
AND HEATHER FRANCO (OWNER/APPLICANT); MINOR SUBDIVISION OF A
0.7 ACRE PARCEL INTO THREE PARCELS OF 10,664, 12,119, AND 7,998
SQUARE FEET AND ACCEPTING THE 5-FOOT WIDE PUBLIC UTILITY
EASEMENT AND PARCEL "A" AS SHOWN ON THE PARCEL MAP**

WHEREAS, The Fort Bragg Planning Commission conditionally approved the Tentative Map for Minor Subdivision 1-23 on March 13, 2024, with the following Special Conditions:

1. Applicant shall comply with all requirements in the memorandum prepared by Public Works on January 10, 2024.
2. Prior to occupancy of any residential unit in this subdivision, address numbers shall be placed in such a manner as to be visible from Dana St. and shall be placed on each residential unit in such a manner as to be visible from the access driveway. The minimum height of numbers to be used shall be three inches and contrasting color from basic background visible from the access driveway. The minimum height of numbers to be used shall be three inches and contrasting color from basic background.
3. Prior to approval of the final parcel map, the applicant shall submit a Final Stormwater Control Plan, along with associated calculations and worksheets, to be approved by the Public Works Director or his/her designee.
4. Stormwater runoff shall be minimized via the incorporation of the selected site design measures in accordance with the approved Final Stormwater Control Plan.
5. Private Maintenance Agreements for the on-site storm water facilities shall be recorded as part of the Deed for each parcel. Drafts of these documents shall be submitted and approved prior to approval of the Parcel Map.
6. A Parcel Map, together with all data, information and materials required by Section 18.81.020 shall be submitted to the Director of Public Works. The Parcel Map shall be considered submitted when it is complete and complies with all applicable provisions of this Development Code and the Map Act. After determining that the Parcel Map is in compliance and is technically correct in compliance with Section 18.82.040, the Director of Public Works shall forward the Parcel Map to the Council for approval. If Council approves a Parcel Map, the map shall be transmitted by the Director of Public Works to the County Recorder for filing in compliance with Map Act Section 66450; and

WHEREAS, in order for the City to access the handicap ramp and the fire hydrant located at the corner of Oak and Dana for maintenance, a triangular dedication is needed; and

WHEREAS, the applicant is dedicating the required triangular Parcel "A" on the Parcel Map; and

WHEREAS, in order for the City to access the new utilities placed at the front of the properties, a Public Utility Easement is necessary; and

WHEREAS, the applicant is dedicating the required 5-foot-wide Public Utility Easement on the Parcel Map; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of Fort Bragg does hereby accept the Public Utility Easement and Parcel "A" as shown on the Parcel Map; and

WHEREAS, the Public Works Director has determined that all conditions of approval required prior to recordation have been met; and

BE IT FURTHER RESOLVED that the City Council of Fort Bragg does hereby approve Parcel Map 1-23.

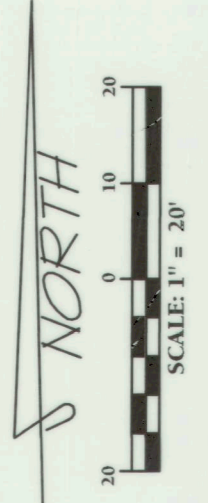
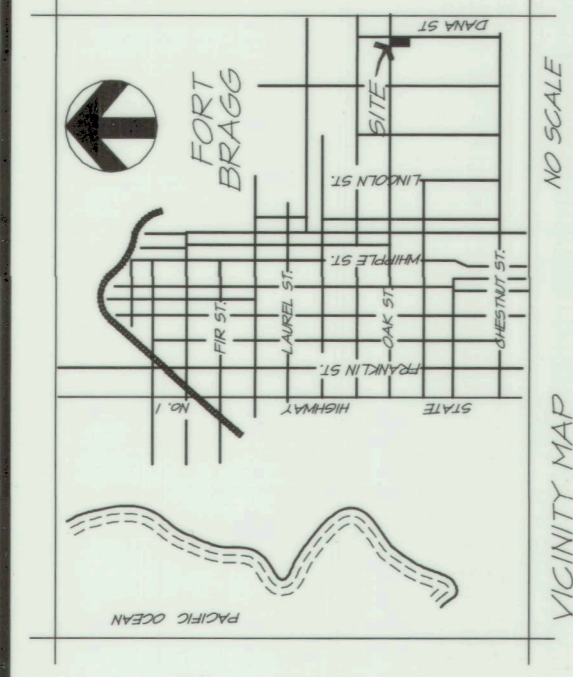
The above and foregoing Resolution was introduced by Councilmember _____, seconded by Councilmember _____, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 10 day of June 2024, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSED:

BERNIE NORVELL
Mayor

ATTEST:

Diana Sanchez
City Clerk



BASIS OF BEARINGS
SCOTTED ALONG THE EAST BOUNDARY OF THE SUBDIVISION SHOWN IN THIS MAP TO BE THE TRUE AND CORRECT BEARINGS AND DISTANCES AS SHOWN HEREON.

OWNER'S STATEMENT

WE, THE UNDERSIGNED, BEING ALL PARTIES HAVING ANY RECORD TITLE INTEREST IN THE LAND WITHIN THIS DIVISION, HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THIS MAP AND DO HEREBY DEDICATE FOR PUBLIC USE THE FOLLOWING:

- 1) PARCEL "A" AS SHOWN HEREON.
- 2) A PUBLIC UTILITY EASEMENT AS SHOWN HEREON.

Carlos F. Franco
CARLOS F. FRANCO

Heather A. Franco
HEATHER A. FRANCO

ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS OR ACCURACY OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA
COUNTY OF Mendocino

ON 5/30/2024 BEFORE ME, M. Niesau, Notary Public

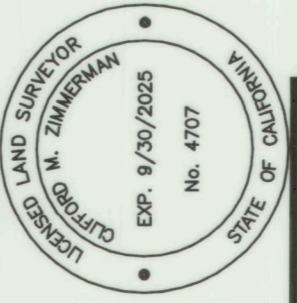
PERSONALLY APPEARED Carlos F. Franco WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/IT WAS/WERE ON THE SAME IN HIS/HER/ITS AUTHORIZED CAPACITIE(S), AND THAT BY HIS/HER/ITS SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.
WITNESS MY HAND AND OFFICIAL SEAL.

SIGNATURE M. Niesau (SEAL)

SURVEYOR'S STATEMENT

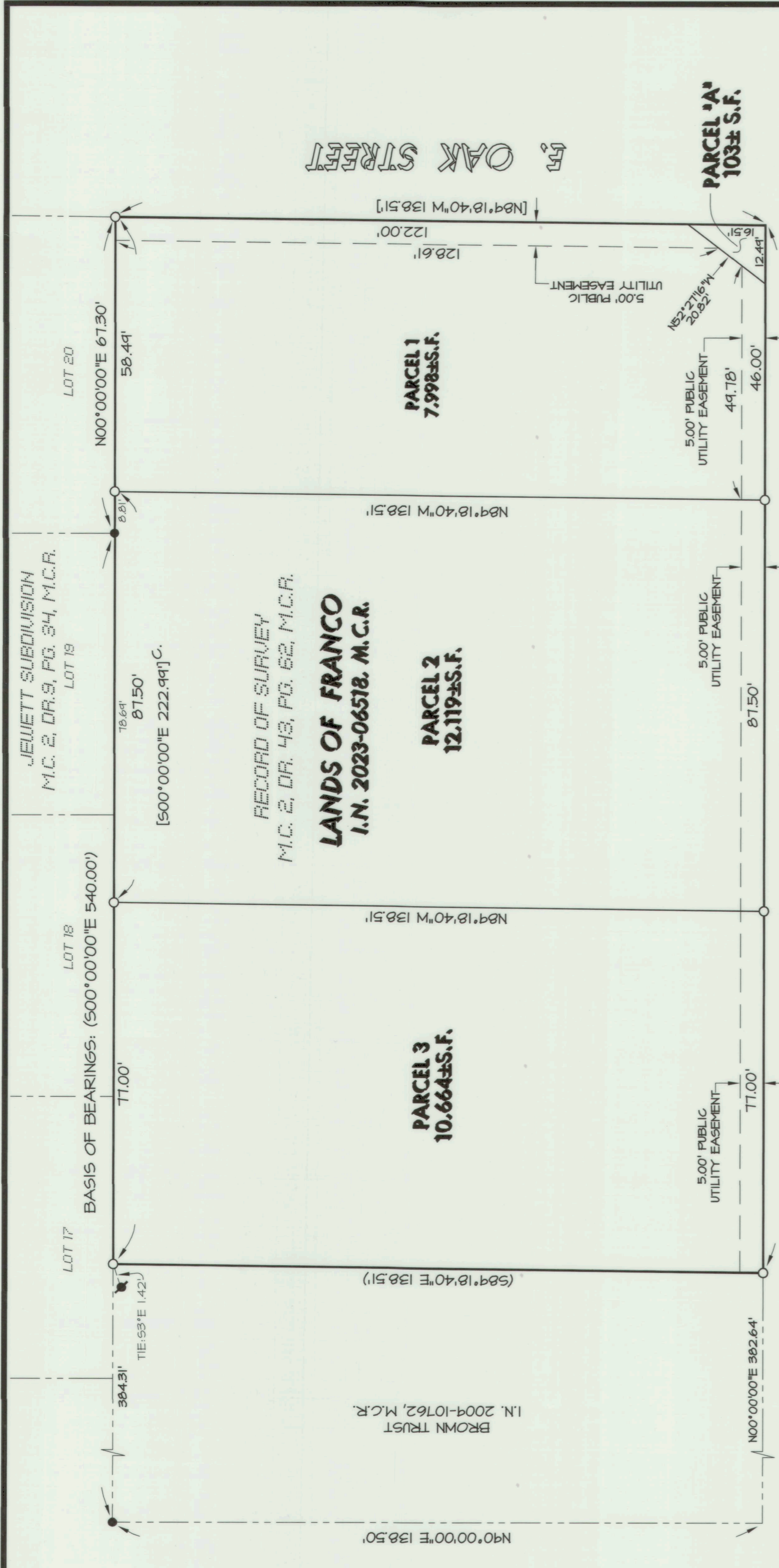
THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF CARLOS F. FRANCO IN FEBRUARY, 2024. I HEREBY STATE THAT THIS PARCEL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED CHANGEBAR AND OCCUPY THE PUBLIC STATE INDICATED AND THAT THE MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.



Clifford M. Zimmerman
CLIFFORD M. ZIMMERMAN, L.S. 4707
EXPIRATION DATE: SEPTEMBER 30, 2025

Prepared by:
Clifford M. Zimmerman

Licensed Land Surveyor, L.S. 4707
32200 Forest Lane, Fort Bragg, Ca. 95437
Phone: 707-489-1194



LEGEND

- LIMITS OF SUBDIVISION
- BOUNDARY LINE, THIS SUBDIVISION
- ADJOINERS' BOUNDARY LINE
- EASEMENT CREATED THIS SUBDIVISION
- FOUND 3/4" REBAR, NO TAG PER M.C. 2, DR. 43, P. 62, M.C.R.
- FOUND 1/2" REBAR, NO TAG PER M.C. 2, DR. 43, P. 62, M.C.R.
- SET 3/4" REBAR WITH CAP STAMPED LS 4707

- M.C.R.
- IN.
- M.C.
- DR.
- P.6.
- C.
- ()
- []

- MENDOCINO COUNTY RECORDS
- INSTRUMENT NUMBER, M.C.R.
- MAP CASE
- DRAWER
- PAGE
- CALCULATED RECORD DATA
- MEASURED & RECORD DATA PER MAP CASE 2, DR. 43, P. 62, M.C.R.
- MEASURED & RECORD DATA PER IN. 2023-06518 M.C.R.

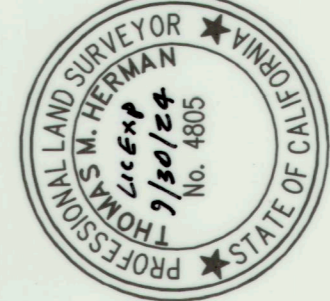
CITY SURVEYOR'S STATEMENT

I HAVE EXAMINED THIS MAP, THE SUBDIVISION AS SHOWN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF, ALL PROVISIONS OF CHAPTER 2, DIVISION 2 OF TITLE 25, PART 1 OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH, ANY VIOLATIONS OF THE MAP IS TECHNICALLY CORRECT.

DATED June 3, 2024

CITY OF FORT BRAGG
STATE OF CALIFORNIA

BY: *Thomas M. Hermyan*
THOMAS M. HERMYAN, PLS 4805



CITY CLERK'S STATEMENT

I, DIANA SANCHEZ CITY CLERK OF THE CITY OF FORT BRAGG, HEREBY ORDER THAT THE CITY COUNCIL OF THE CITY OF FORT BRAGG BY MINUTE ORDER

ON THE 30 DAY OF SEPTEMBER, 2024, APPROVED THIS SUBDIVISION AND ACCEPTED ON BEHALF OF THE PUBLIC, PARCEL "A" AND THE PUBLIC UTILITY EASEMENT AS OFFERED IN THE OWNER'S STATEMENT AND AS SHOWN HEREON.

DIANA SANCHEZ CITY CLERK
CITY OF FORT BRAGG

PROOF OF OWNERSHIP STATEMENT

I HEREBY STATE THAT THE PROOF OF OWNERSHIP REPORT MADE BY REDWOOD EMPIRE TITLE COMPANY OF MENDOCINO COUNTY THIS

CONFORMS TO THE PROVISIONS OF THE SUBDIVISION MAP ACT.

SUSAN M. RANCOCHAK
COUNTY RECORDER

BY: _____ DEPUTY

BOND STATEMENT

I, _____ CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF MENDOCINO, HEREBY STATE THAT THE BOND OR DEPOSIT AS REQUIRED BY THE SUBDIVISION MAP ACT, SECTION 66464, TITLE 1 OF THE GOVERNMENT CODE, DIV. 2 (COMMENCING WITH SEC. 66410) HAS BEEN FILED.

DATED THIS _____ DAY OF _____, 2024

_____, CLERK OF THE BOARD OF SUPERVISORS

BY: _____ DEPUTY

COUNTY RECORDER'S STATEMENT

FILED THIS _____ DAY OF _____ 2024 AT _____ M IN MAPS
DRAWN BY _____ PAGE _____
OF CLIFFORD M. ZIMMERMAN M.C.R. AT THE REQUEST
KATRINA BARTOLOMEO
ASSESSOR COUNTY CLERK-RECORDER

BY: _____ DEPUTY FEE \$ _____

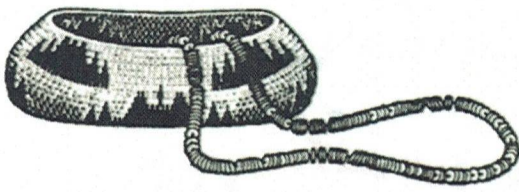
SHEET 1 OF 1

Parcel Map
OF THE LANDS OF FRANCO
Minor Subdivision 1-23

LYING WITHIN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1 TOWNSHIP 18 NORTH, RANGE 11 WEST MOUNT DIABLO BASE AND MERIDIAN

MAY, 2024
JOB # 23-647
CITY OF FORT BRAGG,
MENDOCINO COUNTY
CALIFORNIA

MAPS
DRAWER _____
PAGE _____



SHERWOOD VALLEY BAND OF POMO INDIANS

Thursday, June 6, 2024

Maria Flynn, Administrative Assistant
Community Development Department
416 N. Franklin Street
Fort Bragg, CA 95437

RE: DIV 1-23

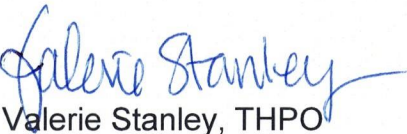
Dear Ms. Flynn:

This correspondence is in response to the proposed project at 145 Dana Street, Fort Bragg.

The Sherwood Valley Tribe has concerns about the trenching being proposed for the project. Although, General Note of project plan, General Note 11 states about construction being halted if cultural resource are found. The Tribe wants to know if Construction Contractor has cultural monitoring knowledge. The Sherwood Valley Tribe may want to have a tribally appointed monitor at project site during trenching phase.

The Tribe is one of the MLD's of the area. Sherwood Valley Tribe contact is Valerie Stanley, THPO at svrthpo@sherwoodband.com. Thank you.

Sincerely,


Valerie Stanley, THPO
Sherwood Valley Rancheria

190 Sherwood Hill Drive Willits, California 95490
(707)459-9690



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Text File

File Number: 24-788

Agenda Date: 6/10/2024

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: 5H.

Consider Adoption of City Council Resolution Approving Budget Amendment 2023/24-18 for the Fort Bragg Special Election Held on November 7, 2023 (Amount not to Exceed \$33,988.00, Account No.110-4110-0315)

RESOLUTION NO. XXXX-2024

RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING BUDGET AMENDMENT 2023/24-18 FOR COSTS INCURRED FOR THE FORT BRAGG SPECIAL ELECTION HELD ON NOVEMBER 7, 2023 (AMOUNT NOT TO EXCEED \$33,988, ACCOUNT NO. 110-4110-0315)

WHEREAS, on November 7, 2023 The City of Fort Bragg and County of Mendocino held a Special Election; and

WHEREAS, the election was necessary to include Measure Q on the ballot; and

WHEREAS, the budgeted amount was insufficient to cover the cost of the election; and

WHEREAS, Budget Amendment 2023/24-18 is needed to move funds in order to pay for the cost of the election; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby amend the previously adopted FY 2023-24 Budget to incorporate the changes enumerated in Exhibit A and does hereby authorize the City Manager to execute the Amendment.

The above and foregoing Resolution was introduced by Councilmember _____, seconded by Councilmember _____, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 10th day of June 2024, by the following vote:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**
- RECUSED:**

BERNIE NORVELL
Mayor

ATTEST:

Diana Sanchez
City Clerk

BUDGET AMENDMENT FY 2022/23

Budget Adjustment #: **2022/23-04**
 Budget FY: **FY 2022/23**

Account Description	Account #		FY 22/23	Increase (+)	Decrease (-)	Revised Total	Description
Expenditures							
1 Salaries & Wages - IT Lead	521	4394	0101	\$ 123,693	\$ 15,915	\$ 139,608	
Medical Premium - CE Officer	521	4394	0211	\$ 26,112	\$ -	\$ 26,112	
Dental Premium - CE Officer	521	4394	0213	\$ 1,928	\$ -	\$ 1,928	
VSP Premium - CE Officer	521	4394	0214	\$ 459	\$ -	\$ 459	
PERS - CE Officer	521	4394	0220	\$ 10,150	\$ 2,829	\$ 12,979	
Worker's Comp - CE Officer	521	4394	0231	\$ 2,037	\$ 749	\$ 2,786	
FICA/Medicare - IT Lead	521	4394	0252	\$ 9,258	\$ 3,434	\$ 12,692	
2 Transfer Code Enforcement Budget from the Community Development Department to the Police Department							
Salaries & Wages -Code Enforcement	110	4320	0101	\$ 299,956	\$ 76,609	\$ 223,347	Transfer of CE Officer Budget to PD
Medical Premium - CE Officer	110	4320	0211	\$ 51,350	\$ 17,674	\$ 33,677	Transfer of CE Officer Budget to PD
Dental Premium - CE Officer	110	4320	0213	\$ 3,733	\$ 1,212	\$ 2,521	Transfer of CE Officer Budget to PD
VSP Premium - CE Officer	110	4320	0214	\$ 917	\$ 229	\$ 688	Transfer of CE Officer Budget to PD
PERS - CE Officer	110	4320	0220	\$ 24,518	\$ 5,946	\$ 18,572	Transfer of CE Officer Budget to PD
Worker's Comp - CE Officer	110	4320	0231	\$ -	\$ 1,276	\$ (1,276)	Transfer of CE Officer Budget to PD
FICA/Medicare - CE Officer	110	4320	0252	\$ 22,761	\$ 5,861	\$ 16,901	Transfer of CE Officer Budget to PD
Salaries & Wages -Code Enforcement	110	4200	0101	\$ 1,865,705	\$ 76,609	\$ 1,942,314	Transfer of CE Officer Budget to PD
Medical Premium - CE Officer	110	4200	0211	\$ 337,999	\$ 17,674	\$ 355,673	Transfer of CE Officer Budget to PD
Dental Premium - CE Officer	110	4200	0213	\$ 24,765	\$ 1,212	\$ 25,977	Transfer of CE Officer Budget to PD
VSP Premium - CE Officer	110	4200	0214	\$ 4,816	\$ 229	\$ 5,045	Transfer of CE Officer Budget to PD
PERS - CE Officer	110	4200	0220	\$ 374,904	\$ 5,946	\$ 380,850	Transfer of CE Officer Budget to PD
Worker's Comp - CE Officer	110	4200	0231	\$ 123,024	\$ 1,276	\$ 124,301	Transfer of CE Officer Budget to PD
FICA/Medicare - CE Officer	110	4200	0252	\$ 157,175	\$ 5,861	\$ 163,036	Transfer of CE Officer Budget to PD
3 Budget for a 2nd Code Enforcement Officer (November 2021-June 2022)							
Salaries & Wages - 2nd CE Officer	110	4200	0101	\$ 1,865,705	\$ 47,144	\$ 1,912,849	Budget- 2nd CE Officer
Medical Premium - 2nd CE Officer	110	4200	0211	\$ 337,999	\$ 10,876	\$ 348,875	Budget- 2nd CE Officer
Dental Premium - 2nd CE Officer	110	4200	0213	\$ 24,765	\$ 746	\$ 25,511	Budget- 2nd CE Officer
VSP Premium - 2nd CE Officer	110	4200	0214	\$ 4,816	\$ 141	\$ 4,957	Budget- 2nd CE Officer
PERS - 2nd CE Officer	110	4200	0220	\$ 374,904	\$ 3,659	\$ 378,563	Budget- 2nd CE Officer
Worker's Comp - 2nd CE Officer	110	4200	0231	\$ 123,024	\$ 786	\$ 123,810	Budget- 2nd CE Officer
FICA/Medicare - 2nd CE Officer	110	4200	0252	\$ 157,175	\$ 3,607	\$ 160,782	Budget- 2nd CE Officer
4 Revenues							
CDD- Grant Staff Time Reimb	110	4320	3318	\$ 98,000	\$ 98,000	\$ -	Transfer of CDD Grant Revenue-CE
PD- Grant Staff Time Reimb	110	4200	3318	\$ 268,420	\$ 98,000	\$ 366,420	Transfer of CDD Grant Revenue-CE
PD- Grant Staff time Reimb	110	4200	3318	\$ 268,420	\$ 66,958	\$ 335,378	Budget 2nd CE Grant Reimb
				\$ 340,724	\$ 206,807	\$ 6,948,770	

Reason for Amendment: RESOLUTION # : _____

Authorization: _____ **Signature:** _____ **Date:** _____

Requested By: Finance/Admin Dept _____

Approval: Isaac Whippy _____

Finance Use: Adriana Moreno Ramos _____

Attach copies of Resolution or other documentation



KATRINA BARTOLOMIE
ASSESSOR
COUNTY CLERK-RECORDER
REGISTRAR OF VOTERS

COMMISSIONER OF
CIVIL MARRIAGES

COUNTY OF MENDOCINO
OFFICE OF ASSESSOR-COUNTY CLERK-RECORDER
501 LOW GAP ROAD, RM. 1020
UKIAH, CALIFORNIA 95482
E-MAIL: acr@mendocinocounty.gov

AMANDA WOLTER
ASSISTANT CLERK-RECORDER
ASSISTANT REGISTRAR OF VOTERS
(707) 234-6819

TONYA MOUNTS
ASSISTANT ASSESSOR
(707) 234-6800
ASSESSOR FAX: (707) 463-6597

County Clerk: (707) 234-6822
Recorder: (707) 234-6823
CLERK-RECORDER FAX: (707) 463-4257

April 9, 2024

RECEIVED

City of Fort Bragg
416 N. Franklin St.
Fort Bragg, CA 95437

APR 11 2024

City of Fort Bragg
City Clerk

INVOICE #: 2023/24-6

Costs incurred for Special Election, for the Fort Bragg Special Election held on
November 7, 2023

Election Costs

Sample Ballots: Order and Mailing	\$ 1,050.00
Election Staff Time (Sorting, Counting, etc)	\$ 23,092.06
Ballot Order/Setup/Shipping	\$ 3,491.77
Postage Cost	\$ 4,191.50
Polling Place/Election Supplies	\$ 2,162.02

TOTAL DUE: \$ 33,987.35

Please make checks payable to (and mail to):
Mendocino County Clerk-Recorder
501 Low Gap Road, Room 1020
Ukiah, CA 95482

Thank you!



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Text File

File Number: 24-802

Agenda Date: 6/10/2024

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Minutes

Agenda Number: 5I.

Approve Minutes of May 28, 2024



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Meeting Minutes City Council

*THE FORT BRAGG CITY COUNCIL MEETS CONCURRENTLY
AS THE FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT
NO. 1 AND THE FORT BRAGG REDEVELOPMENT
SUCCESSOR AGENCY*

Tuesday, May 28, 2024

6:00 PM Town Hall, 363 N. Main Street and Via Video Conference

CALL TO ORDER

Mayor Norvell called the meeting to order at 6:02 PM.

PLEDGE OF ALLEGIANCE

ROLL CALL

- Present:** 4 - Mayor Bernie Norvell, Vice Mayor Jason Godeke, Councilmember Tess Albin-Smith and Councilmember Lindy Peters
- Absent:** 1 - Councilmember Marcia Rafanan

CLOSED SESSION REPORT

None.

AGENDA REVIEW

None.

1. MAYOR'S RECOGNITIONS AND ANNOUNCEMENTS

- 1A. [24-693](#) LGBTQI+ Pride Month Proclamation

Councilmember Albin-Smith read the Proclamation recognizing June 2024 as LGBTQI+ Month.

2. PUBLIC COMMENTS ON: (1) NON-AGENDA, (2) CONSENT CALENDAR & (3) CLOSED SESSION ITEMS

- (1) Dewey Johnson, Jay.
(2) None.
(3) None.

3. STAFF COMMENTS

City Manager Isaac Whippy announced that the First Friday Summer Kickoff will be held on June 7, 2024, from 4 to 8 PM on Laurel Street. The event will feature music, activities, and food trucks. Additionally, the CV Starr leisure pool will open on Monday, June 10, 2024.

Assistant Director of Engineering Chantell O'Neal announced a hazardous waste event on June 6 and June 7 at the Caspar Transfer Station. She also advised the public to be mindful of

parking signage while streets construction continues and provided a timeline for the upcoming construction work. There will be an additional free compost event on May 29, 2024, behind CV Starr. Free compost is also available at the Caspar Transfer Station.

4. MATTERS FROM COUNCILMEMBERS

Councilmember Peters announced that the Fire Protection Authority had a meeting just prior to this one, during which they reviewed their 2023-2024 budget and found it to be in good shape. However, there is some concern about Measure P and the possibility of losing funds associated with it.

Councilmember Albin-Smith announced that there will be a Mendocino Transit Authority (MTA) meeting at the Bus Barn tomorrow, May 29, 2024, at 1:30 PM.

Vice Mayor Godeke announced the last Haz Mat Event for this year on June 6 and June 7 at the Caspar Transfer Station.

5. CONSENT CALENDAR

Moved by Councilmember Peters, seconded by Vice Mayor Godeke, that the Consent Calendar be approved. The motion carried by the following vote:

Aye: 4 - Mayor Norvell, Vice Mayor Godeke, Councilmember Albin-Smith and Councilmember Peters

Absent: 1 - Councilmember Rafanan

- 5A. [24-754](#)** Accept Bathroom and Locker Room Flooring Project as Complete and Direct City Clerk to File Notice of Completion

This Notice of Completion was accepted on the Consent Calendar.

- 5B. [24-759](#)** Adopt Resolution of the Fort Bragg City Council Authorizing the Application for the Permanent Local Housing Allocation Program Non-Entitlement Local Government Competitive Component

This Resolution was adopted on the Consent Calendar.

- 5C. [24-761](#)** Readopt Master Traffic Resolution

This Resolution was adopted on the Consent Calendar.

- 5D. [24-775](#)** Approve Scope of Work for a Request for Proposals for Professional Services to Provide Strategic and Creative Marketing Services for Visit Fort Bragg

This Scope of Work was approved on the Consent Calendar.

- 5E. [24-771](#)** Approve Minutes of Special City Council - Mid Year Budget Workshop of March 20, 2024

These Minutes wer approved on the Consent Calendar.

- 5F. [24-764](#)** Approve Minutes of May 13, 2024

These Minutes were approved on the Consent Calendar.

- 5G.** [24-777](#) Receive and File Minutes for the Public Works and Facilities Committee Meeting for February 08, 2024

These Committee Minutes were received and filed on the Consent Calendar.

- 5H.** [24-780](#) Receive and File Minutes of the Public Works and Facilities Committee Meeting for March 21, 2024

These Committee Minutes were received and filed on the Consent Calendar.

6. DISCLOSURE OF EX PARTE COMMUNICATIONS ON AGENDA ITEMS

None.

7. PUBLIC HEARING

None.

8. CONDUCT OF BUSINESS

- 8A.** [24-768](#) Receive Public Works and Facilities Recommendation on Pavilion Design and Location, and Approve Conceptual Designs of Melton Design Group for Bainbridge Park Enhancement Project, PWP-00096, and Authorize Consultant to Proceed with Construction Documents

Assistant Director of Engineering Chantell O'Neal and Consultant Patrick Farrar presented on this item.

Public Comment: None.

Discussion: After much discussion, the Council decided on option 1A for the Pavilion, with option 1B as a backup, depending on cost and to ensure the project stays within budget.

- 8B.** [24-733](#) Receive Report and Adopt City Council Resolutions
- 1) Adopt City Council Resolution Approving Contract Change Order #7 with Argonaut Constructors for the 2022 Streets Rehabilitation Project, Increasing the Amount to \$3,902,639.42, Categorical Exemption 15301; and
 - 2) Adopt City Council Resolution Approving Amendment #3 with SHN for the Construction Management Services on the 2022 Streets Rehabilitation Project, Increasing the Amount to \$231,900, Categorical Exemption 15301; and; Authorizing City Manager to Execute Same

Assistant Director of Engineering Chantell O'Neal presented on this item.

Public Comment: None.

Discussion: Councilmember Peters noted that if the construction contract needs to be extended, it would naturally require an extension of the construction management services for the project.

A motion was made by Councilmember Peters, seconded by Vice Mayor Godeke,

that the Resolution (Argonaut) be adopted. The motion carried by the following vote:

A motion was made by Councilmember Godeke, seconded by Councilmember Peters that the Resolution (SHN) be adopted. The motion carried by the following vote:

Aye: 4 - Mayor Norvell, Vice Mayor Godeke, Councilmember Albin-Smith and Councilmember Peters

Absent: 1 - Councilmember Rafanan

- 8C. [24-770](#)** Receive Report and Consider Adoption of City Council Resolution Approving the Contract with Redwood Roofers for the City Hall Roof Replacement Project PWP-00139; Authorizing City Manager to Execute Contract (Amount Not to Exceed \$101,174.00); and Finding the Project Exempt from CEQA under 14 CCR 15301

Assistant Director of Engineering Chantell O'Neal presented on this item.

Public Comment: Jacob Patterson.

Discussion: It was noted that contracts with City Government are time-consuming and very involved.

A motion was made by Councilmember Peters, seconded by Councilmember Albin-Smith, that the Resolution be adopted. The motion carried by the following vote:

Aye: 4 - Mayor Norvell, Vice Mayor Godeke, Councilmember Albin-Smith and Councilmember Peters

Absent: 1 - Councilmember Rafanan

- 8D. [24-772](#)** Receive Report and Consider Adoption of City Council Resolution Approving Professional Service Agreement with Palni, Inc. for Broadband Engineering and Design Services, Assistance with Associated Project Management, and Authorizing City Manager to Execute Contract (Amount Not to Exceed \$24,052.00; Account No. 329-6134-0630)

Special Projects Manager Sarah McCormick presented on this item.

Public Comment: Andrew Jordan.

Discussion: There was discussion about how Broadband has always been one of the City Council's top goals.

A motion was made by Councilmember Peters, seconded by Councilmember Albin-Smith, that the Resolution be adopted. The motion carried by the following vote:

Aye: 4 - Mayor Norvell, Vice Mayor Godeke, Councilmember Albin-Smith and Councilmember Peters

Absent: 1 - Councilmember Rafanan

9. CLOSED SESSION

Mayor Norvell recessed the meeting at 7:32 PM; the meeting reconvened to Closed Session at 7:35 PM.

9A. [24-773](#)

CONFERENCE WITH LABOR NEGOTIATORS: Pursuant to Government Code Section 54957.6: City Negotiator: Isaac Whippy, City Manager; Employee Organizations: Fort Bragg Police Association

Mayor Norvell reconvened the meeting to Open Session at 8:38 PM and reported that no reportable action had been taken on the Closed Session item.

ADJOURNMENT

Mayor Norvell adjourned the meeting at 8:38 PM.

BERNIE NORVELL, MAYOR

Diana Sanchez, City Clerk

IMAGED (_____)



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Text File

File Number: 24-793

Agenda Date: 6/10/2024

Version: 1

Status: Public Hearing

In Control: City Council

File Type: Resolution

Agenda Number: 7A.

Receive Report, Conduct Public Hearing, and Consider Adoption of City Council Resolution Approving Contract with Syserco Energy Solutions Inc. for the Purchase and Installation of Solar Power at Multiple City Facilities; Exempt from CEQA Pursuant to Public Resource Code 21080.35



AGENCY: City Council
MEETING DATE: June 10, 2024
DEPARTMENT: Public Works
PRESENTED BY: John Smith
EMAIL ADDRESS: jsmith@fortbragg.com

AGENDA ITEM SUMMARY

TITLE:

Receive Report, Conduct Public Hearing, and Consider Adoption of City Council Resolution Approving Contract with Syserco Energy Solutions, Inc.; For the Purchase and Installation of Solar Power at Six City Facilities. City Project PWP-00133; Authorizing City Manager to Execute Contract, and Finding the Project Exempt from CEQA under Public Resource Code 21080.35

ISSUE:

The City of Fort Bragg has demonstrated an interest in developing and implementing projects across the City's portfolio of facilities that will result in ongoing climate protection and operational cost savings. The City has installed solar PV at the CV Starr Center and has identified additional site locations where the installation of solar PV will provide enhanced benefits to the City. On December 15, 2022, the California Public Utilities Commission (CPUC) unanimously voted to approve the transition of Net Energy Metering (NEM) from NEM 2.0 to NEM 3.0. NEM 3.0 drastically alters the way solar system owners are compensated for the energy they generate and provide to the utility grid, lowering the value that owners are able to capture with their new solar systems. In order to preserve NEM 2.0 status for at least (20) years, the City must complete a series of steps that will result in all new solar PV systems being installed and connected to the utility grid by April 15, 2026. City staff completed an initial step in securing NEM2 status by working with Syserco Energy Solutions, Inc. (SES) to submit Interconnection Applications.

Subsequently, on March 27, 2023 City Council authorized City staff to execute a Letter of Intent to work with SES to complete Project Development and detailed analysis for the installation of solar PV at (6) City-owned sites, as well as a roof replacement at (1) City-owned site. In order to maintain NEM2 status for at least (20) years, the solar installations must be completed, connected to the utility grid, and receive Permission to Operate (PTO) from PG&E before April 15, 2026. The expected construction timeline is expected to be over 18 months, so City staff recognizes the importance to beginning construction as soon as possible. Additionally, the City is eligible to apply for a 10% Low-Income bonus incentive for the project. In order to be eligible to apply for the bonus incentive, the City must enter into an Agreement prior to applying, and the application must be submitted by June 27, 2024. If awarded, the estimated value of the 10% bonus incentive is over \$700,000.

ANALYSIS:

In January 2023 City staff engaged with a turnkey energy solutions company called Syserco Energy Solutions, Inc. (SES). SES and City staff began discussions around the possibility to implement additional solar PV systems at multiple City-owned facilities. SES educated City staff about the pending changes by the CPUC involving the transition from

NEM 2.0 to NEM 3.0. Staff recognized the importance of taking action in order to identify all possible locations where the installation of solar PV would benefit the City financially and environmentally. In order to preserve NEM 2.0 status for any future solar PV systems, the CPUC required a preliminary design of each solar system to be completed and submitted as an Interconnection Application. All Interconnection Applications were required to be submitted by April 15, 2023 and accepted by PG&E in order to maintain NEM 2.0 status for at least the next (20) years.

SES completed a Utility Data Analysis of each City-owned facility and analyzed each site to determine the viability and potential value to the City of installing solar PV on a site-by-site basis. It was determined that (6) sites met the criteria to be considered for the installation of solar PV and SES completed preliminary designs for these (6) sites in order to submit Interconnection Applications for each site. SES performed this work at no cost to the City and all (6) Interconnection Applications were successfully submitted ahead of the April 15, 2023 deadline. The following is a list of the (6) sites where Interconnection Applications were submitted and accepted by PG&E:

1. City Hall, 416 North Franklin St.
2. Corp Yard / Water Treatment Plant, 31301 Cedar St.
3. CV Starr Center, 300 South Lincoln St.
4. Fire Department, 141 North Main St.
5. Police Station, 250 East Cypress St.
6. Waste Water Treatment Plant, 100 W Cypress St.

If the City chooses not to move forward with the project and the solar systems are not completed and connected to the utility grid by the deadline, then any future solar systems will be under the NEM 3.0 configuration, thus significantly reducing the overall financial value of the systems.

On March 27, 2023 City Council authorized City staff to execute a Letter of Intent to authorize SES to proceed with the completion of the final design and detail the Scope of Work, Project Costs, and Utility Savings, for the project. During this Project Development phase, it was also identified by City staff that the roof needs to be replaced at the Police Station prior to installation of solar panels. For this reason, the replacement of the roof at the Police Department is included in the project.

Project Development has now been completed and staff requests to enter into an Energy Services Agreement under CA Government Code 4217.10 *et seq.* Entering into an Energy Services Agreement will authorize SES to proceed with project implementation in order to complete the projects ahead of the NEM2 deadline. Renewable energy and energy efficiency projects may be sole-sourced or procured through either formal or informal procurement under Govt C §§4217.10-4217.18, if the city council is (1) able to make findings at a regular meeting, following a public hearing, that the cost of the proposed project will be less than the anticipated cost of energy that would have been consumed by the city if the project is not completed (i.e., the energy cost savings exceed the project costs).

City staff is working with NHA Advisors to secure financing to fund the project. The project will be funded by one of many funding options, such as a Power Purchase Agreement, issuing bonds, solar leases, energy services agreements, to name a few.

Staff is also aware of an eligible project incentive that can be applied for as part of the Inflation Reduction Act (IRA). Under the IRA, eligible project costs are subject to receive a Direct-Pay project incentive valued at 25.5% of solar project costs. The IRA project rebate is included in the overall project cash flow and can be applied for at the conclusion of the project. Staff and SES have confirmed eligibility to apply for this incentive at the conclusion of the project. This IRA incentive is valued to be approximately \$1.8 million dollars. The total project cost, as proposed by SES is \$7,501,224, with potential IRA incentives ranging from \$1.8M - \$2.5M, depending on if the 10% bonus incentive is awarded, thus leaving the City with a NET project cost of approximately \$5M - \$5.7M. The project is expected to generate approximately \$12.8M in utility savings over the expected life of the equipment being installed. For additional project information, please see Exhibit A to the Energy Services Agreement, titled "Energy Services Proposal" (ESP).

RECOMMENDED ACTION:

Approve Energy Services Agreement authorizing City staff to enter into Agreement with Syserco Energy Solutions for implementation of entire project under California Government Code 4217.10 *et seq.* Project-specific details can be found in the Energy Services Proposal, as submitted by SES, and serving as Exhibit A to the Energy Services Agreement.

ALTERNATIVE ACTION(S):

Do not proceed with approval of Energy Services Agreement, which will eliminate the opportunity for the City to secure NEM 2.0 status for the proposed solar PV systems, thus eliminating the opportunity to realize the currently projected ~\$12.8 million in savings over the expected life of the equipment being proposed to install.

FISCAL IMPACT:

The approved LOI as submitted by Syserco Energy Solutions includes a Break Fee in the amount of \$63,287. If the City does not enter into an Agreement with SES for the implementation of the project, then the Break Fee amount shall be paid to SES. If the Agreement is approved, the break fee is included in the sale price as outlined in the Energy Services Proposal.

ENVIRONMENTAL ANALYSIS:

The project is expected to significantly reduce greenhouse gas emissions by the City. The amount of greenhouse gas emission reduction is outlined in the Energy Services Proposal. This project is exempt from CEQA pursuant to Public Resource Code 21080.35.

CONSISTENCY:

Policy OS-6.3 – Encourage the development and use of alternative sources of energy such as wind, solar, and ways to meet Fort Bragg's energy needs.

Policy S-2.5 – Encourages photovoltaic energy systems.

IMPLEMENTATION/TIMEFRAMES:

The estimated project construction schedule is approximately 18-20 months, whereas if the Agreement is approved by City Council in June 2024, then it is expected to complete the project ahead of the April 15, 2026 NEM2 deadline. Securing NEM2 status is not guaranteed, however adhering to the project implementation schedule, beginning in June 2024 will significantly increase the probability to achieving NEM2 status ahead of the deadline.

ATTACHMENTS:

1. Resolution
2. Presentation
3. Energy Services Contract
4. Exhibit A – Energy Services Proposal

RESOLUTION NO. XXXX-2024

**A RESOLUTION OF THE FORT BRAGG CITY COUNCIL AUTHORIZING CITY
MANAGER TO EXECUTE AN ENERGY SERVICES AGREEMENT WITH
SYSERCO ENERGY SOLUTIONS (SES) FOR THE COMPLETION OF DESIGN
AND INSTALLATION OF SOLAR PV, CONSISTENT WITH GOVT CODE
§§4217.10-4217.18**

WHEREAS, City staff has pursued energy-saving solar PV projects to reduce operating costs, generate electricity locally, and improve infrastructure at various facilities; and

WHEREAS, the California Public Utilities Commission (CPUC) unanimously voted to approve the transition of Net Energy Metering (NEM) from NEM 2.0 to NEM 3.0., which drastically alters the way solar system owners are compensated for the energy they generate and provide to the utility grid; and

WHEREAS, SES, an energy solutions company specializing in energy efficiency and solar PV, performed an analysis, at no cost to the City, to identify all viable site locations where solar PV installed under NEM 2.0 will provide the greatest financial value to the City; and

WHEREAS, City Council authorized City Staff to execute a Letter of Intent to contract under Government Code 4217 on March 27, 2023, to authorize Syserco Energy Solutions to complete Project Development and finalize engineering details for the project; and

WHEREAS, SES completed preliminary solar PV designs for each of (6) City-owned site locations, and completed design for roof replacement at (1) City-owned site location, and worked with staff to successfully submit Interconnection Applications and gain acceptance by PG&E to preserve NEM 2.0 status for at least (20) years; and

WHEREAS, it is understood by the City that a pending deadline exists that requires all future solar PV systems to be designed, installed, and connected to the utility grid by April 15, 2026; and

WHEREAS, it is understood by the City that if an Energy Services Agreement is approved and executed prior to June 27, 2024, then the City is eligible to apply for an additional 10% low-income bonus incentive with an estimated value of over \$700,000; and

WHEREAS, in accordance with California Government Code Section 4217.10-4217.18, renewable energy and energy efficiency projects may be sole-sourced or procured through either formal or informal procurement if the City Council is able to make findings at a regular meeting, following a public hearing, that the cost of the proposed project will be less than the anticipated cost of energy that would have been consumed by the City if the project is not completed (i.e., the energy cost savings exceed the project cost); and

WHEREAS, based on all the evidence presented, the City Council finds as follows:

1. This project is a positive step in the reduction of greenhouse gas and operating costs at various facilities owned and operated by the City.
2. It has been determined during the Project Development phase that, the cost of the proposed Project will be less than the anticipated cost of energy that would have been

consumed by the City if the project is not completed in accordance with Govt Code §§4217.10-4217.18.

3. The project will result in positive annual cash flow and significant NET savings to the City, over the useful life of the equipment being installed.

WHEREAS, the proposed project is exempt from further environmental review under the California Environmental Quality Act (CEQA) because it is consistent with CEQA Section 21080.35, which provides that solar energy systems installed on the roof of an existing building or on an existing parking lot are statutorily exempt from CEQA. The proposed project involves the construction of a solar array on the roofs of several city structures, and the proposed project would not meet any of the exceptions specified in the CEQA guidelines section 21080.35(d) through (f); and

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND HELD AS FOLLOWS:

1. The Recitals set forth above are true and correct and incorporated herein as findings and determinations.
2. That the City Council of the City of Fort Bragg does hereby authorize the City Manager to execute the Energy Services Agreement,

The above and foregoing Resolution was introduced by Councilmember _____, seconded by Councilmember _____, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 10 day of June 2024, by the following vote:

**AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSED:**

BERNIE NORVELL
Mayor

ATTEST:

DIANA SANCHEZ
City Clerk



City of Fort Bragg

NEM2 Solar PV Project



June 10, 2024

AGENDA

1. NEM 2 Solar Opportunity
2. Inflation Reduction Act (IRA)
Incentives
3. Process and Timeline
4. Project Overview
5. Next Steps



Installing Solar PV Ahead of Net Energy Metering (NEM) 3.0

Why is This Important and What Does it Mean?

What is NEM 3.0?

On December 15, 2022, the California Public Utilities Commission (CPUC) unanimously voted to approve NEM 3.0

NEM 3.0 drastically alters the way solar system owners are compensated for the energy they generate and provide to the utility grid, lowering the value that owners are able to capture with their new solar systems.



What Does This Mean?

- ▶ The previous program (NEM 2.0) export rate was **\$0.30/kWh**
- ▶ Potential reduction in compensation ranges from 75 - 80%
- ▶ Under NEM 3.0, PG&E customers with solar systems will receive only **\$0.08/kWh** on average for the same energy they've been providing to the utility grid



City of Fort Bragg has locked in the lucrative NEM 2.0 tariff by successfully submitting Interconnection Applications ahead of the 4/14/23 deadline

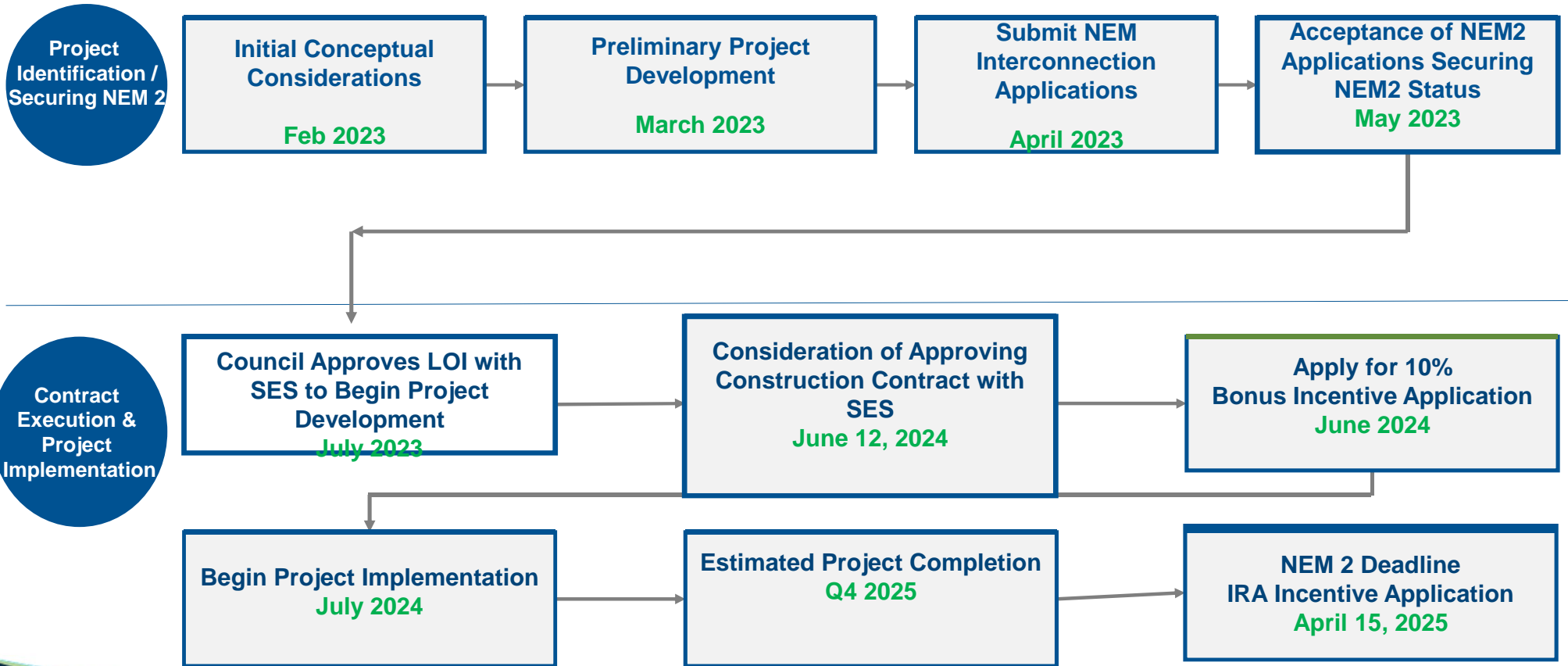
In order to preserve NEM 2 status for at least 20 years, the systems must be built and connected to the grid by 4/15/2026

Inflation Reduction Act (IRA)



- Available through Inflation Reduction Act (IRA)
- Called a “tax credit”, awarded as a rebate via Direct Deposit
- Paid out at Completion of Project
- Direct-Pay “Base” Incentive = 25.5% Off Solar Project Costs
- Additional Low-Income Bonus Incentive = 8.5% Off Solar Project Costs
Must apply by June 27, 2024 for Low-Income Bonus Incentive
City must be under contract for project implementation in order to apply

Process and Timeline



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Project Summary Financials

(2) IRA Incentive Scenarios



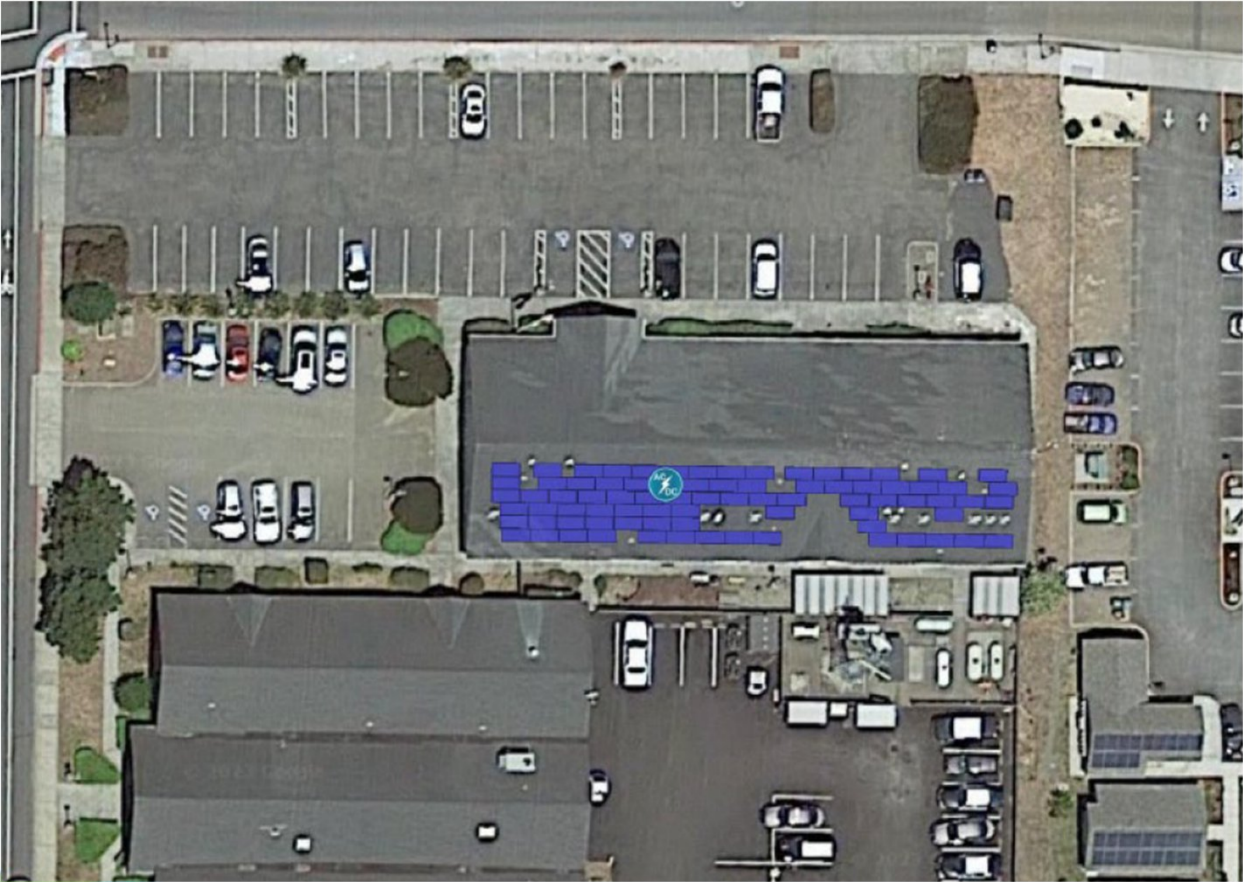
Scenario 1
30% Direct Pay
+ 10% Low Income

Total Project Price	\$7,501,224
IRA Incentive	< \$2,415,185 >
NET Cost to City	\$5,086,039
Cumulative Lifecycle Savings	\$10,523,070

Scenario 2
30% Direct Pay Only

Total Project Price	\$7,501,224
IRA Incentive	< \$1,811,389 >
NET Cost to City	\$5,689,835
Cumulative Lifecycle Savings	\$9,614,063

Police Station - 46.0 kW



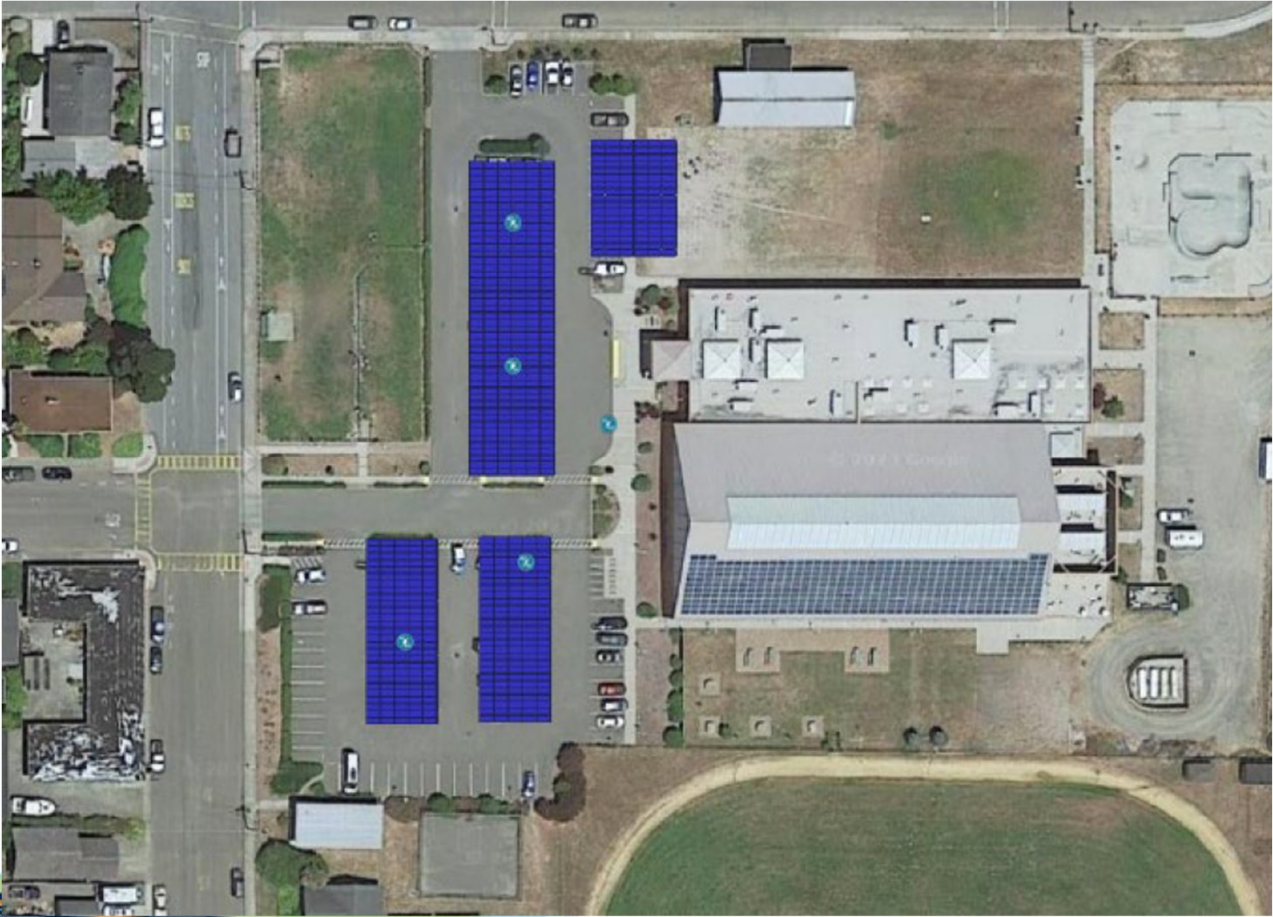
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Fire Department – 22.0 kW



Confidential & Proprietary

Cv Starr Community Center - 372.0 kW



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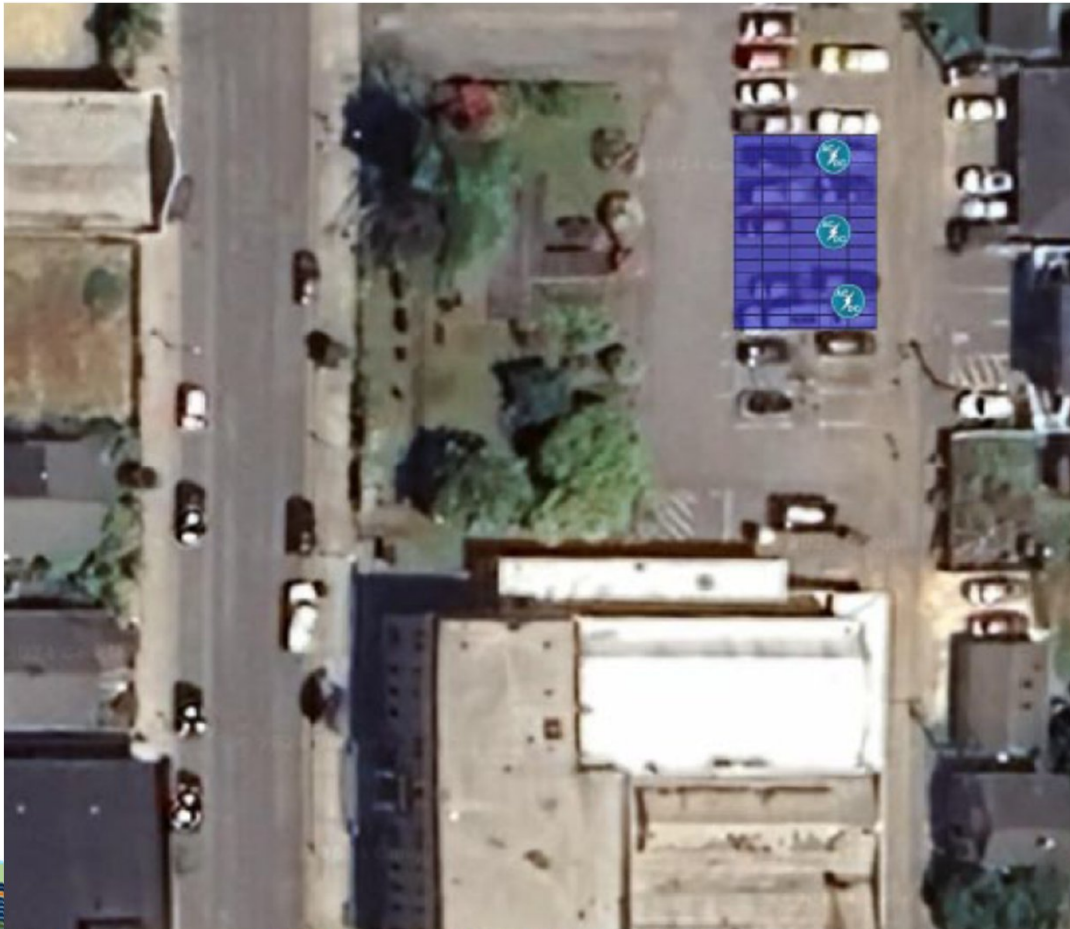
Corp Yard / Water Treatment – 127.0 kW



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12

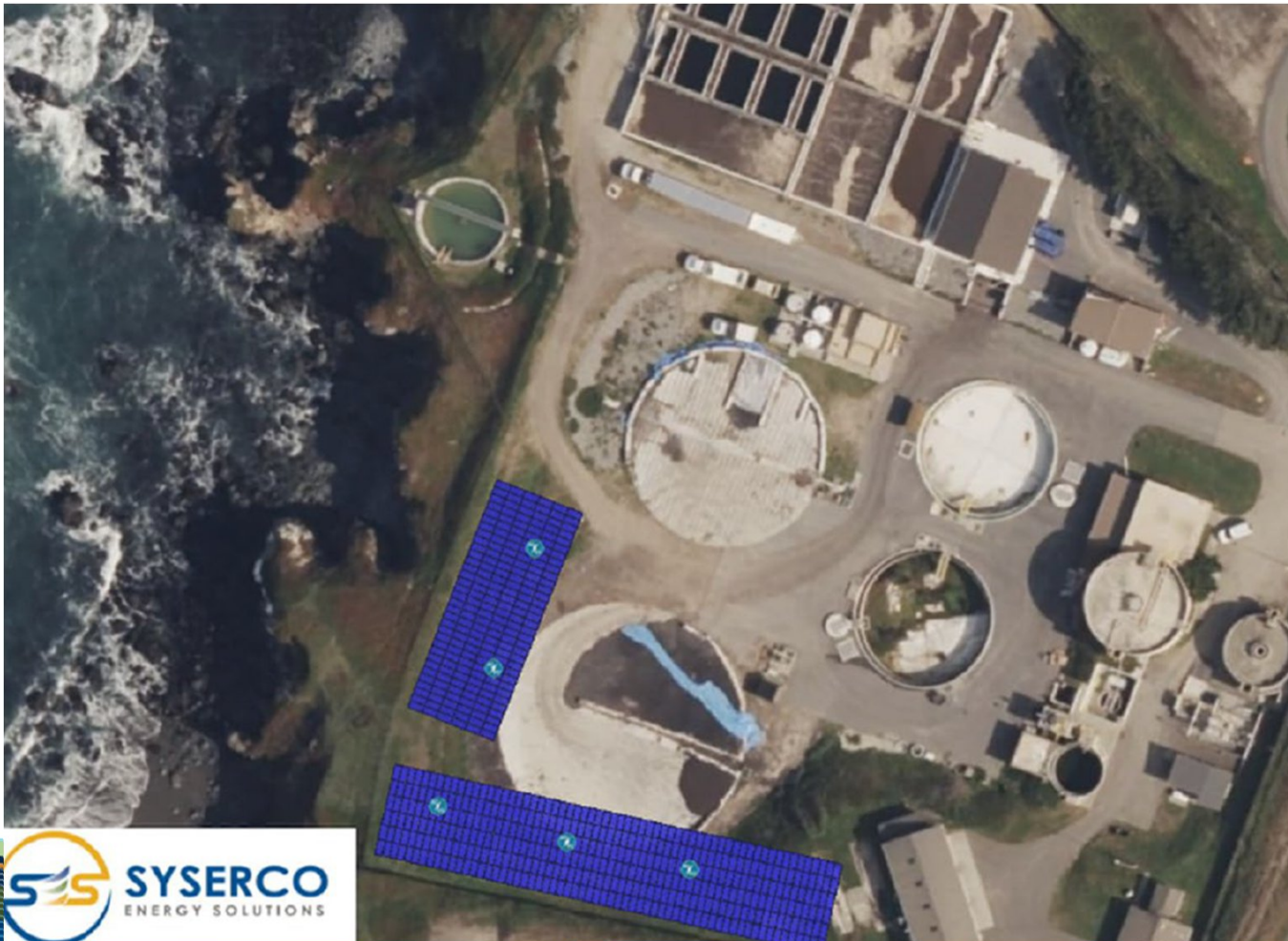
City Hall – 40.0 kW



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13

Wastewater Treatment Plant – 327.0 kW



Proprietary

14

Next steps



Council Consideration of Contract Approval with Syserco Energy Solutions. If approved, then:

1. Execute Agreement
2. Apply for 10% Bonus IRA Incentive
3. Begin Project Implementation
4. Complete Project, Gain Permission to Operate from PG&E
5. Submit Paperwork to Claim IRA Incentives

Confidential & Proprietary

ENERGY SERVICES CONTRACT

This Energy Services Contract ("**Contract**") is made and entered into as of [redacted]/[redacted]/2024 ("**Effective Date**"), between Syserco Energy Solutions, Inc., a California company ("**Energy Services Contractor**"), having its principal offices at 215 Fourier Ave. Suite 140, Fremont, CA 94539, and City of Fort Bragg, having its principal office at 416 N Franklin St, Fort Bragg, CA 95437 ("**Customer**"), who are collectively referred to as the "**Parties**", or individually as a "**Party**".

WHEREAS, Energy Services Contractor is a company with experience and technical and management capabilities to provide for the discovery, engineering, procurement, installation, financing, maintenance and monitoring of energy saving measures, solar power generation measures, and/or operations and maintenance cost reductions at facilities similar to Customer’s facilities;

WHEREAS, Energy Services Contractor has prepared a project proposal in the form of an Energy Services, ("**Proposal**") for Customer; and

WHEREAS, Customer desires for Energy Services Contractor to perform certain work as identified in this Contract, and Energy Services Contractor desires to perform such work;

WHEREAS, if Customer is a public entity, this Contract is procured pursuant to the following procurement statute or other authority: CA Legislative Government Code 4217. Energy Services Contractor enters into this Contract in reliance on Customer’s representations concerning the appropriateness and validity of the procurement mechanism(s) under which this contract is procured. Customer as a fiduciary acknowledges such reliance by Energy Services Contractor.

NOW THEREFORE, the parties agree as follows:

1. Contacts. As of the Effective Date, and subject to change from time to time, the following persons are the primary representatives of each party as related to execution of this project:

For Energy Services Contractor:

Name: Scott Meizen
Title: General Manager
Address: 215 Fourier Ave., Suite 140, Fremont, CA 94539
Telephone: 510-737-1583
Email: s.meizen@syserco-es.com

For Customer:

Name: _____
Title: _____
Address: _____
Telephone: _____
Email: _____

2. Scope of Work. Energy Services Contractor agrees to perform the design and/or construction work set forth in the proposal described as Energy Services Proposal ("**Work**") and attached hereto as Exhibit A. Customer agrees to take all actions identified in this Contract that are necessary to achieve the project benefits identified. Energy Services Contractor will provide all labor, materials, equipment, and supervision, including subcontractors, necessary to perform the Work.

3. Compensation. Customer shall pay Energy Services Contractor Seven Million, Five Hundred One Thousand, Two Hundred Twenty-Four Dollars and Zero Cents (**\$7,501,224.00**) ("**Price**") as compensation for

Energy Services Contractor's performance of the Work and Services as provided herein. Customer shall pay Energy Services Contractor in accordance with the Schedule of Values that shall be reviewed and approved by Customer prior to beginning the Work.. In accordance with CA CC § 3260.1 Customer shall pay Energy Services Contractor within thirty (30) days of receiving an invoice. Energy Services Contractor will be entitled to interest at the rate allowed by law on all sums overdue and unpaid from the date due. Additional project financial information including total compensation and payment terms is as set forth in the Proposal, or other attached exhibits, as applicable.

4. Time. The Work to be performed under this Contract shall begin within 30 days of the date of an Executed Contract or Notice to Proceed (“**Commencement Date**”) and is anticipated to end by the earlier of the dates set forth in Section 4.a. or 4.b., below (“**Time**”). If the Work is divided into phases or individual projects, each phase or project will start in accordance with the Schedule of Performance included as part of this Contract. The Work shall be completed by the date that is the earlier of:

- a. The date on which Energy Services Contractor is substantially complete with the Work. Substantial completion means that Energy Services Contractor has performed enough of the Work so that Customer may use the Work for its intended purpose or realize an intended benefit from the Work. If the Work is divided into phases or individual projects for which individual prices have been negotiated (“**Phase**”), then substantial completion dates shall apply to each phase or individual project as indicated in this Contract. Substantial completion should be demonstrated via execution by Customer of a certificate of substantial completion.
- b. () days after the Commencement Date, subject to equitable extensions of Time, or pursuant to this Contract. [see schedule of performance]

5. Permits, Approvals, Taxes. Unless obtained by Customer or otherwise specified in this Contract, Energy Services Contractor shall obtain all permits, licenses, and inspections that are required for the Work. Customer shall be responsible for securing all other necessary approvals, easements, zoning changes, or similar entitlements. An equitable adjustment in the Time and Price of the Contract shall be made to account for any time Customer spends securing any of these items after the Commencement Date, and reasonable costs incurred by Energy Services Contractor as a result. Customer shall pay all taxes associated with the Work including, sales, use, real estate, and personal property taxes.

6. Safety. Energy Services Contractor shall be responsible for initiating, maintaining, and supervising safe performance of the Work. Energy Services Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities related to safety of persons or property.

7. Cleanup. Energy Services Contractor shall keep the premises and the surrounding area free from accumulation of waste materials or rubbish caused by the Work. Upon completion of the Work, Energy Services Contractor shall remove all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials.

8. Subcontractors. Energy Services Contractor may hire subcontractors to perform any portion of the Work or Services under this Contract. Energy Services Contractor is entirely and ultimately responsible for compliance with the provisions of this Contract and for any part of work that is performed by a subcontractor.

9. Borrowed Equipment. If requested by Energy Services Contractor and if permitted by Customer's representative, Energy Services Contractor may use Customer's equipment in performing the Work or Services. Energy Services Contractor assumes full and complete responsibility for the use of the equipment, will ensure that only a competent operator will be permitted to use the equipment and only after fully inspecting the equipment, shall not modify the equipment, shall be solely responsible for all claims, demands, lawsuits, losses, expenses and/or liabilities that arise from its use of the equipment to the extent of Energy Services Contractor's negligence, and agrees that Customer makes no representation or warranty regarding the condition or suitability of equipment

for any intended use.

10. Insurance. Prior to commencing Work, Energy Services Contractor shall provide to Customer a certificate of insurance. Energy Services Contractor shall maintain such insurance in full force and effect at all times until the Work has been completed, in the following minimum amounts:

Type of Insurance	Coverage
General Liability	\$2,000,000 General Aggregate / \$1,000,000 Each Occurrence
Automobile Liability	\$1,000,000 Combined Single Limit
Workers Compensation	Statutory

All deductibles or self-insured retentions (SIR) related to the above insurance requirements, regardless of size, will remain the responsibility of Energy Services Contractor, however, Customer, at its option, may pay in full any self-insured retention. Energy Services Contractor shall make Customer an Additional Insured on all policies for the duration of the construction activities.

11. Bonds. If required by Customer and not included in the Proposal, Energy Services Contractor shall furnish a performance bond and/or a payment bond, in an amount equal to the construction cost of the Work, and such cost shall be paid by Customer in addition to the Price. The performance bond shall cover completion of the physical work per the approved design. The bonds shall not guarantee or warranty the efficiency or performance of any aspect of the Work or Services, and shall not cover any obligation of Energy Services Contractor to ensure that the Work as constructed, or Services, will result in any particular level of energy savings. Any suit on the Bonds must be brought within the period of one (1) year after substantial completion; provided, however, that if this suit limitation is void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable. Energy Services Contractor may furnish a retention bond in lieu of retainage held on respective monthly invoices.

12. Hazardous Materials. The Work and Services expressly exclude any work of any nature associated or connected with the identification, abatement, cleanup, control, removal, or disposal of hazardous materials or substances, including but not limited to asbestos, lead, or PCBs. As of the Effective Date, Customer represents that, to the best of its knowledge, there is no hazardous material on the premises that may in any way relate to the Work or affect Energy Services Contractor's ability to deliver the Work or Services. Prior to the Commencement Date, Customer shall provide to Energy Services Contractor a comprehensive good faith survey that at a minimum complies with applicable regulatory requirements, and identifies all actual or suspected hazardous materials, quantities, and specific locations of such materials on the premises. Failure to provide such good faith survey timely [add to schedule of performance] shall result in an equitable adjustment to time. If Energy Services Contractor becomes aware of or suspects the presence of hazardous materials on the premises during the Work or Services, Energy Services Contractor shall notify Customer, Customer shall investigate and correct the suspected hazardous materials in accordance with all applicable laws, Energy Services Contractor shall have the right to stop work in the affected area until the suspected hazardous materials are investigated and remediated by Customer, and the Time and Price shall be equitably adjusted relative to the duration of Customer's investigation and remediation of the suspected hazardous materials.

13. Delays. If Energy Services Contractor is delayed in the commencement or completion of the Work or Services by causes beyond its control, including but not limited to fire, flood, theft, vandalism, labor disputes, abnormal adverse weather conditions, acts of God, acts of the public enemy, riot, war, unavailability of equipment or supplies, or supply chain delays caused by any of the foregoing, then Energy Services Contractor shall provide written notice to the Customer of the existence, extent of, and reason for such delays, and an equitable adjustment in the Time of the Contract shall be made as a result. If a delay is attributable to failure by Customer to perform its obligations under the Contract or failure to cooperate with Energy Services Contractor in the timely completion of the Work, an equitable adjustment to Time and Price shall be made as a result.

14. Certificate of Substantial Completion. Upon Substantial Completion of any Phase of the Work, Customer shall execute a certificate of substantial completion acknowledging:

- a. The portion of the Work substantially completed, and the date of substantial completion.
- b. Receipt of any manuals and training provided by Energy Services Contractor under this Contract.
- c. Any warranty start date and warranty period.
- d. A punchlist of items remaining to be completed by Energy Services Contractor.

Timing of Substantial Completion does not depend on Customer's timely executing a certificate of substantial completion.

15. Customer Use. Upon substantial completion or start of beneficial use, whichever occurs first, Customer is responsible for use, operation, and maintenance of all aspects of the Work and Services, except as incomplete Work or punchlist items remain to be completed. Energy Services Contractor shall not be responsible for improper use, operation, or maintenance of any aspect of the Work or Services by Customer or others at any time.

16. Warranty. Energy Services Contractor warrants that the Work will be of good quality and new; that the Work will be free from defects not inherent in the quality required or permitted; and that the Work will conform to this Contract. Energy Services Contractor warrants that the Work shall be free from defects in material and workmanship arising from normal usage for a period of one (1) year from the date of Substantial Completion. This warranty does not cover any improper use, operation, or maintenance of any aspect of the Work, or if the Work has been abused, altered, or repaired by the Customer or third parties without supervision by or prior written approval from Energy Services Contractor, or if serial numbers or warranty date decals have been removed or altered. Customer must report any warranty claims to Energy Services Contractor in writing. Failure by Customer to notify Energy Services Contractor of the need for warranty service within fifteen (15) days of discovery of a warranty claim will void this warranty. Additionally, Customer shall not hire or direct others to repair any warranty item without Energy Services Contractor's written consent. Customer's repair of any warranty item without the written consent of Energy Services Contractor shall void this warranty with respect to such item, and the cost of such repair shall not be reimbursable to Customer by Energy Services Contractor. THE WARRANTIES CONTAINED IN THIS CONTRACT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE.

17. Indemnity. Each Party ("**Indemnitor**") shall indemnify and hold harmless the other Party and its directors, officers, agents and employees against loss, liability, damage, and expense including attorneys' fees awarded by a court of competent jurisdiction, for third party claims for injury or death to persons or damage to property, caused by the negligent conduct of the Indemnitor in connection with the work, but only to the extent of the Indemnitor's negligence.

18. Damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR SIMILAR DAMAGES OR LOSSES, INCLUDING LOSS OF PROFITS, ARISING OUT OF OR RELATING TO THIS CONTRACT, WHETHER BASED IN CONTRACT OR TORT OR ANY OTHER THEORY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

19. Force Majeure. Energy Services Contractor shall not be liable to Customer for damages, loss, injury, or delay caused by conditions that are beyond the reasonable control of Energy Services Contractor. Such conditions include, but are not limited to fire, flood, theft, vandalism, labor disputes, abnormal adverse weather conditions, acts of God, acts of the public enemy, riot, war, unavailability of equipment or supplies, or supply chain delays caused by any of the foregoing.

20. Fire Safety and Security Equipment. If this Contract covers fire safety or security equipment, Customer acknowledges that Energy Services Contractor is not an insurer regarding those services, and Energy Services Contractor shall not be responsible for any damage or loss that may result from fire safety or security equipment that fails to perform properly or fails to prevent a casualty loss.

21. Changes. The Work or Services may be changed pursuant to a written change order executed by an authorized Energy Services Contractor signer and Customer signer (“**Change Order**”). A Change Order is valid only to the extent that it changes the scope of Work or Services, Price, and/or Time. Any invalid portions of a Change Order shall be disregarded. The Parties contemplate that Change Orders may include scope changes such as installation of additional utility conservation measures, facility improvement measures, and operational efficiency improvements or the furnishing of additional services within the identified facilities, as well as other facilities owned or operated by Customer. Energy Services Contractor shall be entitled to a Change Order for additional or extra work or services provided by Energy Services Contractor to Customer at Customer’s request, without regard to whether such request is verbal or in writing.

22. Intellectual Property. Plans, designs, specifications, drawings, materials, exhibits, reports, memoranda, studies, software code, electronic data, and other intellectual information and materials provided by Energy Services Contractor to Customer (collectively the “**Intellectual Property**”) as part of the Work or Services are instruments of service owned by Energy Services Contractor and are not “work made for hire” as such term is defined under U.S. copyright law. If this Contract is performed to completion, then Energy Services Contractor grants to Customer a limited license to use the Intellectual Property to operate, maintain, renovate, and manage the subject matter of this Contract. The Intellectual Property shall not be used on other projects or for completion of the Work or Services by others, unless Energy Services Contractor is adjudged to be in material breach of this Contract, in which case Customer shall use the Intellectual Property at its sole risk, and shall hold Energy Services Contractor harmless from any and all errors or omissions in the Intellectual Property. The parties acknowledge that monetary damages may not be a sufficient remedy for unauthorized use of Intellectual Property and that Energy Services Contractor shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction. If any bond is required in connection with such an action, the allegedly breaching party agrees that \$3,000 shall be a reasonable amount of such bond.

Energy Services Contractor and Customer recognize that the damages to be sustained by Energy Services Contractor in the event of improper use of Intellectual Property by Customer will be difficult if not impossible to ascertain. Consequently, Energy Services Contractor and Customer, after each having consulted with their respective legal counsel and being fully aware of their rights herein, do hereby agree that in the event that Customer breaches this Agreement with respect to use of Intellectual Property, Customer agrees to pay to Energy Services Contractor \$1,000.00 per day as liquidated damages for the period of three (3) years following the date of breach. Customer and Energy Services Contractor, after consulting with their respective legal counsel on their rights herein, do hereby agree and stipulate that the liquidated damages sum is a fair and reasonable estimate of the damages which Energy Services Contractor will sustain in the event Customer materially breaches this Agreement with respect to use of Intellectual Property, and that nothing herein shall be construed to be a penalty.

23. Termination. This Contract may be terminated at any time as described below:

- a. Termination for Cause.** If Energy Services Contractor materially fails to perform under this Contract, Customer may notify Energy Services Contractor in writing of Customer’s intent to terminate this Contract along with a description of the alleged failure. If Energy Services Contractor does not in good faith take reasonable steps to correct such failure within fifteen (15) days after receipt of such notice, Customer may terminate this Contract, and Energy Services Contractor shall be entitled to receive payment for all amounts earned prior to termination. If it is determined for any reason that termination was improper, the termination shall be treated as a termination for convenience.

- b. Termination for Convenience.** Customer may terminate this Contract in whole or in part for any reason by providing written notice of termination to Energy Services Contractor and specifying the date on when the termination becomes effective. Upon receipt of such notice, Energy Services Contractor shall incur no further obligations in connection with the terminated work and will stop work to the extent specified. Energy Services Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Energy Services Contractor shall settle liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work, and Customer shall pay Energy Services Contractor for such expenses, demobilization costs incurred by Energy Services Contractor due to the termination, overhead through the end of work performed due to termination of the Contract. Such amounts shall be paid by Customer to Energy Services Contractor within fifteen (15) days of Energy Services Contractor's delivery to Customer of a request for payment. In addition, Energy Services Contractor may terminate this Contract in whole or in part for any reason by providing written notice of termination to Customer and specifying when termination becomes effective. In such case, Energy Services Contractor shall refund to Customer all amounts prepaid by Customer and unearned by Energy Services Contractor as of the date of termination, and Customer shall have no payment obligation to Energy Services Contractor for unperformed Work.
- c. Unappropriated Public Funds.** If Customer is a public entity that is prohibited by law from making fiscal commitments beyond the term of its current fiscal period, and does not currently have funds set aside to pay for this Contract in future years, then Energy Services Contractor's compensation in future years is contingent upon the availability of appropriations in future years sufficient to pay for this Contract. Payments pursuant to this Contract shall be made only from funds appropriated or available, as of the Effective Date of this Contract, to pay for this Contract, and Customer's liability for payments shall be limited to the amount of appropriated or available funds as of the Effective Date of this Contract. If Customer funds are not appropriated or available to fund this Contract, then Customer may terminate this Contract without further obligation related to the non appropriated or unavailble funds.

24. Disputes. The Parties agree that the following process will be used to resolve any dispute between them. All dispute resolution shall be conducted in good faith, shall be confidential, shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence, and shall be inadmissible in any litigation, or other judicial proceeding.

- a. Negotiations.** First, the Parties will attempt to negotiate a resolution.
- b. Mediation.** If a dispute remains unresolved more than thirty (30) calendar days after the commencement of negotiations and the Parties have not mutually agreed to extend the negotiation period, then the Parties shall pursue mediation. In mediation, the Parties shall mutually select a mediator, the cost of the mediator and other administrative costs shall be shared equally by the Parties, and each Party shall be responsible for its own costs and expenses.
- c. Arbitration.** If any dispute remains unresolved more than sixty (60) calendar days after the commencement of mediation, and the Parties have not mutually agreed to extend the mediation period, then either Party may pursue arbitration. The following rules shall apply to arbitration: The Parties shall mutually select an arbitrator. In the interest of fairness and to ensure that any arbitrator renders an award in accordance with California law, the Parties agree that the arbitrator shall not have the power to commit (a) errors of law or legal reasoning, (b) errors of fact, (c) errors with regard to mixed questions of law and fact; or to render an award: (d) not based on substantial evidence, (e) based on evidence not presented at the hearing, or (f) not in conformity

with the substantive and procedural law of the state of California. If the arbitrator exceeds any of the foregoing specific powers, the award may be vacated or corrected by filing a petition pursuant to the Act in the Superior Court in and for the county where the project is located. In reviewing the award, the Superior Court shall sit as if it were an appellate court, in all respects, including but not limited to the scope of review. The decision of the Superior Court is, itself, subject to review by the California appellate courts. The arbitrator shall hear and determine the matter, and shall execute and acknowledge the award in writing and cause a copy thereof to be delivered to each of the parties. The award shall include factual findings, conclusions of law, and the reasons on which the decision is based. The decision of the arbitrator shall be final, binding, and conclusive, except to the extent the decision may be submitted for judicial review as provided herein. The award of the arbitrator may be confirmed by the Superior Court in the county where the project is located, and such Court may vacate, modify, or correct the award in accordance with the prevailing sections of the Act and in accordance with the terms and conditions herein. The non-prevailing Party shall reimburse the prevailing Party for all of its reasonable attorneys' fees, costs, and expenses related to the arbitration, provided, however, that as a precondition to such award, the prevailing Party shall have participated in negotiations and mediation in good faith.

25. Notices. All notices to Energy Services Contractor shall be written, shall be sent via certified mail or a national courier service or personally delivered, shall consist of one original to Attn: General Counsel, Energy Services Contractor, 215 Fourier Ave, Fremont, CA 94539, and one original to the primary Energy Services Contractor contact for the Work, and shall be deemed delivered when received by the General Counsel.

26. Non-Solicitation of Employees. Customer shall not, so long as Energy Services Contractor is engaged by Customer and for twelve (12) months after such engagement ends, directly or indirectly solicit or recruit any employee of Energy Services Contractor to leave his or her employment with Energy Services Contractor. This provision does not apply if the Energy Services Contractor employee approaches Customer of his or her own accord. Energy Services Contractor and Customer recognize that the damages to be sustained by Energy Services Contractor in the event of unauthorized hiring of an employee of Energy Services Contractor by Customer will be difficult if not impossible to ascertain. Consequently, Customer and Energy Services Contractor, after each having consulted with their respective legal counsel and being fully aware of their rights herein, do hereby agree that in the event that Customer causes Energy Services Contractor to lose any Energy Services Contractor employee, Customer agrees to pay to Energy Services Contractor an amount equivalent to the total prior twelve (12) months' compensation, including but not limited to salary, bonuses, and benefits, of the Energy Services Contractor employee lost due to the unauthorized conduct of Customer. Company and Energy Services Contractor, after consulting with their respective legal counsel on their rights herein, do hereby agree and stipulate that the liquidated damages sum is a fair and reasonable estimate of the damages which Energy Services Contractor will sustain in the event Company materially breaches this Agreement as referenced above, and that nothing herein shall be construed to be a penalty.

27. Choice of Law/Venue. This Agreement shall be governed and construed under the laws of the State of California, notwithstanding any choice of law provision whether statutory, common law, or contractual. The Parties consent to exclusive jurisdiction and venue in the state courts of California. Energy Services Consultant and Customer waive all defenses of lack of personal jurisdiction and forum non conveniens.

28. Assignment. Neither Party may assign or transfer its rights and/or obligations under this Contract without the prior written consent of the other Party which shall not be unreasonably withheld, unless the assignment is to an affiliate of the Party.

29. No Waiver. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Contract shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver

of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver.

30. No Third Party Beneficiaries. There are no third party beneficiaries under this Contract or any portion thereof.

31. Severability, Survival. If any portion of this Contract shall be held invalid in whole or in part under any law, rule, regulation, or order, then such portion shall remain in effect only to the extent permitted, and the remaining portions of the Contract shall remain in full force and effect. Any invalid portions shall be substituted with an interpretation that most accurately reflects the Parties' intentions.

32. Tax Benefits. Unless otherwise specified in this Contract, Energy Services Contractor is solely entitled to claim tax benefits available under section 179D of the Internal Revenue Code (EPAct), or its successor.

33. Waiver of Subrogation. The Parties waive all rights against each other and their directors, officers, agents, and employees, and other contractors, for damages or losses to the extent covered by insurance.

34. Amendment. This Contract may not be amended except pursuant to a written amendment signed by an authorized signer of each Party.

35. Headings. The headings of this Contract are for purposes of reference only and shall not limit or define the meaning of the provisions of this Contract.

36. Complete Agreement. This Contract, including the exhibits attached hereto, is a fully integrated agreement and contains the entire understanding between Energy Services Contractor and Customer with respect to the subject matter hereof. Any legal terms and conditions appearing in any attachment to this Contract shall be ignored to the extent they contradict or are inconsistent with the terms and conditions contained in the foregoing numbered paragraphs. All previous agreements between Energy Services Contractor and Customer as to the Work are superseded by this Contract.

37. Contract Documents. By this reference, the following exhibits are attached hereto and made a part of this Contract:

Exhibit A: Energy Services Proposal, dated (insert date)

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the Effective Date.

ENERGY SERVICES CONTRACTOR

CUSTOMER

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

Energy Services Proposal – Exhibit A

Prepared for City of Fort Bragg



Presented by:
Syserco Energy Solutions, Inc.

Date Submitted:
May 29, 2024

The information contained in this document and all attached documents is strictly confidential and contains proprietary information. It may only be used by the named addressee(s) and is also subject to the terms of any other confidentiality or nondisclosure agreement between parties.

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Executive Summary

City of Fort Bragg (City) selected Syserco Energy Solutions, Inc. (SES), a qualified energy services company and design-build contractor, to develop and implement a comprehensive design-build energy services project. The scope of work for this project includes Solar Photovoltaic at multiple city-owned facilities.

The process of developing the energy conservation measures for the City involved performing an Investment Grade Audit (IGA) of the City's identified facilities. The IGA established a historical energy use baseline and identified facility improvement and ECMs that address the primary objectives of the City's facilities staff.

We are pleased to present the following energy efficiency and facility enhancement project proposal to the City. This proposal represents the scope of work, approved by the City, and shall result in electrical savings for City.

The primary objective of this project is to implement ECMs that maximize energy savings, generate operational savings, and reduce environmental impact.

The following priorities were identified by the City as the most crucial items to address in this project:

- Reduce energy consumption and utility cost across City-owned infrastructure.
- Reduce overall City greenhouse gas emissions (GHGs).

The table below outlines the firm-fixed project cost and estimated grants and incentives, resulting in the expected net project cost to the City.

Estimated Project Cost	\$ 7,501,224
Estimated IRA Investment Tax Credit	\$ 1,811,389
Estimated Low-Income Bonus	\$ 603,796
Net Project Cost	\$ 5,086,039

30-year cumulative savings is \$20,642,642.¹

¹ Based on 5.8% estimated annual electrical cost escalation.

Section 1 – Introduction

We are pleased to present this Energy Services Proposal (“Proposal” or “ESP”) to City of Fort Bragg(City) for the purpose of implementing the recommended energy conservation measures (ECMs) as approved by the City’s staff. In implementing this project, the City will achieve improved occupant comfort and reduced utility consumption. As such, this project will reduce ongoing maintenance costs, thus providing operational cost savings.

To develop the recommended project, our experienced energy engineers, project managers, and project developers examined existing systems and equipment through a detailed energy and operational audit of the City's facilities to determine the full potential for savings. This Proposal is a culmination of our audit findings, recommended measures, infrastructure enhancements, operational savings, and overall cost reductions. We have investigated multiple means for accomplishing this goal including retrofitting equipment, installation of new devices, and employing enhanced strategies to improve operational efficiency.

1.1. Team Effort

We would like to thank members of the City’s staff and facilities team who worked closely with our team throughout this process. Without their assistance, this project would not have been possible.

1.2. Approach

The project development process involved numerous site visits, interaction with City administration and facilities staff, a detailed analysis of existing equipment and systems, current utility consumption, and any available logs and profiles of equipment. Studies of energy usage, operating conditions, and interviews with the City’s facility team have been valuable sources of information, contributing greatly to this effort. We have taken into consideration the input provided by staff and have integrated the various infrastructure needs of the City by compiling the proposed ECMs.

Section 2 – Scope of Work Overview

2.1. Energy Conservation Measure (ECM) Summary

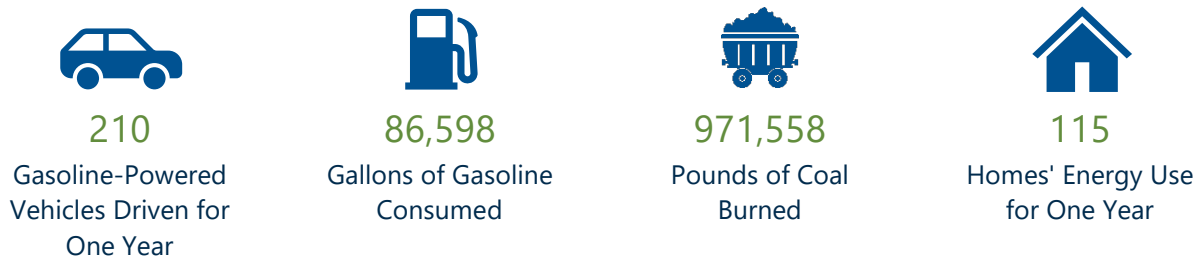
For detailed descriptions of the scope of work, please refer to *Section 3 – ECM Descriptions and Detailed Scope of Work*.

2.1.1. Savings by ECM

The following table depicts cost savings and emissions reductions per proposed ECM.

ECM #	ECM Description	Electric Savings (\$/yr)	Emissions Savings (mtCO ₂ /yr)
11.01	Install Solar PV System	\$356,856	882
	Total ¹	\$ 356,856	882

For comparison, **882 metric tons of Carbon Dioxide (CO₂)** equivalent to greenhouse gas emissions from:



¹ Projected energy reduction and cost avoidance figures are calculated based upon existing building occupancy, operation, and stipulated assumptions of performance. All calculations are based upon industry best practices and methodologies.

2.1.2. Savings by Site

The following table displays the description of energy savings per proposed site.

Site Name	Elec Production (kWh/yr)	Elec Cost Savings (\$/yr)	Total Cost Savings (\$/yr)
Fire Station	31,120	\$13,786	\$13,786
Wastewater Treatment Plant	446,316	\$90,462	\$90,462
Police Station	65,051	\$21,226	\$21,226
CV Starr Community Center	495,347	\$133,871	\$133,871
City Hall	53,084	\$24,016	\$24,016
Corp Yard / WTP	171,010	\$73,495	\$73,495
Total	1,261,928	\$356,856	\$356,856

The projected energy production and cost avoidance figures were calculated based upon existing building occupancy, operation, and stipulated assumptions of performance. Legacy utility billing was derived from city-generated reports and data provided directly by Pacific Gas & Electric (PG&E). All calculations are based on industry best practices and methodologies.

2.2. Clarifications

2.2.1. Clarifications

- There will be two (2) working shifts, a first shift in the morning/early afternoon hours, and a second shift for late afternoon/evening hours.
- We will work closely with City staff to identify any areas that may require after-hours work. We will review the project schedule with City staff to ensure mutual agreement is reached regarding site access and City-approved work in occupied spaces.
- The City shall provide all required static IP addresses and ethernet drops for equipment where applicable and required.
- The City shall provide a laydown and storage area during the construction period.
- It is assumed that the existing electrical circuit breakers and disconnects are working in good order and are fully functional.
- The City shall provide electrical power to operate electrical construction tools and equipment.
- Our proposal is based on reusing existing electrical circuits unless specifically stated in the detailed scope of work.
- It is assumed proper grounding exists for all electrical equipment.
- The City will provide our team with six (6) sets of master keys during the construction period.

2.3. Extent of Subcontracting

We may subcontract portions of work related to this contract to licensed and qualified companies including equipment installation, start-up, and training.

2.4. Project Schedule

As a predecessor milestone, the initial construction schedule start date is based on the execution of the contract. The projected overall project implementation schedule will be developed by our project manager and reviewed with City staff during the construction kickoff meeting.

Section 3 – ECM Descriptions & Detailed Scope of Work

3.1. Introduction

The following section is a detailed description of proposed ECM. Description includes the existing and proposed conditions, planned scope of work, and any impacts to operations and/or maintenance.

3.1.1. Detailed Scope of Work for Energy Efficiency Project

ECM 6.05 – Roof Replacement

General Intent

Police Station is receiving Solar PV modules attached to existing roof. Since PV modules are 30-year asset and the existing roof is in poor condition, we have been asked to include a full roof replacement.

When there is evidence of degradation and damage to roofs, water leaks can occur resulting in damage and loss of energy. By replacing the roofing systems with new roofs leaking water damage will be prevented.

ECM Benefits

A full shingle roof replacement will be carried out on the roofing systems with subsurface repairs as needed. New roofs will be warranted for thirty (30) years (composite sloped roofs)

Impacted Equipment

Site Name	Approx. SqFt
Fort Bragg Police Station	10,000

Scope of Work Inclusions

- Demolish existing shingles down to wood deck as well as associated sheet metal and gutters.
- Install new self-adhered underlayment.
- Install new 30 year architectural shingle and associated sheet metal.
- Install new aluminum gutters.
- Install new flue vents.
- Verify waterproofing of new roof with Solar attachments.

Exclusions

- Carpentry wood replacement for damaged decking or fascia.

Renewable Energy Systems

ECM 11.01 – Solar Photovoltaic System (Solar PV)

Existing Conditions and General Intent

The designs of the new solar arrays were developed to offset as much of City’s overall electricity use and costs from Pacific Gas and Electric (PG&E) and Somona Clean Power (SCP) as feasible.

Equipment location, identification, and selection is the result of our detailed review of the sites, the City’s building plans, specifications, physical equipment arrangements, and discussions with the City’s personnel. These new solar PV arrays are intended to reduce the annual true-up energy consumption and cost relative to the Pacific Gas & Electric bills.

This project will design, furnish, and install new solar PV roof mount, ground mount, and carport shade structure systems at various City sites. These new systems will bring each site close to a net zero energy balance relative to the grid-purchased electrical energy.

ECM Benefits

The benefit to the City is a reduced electrical need by providing solar production on site to offset the volume of electrical energy purchased from the grid.

Impacted Equipment

Site Name	Nominal Array Size (kW_DC)	Nominal System Size (kW AC)	Target Array Production (kWh)	Mounting Type
Police Station	46	50	65,051	PV Roof Mount
Fire Department	22	17	31,120	PV Roof Mount
CV Starr Community Center	372	332	495,347	PV Carport
Corporate Yard / Water Treatment Facility	127	120	171,010	PV Shade Structure
City Hall	40	34	53,084	PV Carport
Wastewater Treatment Plant	327	280	446,316	PV Shade Structure
Total	934	833	1,261,928	

Police Station – 46 kWdc – 65,051 kWh – PV Roof Mount



Fire Department – 22 kWdc – 31,120 kWh – PV Roof Mount



CV Starr Community Center – 372 kWdc – 495,347 kWh – PV Carport



Corporate Yard / Water Treatment Facility – 127 kWdc – 171,010 kWh – PV Shade Structu22



City Hall – 40 kWdc – 53,084 kWh – PV Carport



Wastewater Treatment Plant – 327 kWdc – 446,315 kWdc – PV Shade Structure



Assumed Conditions

1. All work will be performed during regular work hours (Mon-Fri 7:00 a.m. – 3:30 p.m.).
2. All field craft labor will comply with prevailing wage requirements and current California Department of Industrial Relations (DIR).
3. The City shall provide all IT support required for the installation of solar PV and interface systems for this project.
4. All structural engineering related to the support of equipment as identified is included. All structural work related to the construction of the canopy and ground mount structures is included. All structural work related to the mounting of rooftop systems is included. Any required upgrades to the existing roof structures determined after detailed structural engineering is performed are excluded.
5. The City shall provide a laydown and storage area during the construction period.
6. All permit drawings and permit fees required for the execution of the work are included.
7. The City shall provide electrical power to operate electrical construction tools and equipment.
8. Pricing is based on a single-mobilization project, multiple phases or extensions to schedule may constitute a change in scope and project schedule.
9. All carport solar PV structures shall include LED lighting, as required by code.
10. Any tree removal necessary for installation of new carport solar PV is included at following sites:
 - a. C.V. Starr Community Center
 - b. Corporate Yard/ Water Treatment Facility
11. Coastal commission approval of final Wastewater Treatment design is required.

City of Fort Bragg Furnished/Performed Items

1. All as built drawings or site-specific information necessary to effectively design, engineer and construct the renewable energy solution including but not limited to past site plans, all existing utilities (including irrigation infrastructure), permits for past work, etc.
2. PG&E lines located / line location prior to construction.
3. Water as needed to complete the work. Construction services and, if it is required by the authority having jurisdiction, to fill any fire safety water tanks.
4. Provide and maintain a suitable good-weather site access road that will accommodate heavy vehicles, deliveries, and service vehicles.
5. Site preparation including but not limited to vegetation removal, adequate grading, and soil compaction to SES Renewable energy solution specifications.
6. Provide mutually acceptable construction staging and storage area(s) adjacent to project site throughout the construction phase.
7. Provide unrestricted access to the Site during construction Monday through Friday including hours (6:00 am – 6:00 pm).
8. Should City decide to hire Lab of Record (LOR), Inspector of Record (IOR), and special inspections.
9. Utility transformer upgrade through PG&E for C.V. Starr Community Center.

Design Phase

1. The solar PV schematic design aims to meet the targeted electrical production outlined in the conceptual design, which is provided in the technical documents for each site. It will be based on accurate and detailed modeling of system production and consideration of shading analysis or other site constraints using industry-standard tools. The design plans will include sufficient detail to analyze and discuss critical design decisions and the system layout will only utilize areas identified by the City for use.
2. Design development and complete construction drawings of the solar PV and all ancillary work required for permitting and construction will be provided by SES. Drawings shall fully describe all aspects of the construction work including fencing, directional boring/trenching, excavations, racking and mounting systems, electrical systems, signage, foundations, lighting, Americans with Disabilities Act (ADA) requirements, etc. SES will provide electrical, structural, and all other required California licensed engineers and/or architects (Engineers of Record and Architect of Record) to provide a complete, stamped design set as required to permit and construct a complete energy project submittal for the authority having jurisdiction (AHJ). The electrical construction drawings shall show and include all conduits below and above the finished grade/finish. All plans and specifications must meet the approval of AHJ, the City's representative, the local Fire Authority, and any other agency deemed as having jurisdiction over this project.
3. All design and engineering will follow mutually agreed upon submittal process.

Construction Phase

1. SES will Provide and Install the following:
 - a. PV racking
 - b. PV modules
 - c. PV inverters
 - d. Attachments/Foundations
 - e. Data collection and online monitoring system with a five (5) year monitoring service subscription, a five (5) year cellular service plan, and inputs such as irradiance, panel temperature, ambient temperature, and utility grade production.
 - f. Interconnection work includes connection of systems to PGE grid at the main switchboard of each site.
2. SES will provide the PGE Interconnection Application (IA), process management, materials, and coordination for inspection from the local PGE. The IA process includes a PGE application review phase. The PGE engineering review phase can result in additional costs not included or reasonably anticipated (as they can only be determined by the PGE at the end of the IA process) upon execution of this contract.
3. SES will identify all ADA compliance issues that are directly associated with this project. SES is responsible for covered parking space ratios, signage, and any other compliance issues that are located under the footprint of any solar PV array canopy including canopies not located in parking lots. The cost of all other ADA compliance enhancements outside the canopy areas (i.e., path-of-travel access issues that fall outside the canopy footprint) is not known at this time and is therefore excluded from the scope of work.
4. SES' project manager will be assigned for the duration of the project through final completion. Regular coordination meetings (via conference calls or on-site visits, if necessary) will be facilitated by this same project manager. The assigned project manager will create a project schedule with a City representative utilizing project constraints and information revealed during due diligence activities within the design and engineering phase.

The project schedule will include these phases sequentially:

 - g. Design, engineering, interconnection application phase
 - h. Permitting phase
 - i. Procurement phase
 - j. Construction phase
 - k. Commissioning phase
 - l. Close-out phase
5. SES will coordinate with and support inspectors, the City, our team, and their consultants during design, construction, commissioning, and close-out.
6. SES is responsible for and will address the removal of trees, light standard removal, new lighting, parking islands, soft scape modifications, ADA upgrades within the footprint of new solar canopy

arrays, fire lane modifications, ramp access, etc. that are required for the installation of the energy projects.

7. All work assumes normal subsurface and digging conditions. The City acknowledges that SES has not yet performed subsurface due diligence or a geotechnical engineering analysis and therefore makes no representation of knowing the impact of the results of the geotechnical study upon the scope, cost, or schedule of the proposed project. If, prior to the issuance of a "Notice to Proceed," any of the sites are deemed to be infeasible in commercially reasonable discretion of the City after consultation with SES, such site shall be removed from the portfolio and the total Fixed Price shall be adjusted based on the size of the balance of the portfolio.
8. SES will perform project commissioning including all associated tasks and documentation related to successfully commissioning the system.
9. Final energy system as-built construction documents clearly conformed with all changes during construction shall be provided.
10. SES will provide a comprehensive set of closeout documents, including O&M manuals for each installed system.
11. SES will conduct training for City staff including orientation to the O&M manuals, systems, and safety procedures.
12. SES will secure laydown and storage facilities at the job site for all racking materials, energy system equipment, and supplies including any required security.
13. SES will provide legal toilets and handwashing facilities at job sites.
14. SES will perform daily cleanup to "broom clean" conditions.
15. SES will return any disturbed areas to pre-construction conditions including repair of all pavement/concrete, street sweeping, restriping, landscape restoration, irrigation restoration, equipment track marks, and scuffs on finished concrete surfaces.
16. SES will provide project closeout, inclusive of obtaining AHJ final inspection and closeout.
17. SES will provide temporary lighting in place of removed overhead lighting until under-canopy lighting is fully operational.
18. SES will provide a Stormwater Pollution Prevention Plan (SWPPP).
19. All Structural columns to be Hot Dip Galvanized (HDG) steel.
20. Wastewater treatment plant to receive marine grade paint.
 - a. Aluminum IMC conduits with PVC coated fittings

Exclusions

1. Provision of temporary heating, cooling, fans, and domestic water.
2. Any repair work for existing systems beyond that which is stated in the ECM scope of work, or resolving existing code violations. All existing equipment is assumed to be in good working order and meets code.
3. Fire and life safety system programming or related work.
4. Hazardous material abatement.
5. ADA Upgrades outside of Canopy Array footprints. Any necessary upgrades outside of Canopy footprints determined after due diligence after Contract Effective Date by the AOR will be managed through a contract change order.
6. Any upgrades determined after due diligence after Contract Effective Date by the AOR will be managed through a contract change order.
7. Engineering, installation, and maintenance of permanent stormwater facilities and features if required by the AHJ, which includes the best management practice mitigations including but not limited to riprap, basins, inlet structures, and down inlet protections.
8. Multiple mobilizations.
9. Environmental engineering and/or any environmental/biological remediation.
10. Floodplain engineering and/or any alterations to site and materials to accommodate floodplains.
11. Service upgrades, electrical service equipment, or new services.
12. Changes to project design and implementation required to accommodate easements and/or rights of way not listed in the scope of work.
13. Environmental assessment, environmental impact reports, testing, and other reports not listed in the scope of work.
14. Any design or engineering related to flood plans and/or FEMA high-hazard floodplains.
15. Specialized environmental insurance.
16. Relocation and/or removal of any existing utilities (active or abandoned), inclusive of water, electricity, communication, data, cable TV, security systems, irrigation, etc.
17. Hazardous material surveys, testing, and/or monitoring.
18. Removal and/or disposal of any hazardous or contaminated materials.
19. Excavation, removal, and/or disposal of unsuitable materials.
20. Rock excavation and drilling.
21. Soft soil stabilization.
22. Dewatering drilled foundations and sleeving of foundations.
23. Removal/disposal of existing on-site trash and/or debris (inclusive of encountered underground trash or debris).
24. Corrosion-resistant materials (beyond standard galvanization).
25. Arc Fault Hazard Assessment.



26. Overcurrent Protection Coordination Studies.
27. Lab of Record (LOR), Inspector of Record (IOR), and special inspections.
28. Pacific Gas and Electric (PG&E) utility transformer upgrade at C.V. Starr Community Center for Solar PV installation.
29. CalGreen EV Charger requirements.

Section 4 – Project Financials

4.1. Firm-Fixed Project Cost

Costs presented in this proposal are valid until 6/30/2024. If the Notice to Proceed is issued after 6/30/2024, we reserve the right to re-evaluate the project and make necessary modifications to the construction cost.

4.2. Items Included in Project Cost

Project costs include:

1. Engineering audit/project development including the cost for preparation of this proposal.
2. Engineering design
3. Construction/project management and site supervisor services.
4. Installation of equipment as specified in the scope of work:
 - a. All costs will be paid by SES for the installation of the equipment. This includes costs paid to subcontractors, team member reimbursements, or otherwise as it relates to the installation or system verification of equipment.
 - b. Cost of all equipment, materials, supplies, and equipment incorporated in the scope of work, including costs of transportation thereof.
 - i. Cost or rental charges including transportation and maintenance, of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers.
 - ii. Cost of premiums for all bonds and insurance.
 - iii. Demolition cost and cost of removal of all debris.
 - iv. Cost of equipment startup, training, system verification, and balancing performed by SES.
5. Mobilization, project development, and engineering fee:
 - a. The invoice will be presented upon mutual execution of the Contract and will be in the amount of 25% of the project's total value.



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
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Text File

File Number: 24-787

Agenda Date: 6/10/2024

Version: 1

Status: Business

In Control: City Council

File Type: Resolution

Agenda Number: 8A.

Receive Report and Consider Adoption of City Council Resolution Approving the Contract with GOC Construction, for the Replacement of the Fire Station Roof, City Project PWP-00138; Authorizing City Manager to Execute Contract (Amount Not to Exceed \$177,430.00); Authorizing Budget Amendment 2023/24-16; and Finding the Project Exempt from CEQA under 14 CCR 15301



AGENCY: City Council
MEETING DATE: June 10, 2024
DEPARTMENT: Public Works
PRESENTED BY: C. O'Neal
EMAIL ADDRESS: coneal@fortbragg.com

AGENDA ITEM SUMMARY

TITLE:

Receive Report and Consider Adoption of City Council Resolution Approving Contract with GOC Construction, for the Replacement of the Fire Station Roof, City Project PWP-00138, Authorizing City Manager to Execute Contract (Amount Not to Exceed \$177,430.00), and Finding the Project Exempt from CEQA under 14 CCR 15301

ISSUE:

Public Works staff solicited informal quotes for the replacement of the Fire Station roof. The Fire Station roof is a project listed in the City's 2023/2024 Capital Improvement Program list with a budget of \$100,000. The engineer estimate for this project was \$175,000.

Public Works staff solicited informal quotes for the replacement of the Fire Station roof in April 2024. The City received six (6) quotes (Bid Opening Summary Attachment 5). Two (2) of which were deemed non-responsive upon receipt. After a cursory review of the bids and the release of the bid opening, the City received protests on the two (2) lowest bids. One (1) protest regarding proposed material, and one (1) regarding insurance endorsements. After evaluating the protests (further described in the analysis section), the City determined that the first low bidder was non-responsive, but the second protest lacked merit. Staff is recommending an award to the second low bidder, GOC Construction for \$177,430.00.

ANALYSIS:

This project scope includes the removal of the existing roofing material on the various roof sections comprising the Fire Station, the installation of a modified bitumen roof system on the flat sections, and standard 30-year shingles on the pitched roof section. This project had a base bid that included two (2) roof sections composed of Thermoplastic Polyolefin (TPO) and an alternate bid item for all flat sections of the roof to be done in Modified Bitumen (Mod Bit). Based upon the quotes received, the budget available, and the alternate material being the greater value, city staff recommends moving forward with the Mod Bit scope for the Fire Station Project. The replacement of the Fire Station roof is necessary to prevent leaking and ensure the building is maintained sufficiently.

The notice inviting bids described the project in general terms and included a list of minimum task items necessary for a complete bid. The City received six bids and as described above, staff initially determined two bids were unresponsive because the quotes

AGENDA ITEM NO. _____

excluded several components outlined in the scope of work. Thompson Construction was deemed the lowest bidder on 05/15/2024. The City received a timely protest to Thompson Construction's bid citing the following "The use of "30# felt" in their proposal does not meet the manufacturer's specifications for installation, therefore is not allowable." The bid protest claimed that Thompson Construction's bid did not meet the code and should not be considered a responsible bid.

City Staff performed an analysis of the claim and determined the following:

1. The proposed underlayment for the Fire Station Roof Project is non-compliant with code standards, industry standards, and manufacturer specifications.
2. This irregularity is a material deviation and materially affects the proposal.
3. A bid that varies materially must be rejected.

The city has determined that the best course of action was to reject the low bid of Thompson Construction as non-responsive because it does not comply with code standards, industry standards, and manufacturer specifications.

According to the City Informal bid procedures outlined in the Fort Bragg Municipal Code (FBMC) §3.22.050 (G): "Contracts shall be awarded to the lowest responsible bidder submitting a responsive bid." Since the low bidder is based on material defects, the city of Fort Bragg has determined that this proposal is non-responsive, and moved to the next lowest responsive bidder, GOC Construction.

The City received a protest regarding the second low bidder, citing concerns inquiring whether or not "GOC has the necessary insurance endorsement for 'hot tar / modified bitumen" and stating "Without this endorsement, their general liability insurance would not cover this project."

The City has analyzed the concerns raised about GOC's Insurance. CIRA, the City's risk management team reviewed the concerns raised in this second protest and determined the referenced endorsement, only relates to a warranty "It will cover the cost of any warranty repair if all the conditions are met during construction. If the conditions are not met, then the policy will not cover the cost of the warranty, and the contractor will be out of pocket for any warranty repair. A policy/endorsement like this is more about protecting the contractor financially, not the customer." Following this consultation, the City has determined that this endorsement is not necessary for the contractor to meet their obligations under this contract so long as the contractor provides all the other insurance documentation and endorsements required by the contract. GOC Construction has agreed to provide all necessary insurance and endorsements to fulfill its obligations under this contract.

Finally, since all responsive bids received were in excess of \$175,000, staff is referring Council to FBMC §3.22.050 (H), which states "If all bids received are in excess of

\$175,000, the City Council may, by adoption of a resolution by a four-fifths vote, award the contract, at \$187,500 or less, to the lowest responsible bidder submitting a responsive bid if the Council determines the cost estimate of the public agency was reasonable.” Thus in order to award the contract, a four-fifths vote is necessary to award the contract.

RECOMMENDED ACTION:

Accept the bid of GOC Construction as the lowest responsive and responsible bidder, adopt the Resolution awarding the contract for construction to GOC Construction for the Fire Station roof project, and find the project exempt from CEQA under 14 CCR 15268.

ALTERNATIVE ACTION(S):

Refuse bids and put the project out to bid again.

FISCAL IMPACT:

This project was included in the Capital Improvement Budget for \$100,000 in the FY 23/24 budget. A more recent evaluation of the Fire Station roof in late April 2024 increased the engineer's estimate to \$175,000 given the heavy deterioration of the roof. The lowest responsive bid was \$2,430 above the engineer's estimate, and a budget amendment is proposed (via resolution) to increase the budget by \$77,430 for a total cost of \$177,430 to replace the roof of the Fort Bragg Fire Department.

Funding to cover the cost of this project will be supplied by the Fort Bragg Fire Department as part of their Measure P funds received from Mendocino County.

ENVIRONMENTAL ANALYSIS:

This Project is categorically exempt from CEQA, 14 CCR Section 15301 which allows for the repair and maintenance of existing facilities. There will be a short-lived increase in greenhouse gas emissions during construction from processes and equipment necessary for the performance of the work. All Air Quality Management District best management practices for minimizing greenhouse gas emissions during construction, such as reducing idling vehicles, will be incorporated into the daily activities of this project.

CONSISTENCY:

This project is consistent with General Plan Element 3 Public Facilities, which is intended to identify essential public facilities, buildings, and services and to ensure that the existing and future population of Fort Bragg is provided with the best feasible level of public services and infrastructure. Repair of the Fire Station roof will ensure the quality of the work environment for the employees who work there, as well as ensure the longevity of the equipment that is stored there.

IMPLEMENTATION/TIMEFRAMES:

Start Construction – July 2024
Complete Construction – August 2024

ATTACHMENTS:

1. Resolution
2. GOC Construction Quote
3. Budget Amendment
4. Contract
5. Bid Opening

NOTIFICATIONS:

1. GOC Construction
2. Redwood Roofers
3. Thompson Construction

RESOLUTION NO. _____-2024

RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING CONTRACT WITH GOC CONSTRUCTION, CITY PROJECT PWP-00138; AUTHORIZING CITY MANAGER TO EXECUTE CONTRACT (AMOUNT NOT TO EXCEED \$177,430.00); AND AUTHORIZING BUDGET AMENDMENT 2023/24-16; AND FINDING THE PROJECT EXEMPT FROM CEQA UNDER 14 CCR 15268

WHEREAS, the roof on the Fort Bragg Fire Station is leaking and in need of repairs; and

WHEREAS, quotes for the Project were solicited from six local contractors in April 2024; and

WHEREAS, the City solicited alternate pricing for two sections of the roof to be performed in Modified Bitumen as opposed to Thermoplastic Polyolefin; and

WHEREAS, City staff recommends moving forward with the alternate items on this request for quotes due to the added value it will bring to the Fire Station, and the availability of budgeted funds; and

WHEREAS, four responsive quotes and two un-responsive quotes were received for the Fort Bragg Fire Station Roof Replacement Project; and

WHEREAS, a third quote was deemed un-responsive after analysis of a timely protest; and

WHEREAS, all responsive bids received were in excess of \$175,000, and according to FBMC §3.22.050 (H), a resolution adopted by a four-fifths vote is required to award the contract; and

WHEREAS, the lowest responsive quote was received from GOC Construction in the amount of \$177,430.00 to complete this work; and

WHEREAS, staff has confirmed that GOC Construction has the proper license, experience, and meets the necessary requirements to be considered a responsive bidder; and

WHEREAS, the project was included in the 2023/24 Capital Improvement Program in the amount of \$100,000, and a more recent evaluation of the work to be performed raised the engineers estimate to \$175,000.00; and

WHEREAS, a budget amendment in the amount of \$177,430.00 is requested to cover the cost of the roof replacement; and

WHEREAS, based on all the evidence presented, the City Council finds as follows:

1. The GOC Construction proposal meets the requirements of the Project and is considered responsive.
2. GOC Construction has the proper licenses to complete the Project.
3. Sufficient funds are available in the facilities budget to cover the increased costs of

the project.

NOW, THEREFORE, BE IT RESOLVED that this Project is categorically exempt from CEQA, 14 CCR Section 15301 which allows for repair and maintenance to existing facilities; and

BE IT FURTHER RESOLVED that the City Council of the City of Fort Bragg does hereby accept the proposal of GOC Construction, awarding the contract for the Fire Station Roof Replacement Project (PWP-00138) to GOC Construction and authorizing the City Manager to execute the same (Amount Not to Exceed \$177,430.00) and Authorize Budget Amendment 2023/24-16.

The above and foregoing Resolution was introduced by Councilmember _____, and seconded by _____, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 10th day of June, 2024, by the following vote:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**
- RECUSED:**

BERNIE NORVELL
Mayor

ATTEST:

DIANA SANCHEZ
City Clerk

GOC Construction & Roofing, Inc.
 20725 Dennison Lane
 Fort Bragg, CA 95437
 (707) 684-0942
 genaroox@yahoo.com



ADDRESS

City of Fort Bragg projects
 416 N. Franklin St.
 Fort Bragg, CA 95437

Estimate 1701

DATE 05/09/2024

JOB NAME

Fire Station Roof

JOB ADDRESS

141 N. Main St.

DATE	DESCRIPTION	AMOUNT
	Item# Section A Roof replacement with standard 30-year asphalt shingles (15 sqrs approx.). Complete tear off existing roofing materials, install new synthetic underlayment, new 30-year asphalt shingles with SS nails, flashing, and roof components, wall cap to be reused.	26,880.00
	Item# Section B Modified Bitumen (Mod Bit) Roof replacement (40 sqrs approx.). Complete tear off existing material and install one layer of base sheet (smooth) and one layer of cap sheet (granulated). For a proper installation we'll be removing and reinstalling the same siding.	50,600.00
	Item# Section C Thermoplastic Polyolefin (TPO) Roof replacement (25 sqrs approx.), including all plumbing penetrations and all components compatible with the TPO material. Wall cap to be reused.	24,240.00
	Item# Section D Thermoplastic Polyolefin (TPO) Roof replacement (37 sqrs approx.), including all plumbing penetrations and all components compatible with the TPO material. Wall cap to be reused.	25,440.00
	Item# Section E Modified Bitumen (Mod Bit) Roof replacement (55 sqrs approx.) Complete tear off existing material and install one layer of base sheet (smooth) and one layer of cap sheet (granulated).	42,550.00
	Section C alternative \$27,900.00 Modified Bitumen (Mod Bit) Roof replacement (25sqrs approx.) Complete tear off existing material and install one layer of base sheet (smooth) and one layer of cap sheet (granulated). Including all components. Wall cap to be reused.	0.00

DATE	DESCRIPTION	AMOUNT
	Section D alternative \$29,500.00 Modified Bitumen (Mod Bit) Roof replacement (37 sqrs approx.). Complete tear off existing material and install one layer of base sheet (smooth) and one layer of cap sheet (granulated), including all plumbing penetrations and all components. Wall cap to be reused.	0.00

We hereby propose to furnish material and labor in accordance with the above specifications for the sum shown.

Any alteration or deviation from the above specifications involving extra cost will be billed as a change order.

ACCEPTANCE OF PROPOSAL The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

TOTAL	\$169,710.00
--------------	---------------------

Alt total: \$177,430

Accepted By

Accepted Date

BUDGET AMENDMENT FY 2022/23

Budget Adjustment #: **2022/23-04**
 Budget FY: **FY 2022/23**

Account Description	Account #		FY 22/23	Current Budget	Increase (+) Budget Amt	Decrease (-) Budget Amt	Revised Total Budget Amt	Description
Expenditures								
1 Salaries & Wages - IT Lead	521	4394	0101	\$ 123,693	\$ 15,915		\$ 139,608	
Medical Premium - CE Officer	521	4394	0211	\$ 26,112	\$ -		\$ 26,112	
Dental Premium - CE Officer	521	4394	0213	\$ 1,928	\$ -		\$ 1,928	
VSP Premium - CE Officer	521	4394	0214	\$ 459	\$ -		\$ 459	
PERS - CE Officer	521	4394	0220	\$ 10,150	\$ 2,829		\$ 12,979	
Worker's Comp - CE Officer	521	4394	0231	\$ 2,037	\$ 749		\$ 2,786	
FICA/Medicare - IT Lead	521	4394	0252	\$ 9,258	\$ 3,434		\$ 12,692	
2 Transfer Code Enforcement Budget from the Community Development Department to the Police Department								
Salaries & Wages -Code Enforcement	110	4320	0101	\$ 299,956	\$ 76,609		\$ 223,347	Transfer of CE Officer Budget to PD
Medical Premium - CE Officer	110	4320	0211	\$ 51,350	\$ 17,674		\$ 33,677	Transfer of CE Officer Budget to PD
Dental Premium - CE Officer	110	4320	0213	\$ 3,733	\$ 1,212		\$ 2,521	Transfer of CE Officer Budget to PD
VSP Premium - CE Officer	110	4320	0214	\$ 917	\$ 229		\$ 688	Transfer of CE Officer Budget to PD
PERS - CE Officer	110	4320	0220	\$ 24,518	\$ 5,946		\$ 18,572	Transfer of CE Officer Budget to PD
Worker's Comp - CE Officer	110	4320	0231		\$ 1,276		\$ (1,276)	Transfer of CE Officer Budget to PD
FICA/Medicare - CE Officer	110	4320	0252	\$ 22,761	\$ 5,861		\$ 16,901	Transfer of CE Officer Budget to PD
Salaries & Wages -Code Enforcement	110	4200	0101	\$ 1,865,705	\$ 76,609		\$ 1,942,314	Transfer of CE Officer Budget to PD
Medical Premium - CE Officer	110	4200	0211	\$ 337,999	\$ 17,674		\$ 355,673	Transfer of CE Officer Budget to PD
Dental Premium - CE Officer	110	4200	0213	\$ 24,765	\$ 1,212		\$ 25,977	Transfer of CE Officer Budget to PD
VSP Premium - CE Officer	110	4200	0214	\$ 4,816	\$ 229		\$ 5,045	Transfer of CE Officer Budget to PD
PERS - CE Officer	110	4200	0220	\$ 374,904	\$ 5,946		\$ 380,850	Transfer of CE Officer Budget to PD
Worker's Comp - CE Officer	110	4200	0231	\$ 123,024	\$ 1,276		\$ 124,301	Transfer of CE Officer Budget to PD
FICA/Medicare - CE Officer	110	4200	0252	\$ 157,175	\$ 5,861		\$ 163,036	Transfer of CE Officer Budget to PD
3 Budget for a 2nd Code Enforcement Officer (November 2021-June 2022)								
Salaries & Wages - 2nd CE Officer	110	4200	0101	\$ 1,865,705	\$ 47,144		\$ 1,912,849	Budget- 2nd CE Officer
Medical Premium - 2nd CE Officer	110	4200	0211	\$ 337,999	\$ 10,876		\$ 348,875	Budget- 2nd CE Officer
Dental Premium - 2nd CE Officer	110	4200	0213	\$ 24,765	\$ 746		\$ 25,511	Budget- 2nd CE Officer
VSP Premium - 2nd CE Officer	110	4200	0214	\$ 4,816	\$ 141		\$ 4,957	Budget- 2nd CE Officer
PERS - 2nd CE Officer	110	4200	0220	\$ 374,904	\$ 3,659		\$ 378,563	Budget- 2nd CE Officer
Worker's Comp - 2nd CE Officer	110	4200	0231	\$ 123,024	\$ 786		\$ 123,810	Budget- 2nd CE Officer
FICA/Medicare - 2nd CE Officer	110	4200	0252	\$ 157,175	\$ 3,607		\$ 160,782	Budget- 2nd CE Officer
4 Revenues								
CDD- Grant Staff Time Reimb	110	4320	3318	\$ 98,000		\$ 98,000	\$ -	Transfer of CDD Grant Revenue-CE
PD- Grant Staff Time Reimb	110	4200	3318	\$ 268,420	\$ 98,000		\$ 366,420	Transfer of CDD Grant Revenue-CE
PD- Grant Staff time Reimb	110	4200	3318	\$ 268,420	\$ 66,958		\$ 335,378	Budget 2nd CE Grant Reimb
				\$ 340,724	\$ 206,807		\$ 6,948,770	

Reason for Amendment: RESOLUTION # : _____

Authorization:

Requested By: Finance/Admin Dept _____ Signature: _____ Date: _____

Approval: Isaac Whippy _____

Finance Use: Adriana Moreno Ramos _____

Attach copies of Resolution or other documentation

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

CONTRACT CHECK LIST

Complete, accurate, executed copies of the following documents must be submitted to the CITY OF FORT BRAGG for the Fort Bragg Fire Station Roof Replacement Project, Project No. PWP-00138 within ten (10) working days of receiving written notice of award of the project.

- _____ Contract Check List
- _____ Contract, Part 1
- _____ Contract, Part 2 – General Provisions
- _____ Contract, Part 3 – Special Provisions
- _____ Performance Bond
- _____ Payment Bond
- _____ Maintenance Bond
- _____ Certificates of Insurance and Endorsements

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

CONTRACT, PART 1

The CITY OF FORT BRAGG, 416 N. Franklin Street, Fort Bragg, California 95437 (“City”) enters into this Contract, dated [REDACTED], for reference purposes only, with

GOC Construction & Roofing, Inc. 20725 Dennison Lane, Fort Bragg, Ca 95437 (“Contractor”).

RECITALS

- A. REQUEST FOR QUOTE. The City solicited quotes from a minimum of three (3) vendors on April 19, 2024 for the Fort Bragg Fire Station Roof Replacement Project, PWP-00138 (“Project”) in accordance with Fort Bragg Municipal Code Section 3.22.050 for informal bidding. For purposes of this agreement “bid,” “proposal,” and “quote” are used interchangeably.
- B. PROJECT PROPOSAL. On May 10, 2024 City representatives received the lowest, responsive proposal for the Project from GOC Construction & Roofing, Inc.
- C. PROJECT AWARD. On [REDACTED], the City Council accepted the proposal of GOC Construction & Roofing, Inc., awarding the contract for the Fort Bragg Fire Station Roof Replacement Project and authorizing the City Manager to execute the same.
- D. REQUIRED DOCUMENTS. The Contractor has provided the City executed copies of all documents specified in the contract check list.
- E. INVESTIGATION AND VERIFICATION OF SITE CONDITIONS. The Contractor warrants that it has conducted all necessary pre-bid investigations and other obligations, and agrees that it shall not be entitled to Change Orders (time or compensation) due to any information, error, inconsistency, omission, or conditions that Contractor should have known as a part of this Work. Contractor shall be responsible for the resultant losses, including, without limitation, the cost of correcting Defective Work. In executing this Contract, Contractor shall rely on the results of its own independent investigation and shall not rely on City-supplied information regarding above ground conditions and as-built conditions, and Contractor shall accept full responsibility for its verification work sufficient to complete the Work as intended.

City of Fort Bragg
Project No. PWP-00138
Contract, Part 1

CONTRACT TERMS

The City and the Contractor agree as follows:

1. THE WORK. The Contractor shall furnish all equipment, tools, apparatus, facilities, material labor, and skill necessary to perform and complete in a good and workmanlike manner the Fort Bragg Fire Station Roof Replacement Project (“Work”) as more specifically shown in the Contract Documents and applicable law.
2. LOCATION OF WORK.
The Work will be performed at the following location:
141 N Main St, Fort Bragg, CA 95437
3. TIME FOR COMPLETION. The Contractor must complete the Work in accordance with the Contract Documents within Sixty Five (65) working days from the date specified in the City’s Notice to Proceed (“Time for Completion”).
4. REMEDIES FOR FAILURE TO TIMELY COMPLETE THE WORK. If the Contractor fails to fully perform the Work in accordance with the Contract Documents by the Time for Completion, as such time may be amended by change order or other modification to this Contract in accordance with its terms, and/or if the Contractor fails, by the Time for Completion, to fully perform all of the Contractor’s obligations under this Contract that have accrued by the Time for Completion, the Contractor will become liable to the City for all resulting loss and damage in accordance with the Contract Documents and applicable law. The City’s remedies for the Contractor’s failure to perform include, but are not limited to, assessment of liquidated damages of \$500 per day in accordance with California Government Code Section 53069.85 and the Contract Documents, and/or obtaining or providing for substitute performance in accordance with the Contract Documents.
5. CONTRACT PRICE AND PAYMENT. As full compensation in consideration of completion of the Work in accordance with the Contract Documents and in consideration of the fulfillment of all of the Contractor’s obligations under the Contract Documents, the City will pay the Contractor in lawful money of the United States the total price of **One Hundred Seventy Seven Thousand Four Hundred Thirty Dollars (\$177,430.00)** (the “Contract Price”) as specified in the Contractor’s completed *Quote* dated May 9, 2024, and attached to and incorporated in this Contract as **Exhibit A**. Payment to the Contractor under this Contract will be for Work actually performed in accordance with the Contract Documents and will be made in accordance with the requirements of the Contract Documents and applicable law. The City will have no obligation to pay the Contractor any amount in excess of the Contract Price unless this

Contract is first modified in accordance with its terms. The City's obligation to pay the Contractor under this Contract is subject to and may be offset by charges that may apply to the Contractor under this Contract. Such charges include but are not limited to, charges for liquidated damages and/or substitute performance in accordance with the Contract Documents.

The Contract Sum is all inclusive and includes all Work; all federal, state, and local taxes on materials and equipment, and labor furnished by Contractor, its subcontractors, subconsultants, architects, engineers, and" vendors or otherwise arising out of Contractor's performance of the Work, including any increases in any such taxes during the term of this Agreement; and any duties, fees, and royalties imposed with respect to any materials and equipment, labor or services. The taxes covered hereby include (but are not limited to) occupational, sales, use, excise, unemployment, FICA, and income taxes, customs, duties, and any and all other taxes on any item or service that is part of the Work, whether such taxes are normally included in the price of such item or service or are normally stated separately. Notwithstanding the foregoing, each party shall bear such state or local inventory, real property, personal property or fixtures taxes as may be properly assessed against it by applicable taxing authorities.

6. PREVAILING WAGES. In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 et seq., the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed. In accordance with California Labor Code Section 1773, the City has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project. In accordance with California Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at the City Public Works Department and will be made available on request. Throughout the performance of the Work the Contractor must comply with all provisions of the Contract Documents and all applicable laws and regulations that apply to wages earned in performance of the Work.

- 6.1. Contractor acknowledges and agrees that it shall comply with the requirements of California Public Contracts Code sections 2600 et seq., in its entirety and, in particular, those sections related to Skilled and Trained Workforce. By its execution of this agreement Contractor certifies and warrants that it is aware of the requirement of California Public Contracts Code section 2600 et seq. and its requirements as to a Skilled and Trained Workforce.

7. THE CONTRACT DOCUMENTS. This Contract consists of the following documents (“Contract Documents”), all of which are incorporated into and made a part of this Contract as if set forth in full. In the event of a conflict between or among the Contract Documents, precedence will be in the following order:
 - 7.1 This Part 1 of the Contract and change orders and other amendments to this Contract signed by authorized representatives of the City and the Contractor.
 - 7.2 The General Provisions, Part 2 of the Contract, and change orders and other amendments to the General Provisions signed by authorized representatives of the City and the Contractor.
 - 7.3 The Special Provisions, Part 3 of the Contract, and change orders and other amendments to the Special Provisions signed by authorized representatives of the City and the Contractor.
 - 7.4 [Section Removed]
 - 7.5 [Section Removed]
 - 7.6 The Contractor’s Quote dated May 9, 2024
 - 7.7 Contractor’s completed Certificates of Insurance and Endorsements
 - 7.8 Contractor’s executed Performance Bond
 - 7.9 Contractor’s executed Payment Bond
 - 7.10 Contractor’s Maintenance Bond
8. PROVISIONS INCORPORATED BY REFERENCE. Provisions or parts of provisions that are incorporated by reference and not set forth at length in any of the Contract Documents will only form a part of this Contract to the extent the Contract Documents expressly make such provisions or parts of provisions a part of this Contract. For example, published public works agreement provisions, such as those of the State of California Department of Transportation Standard Specifications (known as the Standard Specifications) are only a part of this Contract to the extent expressly incorporated in the Contract by section number. When such published provisions are made a part of this Contract, references in the published provisions to other entities, such as the State, the Agency, or similar references, will be deemed references to the City as the context of this Contract may require.
9. INTERPRETATION OF CONTRACT DOCUMENTS. Any question concerning the intent or meaning of any provision of the Contract Documents, must be submitted to the Public Works Director, or his/her designee, for issuance of an interpretation and/or decision by the authorized Public Works Director in accordance with the requirements of the Contract Documents. Interpretations or decisions by any other person concerning

the Contract Documents will not be binding on the City. The decision of the Public Works Director, or his/her designee, shall be final.

10. ASSIGNMENT PROHIBITED. The Contractor may not assign part or all of this Contract, or any monies due or to become due under this Contract, or any other right or interest of the Contractor under this Contract, or delegate any obligation or duty of the Contractor under this Contract without the prior written approval of an official authorized to bind the City and an authorized representative of Contractor's surety or sureties. Any such purported assignment or delegation without such written approval on behalf of the City and the Contractor's sureties will be void and a material breach of this Contract subject to all available remedies under this Contract and at law and equity.
11. CONTRACTOR'S LICENSE CERTIFICATION. By signing this Contract the Contractor certifies that the Contractor holds a valid Type Class B or C-39 license issued by the California State Contractors Licensing Board, and that the Contractor understands that failure to maintain its license in good standing throughout the performance of the Work may result in discipline and/or other penalties pursuant to the California Business and Professions Code, and may constitute a material breach of this Contract subject to all available remedies under this Contract and at law and equity.
12. SEVERABILITY. If any term or provision or portion of a term or provision of this Contract is declared invalid or unenforceable by any court of lawful jurisdiction, then the remaining terms and provisions or portions of terms or provisions will not be affected thereby and will remain in full force and effect.
13. PROJECT REPRESENTATIVES
 - 13.1 The City has designated Public Works Director John Smith as its Project Manager to act as its Representative in all matters relating to the Contract. If Project Manager is an employee of City, Project Manager is the beneficiary of all Contractor obligations to the City including, without limitation, all releases and indemnities.

Project Manager shall have final authority over all matters pertaining to the Contract and shall have sole authority to modify the Contract on behalf of the City, to accept work, and to make decisions or actions binding on the City, and shall have sole signature authority on behalf of the City.

The City may assign all or part of the Project Manager's rights, responsibilities and duties to a construction manager or other City representative.
 - 13.2 The Contractor has designated Genaro Oxta as its Project Manager to act as Contractor's Representative in all matters relating to the Contract. The Contractor's Project Manager shall have final authority over all matters pertaining

to the Contract and shall have sole authority to modify the Contract on behalf of the Contractor and to make decisions or actions binding on the Contractor, and shall have sole signature authority on behalf of the Contractor.

SIGNATURES ON FOLLOWING PAGE

Executed on _____, by

CONTRACTOR

By: _____
Title: _____

[Attach Notary Acknowledgment Page]

CITY

By: Isaac Whippy
Title: City Manager

ATTEST:

By: _____
Diana Sanchez
City Clerk

APPROVED AS TO FORM:

By: _____
Baron J. Bettenhausen
City Attorney

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

CONTRACT, PART 2
GENERAL PROVISIONS

1. DEFINITIONS

The following terms as used in any agreement of which these General Provisions are a part are defined as follows:

- 1.1 **City:** CITY OF FORT BRAGG.
- 1.2 **Construction Manager:** The City's authorized representative for administration and overall management of the Project contract and Work. The Construction Manager is the official point of contact between the City, the Architect and/or Engineer, and the Contractor. The Construction Manager for this project shall be Engineering Technician Carlos Hernandez.
- 1.3 **Contract:** The agreement between the City and Contractor concerning the Project, as evidenced by and comprised of the Contract Documents.
- 1.4 **Contract Documents:** All documents identified in Section 7 of Part 1 of the Contract.
- 1.5 **Contractor:** GOC Construction & Roofing, Inc. The successful bidder for the Project and party to the Project agreement with the City as specified in the Project agreement.
- 1.6 **Days:** Unless otherwise specified in the Contract Documents, Days mean working days.
- 1.7 **Project:** The Fort Bragg Fire Station Roof Replacement Project as described in scope of work.
- 1.8 **Project Inspector:** The party or parties charged by the City with inspecting the Work for compliance with the requirements of the Contract Documents and applicable laws and regulations. The Project Inspector acts under the direction of the City and shall coordinate with the Construction Manager and Architect as directed by the City in accordance with the Contract Documents. .
- 1.9 **Project Plans:** [Section Removed]
- 1.10 **Proposal:** The quote, bid, or proposal submitted by by Contractor to the City in response to City request for informal bid. For purposes of this Agreement, quote, proposal, and bid are used interchangeably.
- 1.11 **Subcontractor:** A person, firm or corporation that is obligated as a party to a contract with the Contractor to perform part of the Project work. For purposes

City of Fort Bragg
Project No. PWP-00138
Contract, Part 2
General Provisions

of these General Provisions Subcontractors include, but are not limited to, those that are obligated as parties to a contract with the Contractor to specially fabricate and install a portion of the Project Work.

1.12 **Technical Specifications:** [Section Removed]

1.13 **Time for Completion:** The Time for Completion is the time by which the Work must be completed, as defined in the Contract, Part 1, or as modified in a writing, executed by the City and Contractor. .

1.14 **Work:** The furnishing of all equipment, tools, apparatus, facilities, material, labor and skill necessary to perform and complete in a good and workmanlike manner the Project in accordance with the Contract Document and applicable law(s).

1.15 **Written Notice:** Will be deemed to have been duly served for purposes of these General Provisions and any agreement of which they are a part if delivered in person to the individual or to a member of the firm or to any office of the corporation for whom the notice is intended, or if sent by registered or certified mail to the last known business address known to the party giving notice. Unless otherwise specified in the Contract Documents, the last known address of the Contractor shall be that listed in the Contractor's completed Quote.

2. PLANS AND SPECIFICATIONS [SECTION REMOVED]

3. CONTROL OF WORK AND MATERIAL

3.1 **Construction Manager's Status.** The Construction Manager will administer the Project in accordance with the Contract Documents. After execution of the agreement and issuance of the Notice to Proceed, all correspondence and/or instructions concerning the Project between the Contractor and/or City shall be forwarded through the Construction Manager. Except as otherwise provided in the Contract Documents, the Construction Manager will not be responsible for and will not have control or charge of construction means, methods, techniques, or procedures or for safety precautions in connection with the Work. The Construction Manager, however, will have authority to reject materials and/or workmanship that do not conform to the requirements of the Contract Documents. The Construction Manager will also have the authority to require inspection or testing of the Work.

3.2 [Section Removed]

3.3 **Inspection and Testing of Work and Material.**

City of Fort Bragg
Project No. PWP-00138
Contract, Part 2
General Provisions

- 3.3.1 The City and the Construction Manager and their representatives will have access to the Work at all times wherever it is in preparation or progress. The Contractor must provide proper facilities for such access and for inspection.
- 3.3.2 The Contractor must inspect all materials as delivered and promptly return all defective materials without waiting for their rejection by the Construction Manager.
- 3.3.3 If the Construction Manager, or any laws, ordinances, or any public authority require any Work to be tested or approved, the Contractor must give the Construction Manager timely notice of the Contractor's readiness for inspection. Inspections will be promptly made, and where practicable, at the source of supply. Any work subject to such testing that is covered up without timely notice to the Construction Manager or without the approval or consent of the Construction Manager must, if required by the Construction Manager, be uncovered for examination at the Contractor's expense. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 11 concerning any work subject to testing that is covered up without timely notice to the Construction Manager and that is not uncovered for examination at the Contractor's Expense if required by the Construction Manager.
- 3.3.4 Tests of materials or qualification tests required by the Contract Documents must be made in accordance with the California Building Standards Code as adopted by the City and other applicable law. Copies of all testing reports shall be distributed as required .
- 3.3.5 The City or its representatives may order re-examination of questioned Work. If ordered to do so, the Contractor must uncover such Work. If such Work is found to be according to the Contract Documents, the City shall pay the cost of uncovering and restoring the Work, unless such Work was subject to testing and covered up without timely notice to or approval of the Construction Manager. If re-examined Work is found not in accordance with the Contract Documents, the Contractor must pay the cost of uncovering and restoring the Work. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 11 concerning any re-examined Work not in accordance with the Contract Documents that the Contractor fails to uncover and restore at the Contractor's expense.
- 3.3.6 The Contractor must replace or correct without charge any material or workmanship found not to conform to the requirements of the Contract Documents, unless the City consents to accept such material or workmanship with an appropriate adjustment in the Contract Price. The

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Contractor must promptly segregate and remove non-conforming material from the Work site. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 11 concerning any failure by the Contractor to replace or correct without charge any material or workmanship that does not conform to the requirements of the Contract Documents and that the City has not consented to accept.

3.4 Samples Furnished by the Contractor. [Section Removed]

3.5 Materials and Substitutions.

3.5.1 Materials used for the Work must be new and of the quality specified. When not particularly specified, materials must be the best of their class or kind. The Contractor must, if required, submit satisfactory evidence as to the kind and quality of materials.

3.5.2 If the Contractor submitted complete information to the Public Works Department for products proposed as equals in accordance with the Bid Package, and the City approved such products proposed as equals in writing, the Contractor may either furnish such products approved as equals, or furnish the products listed by manufacturer name, brand or model number in the Contract Documents. The City retains the right, in its sole discretion, to accept or reject any other proposed substitution. To be considered, proposals concerning products proposed as equals must include sufficient information to permit the City to determine whether the products proposed as equals will satisfy the same performance requirements as products listed by manufacturer's name, brand or model number. Such performance requirements may include, but are not limited to, size, strength, function, appearance, ease of maintenance and repair, and useful life requirements. If the City does not accept a proposed substitution, the Contractor must furnish an acceptable product approved by the Construction Manager.

3.5.3. During the performance of the Work, all materials must be neatly stacked, properly protected from the weather and other adverse impacts, and placed so as to avoid interference with efficient progress of the Work, with other activities of the City, or with the use of existing City facilities by the public. All materials must be delivered so as to ensure efficient and uninterrupted progress of the Work. Materials must be stored so as to cause no obstruction and so as to prevent overloading of any portion of the Work. The Contractor will be responsible for damage or loss of materials delivered to and/or stored at the Work site due to weather or other causes. The Contractor must promptly remove from the Work site all materials rejected by the City or its representatives as failing to conform to the requirements of the

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Contract Documents, whether such non-conforming materials have been incorporated in the Work or not. If the City or its representatives so direct, the Contractor must promptly replace and re-execute Work performed by the Contractor and order the replacement and re-execution of Work performed by subcontractors using non-conforming materials with materials that satisfy the requirements of the Contract Documents without expense to the City. The Contractor will bear the expense of making good all Work destroyed or damaged by such removal. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 11 concerning any failure by the Contractor to replace or re-execute Work using non-conforming materials, and/or to make good all work destroyed or damaged by such removal and/or execution.

- 3.6 Maintenance and Examination of Records. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Contract Modifications, Change Orders, Work Directives, Force Account orders, and written interpretations and clarifications in good order and annotated to show all as-built changes made during construction. These Project Record Documents, together with all approved Samples and a counterpart of all approved Shop Drawings, shall be maintained and available to the City for reference. Upon completion of the Work, Contractor shall deliver to the City, the Project Record Documents, Samples and Shop Drawings and as-built drawings.

Throughout Contractor's performance of the Work of the Project, Contractor shall maintain construction records to include: shop drawings; product data/material data sheets; samples; submittals; purchases; materials; equipment; inspections; applicable handbooks; applicable codes and standards; maintenance and operating manuals and instructions; RFI Log; Submittal Log; other related documents and revisions which arise out of the Construction Contracts. Contractor shall maintain records of principal building layout lines, elevations for the bottom of footings, floor levels, and key site elevations (certified by a qualified surveyor or professional engineer). Contractor shall make all records available to the City. At the completion of the Project, Contractor shall deliver all such records to the City to have a complete set of record as-built drawings.

The City may examine and audit at no additional cost to the City all books, estimates, records, contracts, documents, bid documents, bid cost data, subcontract job cost reports and other Project related data of the Contractor, subcontractors engaged in performance of the Work, and suppliers providing supplies, equipment and other materials required for the Work, including computations and projections related to bidding, negotiating, pricing or performing the Work or contract modifications and other materials concerning

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the Work, including, but not limited to, Contractor daily logs, in order to evaluate the accuracy, completeness, and currency of cost, pricing, scheduling and any other project related data. The Contractor will make available all such Project related data at all reasonable times for examination, audit, or reproduction at the Contractor's business office at or near the Work site, and at any other location where such Project related data may be kept until three years after final payment under the Agreement. Pursuant to California Government Code Section 8546.7, if the amount of public funds to be expended is in excess of \$10,000, this Contract shall be subject to the examination and audit of the State Auditor, at the request of the City, or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

- 3.7 Advertising. No advertising signs of any kind may be displayed on the Work site, or on fences, offices or elsewhere adjacent to the Work site.
- 3.8 Project Schedule. Prior to the pre-construction meeting, the Contractor shall submit a baseline schedule showing each task of Work, including, as required by the City, equipment procurement and delivery (Contractor and City supplied), activities with Subcontractors and suppliers, major submittal reviews, commissioning of systems, use of major equipment on site, and necessary interface with the City and third parties. The baseline schedule shall include the sequence of each task, the number of days required to complete each task, and the critical path controlling the completion of the entire Work. The schedule shall allow for the completion of the entire Work within the Time for Completion.
 - 3.8.1 City Review of Schedule. The City may review the Contractor's submitted schedule and may note any exceptions. The Contractor shall correct any exceptions noted by the City within five (5) working days of being notified of the exceptions.
 - 3.8.2 Update of Schedule. After submission of a schedule to which the City has taken no exceptions, the Contractor shall submit an updated schedule on a biweekly basis until completion of the Work. The updated schedule shall show the progress of Work as of the date specified in the updated schedule. Contractor shall provide the City with an electronic copy of each updated schedule.
 - 3.8.3 Float. The baseline schedule and all later submitted schedules shall show early and late completion dates for each task. The number of days between these dates shall be designated as "Float." The Float shall be designated to the Project and shall be available to both the City and the Contractor as needed to complete the Work in accordance with the Contract.

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- 3.8.4 Failure to Submit Schedule. If the Contractor fails to submit the schedule within the time period specified in this section or submit a schedule to which the City has taken uncorrected exceptions, the City may withhold payments to the Contractor until such schedules are submitted and/or corrected in accordance with the Contract documents.
- 3.8.5 Responsibility for Schedule. The Contractor will be solely and exclusively responsible for creating the schedule and properly updating it. The City may note exceptions to any schedule submitted by the Contractor. However, the Contractor will be solely responsible for determining the proper method of addressing such exceptions, and the City's review of the schedule will not create scheduling obligations for the City.
- 3.8.6 Contractor's baseline schedule and progress schedules shall be in the form of a CPM (arrow) diagram. Contractor shall provide the City with native format electronic schedules and hard copies of the baseline schedule, schedule updates, and look ahead schedules. All electronic and hard copies of the schedule that Contractor provides to the City shall indicate the critical path of the Work (in red) and shall show a logical progression of the Work through completion within Contract Time.
- 3.8.7 The City has no obligation to accept an early completion date.
- 3.8.8 The City may request a recovery schedule should Contractor fall 21 or more Days behind any schedule milestone, which schedule shall show Contractor's plan and resources committed to retain Contract completion dates. The recovery schedule shall show the intended critical path. If the City requests, Contractor shall also: secure and demonstrate appropriate subcontractor and supplier consent to the recovery schedule; and submit a written plan and narrative explaining on trade flow and construction flow changes and man-hour loading assumptions for major Work activities and/or subcontractors.
- 3.8.9 If the Contractor requests an extension of the Time for Completion, it shall submit the request in a writing that provides information justifying the request and stating the extent of the adjustment requested for each specific change or alleged delay. The writing shall include this narrative and a schedule diagram depicting how the changed Work or other impact affects other schedule activities. The schedule diagram shall show how Contractor proposes to incorporate the changed Work or other impact in the schedule and how it impacts the current schedule impact or critical path or otherwise. Any requests of an extension of the Time for Completion stemming from an alleged project delay shall be

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made within five (5) days of the commencement of the alleged delay, explain the reason for delay, include the anticipated length of the delay, and contain a narrative justifying the extension, in addition to the other information and schedules required by this section.

3.9 Construction Staking. [Section Removed]

3.10 Materials Testing. [Section Removed]

4. CHANGES IN WORK

- 4.1 City Directed Change Orders. The City may at any time during the progress of the Work direct any amendments to the Work or any of the Contract Documents. Such amendments will in no way void the agreement, but may be applied to amend the Contract Price or Time for Completion, if such amendments affect the Contract Price, the Project schedule, or any other provision of the Contract Documents based on a fair and reasonable valuation of the amendment in accordance with this Section 4.
- 4.2 Writing Requirement. Change orders and other amendments to the Contract Documents may be made only by a writing executed by authorized representatives of the City and the Contractor.
- 4.3 Contractor Proposed Change Orders. Unless the Construction Manager otherwise authorizes or the City and the Contractor otherwise agree, change order proposals submitted by the Contractor must be submitted to the Construction Manager no later than the time of the proposed change.
- 4.4 All Change Orders. All change order proposals must be submitted on completed Change Order forms provided by the City. All such change order proposals must itemize all cost impacts of the proposed change order and include a total price for that change order and the amended Contract Price that would become effective upon execution of the change order. All change order proposals must specify any change in the Project schedule, or in any project milestone including, but not limited to, the Time for Completion, under the change order, and must provide information justifying the requested change in the Time for Completion. It is understood that change orders that do not specify a change in any milestone, including, but not limited to, the Time for Completion, will be accomplished by the Time for Completion then in effect.
- 4.5 Change Order Pricing. Change order pricing will be governed by the following:

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- 4.5.1 Unit prices specified in the Contract Documents will apply to cost impacts involving items for which the Contract Documents specify unit prices.
- 4.5.2 Cost impacts involving items for which no unit prices are specified will be calculated by adding the itemized actual direct cost that would be added or reduced under the change order and an allowance for indirect costs in accordance with this Section. Itemization for direct costs for required labor must include the classifications of labor required, the total hours required for each classification, the hourly rate for each classification and other labor related costs such as liability and workers compensation insurance, social security, retirement and unemployment insurance. All other cost impacts for which no unit prices are specified must be itemized as appropriate, including the cost of tools, vehicles, phones and other equipment, and the cost of all required materials or supplies. Indirect costs added under a change order may not exceed an allowance of fifteen (15) percent of the total of combined Contractor and subcontractor direct costs added under the change order. Such allowance covers Contractor overhead and profit under the change order and includes the cost of insurance in addition to that required pursuant to Section 8.8, bond premiums, superintendent labor, clerical labor, home office expenses, worksite office expenses, and utility costs under the change order. Such costs may not be itemized as direct costs under a change order. Indirect costs deducted under a change order will be calculated in exactly the same way as indirect costs added under a change order, except indirect costs deducted under a change order may not exceed an allowance of seven and a half (7.5) percent of the total of combined Contractor and subcontractor direct costs deducted under the change order.
- 4.6 Liability Under Unapproved Change Orders. The Contractor shall be solely responsible for any and all losses, costs, or liabilities of any kind incurred by the Contractor, any subcontractor engaged in the performance of the Work, any party supplying material or equipment for the Work or any third party that are incurred pursuant to Contractor-proposed change orders prior to issuance of an approved change order executed in accordance with this Section 4. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in Section 11 concerning any work or resulting losses, costs, or liabilities pursuant to a Contractor proposed change order before issuance of an approved change order executed in accordance with this Section 4.
- 4.7 Changes Subject to Contract Documents. Any changes in the Work and/or the Contract Documents pursuant to change orders and any other

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amendments issued in accordance with the Contract Documents, including this Section 4, will in all respects be subject to all provisions of the Contract Documents, except as modified by such change orders or amendments.

4.8 Change Order Disputes.

4.8.1 Disputed City Directed Change Orders. If the Contractor disputes a City directed change order following a reasonable effort by the City and the Contractor to resolve the dispute including, at a minimum, a meeting between appropriate representatives of the Contractor and the City, the Contractor must commence performing the Work consistent with the disputed change order within five (5) working days of the last meeting between representatives of the Contractor and the City to resolve the dispute, or within the time specified in the disputed City directed change order, whichever is later. In performing Work consistent with a disputed City-directed change order pursuant to this provision the Contractor will have all of the Contractor's rights concerning claims pursuant to the Contract Documents and applicable law.

4.8.2 Disputed Contractor Proposed Change Orders. If the City disputes a Contractor proposed change order, the City and the Contractor will use reasonable efforts to resolve the dispute including, at a minimum, holding a meeting between appropriate representatives of the Contractor and the City. Regardless of and throughout any such efforts to resolve the dispute the Contractor must continue performing the Work irrespective of and unmodified by the disputed change order. In continuing to perform the Work, the Contractor will retain all of the Contractor's rights under contract or law pertaining to resolution of disputes and protests between contracting parties. Disputes between the City and the Contractor concerning any Contractor-proposed change order or other amendment do not excuse the Contractor's obligation to perform the Work in accordance with the Contract Documents excluding such Contractor-proposed change order or other amendment by the Time for Completion or waive any other Project milestone or other requirement of the Contract Documents.

4.9 Change in Time for Completion. The Time for Completion may only be changed through a Change Order, and all time limits stated in the Contract Documents are to mean that time is of the essence. Contractor shall not be entitled time extension for impacts that consume Float, but do not impact the critical path. Time extensions will not be granted unless substantiated by the Critical Path Method (CPM) Schedule, and then not until the CPM float becomes zero. If contractor fails to submit documentation requesting and justifying a change in Time for Completion consistent with the Contract

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Documents, the Contractor shall be deemed to have agreed that there is no extension of time and that Contractor has irrevocably waived its rights to any change in the Time for Completion. Contractor initiated change orders shall address any impacts on the Time for Completion when first submitted to the City. Contractor shall submit any request for change in the Time for Completion and all supporting information and documentation required by the Contract Documents within seven (7) working days of receipt of a City-directed Change Order.

5. TRENCHING AND UTILITIES [Section Removed]

6. PROJECT FACILITIES

6.1 Work Site Offices. Any Work site office facilities used by the Contractor and/or its privities must conform to all applicable codes, ordinances and regulations. The cost of such Work site office facilities shall be paid from and included in the Contract Price.

6.2 City Rights of Access and Ownership. The City and its authorized representatives will at all reasonable times while such office facilities are located at the Work site (including, at a minimum, all times during which the Work is performed), have access to any such Work site office facilities used by the Contractor and/or its privities. With respect to the right of access of the City and its authorized representatives, neither the Contractor nor its privities shall have a reasonable expectation of privacy pursuant to the Fourth Amendment to the United States Constitution or other applicable law concerning such Work site office facilities used by the Contractor and/or its privities. Without exception, any and all Project related materials located at such Work site facilities will be deemed at all times to be City property subject to inspection and copying by the City and its authorized representatives at all reasonable times while such facilities are located at the Work site (including, at a minimum, all times during which the Work is performed). Any interference by the Contractor or its privities with the City's rights of access and/or Ownership pursuant to this Section 6 will constitute a material breach of the Agreement subject to any and all remedies available pursuant to the Contract Documents and at law and equity.

7. PROSECUTION AND PROGRESS OF THE WORK

7.1 Liquidated Damages. Time is of the essence in the Agreement. The City and the Contractor agree that it will be difficult and/or impossible to determine the actual damage which the City will sustain in the event of the Contractor's

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failure to fully perform the Work or to fully perform all of the Contractor's obligations that have accrued pursuant to the Agreement by the Time for Completion. Accordingly, the City and the Contractor agree in accordance with California Government Code Section 53069.85 that the Contractor will forfeit and pay to the City liquidated damages in the sum of \$100 per day for each and every calendar day completion of the Work and/or performance of all of the Contractor's obligations that have accrued pursuant to the Agreement is delayed beyond the Time for Completion. The City and the Contractor further agree in accordance with California Government Code Section 53069.85 that the liquidated damages sum specified in this provision is not manifestly unreasonable under the circumstances existing at the time the Agreement was made, and that the City may deduct liquidated damages sums in accordance with this provision from any payments due or that may become due the Contractor under the Agreement.

- 7.2 No Damage for Avoidable Delays. All delays in the Work that might have been avoided by the exercise of care, prudence, foresight and diligence of the Contractor or any privities of the Contractor will be deemed avoidable delays. Delays in the Work that may be unavoidable but that do not necessarily affect other portions of the Work or prevent completion of all Work within the Time for Completion, including, but not limited to, reasonable delays in Engineer approval of shop drawings, placement of construction survey stakes, measurements and inspection, and such interruption as may occur in prosecution of the Work due to reasonable interference of other contractors of the City, will be deemed avoidable delays. The Contractor will not be awarded a change in the Project schedule, the Time for Completion, and/or additional compensation in excess of the contract price for avoidable delays.
- 7.3 Unavoidable Delays. All delays in the Work that result from causes beyond the control of the Contractor and that the Contractor could not have avoided through exercise of care, prudence, foresight, and diligence will be deemed unavoidable delays. Orders issued by the City changing the amount of Work to be done, the quantity of materials to be furnished, or the manner in which the work is to be prosecuted, and unforeseen delays in the prosecution of the Work due to causes beyond the Contractor's control, such as strikes, lockouts, labor disturbances, fires, epidemics, earthquakes, acts of God, neglect by utility owners or other contractors that are not privities of the Contractor will be deemed unavoidable delays to the extent they actually delay the Contractor's completion of the Work. The Contractor will be awarded a change in the Project schedule, the Time for Completion, and/or additional compensation in excess of the Contract Price for unavoidable delays to the extent such delays actually delay the Contractor's completion of the Work and/or result in the Contractor incurring additional costs in excess of the Contract Price.

- 7.4 No Damage for Contractor Caused Delay. Contractor shall not be entitled to additional compensation for extended field or home office overhead, field supervision, costs of capital, interest, escalation charges, acceleration costs or other impacts for any delays to the extent such delays are caused by the failure of the Contractor or any subcontractor or other entity engaged in performance of the Work to perform the Work in accordance with the Contract Documents.
- 7.5 No Damage for Other Delay. Contractor will not be entitled to damages for delay to the Work caused by the following, which the City and Contractor agree will be deemed for purposes of California Public Contract Code Section 7102 either not caused by the City, and/or within the contemplation of the City and the Contractor, and/or reasonable under the circumstances:
- 7.5.1 Exercise of the City's right to sequence the Work in a manner that would avoid disruption to the City and other contractors based on: the failure of the Contractor or any subcontractor or other entity engaged in the performance of the Work to perform the Work in accordance with the Contract Documents, enforcement by the City or any other governmental agency of competent jurisdiction of any government act or regulation, or enforcement by the City of any provisions of the Agreement.
- 7.5.2 Requests for clarification or information concerning the Contract Documents or proposed change orders or modifications to the Contract Documents, including extensive and/or numerous such requests for clarification or information or proposed change orders or modifications, provided such clarifications or information or proposed change orders or modifications are processed by the City or its representatives in a reasonable time in accordance with the Contract Documents.
- 7.6 Delays Caused by the City and/or Its Privities. Delay caused by the City and/or other Contractors of the City will be deemed unavoidable delays. Either the City or the Contractor may propose a change in the Time for Completion for delays that are purported to be caused by the City and/or its privities and that are not reasonable under the circumstances involved and/or that are not within the contemplation of the City and the Contractor. Such proposed changes in the Time for Completion will constitute change order proposals subject to Section 4. In accordance with Section 4, the City and the Contractor may agree upon pricing for the cost impacts, if any, resulting from such delays. If such pricing is in anticipation of cost impacts that may, but have not yet occurred, the City will be obligated to pay the Contractor for such anticipated impacts in accordance with the Agreement and any applicable, approved change orders only to the extent the Contractor actually incurs the anticipated cost impacts. Notwithstanding anything to the contrary in Section 4, the City and the Contractor may agree to a daily rate or cap or lump sum

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that will apply to the cost impacts, if any, resulting from delay purportedly caused by the City and/or its privities subject to this provision. However, if such daily rate or cap or lump sum is in anticipation of cost impacts that have not yet occurred, the City will be obligated to pay such daily rate or cap or lump sum only to the extent the Contractor actually incurs such cost impacts.

7.7 Weather Delays. Extensions of the Time for Completion will not be allowed for normal, adverse weather conditions that are consistent with historical weather data of the National Oceanographic and Atmospheric Administration of the U.S. Department of Commerce for the record station that is nearest or most applicable to the Work site. The Contractor should understand that normal adverse weather conditions are to be expected and plan the Work accordingly, such as by incorporating into the Project schedule, normal adverse weather delays as reflected in historical data of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce for the weather station most applicable to the Work site. Extensions of the Time for Completion for delays due to adverse weather will be allowed only if the number of adverse weather days far exceeds the historical data. No extensions of the Time for Completion will be granted for normal, adverse weather conditions or for adverse weather conditions that merely result in delays that do not or would not, themselves, result in failure to complete the Work by the Time for Completion.

7.8 Delay Claims. Within five (5) days of the beginning of any delay, Contractor shall notify the City in writing, by submitting a notice of delay that shall describe the anticipated delays resulting from the delay event in question. Whenever the Contractor claims a delay for which the Time for Completion may be extended, the Contractor must request an extension of time within five (5) days of submitting its notice of delay. The request must be in writing in the form of a change order and describe in detail the cause for the delay, and, if possible, the foreseeable extent of the delay. The City will determine all claims and adjustments in the Time for Completion. No claim for an adjustment in the Time for Completion will be valid and such claim will be waived if not submitted in accordance with the requirements of this Section and Section 4.9. In cases of substantial compliance with the notice timing requirements of this Section (but not to exceed twenty-one (21) days from the beginning of the delay event), City may in its sole discretion recognize a claim for delay accompanied with the proper documentation and justification, provided the Contractor also shows good faith and a manifest lack of prejudice to the City from the late notice.

7.9 Contractor Coordination of the Work.

7.9.1 The City reserves the right to do other work in connection with or in the vicinity of the Project by contract or otherwise, and Contractor shall at all times conduct the Work so as to impose no hardship on the City,

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others engaged in the Work or other contractors working at the Work site. The Contractor will adjust, correct and coordinate the Work with the work of others so that no delays result in the Work or other work at or near the Work site.

- 7.9.2 If any part of the Work depends for proper execution or results upon the work of the City or any other contractor, the Contractor will, before proceeding with such Work, promptly report to the City any apparent discrepancies or defects in such other Work. Failure of the Contractor to promptly report any apparent discrepancy or defect will be deemed an acceptance of the City's or other contractor's Work as fit and proper.
- 7.9.3 The Contractor will anticipate the relations of the various trades to the progress of the Work and will ensure that required anchorage or blocking is furnished and set at proper times. Anchorage and blocking necessary for each trade shall be part of the Work except where stated otherwise.
- 7.9.4 The Contractor will provide proper facilities at all times for access of the City, the Construction Manager, Architect or Engineer, and other authorized City representatives to conveniently examine and inspect the Work.

8. CONTRACTOR RESPONSIBILITIES

- 8.1. Eligibility. By executing the Agreement, the Contractor certifies that the Contractor is not ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7. In accordance with California Public Contract Code Section 6109(a), contractors who are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7 may neither bid on, be awarded or perform the Work. To the fullest extent permitted by law, the Contractor shall hold harmless and indemnify the City from and against any and all damages, costs, and liability arising from or as a consequence of any violation of Public Contract Code Section 6109.
- 8.2 Non Discrimination. During the performance of this Contract, Contractor will not discriminate against any employee or subcontractor of the Contractor or applicant for employment because of race, religion, creed, color, national origin, gender, sexual orientation, or age. Contractor 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, gender, sexual orientation, or age.

Contractor acknowledges that Contractor, and all subcontractors hired by Contractor to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act ("IRCA"). Contractor is

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and shall remain in compliance with the IRCA and shall ensure that any subcontractors hired by Contractor to perform services under this Agreement are in compliance with the IRCA. In addition, Contractor agrees to indemnify, defend and hold harmless City, its agents, officers and employees, from any liability, damages or causes of action arising out of or relating to any claims that Contractor's employees, or employees of any subcontractor hired by Contractor, are not authorized to work in the United States for Contractor or its subcontractor and/or any other claims based upon alleged IRCA violations committed by Contractor or Contractor's subcontractors.

- 8.3 Supervision of the Work. The Contractor will be solely responsible for the performance of the Work, including portions of the Work to be performed by subcontractors. The Contractor is charged with ensuring that all orders or instructions from the City, Construction Manager or Architect are disseminated to and followed by all subcontractors engaged in performance of the Work. The Contractor will supervise the Work using the Contractor's best skill and attention. At any time during the progress of the Work, the City, the Construction Manager, or the Architect may require the Contractor and/or subcontractors engaged in performance of the Work to attend a project meeting and the Contractor will attend, and ensure the attendance of any subcontractors whose attendance is required by the City and/or advisable in light of the matters to be addressed at the meeting.
- 8.4 Contractor's Superintendent. The Contractor will keep on the Work, throughout its progress, a competent superintendent and any necessary assistants, all satisfactory to the City. The superintendent may not be changed without the consent of the City. The superintendent will represent the Contractor and all directions given by the City to the superintendent will bind the Contractor in accordance with the Agreement. Superintendent time included in Contractor's completed bid schedule and/or in approved change orders, if any, must be included in Contractor's approved overhead rate and may not be charged as a direct cost.
- 8.5 Competent Employees. The Contractor must at all times enforce strict discipline and good order among the Contractor's employees and may not employ on the Project any unfit person or anyone not skilled in the Work assigned, or anyone incompetent or unfit for the duties of that person. When the City determines that a Contractor employee does not satisfy the requirements of this provision, upon notice from the City, the Contractor must ensure that employee performs no further Work and is no longer present at the Work site. Any such Contractor employee may not again be employed on the Project without City approval.
- 8.6 Items Necessary for Proper Completion of the Work. Except as otherwise noted in the Contract Documents, the Contractor will provide and pay for all labor, materials, equipment, permits, fees, licenses, facilities and services

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necessary for the proper execution and timely completion of the Work in accordance with the Contract Documents.

- 8.7 Construction Reports. The Contractor must submit daily construction reports detailing the daily progress of the Work to the Construction Manager on a weekly basis.
- 8.8 Subcontracting. The Contractor must perform with his or her own organization, a value of work amounting to not less than fifty percent (50%) of the Contract amount, except that the bid amount for subcontracted "Specialty Items" so designated in the Special Provisions may be eliminated from the Contract amount and not considered as sub-contracted for the purposes of calculating the value of work to be performed by the Contractor. For the purposes of determining the value of work to be performed by the Contractor pursuant to this provision, materials, equipment, incidentals, etc., shall be considered to have been purchased by the Contractor or Subcontractor that is to install them. Where a portion of an item is subcontracted, the value of work subcontracted will be based on the estimated cost of such portion of the subcontracted item, as determined from information submitted by the Contractor, subject to approval by the Engineer.
- 8.8.1 By executing the Contract, the Contractor certifies that no subcontractor included on the list of proposed subcontractors submitted with the Contractor's bid is ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7. In accordance with California Public Contract Code Section 6109(a), subcontractors who are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7 may neither bid on, be awarded or perform as a subcontractor on the Work. In accordance with California Public Contract Code Section 6109(b), any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. The Contractor will ensure that no debarred subcontractor receives any public money for performing the Work, and any public money that may have been paid to a debarred subcontractor for the Work is returned to the City. The Contractor will be responsible for payment of wages to workers of a debarred subcontractor who has been allowed to perform the Work.
- 8.8.2 The Agreement and the performance of the Work are subject to the requirements of the Subletting and Subcontracting Fair Practices Act codified at California Public Contract Code Section 4100 et seq. If the Contractor fails to specify a subcontractor or specifies more than one subcontractor for the same portion of the Work in excess of one-half of

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one percent of the Contractor's total bid, the Contractor agrees that the Contractor is fully qualified to perform that portion of the Work with the Contractor's own forces, and that the Contractor will perform that portion of the Work with the Contractor's own forces. If after award of the Agreement the Contractor subcontracts, except as provided for in California Public Contract Code Sections 4107 or 4109, any such portion of the Work, the Contractor will be subject to the penalties set forth in California Public Contract Code Sections 4110 and 4111, including cancellation of the Agreement, assessment of a penalty of up to 10 percent of the amount of the subcontract, and disciplinary action by the Contractors State License Board.

- 8.8.3. No contractual relationship exists between the City and any subcontractor engaged in performance of the Work.
- 8.8.4. Incorporation of Contract Documents. The Contractor must incorporate the Contract Documents in each contract with a subcontractor engaged in the performance of the Work including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. The Contractor shall be solely responsible for any delay or additional costs incurred as a result of its failure to provide adequate or accurate project information to a subcontractor that results in improper submittals and/or work, or time or other impacts is the sole responsibility of the Contractor. The Contractor will have all of the obligations and the City will have all of the remedies that are specified in Section 11.
- 8.8.5. Subcontractor agrees to be bound to General Contractor and City in the same manner and to the same extent as General Contractor is bound to City under the Contract Documents. Subcontractor further agrees to include the same requirements and provisions of this agreement, including the indemnity and insurance requirements, with any Sub-subcontractor to the extent they apply to the scope of the Sub-subcontractor's work. A copy of the City's Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request. The Contractor shall require all subcontractors to provide a valid certificate of insurance with the required endorsements included in the agreement prior to commencement of any work and General Contractor will provide proof of compliance to the City.
- 8.8.6. Coordination of Subcontract Work: The Contractor is responsible for scheduling the Work of subcontractors so as to avoid delay or injury to either Work or materials.

8.9 Insurance.

- 8.9.1 All required insurance shall be provided in the form of “occurrence”-type policies underwritten by admitted insurers in the State of California with a rating of A or better from the current year Best Rating Guide. All policies must be issued at the expense of the Contractor and must be maintained at the Contractor’s expense throughout the performance of the Work.
- 8.9.2 The Contractor and any subcontractors engaged in performance of the Work must secure payment of workers compensation in accordance with California Labor Code Section 3700 and other applicable law. The Contractor must verify that all Subcontractors comply with this requirement.
- 8.9.3 Within ten (10) working days following notice of award the Contractor must submit to the City along with executed copies of all other documents specified in the Contract Check List certificates of insurance and endorsements evidencing that the Contractor has in effect and will maintain throughout the performance of the Work the following kinds and amounts of insurance:
- 8.9.3.1 Worker’s Compensation Insurance. Workers Compensation and Employers Liability insurance as required by any applicable law, regulation or statute, including the provisions of Division IV of the Labor Code of the State of California, and any act or acts amending it. Worker’s Compensation insurance must be for Statutory Limits and must cover the full liability of the Contractor. The Contractor’s Employer’s Liability Insurance must be in an amount no less than \$1,000,000.00 per occurrence. 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 work performed under this agreement.
- 8.9.3.2 Commercial General Liability and Automobile Liability Insurance. Coverage for liability because of Bodily Injury and Property Damage including, but not limited to the following coverage:
- Completed Operations and Products Liability
 - Bodily Injury
 - Personal Injury
 - Broad Form Property Damage Liability

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- Contractual Liability insuring the obligations assumed by the Contractor under the Contract Documents
- Automobile Liability, including owned, non-owned and hired automobiles
- Coverage for the XCU hazards of Explosion, Collapse and Underground Hazards

8.9.3.3 Commercial General Liability Self-Insured Retentions:

- 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 the City.
- The 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.

8.9.3.4 Commercial Umbrella Policy. The limits of insurance required in these Contract Documents 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.

8.9.3.5 Builders Risk. The Contractor must, at the Contractor's own expense, maintain a builder's risk fire insurance policy, special form including extended coverage and vandalism, and malicious mischief endorsements. The policy must name the City and the Contractor as insureds. Such insurance must be carried in the amount of 100% of the Contract Price. In the event of a partial or total destruction by fire of any or all of the Work at any time prior to the completion and acceptance thereof, the Contractor shall promptly reconstruct all Work so destroyed or injured at the Contractor's own cost and expense and at no cost to the City.

8.9.4 The Additional Insured coverage under the Contractor’s policy shall be “primary and non-contributory” and 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.

8.9.5 The limits of the insurance required above will be at least:

Comprehensive General Liability

Bodily Injury Liability	\$2,000,000	each occurrence
	\$4,000,000	each aggregate
Property Damage Liability	\$2,000,000	each occurrence
	\$4,000,000	each aggregate

Comprehensive Automobile Liability

Bodily Injury Liability	\$2,000,000	each person
	\$2,000,000	each occurrence
Property Damage Liability	\$2,000,000	each occurrence

Builders Risk issued for the value of the Contract Price

8.9.6 For each insurance policy required under the Agreement except for the required workers compensation insurance policy, the Contractor must provide endorsements that add the City, its officials, officers, employees, agents and volunteers as an additional insured (“Additional Insured”). Such endorsements must: provide that the insurance required to be furnished by the Contractor will be primary as regards the City, and that the City’s insurance will be excess of and not contribute to the insurance required to be furnished by the Contractor; that the City will receive 30 day written notice of any reduction or cancellation of such insurance required to be furnished by the Contractor; and include a severability of interest clause acceptable to the City. Said endorsement shall be at least as broad as Insurance Services Office form number CG2010 (Ed. 11/85).

8.9.7 It shall be a requirement under these Contract Documents 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.

8.9.8 Contractor shall maintain insurance as required by these Contract Documents to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event contractor 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 Contractor.

8.10 Indemnities.

8.10.1 The Contractor will take all responsibility for the Work, and will bear all losses and damages directly or indirectly resulting to the Contractor, any subcontractors engaged in performance of the Work, the City, its officials, officers, employees, agents, volunteers and consultants, and to third parties on account of the performance or character of the Work, unforeseen difficulties, accidents, or occurrences of other causes arising out of the Contractor's execution of the Work or of any subcontractor engaged in performance of the Work. To the fullest extent permitted by law the Contractor will indemnify, defend and hold harmless the City, its officials, officers, employees, agents, volunteers and consultants from and against any or all loss, liability, expense, claims, costs (including costs of defense and consultants' costs), suits, and damages of every kind, nature and description (including, but not limited to, penalties resulting from exposure to hazards in violation of the California Labor Code and bodily injury or death) directly or indirectly arising from the Contractor's performance of the Work, failure to perform the Work, or condition of the Work that is caused in whole or in part by any act or omission of Contractor, its subcontractors, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, resulting from any cause whatsoever, save for liability for any loss, damage, or expense arising out of the City's sole negligence or willful misconduct.

8.10.2 The Contractor will indemnify, defend and hold harmless the City, the City's officials, officers, employees, volunteers, agents and the Construction Manager for all liability on account of any patent rights, copyrights, trade names or other intellectual property rights that may apply to the Contractor's performance of the Work. The Contractor will pay all royalties or other charges as a result of intellectual property rights that may apply to methods, types of construction, processes, materials, or equipment used in the performance of the Work, and will furnish written assurance satisfactory to the City that any such charges have been paid.

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- 8.10.3 The Contractor assumes all liability for any accident or accidents resulting to any person or property as a result of inadequate protective devices for the prevention of accidents in connection with the performance of the Work. The Contractor will indemnify, defend, and hold harmless the City and its officials, officers, employees, agents, volunteers and consultants from such liability.
- 8.10.4 Approval of the Contractor's certificates of insurance and/or endorsements does not relieve the Contractor of liability under this Section 8.10. The Contractor will defend, with legal counsel reasonably acceptable to the City, any action or actions filed in connection with any Claims and will pay all related costs and expenses, including attorney's fees incurred. The Contractor will promptly pay any judgment rendered against the City, its officials, officers, employees, agents, volunteers or consultants for any Claims. In the event the City, its officials, officers, employees, agents, volunteers or consultants is made a party to any action or proceeding filed or prosecuted against Contractor for any Claims, Contractor agrees to pay the City, its officials, officers, employees, agents, volunteers and consultants any and all costs and expenses incurred in such action or proceeding, including but not limited to, reasonable attorneys' fees.
- 8.10.5 Contractor will indemnify, hold harmless and defend, with legal counsel reasonably acceptable to the City, the City and its officials, officers, employees, agents and volunteers from and against any and all claims related to damage to surface or underground facilities caused by the Contractor or any of the Contractor's privities or agents.
- 8.10.6 The Contractor will indemnify, hold harmless and defend, with legal counsel reasonably acceptable to the City, the City and its officials, officers, employees, agents and volunteers from and against any and all claims, including any fines or other penalties, related to failure of the Contractor and/or privities or agents of the Contractor to comply with the requirements of the General Permit, or to implement the Stormwater Pollution Prevention Plan ("SWPPP") in accordance with provision 12 of the Special Provisions. The City may withhold from amounts due or that may become due to the Contractor under this Contract amounts that equal or are estimated to equal the amount of claims, including fines, resulting from failure of the Contractor and/or privities or agents of the Contractor to comply with the requirements of the General Permit, or to implement the SWPPP in accordance with provision 12 of the Special Provisions.

- 8.10.7 In accordance with California Civil Code Section 2782(a), nothing in the Contract will be construed to indemnify the City for its sole negligence, willful misconduct, or for defects in design furnished by the City. By execution of the Contract Documents the Contractor acknowledges and agrees that the Contractor has read and understands the insurance and indemnity requirements of the Contract Documents, which are material elements of consideration.
 - 8.10.8 The defense and indemnification obligations of these Contract Documents are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in these Contract Documents.
 - 8.10.9 Contractor/Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of these Contract Documents for the full period of time allowed by law.
 - 8.10.10 If Contractor fails to perform any of the foregoing defense and indemnity obligations, the City may defend itself and back-charge the Contractor for the City's costs and fees (including attorneys' and consultants' fees), and damages and withhold such sums from progress payments or other Contract monies which may become due.
- 8.11 Licenses/Permits. The Contractor must, without additional expense to the City, obtain all licenses, permits and other approvals required for the performance of the Work.
- 8.12 California Labor Code Requirements.
- 8.12.1 In accordance with California Labor Code Section 1771.1, this Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR). The Contractor and subcontractors engaged in performance of the Work must comply with Labor Code Section 1771.1.
 - 8.12.2 In accordance with California Labor Code Section 1810, eight (8) hours of labor in performance of the Work shall constitute a legal day's work under the Agreement.
 - 8.12.3 In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the Work is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess

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of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.

- 8.12.4 The Contractor and its subcontractors will forfeit as a penalty to the City \$25 for each worker employed in the performance of the Work for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one calendar day, or more than forty (40) hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 et seq.
- 8.12.5 In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the Work is to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the Public Works Department and shall be made available on request. The Contractor and subcontractors engaged in the performance of the Work shall pay no less than these rates to all persons engaged in performance of the Work.
- 8.12.6 In accordance with California Labor Code Section 1775, the Contractor and any subcontractors engaged in performance of the Work must comply with Labor Code Section 1775 which establishes a penalty of up to \$200 per day for each worker engaged in the performance of the Work that the Contractor or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner. The Contractor or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the Work is not paid the general prevailing per diem wages by the subcontractor, the Contractor is not liable for any penalties therefor unless the Contractor had knowledge of that failure or unless the Contractor fails to comply with all of the following requirements:
 - 8.12.6.1 The contract executed between the Contractor and the subcontractor for the performance of part of the Work must include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - 8.12.6.2 The Contractor must monitor payment of the specified general prevailing rate of per diem wages by the

subcontractor by periodic review of the subcontractor's certified payroll records.

- 8.12.6.3 Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Contractor must diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the Work.
- 8.12.6.4 Prior to making final payment to the subcontractor, the Contractor must obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to employees engaged in the performance of the Work and any amounts due pursuant to California Labor Code Section 1813.
- 8.12.7 In accordance with California Labor Code Section 1776, the Contractor and each subcontractor engaged in performance of the Work, must keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating that the information contained in the payroll record is true and correct and that the employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project. The payroll records required pursuant to California Labor Code Section 1776 must be certified and must be available for inspection by the City and its authorized representatives, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations and must otherwise be available for inspection in accordance with California Labor Code Section 1776.
- 8.12.8 In accordance with California Labor Code Section 1777.5, the Contractor, on behalf of the Contractor and any subcontractors engaged in performance of the Work, will be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.
- 8.12.9 In case it becomes necessary for the Contractor or any subcontractor engaged in performance of the Work to employ on the Work any person in a trade or occupation (except executive, supervisory,

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administrative, clerical, or other non-manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor must pay the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by that person. The minimum rate thus furnished will be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

8.13 Laws and Ordinances. The Contractor and all subcontractors engaged in the performance of the Work must conform to the following specific rules and regulations as well as all other laws, ordinances, rules and regulations that apply to the Work. Nothing in the Contract Documents is to be construed to permit Work not conforming to these codes:

- National Electrical Safety Code, U. S. Department of Commerce
- National Board of Fire Underwriters' Regulations
- California Building Standards Code as adopted by the City
- California Mechanical Code as amended by applicable local ordinances for all construction work.
- California Administrative Code Titles 15, 19 and 24 (with California amendments), and Americans with Disabilities Act (ADA) accessibility guidelines, whichever is more stringent.
- Manual of Accident Prevention in Construction, latest edition, published by A.G.C. of America
- Industrial Accident Commission's Safety Orders, State of California
- Regulations of the State Fire Marshall (Title 19, California Code of Regulation) and Applicable Local Fire Safety Codes
- Labor Code of the State of California - Division 2, Part 7, Public Works and Public Agencies
- Federal, state, and local air pollution control laws and regulations applicable to the Contractor and/or Work

8.14 Guaranty. The Contractor guarantees all of the Work for one year from the date the City accepts the Work. Upon receiving written notice of a need for repairs which are directly attributable to defective materials or workmanship the Contractor must make good any defects arising or discovered in any part of the Work by diligently commencing the necessary repairs within seven (7) days from the date of notice from the City. If the Contractor fails to make good any defects in the Work in accordance with this provision, in addition to any other available remedy under the contract or at law or equity, the City may make good or have made good such defects in the Work and deduct the cost from amounts that may be due or become due the Contractor, and/or call on the Contractor's maintenance bond for the cost of making good such defects

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and for the City's reasonable legal costs, if any, of recovering against the bond. The Contractor shall remain responsible for repairing any Work found to be defective regardless of when such defect is discovered by the City.

Where defective or rejected Work and any damage caused thereby has been corrected, removed, or replaced by the Contractor pursuant to this section, the guarantee period with respect to that Work shall be extended for an additional period of one year after such correction, removal, or replacement has been satisfactorily completed.

8.15 Safety.

8.15.1 In accordance with generally accepted construction practices and applicable law, the Contractor will be solely and completely responsible for conditions of the Work site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours. For purposes of California Labor Code Section 6400 and related provisions of law, the Contractor and the Contractor's privities and any other entities engaged in the performance of the Work will be "employers" responsible for furnishing employment and a place of employment that is safe and healthful for the employees, if any, of such entities engaged in the performance of the Work. Neither the City nor its officials, officers, employees, agents, volunteers or consultants will be "employers" pursuant to California Labor Code Section 6400 and related provisions of law with respect to the Contractor, the Contractor's privities or other entities engaged in the performance of the Work. The Contractor agrees that neither the City, the Construction Manager, the Architect, nor the Engineer will be responsible for having hazards corrected and/or removed at the Work site. The Contractor agrees that the City will not be responsible for taking steps to protect the Contractor's employees from such hazards, or for instructing the Contractor's employees to recognize such hazards or to avoid the associated dangers. The Contractor agrees with respect to the Work and the Work site, the Contractor will be responsible for not creating hazards and for having hazards corrected and/or removed, for taking appropriate, feasible steps to protect the Contractor's employees from such hazards and that the Contractor has instructed and/or will instruct its employees to recognize such hazards and how to avoid the associated dangers.

8.15.2 Review and inspection by the City, the Construction Manager, the Architect or Engineer, and/or other representatives of the City of the Contractor's performance of the Work will not constitute review of the adequacy of the Contractor's safety measures in, on, or near the Work site. Such reviews and inspections do not relieve the Contractor of

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any of the Contractor's obligations under the Contract Documents and applicable law to ensure that the Work site is maintained and the Work is performed in a safe manner.

- 8.15.3 The Contractor will be solely responsible for the implementation and maintenance of safety programs to ensure that the Work site is maintained and the Work is performed in a safe manner in accordance with the Contract Documents and applicable law.
 - 8.15.4 Within ten (10) working days following notice of award the Contractor must submit to the City a copy of the Contractor's Safety Plan.
 - 8.15.5 The Contractor must furnish and place proper guards and systems for the prevention of accidents, including, but not limited to, those systems required pursuant to Title 8, Section 1670 et seq. of the California Code of Regulations concerning safety belts and nets. The Contractor must provide and maintain any other necessary systems or devices required to secure safety of life or property at the Work site in accordance with accepted standards of the industry and applicable law. The Contractor must maintain during all night hours sufficient lights to prevent accident or damage to life or property.
- 8.16 Assignment of Unfair Business Practice Claims. In accordance with California Public Contract Code Section 7103.5, the Contractor and any subcontractors offer and agree to assign to the City all rights, title, and interest in and to all causes of action the Contractor or any subcontractors may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to this contract. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgement by the parties.
- 8.17 Contractor shall be responsible for properly notifying residents and property owners impacted by this project in accordance with City standards. Specific notification procedures vary with the type of work and shall be coordinated with the City before work begins. The City will furnish a list of impacted property owners.
- 8.18 Contractor shall use paper products and printing and writing paper that meets Federal Trade Commission recyclability standards as defined in 16 CFR 260.12.

9. MEASUREMENT AND PAYMENT

9.1 F.O.B. All shipments must be F.O.B. destination to the Work site and/or other sites indicated in the Contract Documents. The Contract Price is all-inclusive (including sales tax). There shall be no additional compensation paid for containers, packing, unpacking, drayage or insurance.

9.2 Payment

9.2.1 On or about the first day of each calendar month the Contractor will submit to the Construction Manager a verified application for payment and schedule of values supported by a statement showing all materials actually installed during the preceding month and the cost of labor actually expended in the performance of the Work. **Billing must be received on a monthly basis, at a minimum.** Unless otherwise provided in the Contract Documents, no allowances or payments will be made for material or equipment not placed at the Work site.

9.2.2 To be eligible for payment the Contractor's applications for payment must include certified payroll reports prepared in accordance with California Labor Code Section 1776 and the Agreement for each employee of the Contractor and any subcontractors engaged in the performance of the Work during the preceding months, applications for payment will not be processed without certified payroll reports.

9.2.3 In accordance with California Public Contract Code Section 20104.50, the City will review applications for payment as soon as practicable after receipt. Any application or part of an application that is determined to be improper will be returned to the Contractor as soon as practicable, but no later than seven (7) days after receipt by the City, along with a written description of the reasons why the application is improper. The Contractor's failure to submit a schedule in the time specified in Section 3.8, or its submission of a schedule to which the City has taken any uncorrected exception, shall serve as a basis for returning an application for payment in its entirety.

9.2.4 Unless the Contractor has elected to post securities in lieu of retention in accordance with California Public Contract Code Section 22300 and the Agreement, and the Contractor and the City have executed an escrow agreement in accordance with the Public Contract Code and the Agreement, the City will make progress payments to the Contractor in accordance with applicable law in the amount of ninety-five (95) percent of the value of the labor actually performed and the material incorporated in the Work as specified in Contractor's verified application for payment upon approval by the City's authorized representative(s). Payment of progress payments will not be construed as acceptance of the Work performed. If the Contractor has elected to post securities in

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lieu of retention in accordance with Public Contract Code Section 22300 and the Agreement and the Contractor and the City have executed an escrow agreement in accordance with the Public Contract Code and the Agreement, the City will make payments to the Contractor or the Contractor's escrow agent in accordance with such escrow agreement.

9.2.5 The City will pay the Contractor's final invoice in accordance with applicable law and this Section 9 following acceptance of the Work provided that:

9.2.5.1 The Contractor has furnished evidence satisfactory to the City that all claims for labor and material have been paid, or the time for filing valid stop notices has passed and no stop notices have been filed, or all stop notices filed have been released by valid release or release bond acceptable to the City.

9.2.5.2 No claim has been presented to the City by any person based upon any acts or omissions of the Contractor or any subcontractor engaged in the performance of the Work.

9.2.5.3 No other claim or dispute exists under the Agreement or applicable law concerning payment of the Contractor's final invoice and/or release of the Agreement retention.

9.2.5.4 The Contractor has filed with the City the Maintenance Bond provided in the Contract Documents with duly notarized signatures of an authorized representative of the Contractor and an attorney-in-fact of an admitted surety insurer acceptable to the City and such Maintenance Bond binds the Contractor as Principal and the Surety in accordance with its terms in the amount of 10% of the final Contract Price.

9.2.6 In accordance with California Public Contract Code Section 20104.50, if the City fails to make a progress payment within thirty (30) days of receipt of an undisputed, properly submitted application for payment, the City will pay the Contractor interest equivalent to the legal rate set forth in subdivision (a) of California Code of Civil Procedure Section 685.010. The number of days available to the City to make a payment without incurring an interest obligation pursuant to this provision and California Public Contract Code Section 20104.50 will be reduced by the number of days, if any, by which the City has delayed return of an application for payment beyond the seven day return requirement set forth in Section 9.2.5.

9.3 Non-Allowable Direct Charges. The following costs are not allowable direct charges under the Agreement. The following costs may only be paid under

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the Agreement, if at all, as part of any allowance for contractor overhead and/or profit established under the Agreement.

- 9.3.1 Labor costs in excess of applicable prevailing wages pursuant to the Agreement and applicable law, liability and workers compensation insurance, social security, retirement and unemployment insurance and other employee compensation and benefits pursuant to bona fide compensation plans in effect at the time specified for the opening of Project bids for contractor and subcontractor employees engaged in the performance of the Work or in excess of the labor costs specified in Section 4.5 of this Contract in the case of cost impacts involving items for which the Contract Documents do not specify prices and for which no lump sum amount has been approved by the City. However, in no event will allowable direct labor charges under the agreement include employee bonuses, employee vehicles or vehicle allowances, employee telephones or telephone allowances, or employee housing or housing allowances, whether or not such benefits are part of a bona fide compensation plan in effect at the time specified for the opening of Project bids.
 - 9.3.2 Superintendent labor and clerical labor.
 - 9.3.3 Bond premiums.
 - 9.3.4 Insurance in excess of that required under Section 8.8.
 - 9.3.5 Utility costs.
 - 9.3.6 Work Site office expenses.
 - 9.3.7 Home office expenses.
 - 9.3.8 Permit or license costs.
- 9.4 Retention. The City or its agent may, in accordance with the Contract Documents and applicable law, withhold any payment of monies due or that may become due the Contractor because of:
- 9.4.1 Defective work not remedied or uncompleted work.
 - 9.4.2 Claims filed or reasonable evidence indicating probable filing of claims.
 - 9.4.3 Failure to properly pay subcontractors or to pay for material or labor.
 - 9.4.4 Reasonable doubt that the Work can be completed for the balance then unpaid.
 - 9.4.5 Damage to another contractor.
 - 9.4.6 Damage to the City.

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- 9.4.7 Damage to a third party.
- 9.4.8 Delay in the progress of the Work, which, in the City's judgment, is due to the failure of the Contractor to properly expedite the Work.
- 9.4.9 Liquidated damages or other charges that apply to the Contractor under the Agreement.
- 9.4.10 Any other lawful basis for withholding payment under the contract.
- 9.5 Securities in Lieu of Retention.
 - 9.5.1 In accordance with Public Contract Code Section 22300, except where federal regulations or policies do not permit substitution of securities, the Contractor may substitute securities for any moneys withheld by the City to ensure performance of the Work. At the Contractor's request and expense, securities equivalent to the amount withheld will be deposited with the City, or with a state or federally chartered bank in California as the escrow agent, who will then pay those moneys to the Contractor under the terms of an Escrow for Security Deposit agreement. The Escrow for Security Deposit agreement is provided in the Contract Documents. Upon satisfactory completion of the Work, the securities will be returned to the Contractor.
 - 9.5.2 Alternatively, at the Contractor's request and expense, the City will pay retentions earned directly to the escrow agent. At the Contractor's expense, the Contractor may direct investment of the payments into securities. Upon satisfactory completion of the Work, the Contractor will receive from the escrow agent all securities, interest, and payments received by the escrow agent from the City pursuant to this provision and the terms of the Escrow for Security Deposit agreement. The Contractor will, within 20 days of receipt of payment, pay to each subcontractor the respective amount of interest earned, less costs of retention withheld from each Subcontractor, on monies withheld to ensure the Contractor's performance of the Work.
 - 9.5.3 Securities eligible for investment in accordance with this provision include those listed in Government Code Section 16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the City.
 - 9.5.4 The Contractor will be the beneficial owner of any securities substituted for moneys withheld and will receive any interest thereon.

10. PROJECT ACCEPTANCE AND CLOSEOUT

10.1 Occupancy. The City reserves the right to occupy or use any part or parts or the entirety of the Work before the Work is fully performed. Subject to applicable law, exercising this right will in no way constitute acceptance of any part of the Work so occupied or used or acceptance of the entire Work, nor will such occupancy or use in any way affect the times when payments will become due the Contractor, nor will such occupancy or use in any way prejudice the City’s rights under the Agreement, any Agreement bonds, or at law or equity. Occupancy or use shall not waive the City’s rights to assess liquidated damages in accordance with Section 7 after the date of such occupancy or use.

10.2 Work Completion and Final Inspection. When the Contractor considers the Work is completed, the Contractor will submit written certification to the Construction Manager specifying that: the Contract Documents have been reviewed; the Work has been inspected for compliance with the Contract Documents; the Work has been completed in accordance with the Contract Documents; and that equipment and systems have been tested in the presence of the City’s representative and are operational. The City and/or the City’s authorized representatives will make an inspection to verify that the Work is complete and will notify the Contractor in writing of any incomplete or deficient Work. The Contractor will take immediate steps to remedy the stated deficiencies and give notice of correction to the Construction Manager. Upon receiving a notice of correction, the City or the City’s authorized representatives will re-inspect the Work. The Contractor must correct all punch list items within 15 working days after the issuance of the punch list. Before acceptance of the Work the Contractor must submit: one set of the Project Record Drawings (As-Builts), and any equipment operating and maintenance instructions and data, warranties.

10.3 Work Acceptance.

10.3.1 All finished Work will be subject to inspection and acceptance or rejection by the City, the Construction Manager, and the Architect or Engineer and other government agencies having jurisdiction over the Work. Final acceptance of the Work will be at the discretion of the City.

10.3.2 The City will accept the Work in writing only when the Work has been completed to the City’s reasonable satisfaction. Progress payments will in no way be construed as acceptance of any part of the Work.

10.3.3 In evaluating the Work, no allowance will be made for deviations from the Contract Documents unless already approved in writing in accordance with the requirements of Section 4, above.

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- 10.3.4 The fact that the Work and materials have been inspected from time to time and that progress payments have been made does not relieve the Contractor of the responsibility of replacing and making good any defective or omitted work or materials in accordance with the requirements of the Contract Documents.
- 10.3.5 None of the provisions of this section, including acceptance of the Project, final payment, or use or occupancy of the Project Site shall constitute acceptance of Work not done in accordance with the Contract Documents nor relieve Contractor of liability relating to the express guarantees or responsibility for faulty materials or workmanship. Nothing in this section or the Contract Documents shall be construed to limit, relieve, or release Contractor's, subcontractors', and materials suppliers' liability to the City for damages sustained as a result of latent defects in materials, equipment, or the Work caused by the Contractor, its agents, suppliers, employees, or Subcontractors.

11. REMEDIES AND DISPUTES

11.1 Failure to Correct Work. Within ten (10) working days of receiving written notice from the City describing Work that is defective or that is otherwise not in accordance with the requirements of the Agreement and/or applicable law and directing that such Work be corrected, the Contractor and/or the Contractor's sureties must give the City written notice of the intent of the Contractor and/or the Contractor's sureties to correct such Work and commence correction of such Work in accordance with the City's notice and the Agreement. If the Contractor and/or the Contractor's sureties do not give the City written notice of intent to correct such Work and commence correction of such Work within ten (10) working days of receipt of the City's notice, then the City may correct such work and/or have such work corrected for the account and at the expense of the Contractor and/or its sureties, and the Contractor and/or its sureties will be liable to the City for any resulting excess cost. The City may, in addition to all other remedies that the City may have under the Agreement and at law or equity, deduct any such excess cost of completing the Work from amounts that are due or that may become due the Contractor. Contractor shall not be entitled to an extension of the Time of Completion because of a delay in the performance of the Work attributable to the City's exercise of its rights under this section.

11.2 Termination for Cause

11.2.1 In accordance with California Public Contract Code Section 7105, in addition to all other available remedies that the City may have under the Agreement, and at law or equity, the City may terminate the

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Contractor's control of the Work for any material breach of the Contract, including, but not limited to the following:

- 11.2.1.1 If the Contractor or any of its subcontractors engaged in the performance of the Work fails to timely perform the Work and/or any of the Contractor's material obligations under the Contract Documents, including but not limited to submission of an acceptable schedule, that have accrued except for due to reasons beyond the control of the Contractor pursuant to the Contract Documents.
 - 11.2.1.2 If the Contractor is adjudged bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of its creditors.
 - 11.2.1.3 If the Contractor or any of the subcontractors engaged in the performance of the Work persistently or repeatedly refuses or fails to supply enough properly skilled workmen or proper materials for the timely completion of the Work.
 - 11.2.1.4 If the Contractor fails to make prompt payment to subcontractors engaged in the performance of the Work or for material or labor used in the performance of the Work in accordance with the Contract Documents and applicable law.
 - 11.2.1.5 If the Contractor or any subcontractors engaged in the performance of the Work persistently disregards laws or ordinances applicable to the performance of the Work, or the instructions of the City, the Construction Manager, the Architect, or other authorized representatives of the City.
- 11.2.2 If the City intends to terminate the Contractor's control of the Work for any of the reasons specified in Sections 11.2.1.1 through 11.2.1.5, above, the City will immediately serve written notice to the Contractor and its sureties in accordance with the Contract Documents. Notice of the City's intent to terminate the Contractor's control of the Work will be given by registered or certified mail and specify the grounds for termination, the required cure and the time by which the cure must be effected. Upon receipt of notice of the City's intent to terminate the Contractor's control of the Work for any of the reasons specified in provisions 11.2.1.1 through 11.2.1.5, above, the Contractor will have ten (10) days from receipt of the notice or a longer time specified in the notice to cure its default. If the Contractor does not affect the required cure by the time specified in the notice, the City will issue a written notice of termination to the Contractor and its sureties by registered or certified mail. The notice of termination will specify: that

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upon receipt of the notice the Contractor's right to perform or complete the Work, including on behalf of the Contractor's sureties, is terminated; that the Contractor's sureties will have the right to take over and complete the Work and perform all of the Contractor's remaining obligations that have accrued under the Agreement; and that if the Contractor's sureties do not both give the City written notice of their intention to take over and perform the Agreement and commence completion of the Work and performance of all of the Contractor's remaining obligations that have accrued under the Agreement within ten (10) days after receipt of notice of termination that the City may declare the Contractor's sureties in default and take over the completion of the Work or have the Work completed for the account and at the expense of the Contractor and its sureties, and the Contractor and its sureties will be liable to the City for any resulting excess cost. The City may, in addition to all other available remedies that the City may have under the Contract Documents and at law or equity, deduct any such excess cost of completing the Work from amounts that are due or that may become due the Contractor.

- 11.2.3 Upon termination of the Contractor's control of the Work for any of the reasons specified in Sections 11.2.1.1 through 11.2.1.5, the Contractor will, if so directed by the City, immediately remove from the Work site any and all materials and personal property belonging to the Contractor which have not been incorporated in the Work and the Contractor and its sureties will be liable upon their bond for all damages caused the City by reason of the Contractor's failure to complete the Work.
- 11.2.4 Upon termination of the Contractor's control of the Work for any of the reasons specified in provisions 11.2.1.1 through 11.2.1.5, above, the City reserves the right to refuse tender of the Contractor by any surety to complete the Work.
- 11.2.5 If the City completes or has completed any portion of, or the whole of the Work, following termination of the Contractor's control of the Work for any of the reasons specified in Sections 11.2.1.1 through 11.2.1.5, above, the City will neither be liable for nor account to the Contractor or the Contractor's sureties in any way for the time within which, or the manner in which such Work is performed, or for any changes made in such Work or for the money expended in satisfying claims and/or suits and/or other obligations in connection with completing the Work. If, following termination of the Contractor's control of the Work for any of the reasons specified in Sections 11.2.1.1 through 11.2.1.5, above, the unpaid balance of the Contract Price exceeds the expense of completing the Work, including compensation for additional legal,

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managerial and administrative services and all other amounts due for the completion of the Work and/or satisfaction of claims of the City and/or others arising out of the Agreement and any other charges that apply to the Contractor under the Agreement, the difference will be paid to the Contractor. If such expenses of completing the Work exceed the unpaid balance of the Contract Price, the Contractor or its sureties will pay the difference to the City.

- 11.2.6 If the Agreement or Contractor's control of the Work is terminated for any reason, Contractor waives all consequential damages resulting therefrom, including, but not limited to, the loss of any anticipated profit by the Contractor for the Work, the loss of profit on any potential or future jobs, and the loss of bonding capacity.
- 11.2.7 In accordance with California Government Code Section 4410, in the event a national emergency occurs, and public work being performed by contract is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the City and the Contractor may, by written agreement, terminate the Agreement. In accordance with California Government Code Section 4411, such an agreement will include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either party will pay to the other or any other person, under the facts and circumstances in the case. Compensation to the Contractor will be determined on the basis of the reasonable value of the work done, including preparatory work. As an exception to the foregoing, in the case of any fully completed separate item or portion of the Work for which there is a separate contract price, the contract price shall control. The parties may in any other case adopt the contract price as the reasonable value of the work or any portion of the work done.
- 11.2.8 In the event a termination for cause is later determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and the Contractor shall have no greater rights than it would have following a termination for convenience. Any contractor claim arising out of a termination for cause shall be made in accordance with this section.

11.3 Termination for Convenience.

- 11.3.1 The City may terminate performance of the Work under the Contract Documents in accordance with this clause in whole, or from time to

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time in part, whenever the City shall determine that termination is in the City's best interest. Termination shall be effected by the City delivering to the Contractor notice of termination specifying the extent to which performance of the Work under the Contract Documents is terminated, and the effective date of the termination.

- 11.3.2 Contractor shall comply strictly with the City's direction regarding the effective date of the termination, the extent of the termination, and shall stop work on the date and to the extent specified.
- 11.3.3 Contractor shall be entitled to a total payment on account of the Contract work so terminated measured by: (i) the actual cost to Contractor of Work actually performed, up to the date of the termination, with profit and overhead limited to twelve percent (12%) of actual cost of work performed, up to but not exceeding the actual contract value of the work completed as measured by the Schedule of Values and Progress Schedule; and (ii) offset by payments made and other contract credits. In connection with any such calculation, however, the City shall retain all rights under the Contract Documents including, without limitation, claims, indemnities, or setoffs.
- 11.3.4 Under no circumstances may Contractor recover legal costs of any nature, nor may Contractor recover costs incurred after the date of the termination.

11.4 Disputes.

The procedure set forth in California Public Contracts Code section 9204 (as summarized in Exhibit B attached hereto) shall apply to all "claims" by the Contractor on the City, as that term is defined in Section 9204. With respect to "claims" or any portion of a claim not resolved by way of the procedure set forth in Section 9204, the following procedure shall thereafter apply as follows:

- 11.4.1 In accordance with California Public Contract Code Section 20104.2, the following procedures apply to claims of \$375,000 or less between the Contractor and the City:
 - 11.4.1.1 The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.
 - 11.4.1.2 For claims of less than fifty thousand dollars (\$50,000), the City shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional

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documentation supporting the claim or relating to defenses to the claim the City may have against the Contractor.

11.4.1.2.1 If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the Contractor.

11.4.1.2.2 The City's written response to the claim, as further documented, shall be submitted to the Contractor within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the Contractor in producing the additional information, whichever is greater.

11.4.1.3 For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the City shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the City may have against the Contractor.

11.4.1.3.1 If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the Contractor.

11.4.1.3.2 The City's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

11.4.1.4 If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within 15 days of receipt of the City's response or within 15 days of the City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute.

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- 11.4.1.5 Following the meet and confer conference, if the claim or any portion remains in dispute, the Contractor may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.
- 11.4.1.6 This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.
- 11.4.2 In accordance with California Public Contract Code Section 20104.4, the following procedures apply to civil actions to resolve claims of \$375,000 or less between the City and the Contractor:
 - 11.4.2.1 Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.
 - 11.4.2.2 If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

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11.4.2.2.1 Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

11.4.2.2.2 In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

11.4.2.3 The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

11.4.3 In accordance with California Public Contract Code Section 20104.6:

11.4.3.1 The City shall not fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

11.4.3.2 In any suit filed under Public Contract Code Section 20104.4 concerning this contract, the City shall pay interest at the legal rate on any arbitration award or judgment. Such interest shall accrue from date the suit was filed.

11.5 Non-Waiver.

11.5.1 Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

11.5.2 Neither acceptance of the whole or any part of Work by City nor any verbal statements on behalf of City or its authorized agents or representatives shall operate as a waiver or modification of any provision of the Contract Documents, or of any power reserved to City herein nor any right to damages provided in the Contract Documents.

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

CONTRACT, PART 3

SPECIAL PROVISIONS

12. SPECIAL PROVISIONS

12.1 Description of Work.

The Work in general consists of removing existing roofing material, underlayment, flashing, and all necessary components, identifying and repairing all areas that require plywood replacement, install new and city approved underlayment, roofing material, fasteners, and flashing. Other such items of work as are required to complete the project in accordance with this Contracts Scope of Work.

The estimate of the quantities of work to be done is approximate only, being as a basis for the comparison of bids, and the City does not expressly or by implication agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount or any portion of the work as directed by the Construction Manager.

Incidental items of construction necessary to complete the whole Work in a satisfactory and acceptable manner as shown on the Scope of Work and not specifically referred to in this section, will be understood to be furnished by the Contractor.

12.2 Construction Limitations.

The Contractor will be expected to conduct his or her operations in a manner that creates a minimum of damage to the natural vegetation and landscape. Ingress and egress must be via the existing driveways. Care must be exercised to avoid hazards that may cause injury to persons, animals or property either during working hours or after work hours, which will include dust control, backfilling trenches immediately following pipe laying and temporary fencing as required. Excavation made under this Contract must be backfilled before leaving the Work for the night.

The Contractor will be responsible for obtaining permission from the property owners for any construction outside of the Work site or easements as shown on the plans. Equipment will be restricted to the immediate area of construction, pipe trenches will be backfilled as soon as possible.

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Receptacles for construction residue, including oil, cleaning fluids, and litter must be covered. Such residues must be disposed of in a proper manner. Construction activity within the existing right-of-way must be scheduled to minimize traffic inconvenience and safety hazards to motorists, pedestrians and cyclists.

12.3 Storm Water Pollution Prevention.

The Contractor must perform the Work in compliance with all applicable requirements of the California State Water Resources Control Board pursuant to Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 (“General Permit”) adopted pursuant to regulations adopted by the U.S. Environmental Protection Agency (USEPA) on November 16, 1990 and codified in 40 Code of Federal Regulations Parts 122, 123, 124. The General Permit applies to storm water discharges from construction sites that disturb land equal to or greater than one acre, and to construction activity that results in soil disturbances of less than one acre if the construction activity is part of a larger common plan of development that encompasses one acre or more of soil disturbance or if there is significant water quality impairment resulting from the activity. The General Permit requirements that may apply to the Contractor’s performance of the Work include, but are not limited to:

- a. Development and implementation of a Storm Water Pollution Prevention Plan (“SWPPP”) that specifies Best Management Practices (“BMPs”) that will prevent all construction pollutants from contacting storm water and with the intent of keeping all products of erosion from moving off site into receiving waters.
- b. Elimination or reduction of non-storm water discharges to storm sewer systems and other waters of the nation.
- c. Inspection of all BMPs.

Portions of the Work that may be subject to the General Permit include, but are not limited to clearing, grading, stockpiling and excavation.

Prior to commencing performance of the Work, the Contractor must prepare and file a Notice of Intent to obtain coverage under the General Permit, a vicinity map, and the applicable fee, with the California State Water resources Control Board, Division of Water Quality, Storm Water Permit Unit, P.O. Box 1977, Sacramento, California 95812-1977.

Prior to commencing performance of the Work, the Contractor must also prepare an SWPPP in accordance with all applicable requirements of the General Permit and submit the SWPPP to the Construction Manager for approval.

The Contractor must also develop and implement a monitoring program to verify compliance with the General Permit.

The SWPPP must include a Project site map. Geometric equations, notes, details, and all data not related to water pollution control work shall be removed to provide clarity. A copy of the Project Plans must be used as a base plan, with the pertinent stage of construction shown as an overlay to accurately reflect Project Site conditions at various phases of construction.

The Contractor must revise and update the SWPPP whenever there is a change in construction operations that may affect the site drainage patterns or discharge of pollutants to surface waters, groundwaters, or a separate municipal storm sewer system.

Any fines, damages, Work delays or other impacts that result from failure of the Contractor or privities or agents of the Contractor to fully comply with the requirements of the General Permit or to fully implement the SWPPP will be solely the responsibility of the Contractor.

The Contractor must keep a copy of the General Permit, together with updates and revisions, at the Project Site and provide copies of the SWPPP at the request of the City.

12.4 Maintaining Traffic and Pedestrian Operations.

The Contractor must conduct his or her operations so as to cause the least possible obstruction and inconvenience to public traffic. Unless otherwise approved by the Construction Manager, all traffic must be permitted to pass through the Work.

Due to the need to accommodate and minimize inconvenience to the public, unless expressly specified or approved in writing by the Construction Manager, no road closures will be permitted. Public vehicular and pedestrian traffic must be allowed to travel through the Work area with an absolute minimum of interruption or impedance unless otherwise provided for in the Special Provisions or approved in writing by the Construction Manager. The Contractor must make provisions for the safe passage of pedestrians around the area of Work at all times.

Residents affected by construction must be provided passage and access through the Work area to the maximum extent possible. Where existing driveways occur on the street, the Contractor must make provisions for the trench crossings at these points, either by means of backfill or by temporary bridges acceptable to the Construction Manager, so that the length of shut-down of any driveway is kept to a minimum. In addition, all driveways must be accessible at the end of each workday, and no driveway or property access may be closed for more than four (4) hours during the workday. Access to driveways, houses, and buildings along the road or street must be as convenient as possible and well maintained, and all temporary crossings must be maintained in good condition. To minimize the need for and complexity of detours, not more than one crossing or street intersection or road may be closed at any one time without the written approval of the Construction Manager.

The Contractor must provide multiple, advance written notices of closures to all affected property owners in a form approved by the Construction Manager.

Except as otherwise approved by the Construction Manager, the stockpiling or storing of material in City streets or rights of way shall be prohibited. Where this is unavoidable, all such materials must be piled or stored in a manner that will not obstruct sidewalks, driveways, or pedestrian crossings. Gutters and drainage channels must be kept clear and unobstructed at all times. All such materials shall be stored and handled in a manner that protects City streets, sidewalks, or other facilities from damage.

Where approved in advance by the Construction Manager, the Contractor must construct and maintain detours for the use of public traffic at his or her own expense. Failure or refusal of the Contractor to construct and maintain detours so approved at the proper time will be a material breach of the Contract subject to any and all remedies available pursuant to the Contract Documents and at law and equity. Such remedies include, but are not limited to, termination pursuant to Section 11.

Throughout performance of the Work, the Contractor must construct and adequately maintain suitable and safe crossings over trenches and such detours as are necessary to care for the public and private traffic at all times including Saturdays, Sundays and holidays.

The Contractor will be responsible for keeping all emergency services, including the Fort Bragg police and fire departments informed of obstructions to, or detours around any public or private roads caused by reasons of his or her operations.

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The Contractor must comply with the State of California, Department of Transportation Manual of warning signs, lights, and devices for use and performance of work within the job site.

The fact that rain or other causes, either within or beyond the control of the Contractor, may force suspension or delay of the Work, shall in no way relieve the Contractor of his or her responsibility of maintaining traffic through the Project and providing local access as specified in this section. The Contractor must, at all times, keep on the job such materials, force and equipment as may be necessary to keep roads, streets and driveways within the Project open to traffic and in good repair and shall expedite the passage of such traffic, using such force and equipment as may be necessary.

Full compensation for conforming to the requirements of this section will be deemed included in the prices paid or the various Contract items of Work, and no additional allowances will be made therefor.

12.5 Public Safety.

The Contractor must at all times conduct the Work in accordance with Construction Safety Orders of the Division of Industrial Safety, State of California, to ensure the least possible obstruction to traffic and inconvenience to the general public, and adequate protection of persons and property in the vicinity of the Work.

No pedestrian or vehicle access way may be closed to the public without first obtaining permission of the Construction Manager.

Should the Contractor fail to provide public safety as specified or if, in the opinion of the Construction Manager, the warning devices furnished by the Contractor are not adequate, the City may place any warning lights or barricades or take any necessary action to protect or warn the public of any dangerous condition connected with the Contractor's operations, and the Contractor will be liable to the City for, and the City may deduct from amounts due or that may become due to the Contractor under the Contract, all costs incurred including, but not limited to, administrative costs.

Nothing in this section will be construed to impose tort liability on the City or Construction Manager.

Contractor acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a Contractor, must be

City of Fort Bragg
Project No. PWP-00138
Contract, Part 3
Special Provisions

accessible to the disabled public. Contractor shall provide the services specified in the Contract Documents in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under the Contract Documents and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns shall constitute a material breach of the Contract Documents.

12.6 Protection of Existing Facilities and Property.

The Contractor must notify Underground Service Alert (USA) for marking the locations of existing underground facilities.

Subject to Section 5 of the General Provisions, the Contractor must take all necessary measures to avoid injury to existing surface and underground utility facilities in and near the Work site. Subject to Section 5 of the General Provisions, no error or omission of utility markouts will be construed to relieve the Contractor from his responsibility to protect all underground pipes, conduits, cables or other structures affected by the Work.

The existing underground facilities in the area of Work may include telephone, television and electrical cables, gas mains, water mains, sewer pipe and drainage pipe. The various utility companies must be notified before trenching begins and at such other times as required to protect their facilities. Subject to Section 5 of the General Provisions, all underground facilities must be located and exposed ahead of trenching to prevent damage to the facilities, and to determine the depth and character of all facilities that cross or infringe on the trench prism. The Contractor must immediately notify the Construction Manager of any facilities found. If damage should occur to the existing facilities, the utility company and the City must be notified immediately and, subject to Section 5 of the General Provisions, repairs acceptable to the utility company must be made at the Contractor's expense.

The Project Plans show the underground utilities on the site of the construction insofar as they are known to the City. The drawings may not show facilities apparent from visual inspection of the site or service laterals or appurtenances, the existence of which can be inferred from the presence of other visible facilities such as buildings, meters, junction boxes, etc. on or adjacent to the construction site.

If in the performance of the Work an existing utility is encountered that is not shown on the Project Plans and is not apparent or inferable from visual

inspection of the Project site, the Project Inspector must be notified immediately. The Construction Manager will determine, subject to Section 5 of the General Provisions, whether the Project Plans or Technical Specifications should be modified, or whether the existing utility should be relocated or whether the Contractor must work around the existing utility. Subject to Section 5 of the General Provisions, the Contractor must replace, at his or her own expense, in as good condition as they were prior to the start of construction, all existing improvements and surroundings damaged by his or her operation. Reconstruction of all existing improvements must conform to CITY OF FORT BRAGG Public Works Standard Specifications and Details under the direction of and subject to the acceptance by the Construction Manager.

Subject to Section 5 of the General Provisions, should the Contractor fail to take adequate measures to avoid injury or damage to the facilities described above, the City may take any actions necessary to protect such facilities from the Contractor's operations. Subject to Section 5 of the General Provisions, the City may withhold the cost of injury to existing surface and underground utility facilities in and near the Work site from amounts due or that may become due the Contractor.

12.7 Preconstruction Conference.

A pre-construction conference will be scheduled, at which time the Contractor must present his or her proposed work schedule in accordance with Section 3.8 of the General Provisions, information concerning offsite yards, Subcontractors, location of disposal and stock pile areas, and traffic control plans. All such schedules will be subject to the approval of the Construction Manager and the applicable agencies.

City will schedule and administer intermittent progress meetings throughout duration of work. City will determine the location and time for the meetings.

12.8 Owner Notification.

The Contractor must notify all property owners and businesses affected by the Work at least 48 hours before Work is to begin. The notice must be in writing in the form of a door hanger, and must indicate the Contractor's name and phone number, type of work, day(s) and time when Work will occur. Notices must be reviewed in advance and approved by the Construction Manager.

12.9 Emergency Service Providers Notifications.

The Contractor must furnish the name and phone number of a representative that can be contacted in the event of an emergency. Said information must be reported to the City Police Department dispatcher, and updated as required to provide 24-hour phone access.

12.10 Clean up.

Attention is directed to Section 4-1.02 of the Caltrans Standard Specifications, which section is made a part of this Contract.

Before final inspection of the Work, the Contractor must clean the construction site and all ground occupied by him in connection with the Work, of all rubbish, excess material, falsework, temporary structures and equipment. All parts of the Work shall be left in a neat and presentable condition.

Nothing herein shall require the Contractor to remove warning, regulatory, and guide signs prior to formal acceptance by the Construction Manager.

12.11 Payment.

Payment for all work and work requirements specified in these Special Provisions shall be considered as included in the Contract Price and no additional allowances shall be made therefore.

12.12 Construction Staking. [Section Removed]

12.13 Materials Testing Allowance. [Section Removed]

12.14 Obstructions.

Attention is directed to Section 15, "Existing Highway Facilities," of the Caltrans Standard Specifications, which section is made a part of this Contract.

Attention is directed to the existence of overhead and underground power, telephone, and television cable poles, underground sewer mains and

laterals, underground gas mains, and underground water mains and laterals within the area in which construction is to be performed.

Prior to starting the Work, the Contractor must (a minimum of 2 working days in advance) call Underground Service Alert (USA), toll free, at 811, and provide USA with all necessary data relative to the proposed work. USA will accept calls and process information to participating agencies who have underground facilities in the area between the hours of 7:30 a.m. and 5:00 p.m. daily, except Saturdays, Sundays, and holidays. Between the hours of 5:00 p.m. and 7:30 a.m. calls will be recorded and then processed after 7:30 a.m. For emergency situations, after hours and on Saturdays, Sundays and holidays, the Contractor shall contact the organization owning the affected facility. Upon notification, agencies having facilities in the area of the proposed excavation will mark their locations in the field using USA standard colors and codes to identify the facility.

The Contractor will be required to work around public and private utility facilities and other improvements that are to remain in place within the construction area, and he will be held liable to the owners of such facilities for interference with service resulting from his operations.

12.15 Hours of Work.

Unless otherwise specified herein, all construction activity, except for emergency situations, will be confined to Monday through Friday between the hours of 7:30 a.m. and 6:00 p.m., to minimize nuisances to local residents. Mufflers and/or baffles will be required on all construction equipment to control and minimize noise. The Contractor must comply with all applicable noise regulations in the City's Zoning Ordinance.

Saturdays, Sundays, holidays and overtime shall not be regarded as working days. Work shall not be allowed on non-working days without the expressed approval of the Construction Manager. The Contractor shall make a request for approval in writing with the stipulation (implied or expressed) that the Contractor shall pay for all overtime labor charges at the applicable hourly rate of the City or contract employee performing duties of inspector and/or resident engineer. All overtime labor charges shall be deducted from the final payment along with any liquidated damages.

Work necessary for the proper care and protection of work already performed or in case of emergency may be allowed without permission of the Construction Manager.

12.16 Dust Control.

The Contractor must furnish all labor, equipment, and means required and carry out effective measures wherever and as often as necessary to prevent its operation from producing dust in amounts damaging to property, cultivated vegetation, or domestic animals, or causing a nuisance. The Contractor will be responsible for any damage resulting from any dust originating from the performance of the Work. The use of water resulting in mud on streets, sidewalks, or driveways, will not be permitted as a substitute for sweeping or other methods of dust control. The Contractor may not discharge smoke, dust, or any other air contaminants into the atmosphere in such quantity as will violate the regulations of any legally constituted authority.

Dust control must conform to the provisions in Sections 10-5, "Dust Control" and Section 18, "Dust Palliatives" of the Caltrans Standard Specifications, which section is made a part of this Contract.

12.17 Water for Construction and Dust Control.

Unless otherwise provided, the Contractor will be responsible for applying to the City's Utility Department to establish utility accounts (at no charge) for all water necessary to perform the Work. The Contractor must comply with all City requirements for construction water, including provision of deposits and provision of backflow prevention devices. In accordance with State law, backflow prevention devices for construction water connections must be re-tested when relocated. The Contractor will be responsible for the cost of any re-testing.

The Contractor is prohibited from operating gate valves, fire hydrants, pumps or any other components of the City water system. The Contractor must contact the City's utilities staff, a minimum of twenty-four (24) hours in advance, to operate these or any other components on the City water system.

12.18 Protection and Restoration of Vegetation.

Trees, lawns, shrubbery and vegetation that are not to be removed must be protected from damage or injury. Existing trees, shrubs, and other plants, that are not to be removed and are injured or damaged by reason of the Contractor's operations, must be replaced by the Contractor in accordance with the requirements in Section 20-3.01C, "Replacement," of the Caltrans Standard Specifications. Section 20-3.01C of the Caltrans Standard Specifications is made a part of this Contract.

City of Fort Bragg
Project No. PWP-00138
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Special Provisions

When it is necessary to excavate adjacent to existing trees, shrubs, or hedges, the Contractor must use all possible care to avoid injury to the trees, shrubs, or hedges and their roots. No roots or limbs two inches (2") or larger in diameter may be cut without the express approval of the Construction Manager.

All roots two inches (2") in diameter and larger left in place must be wrapped with burlap to prevent scarring or excessive drying. When it is necessary to cut limbs and branches of trees to provide clearance for equipment used in construction, the Contractor must repair the damaged areas by properly painting with an emulsified asphalt type seal. All cuts through 1/2" or larger roots and limbs must be hand trimmed and cleanly cut before being repaired.

12.19 Surplus Material.

All material removed or excavated during the course of construction will be surplus. All surplus material will be the property of the Contractor and be disposed of outside the right-of-way, unless the City elects to salvage certain objects that are determined to be of historical interest. The City reserves the right of ownership of all objects that it elects to salvage, and the Contractor must protect such objects from subsequent damage until delivered unto the care of the owner.

12.20 Cultural Resources.

In accordance with the National Historic Preservation Act of 1966 (16 U.S.C. 470), the following procedures are implemented to ensure historic preservation and fair compensation to the Contractor for delays attendant to the cultural resources investigation. The Contractor hereby agrees to comply with these procedures.

12.21 Historical Finds.

In the event potential historical, architectural, archeological, or cultural resources (hereinafter called cultural resources) are discovered during subsurface excavations at the site of construction, the following procedures will apply:

1. The Contractor must immediately notify the Construction Manager and stop any Work that may jeopardize the find pending an investigation of its significance;
2. The Construction Manager will select a qualified archeologist (such as through the Northwest Information Center at Sonoma State University

or other official contact) and wait for an archaeologist to complete an evaluation of significance before continuing Work in that area.

3. The Construction Manager will supply the Contractor with a "Stop Work Order" directing the Contractor to cease all portions of the Work that the Construction Manager determines may impact the find. The "Stop Work Order" will be effective until a qualified archaeologist assesses the value of the potential cultural resources. The "Stop Work Order" will contain the following:
 - a. A clear description of the Work to be suspended;
 - b. Any instructions regarding issuance of further orders by the Contractor for materials services;
 - c. Guidance as to action to be taken regarding Subcontractors;
 - d. Any direction to the Contractor to minimize costs; and
 - e. Estimated duration of the temporary suspension.
4. If the archaeologist determines the potential find is a bona fide cultural resource, the Construction Manager may extend the duration of the "Stop Work Order" in writing, and if so the "Stop Work Order" will remain in effect and Work subject to the "Stop Work Order" may not resume until authorized by the Construction Manager.

12.22 Cultural Resources Defined.

Possible indicators that a cultural resource has been found include, but are not limited to the following:

1. Prehistoric-era archaeological site indicators: obsidian tools, tool manufacture waste flakes, grinding and other implements, dwelling sites, animal or human bones, fossils, and/or locally darkened soil containing dietary debris such as bone fragments and shellfish remains;
2. Historic-era site indicators: ceramic, glass, and/or metal.

12.23 Construction Manager's Discretion.

Once possible cultural resources are found at the Work site, the Construction Manager may use discretion to continue the Work, regardless of the cultural resource find, if the Construction Manager determines that there are overriding considerations such as the instability of the excavation site, the existence of adverse weather or other conditions that would

preclude leaving the site exposed, or if the site would be unsafe to workers who would retrieve cultural resource items from therein.

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

CONSTRUCTION PERFORMANCE BOND

(Note: The successful bidder must use this form. Use of any other bond form may prevent a contract from forming and/or result in forfeiture of the successful bidder's bid bond.)

THIS CONSTRUCTION PERFORMANCE BOND (Bond), dated _____, is in the amount of **One Hundred Seventy Seven Thousand Four Hundred Thirty Dollars (\$177,430.00)** (Penal Sum), which is 100% of the Contract Sum and is entered into by and between the parties listed below to ensure the faithful performance of the Contract identified below. This Bond consists of this page and the Bond Terms and Conditions, Paragraphs 1 through 14 attached to this page. Any singular reference to GOC Construction & Roofing, Inc.(Contractor),

_____ (Surety), City of Fort Bragg (City), or other party shall be considered plural where applicable.

CONTRACTOR:

SURETY:

Name of Contractor

Name of Surety

Address

Principal Place of Business

City/State/Zip

City/State/Zip

CONSTRUCTION CONTRACT:

Agreement for the *Fort Bragg Fire Station Roof Replacement* (Project) located at 141 N. Main St. Fort Bragg, Ca 95437 (Address), California, dated _____, in the amount of **One Hundred Seventy Seven Thousand Four Hundred Thirty Dollars (\$177,430.00)**.

CONTRACTOR AS PRINCIPAL

SURETY

Company: (Corp. Seal)

Company: (Corp. Seal)

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

City of Fort Bragg
Project No. PWP-00138
Construction Performance Bond

BOND TERMS AND CONDITIONS

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the City and the State of California for the complete and proper performance of the Construction Contract, which is incorporated herein by reference.
2. If Contractor completely and properly performs all of its obligations under the Construction Contract, Surety and Contractor shall have no obligation under this Bond.
3. If there is no City Default, Surety's obligation under this Bond shall arise after:
 - 3.1 City provides Surety with written notice that City has declared a Contractor Default under the Construction Contract pursuant to the terms of the Construction Contract; and
 - 3.2 City has agreed to pay the Balance of the Contract Sum:
 - 3.2.1 To Surety in accordance with the terms of this Bond and the Construction Contract; or
 - 3.2.2 To a Contractor selected to perform the Construction Contract in accordance with the terms of this Bond and the Construction Contract.
4. When City has satisfied the conditions of Paragraph 3 above, Surety shall promptly (within 40 Days) and at Surety's expense elect to take one of the following actions:
 - 4.1 Arrange for Contractor, with consent of City, to perform and complete the Construction Contract (but City may withhold consent, in which case the Surety must elect an option described in Paragraphs 4.2, 4.3 or 4.4 below); or
 - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors or Construction entities; provided, that Surety may not select Contractor as its agent or independent contractor or Contractor without City's consent; or
 - 4.3 Undertake to perform and complete the Construction Contract by obtaining bids from qualified contractors or Construction entities acceptable to City for a contract for performance and completion of the Construction Contract and, upon determination by City of the lowest responsive and responsible Bidder, arrange for a contract to be prepared for execution by City and the contractor or Contractor selected with City's concurrence, to be secured with performance and payment bonds executed by a qualified surety

City of Fort Bragg
Project No. PWP-00138
Construction Performance Bond

equivalent to the bonds issued on the Construction Contract; and, if Surety's obligations defined in Paragraph 6 below, exceed the Balance of the Contract Sum, then Surety shall pay to City the amount of such excess; or

- 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor or Contractor, and with reasonable promptness under the circumstances and, after investigation and consultation with City, determine in good faith its monetary obligation to City under Paragraph 6 below, for the performance and completion of the Construction Contract and, as soon as practicable after the amount is determined, tender payment therefor to City with full explanation of the payment's calculation. If City accepts Surety's tender under this Paragraph 4.4, City may still hold Surety liable for future damages then unknown or unliquidated resulting from the Contractor Default, as agreed by City and Surety at the time of tender. If City disputes the amount of Surety's tender under this Paragraph 4.4, City may exercise all remedies available to it at law to enforce Surety's liability under Paragraphs 6 and 7 below.
5. At all times City shall be entitled to enforce any remedy available to City at law or under the Construction Contract including, without limitation, and by way of example only, rights to perform work, protect Work, mitigate damages, advance critical Work to mitigate schedule delay, and coordinate Work with other consultants or contractors.
6. If Surety elects to act under Paragraphs 4.1, 4.2 or 4.3 above, within the time period provided in Paragraph 4, above, and complies with its obligations under this Bond, Surety's obligations under this Bond are commensurate with Contractor's Construction Contract obligations. Surety's obligations include, but are not limited to:
 - 6.1 Contractor's obligations to complete the Construction Contract and correct Defective Work;
 - 6.2 Contractor's obligations to pay liquidated damages; and
 - 6.3 To the extent otherwise required of Contractor under the Construction Contract, Contractor's obligations to pay additional legal, design professional, and other costs not included within liquidated damages resulting from Contractor Default (but excluding attorney's fees incurred to enforce this Bond).

7. If Surety does not elect to act under Paragraphs 4.1, 4.2, 4.3, or 4.4, above, within the time period provided in Paragraph 4, above, or comply with its obligations under this Bond, then Surety shall be deemed to be in default on this Bond ten Days after receipt of an additional written notice from City to Surety demanding that Surety perform its obligations under this Bond. Such Surety default shall be independent of the Contractor Default. To the extent Surety's independent default causes City to suffer damages including, but not limited to, delay damages, which are different from, or in addition to (but not duplicative of) damages which City is entitled to receive under the Construction Contract, Surety shall also be liable for such damages. In the event any Surety obligation following its independent default is inconsistent or conflicts with California Civil Code Section 2809, or any other law which either prohibits, restricts, limits or modifies in any way any obligation of a surety which is larger in amount or in any other respect more burdensome than that of the principal, Surety hereby waives the provisions of such laws to that extent.
8. If Surety elects to act under Paragraphs 4.1, 4.2, 4.3 or 4.4 above, within the time period provided in Paragraph 4, above, and complies with all obligations under this Bond, Surety's monetary obligation under this Bond is limited to the Penal Sum.
9. No right of action shall accrue on this Bond to any person or entity other than City or its successors or assigns.
10. Surety hereby waives notice of any change, alteration or addition to the Construction Contract or to related subcontracts, design agreements, purchase orders and other obligations, including changes of time, and of any City action in accordance with Paragraph 5 above. Surety consents to all terms of the Construction Contract, including provisions on changes to the Contract. No extension of time, change, alteration, Modification, deletion, or addition to the Contract Documents, or of the Work (including services) required thereunder, or any City action in accordance with Paragraph 5 above shall release or exonerate Surety on this Bond or in any way affect the obligations of Surety on this Bond, unless such action is an City Default.
11. Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction where a proceeding is pending between City and Contractor regarding the Construction Contract, or in the Superior Court of the County of Mendocino, California, or in a court of competent jurisdiction in the location in which the Work is located. Communications from City to Surety under Paragraph 3.1 above shall be deemed to include the necessary agreements under Paragraph 3.2 above unless expressly stated otherwise.
12. All notices to Surety or Contractor shall be mailed or delivered (at the address set forth on the signature page of this Bond), and all notices to City shall be mailed or delivered as provided in the Construction Contract. Actual receipt of notice by

City of Fort Bragg
Project No. PWP-00138
Construction Performance Bond

Surety, City or Contractor, however accomplished, shall be sufficient compliance as of the date received at the foregoing addresses.

13. Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein.

14. Definitions

14.1 Balance of the Contract Sum: The total amount payable by City to Contractor pursuant to the terms of the Construction Contract after all proper adjustments have been made under the Construction Contract, for example, deductions for progress payments made, and increases/decreases for approved Modifications to the Construction Contract.

14.2 Construction Contract: The agreement between City and Contractor identified on the signature page of this Bond, including all Contract Documents and changes thereto.

14.3 Contractor Default: Material failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract, limited to "default" or any other condition allowing a termination for cause as provided in the Construction Contract.

14.4 City Default: Material failure of City, which has neither been remedied nor waived, to pay Contractor progress payments due under the Construction Contract or to perform other material terms of the Construction Contract, if such failure is the cause of the asserted Contractor Default and is sufficient to justify Contractor termination of the Construction Contract.

END OF DOCUMENT

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City of Fort Bragg
Project No. PWP-00138
Construction Performance Bond

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

CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND

(Note: The successful bidder must use this form. Use of any other bond form may prevent a contract from forming and/or result in forfeiture of the successful bidder's bid bond.)

KNOW ALL PERSONS BY THESE PRESENTS:

- 1.01 WHEREAS, the City of Fort Bragg, 416 N. Franklin Street, Fort Bragg, California 95437 (City) has awarded a Contract to _____ as Principal, dated the _____ day of _____, **2024** (the Contract), titled THE Fort Bragg Fire Station Roof Replacement PROJECT in the amount of **One Hundred Seventy Seven Thousand Four Hundred Thirty Dollars (\$177,430.00)**, which Contract is by this reference made a part hereof, for the work of the following Contract:
Contract between City of Fort Bragg and GOC Construction & Roofing, Inc. for the Fort Bragg Fire Station Roof Replacement Project, City Project No. PWP-00138
- 1.02 WHEREAS, Principal is required to furnish a bond in connection with the Contract to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided by law;
- 1.03 NOW, THEREFORE, we, the undersigned Principal and _____, as Surety, are held and firmly bound unto City in the sum of 100% OF THE CONTRACT PRICE **One Hundred Seventy Seven Thousand Four Hundred Thirty Dollars (\$177,430.00)**, for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.
- 1.04 THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its executors, administrators, successors, or assigns approved by City, or its subcontractors shall fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the State of California Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to Section 13020 of the State of California Unemployment Insurance Code with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the sum specified in this bond,

City of Fort Bragg
Project No. PWP-00138
Construction Labor & Material Payment Bond

plus reasonable attorneys' fees, otherwise the above obligation shall become and be null and void.

- 1.05 This bond shall inure to the benefit of any of the persons named in California Civil Code Section 9100, as to give a right of action to such persons or their assigns in any suit brought upon this bond. The intent of this bond is to comply with the California Mechanic's Lien Law.
- 1.06 Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder, shall in any way affect the obligation of this bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder.
- 1.07 Surety's obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection with Contract; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing City's rights against the other.
- 1.08 Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this _____day of _____, _____.

CONTRACTOR AS PRINCIPAL

SURETY

Company: (Corp. Seal)

Company: (Corp. Seal)

Signature

Signature

Name

Name

Title

Title

Street Address

Street Address

City, State, Zip Code

City, State, Zip Code

END OF DOCUMENT

City of Fort Bragg
Project No. PWP-00138
Construction Labor & Material Payment Bond

FORT BRAGG
416 Franklin Street
Fort Bragg, California 95437

MAINTENANCE BOND

(Note: The successful bidder must use this form. Use of any other bond form may prevent a contract from forming and/or result in forfeiture of the successful bidder's bid bond.)

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS the City Council of the CITY OF FORT BRAGG has awarded to GOC Construction & Roofing, Inc., (designated as the "PRINCIPAL") a contract for the Fort Bragg Fire Station Roof Replacement Project, Project No. PWP-00138, which contract and all of the contract documents as defined therein (designated as the "Contract") are hereby made a part hereof; and

WHEREAS, the PRINCIPAL is required under the terms of the Contract to furnish a bond for the correction of any defects due to defective materials or workmanship in the work performed under the Contract.

NOW, THEREFORE, we the PRINCIPAL and the undersigned _____, as surety (designated as "SURETY"), an admitted surety insurer authorized to do business in the State of California, are held and firmly bound unto the CITY OF FORT BRAGG, (designated as the "OBLIGEE"), in the penal sum of _____ Dollars (\$_____), lawful money of the United States, being a sum not less than ten percent (10%) of the final Contract price, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH that if, during a maintenance period of one (1) year from the date of acceptance by the OBLIGEE of the contracted work, the PRINCIPAL upon receiving written notice of a need for repairs which are directly attributable to defective materials or workmanship, shall diligently take the necessary steps to correct said defects within seven (7) days from the date of said notice, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

If any action shall be brought by the OBLIGEE upon this bond, a reasonable attorney's fee, to be fixed by the Court, shall be and become a part of OBLIGEE's judgment in any such action.

No right of action shall accrue on this bond to, or for the use of, any person or corporation other than the OBLIGEE named herein or the heirs, executors, administrator or successor of the OBLIGEE.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their seals this ____ day of _____, _____ the name and corporate seals

City of Fort Bragg
Project No. PWP-00138
Construction Labor & Material Payment Bond

of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Corporate Seal)

PRINCIPAL

By: _____

(Acknowledgement)

Title:

(Corporate Seal)

SURETY

By: _____

(Attorney-in-fact)

(Acknowledgement)

Title:

(NOTE TO SURETY COMPANY: A certified copy of unrevoked resolution of authority for the attorney-in-fact must be submitted with and attached to the executed bid bond.)

END OF DOCUMENT

EXHIBIT A

GOC Construction & Roofing, Inc.
 20725 Dennison Lane
 Fort Bragg, CA 95437
 (707) 684-0942
 genaroox@yahoo.com



ADDRESS

City of Fort Bragg projects
 416 N. Franklin St.
 Fort Bragg, CA 95437

Estimate 1701

DATE 05/09/2024

JOB NAME

Fire Station Roof

JOB ADDRESS

141 N. Main St.

DATE	DESCRIPTION	AMOUNT
	Item# Section A Roof replacement with standard 30-year asphalt shingles (15 sqrs approx.). Complete tear off existing roofing materials, install new synthetic underlayment, new 30-year asphalt shingles with SS nails, flashing, and roof components, wall cap to be reused.	26,880.00
	Item# Section B Modified Bitumen (Mod Bit) Roof replacement (40 sqrs approx.). Complete tear off existing material and install one layer of base sheet (smooth) and one layer of cap sheet (granulated). For a proper installation we'll be removing and reinstalling the same siding.	50,600.00
	Item# Section C Thermoplastic Polyolefin (TPO) Roof replacement (25 sqrs approx.), including all plumbing penetrations and all components compatible with the TPO material. Wall cap to be reused.	24,240.00
	Item# Section D Thermoplastic Polyolefin (TPO) Roof replacement (37 sqrs approx.), including all plumbing penetrations and all components compatible with the TPO material. Wall cap to be reused.	25,440.00
	Item# Section E Modified Bitumen (Mod Bit) Roof replacement (55 sqrs approx.) Complete tear off existing material and install one layer of base sheet (smooth) and one layer of cap sheet (granulated).	42,550.00
	Section C alternative \$27,900.00 Modified Bitumen (Mod Bit) Roof replacement (25sqrs approx.) Complete tear off existing material and install one layer of base sheet (smooth) and one layer of cap sheet (granulated). Including all components. Wall cap to be reused.	0.00

DATE	DESCRIPTION	AMOUNT
	Section D alternative \$29,500.00 Modified Bitumen (Mod Bit) Roof replacement (37 sqrs approx.). Complete tear off existing material and install one layer of base sheet (smooth) and one layer of cap sheet (granulated), including all plumbing penetrations and all components. Wall cap to be reused.	0.00

We hereby propose to furnish material and labor in accordance with the above specifications for the sum shown.

Any alteration or deviation from the above specifications involving extra cost will be billed as a change order.

ACCEPTANCE OF PROPOSAL The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

TOTAL	\$169,710.00
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Accepted By

Accepted Date

EXHIBIT B

CLAIMS PROCEDURE

SUMMARY OF PUBLIC CONTRACT CODE § 9204

The following procedure will apply to any claims by the Contractor on the City:

A “claim” is a separate demand on the City by a contractor on a public works project and sent by registered mail or certified mail with return receipt requested, for one or more of the following:

- A time extension, including relief from penalties for delay
- Payment by the City of money damages under the terms of the contract
- Payment of an amount that is disputed by the City

Initial Review

The claim must be supported by appropriate documentation. The City has 45 days within which to review the claim and provide the contractor with a written statement identifying the disputed and undisputed portions of the claim. If the City does not issue a written statement, the claim is deemed rejected in its entirety. The City will pay any undisputed portion of the claim within 60 days of issuing the statement.

Meet & Confer

If the contractor disputes the City’s written response, or if the City does not issue one, the contractor may request in writing an informal conference to meet and confer for possible settlement of the claim. The City will schedule the meet and confer conference within 30 days of this request and provide a written statement identifying the remaining disputed and undisputed portions of the claim within 10 business days of the meet and confer. The City will pay the undisputed portion within 60 days of issuing this statement.

Mediation

With respect to any disputed portion remaining after the meet and confer, the City and contractor will submit the matter to nonbinding mediation, agree to a mediator within 10 business days after issuing the written statement, and share mediation costs equally. If mediation is unsuccessful, then the terms of the public works agreement and applicable law will govern resolution of the dispute.

Miscellaneous Provisions

Amounts not paid by the City in a timely manner bear interest at 7% per annum. Subcontractors may submit claims via this procedure through the general contractor. The City and contractor may waive the requirement to mediate, but cannot otherwise waive these claim procedures.



CITY OF FORT BRAGG

Incorporated August 5, 1889
416 N. Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823

BID OPENING Fire Station Roof Project

Bids were opened on May 10, 2024, at 2:00 p.m. by Carlos Hernandez, Engineering Technician.

Following an internal review of proposals, the city will be moving forward with add alternate pricing based on compliance with budgeted funds and priority items. The priority is procuring a Modified Bitumen roof system for all four flat roofs at the fire station facility, therefore the project will be awarded to the bidder with the lowest add-alternate cost:

Six (6) bids were received. Said bids were from:

Contractor:	Base Bid (TPO option)	Alternate Bid (MOD Bit option)
1. Thompson Construction	\$173,884.40	\$173,884.40
2. GOC Construction	\$169,710.00	\$177,430.00
3. Redwood Roofers	\$197,385.00	\$188,669.00
4. Four Seasons Roofing	\$273,888.00	\$270,580.00
5. Best Roofing	\$221,658.00	Unresponsive
6. American Foam Experts	\$260,495.00	Unresponsive

The bids contained bid security in accordance with the Notice Inviting Bids for this project.

A recommendation will be made to the Fort Bragg City Council at their regular meeting of May 28, 2024, at 6:00 p.m., or as soon thereafter as the matter may be heard.



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Text File

File Number: 24-769

Agenda Date: 6/10/2024

Version: 1

Status: Business

In Control: City Council

File Type: Resolution

Agenda Number: 8B.

Approve Purchase Agreement with Oneka Technologies for the Oneka Desalination Buoy Project, and Authorizing City Manager to Execute Agreement



AGENCY: City Council
MEETING DATE: June 10, 2024
DEPARTMENT: Public Works
PRESENTED BY: John Smith
EMAIL ADDRESS: jsmith@fortbragg.com

AGENDA ITEM SUMMARY

TITLE:

Receive Report and Consider Adoption of City Council Resolution Approving Purchase Agreement with Oneka Technologies, Inc. for the Installation and Maintenance of a Wave Powered Desalination Pilot Project City Project No. WTR-00025, and Authorizing City Manager to Execute Agreement (Amount Not To Exceed \$1,490,000)

BACKGROUND:

The City of Fort Bragg (City) relies on three surface water sources, the Noyo River, Waterfall Gulch, and Newman Gulch, to provide safe, reliable water to residents year-round. During the winter months flows are high and water is abundant. In the summer and fall, flows are reduced, and during periods of drought, low flow conditions and the occurrence of high tides greatly reduces the City's ability to provide an adequate supply. As the water levels in the Noyo River drop and the high tide levels rise, increased salinity levels in the Noyo River impact the City's ability to pump from this water source. City water usage typically peaks July through September. Over the past ten years of reduced rainfall, our spring fed sources have steadily declined. Both Newman Gulch and Waterfall Gulch have decrease in flow. Preparation for these cyclical weather patterns is essential for the safety of our customers and economic resilience.

ANALYSIS:

The City's water supply system relies solely on three surface water sources: Waterfall Gulch (tributary to Hare Creek), Newman Gulch (tributary to Noyo River), and the Noyo River (diversion at Madsen Hole). In 2015, the City's water supply system could only store small amounts of water that provided enough to maintain proper water system pressure and to provide a safety margin for fire-fighting flows. Six years later, the City made progress with water storage with the addition of a 1.5 million gallon finished water storage tank and the Summers Lane Reservoir with a raw water capacity of 14.7 million gallons. This brought our total water storage capacity to 22.6 million gallons, which is approximately 30 days of storage with average daily use, including water loss during production of 750k gallons.

During the winter and spring, pumping of the Noyo River is used only to supplement the Waterfall Gulch and Newman Gulch sources. The two tributary sources generally provide a higher quality of raw water and gravity-feed to the water treatment plant, whereas water from the City's Noyo River diversion must be pumped. As summer progresses and the flows in the tributary streams diminish, the Noyo River diversion is used more frequently and in greater quantities. In July, Waterfall Gulch and Newman Gulch provide approximately 40% of the City's water needs and 60% of summer water supply comes from the Noyo River. As the water levels in the Noyo River drop and the high tide levels rise, increased salinity levels in the Noyo River impact the City's ability to pump from this water source.

During the last drought, the worst water drought on record for the City of Fort Bragg, the City began an in depth review of water source options throughout the City and neighboring County. This included additional surface water sources, over 1000 wells, storage options, rain capture, and solar water supply etc. The City has been focused on improving our water position for the past ten years. We have made great progress in identifying potential water sources to increase water supply with minimal impact to the waters of the state. Most recently, the City has added these future options include:

- Brackish desalination (existing)
- Recycled water
- Three reservoirs - 135 Acre Feet
- Desalination Buoy - (Oneka)
- Ranney system - Noyo River subsurface
- Water Meter replacement - Water savings
- Water Distribution System Master Plan

The most plentiful option is our Pacific Ocean. Oneka has found a way to extract a product from the water with very little impact to the ecosystem and doing so without greenhouse gas emissions.

RECOMMENDED ACTION:

Public works staff recommend adopting the resolution awarding the contract.

ALTERNATIVE ACTION(S):

Cancel project.

FISCAL IMPACT:

The source of funding for the construction of the project is the California Department of Water Resources. The City was awarded \$1,490,000 in grant funds for execution of this project. This contract will be funded by the grant.

CONSISTENCY:

Water security

IMPLEMENTATION/TIMEFRAMES:

Installation

ATTACHMENTS:

1. Resolution
2. Staff Report
3. Purchase Agreement

**CITY OF FORT BRAGG
PURCHASE AGREEMENT
WITH
ONEKA TECHNOLOGIES**

THIS AGREEMENT is made and entered into this ___ day of June, 2024 (“Effective Date”), by and between the City of Fort Bragg with its principal office at 416 North Franklin Street Fort Bragg, CA 95437 (herein “City”) and Oneka Technologies US Inc, principal address at 600 W. Broadway, Suite 1200, San Diego, CA 92101 (herein ONEKA). This is a government contract. The terms of this Agreement are not changed by any words added by Oneka, nor superseded because of any form used by Oneka in the course of business. Any change in terms must be agreed to by an authorized representative of the City, in writing. Acceptance by the City of goods, materials or services is not an acceptance of any of Oneka’s other terms and conditions not expressly set forth in this Agreement.

RECITALS:

A. WHEREAS, CITY desires to purchase a single Oneka Iceberg Class (50 M3/D) Desalination Unit and to have ONEKA Install, Operate and Maintain the Iceberg Desalination Unit for a period of One (1) Year as part of a Demonstration, facilitated through a grant by the California Department of Water Resources (DWR).

B. WHEREAS, ONEKA is willing to sell a single Oneka Iceberg Class, wave-powered, desalination Unit and install, operate and maintain the Oneka Iceberg Class desalination Unit (herein “Plant”) to supply desalinated water to CITY on terms and conditions set forth herein; and

C. WHEREAS, no official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

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

1. DEFINITIONS

- 1.1 The "Desalination Plant" shall include one Oneka Iceberg Class (50 M3/D) Desalination Unit wave-powered buoy, all desalination equipment, anchors, fixtures, pipelines, improvements, inventories and supplies of the “Plant” which comprise the fully operational facility for the desalination of seawater and conveyance to land and any future expansions or modifications.
- 1.2 The "Plant Site" shall be the installation site where the Plant shall be installed as set forth in Exhibit 1, hereto.
- 1.3 The "WWT Plant Site" shall be the property where the City of Fort Bragg Wastewater Treatment Plant is located as set forth in Exhibit 1 Section 3, hereto.
- 1.4 The "Maximum Daily Production Capacity" of the Plant will be *50 M3/D (13,200 US Gallons Per Day)*, which shall be the average amount of desalinated water which can be produced by the Plant in 24 hours of operation (one day).
- 1.5 The “Monthly Rated Capacity” shall be thirty (30) times the Maximum Daily Production

Capacity.

- 1.6 The "Desalinated Water" is water treated by the Plant that shall have a salinity of less than 750 PPM TDS.
- 1.7 The "Guaranteed Desalinated Water Accepted Capacity" is that portion of the monthly rated capacity of the plant that CITY agrees to accept. The "Guaranteed Desalinated Water Acceptance Capacity" is *all of the water the Plant is capable of producing* or up to 1,521 M3/month (401,500 US Gallons per month) for twelve (12) months.
- 1.8 The "Desalinated Water Tariff Meter" is the device, provided and installed by CITY (and or ONEKA), which measures the total quantity of Desalinated Water produced by the Plant. This meter will be installed by CITY (and/or ONEKA) for confirmation of production and shall remain the property of and be controlled by the entity that installed the meter. However, both Parties will permit observation of the device(s) and at their option install their own "Check Flow Meter" in series with the Primary Desalinated Water Tariff Meter.
- 1.9 The "Monthly Desalinated Water" shall be the total amount of Desalinated Water produced in each calendar month as measured by the Desalinated Water Tariff Meter readings at the beginning of each successive month.
- 1.10 The "Water Storage Reservoir" shall be a Water Storage Tank, provided by CITY with adequate buffer storage capacity to provide for the designated water requirements of CITY. The Water Storage Reservoir shall be located at the City of Fort Bragg (CITY) Wastewater Treatment Plant (WWTP) near to the western boundary.
- 1.11 The "Operation & Maintenance Period" of the Agreement shall be the period commencing immediately after the Installation of the Plant during which the Plant is producing and delivering Desalinated Water to CITY.

2. TERM AND DURATION

The term and duration of this Agreement shall commence upon the execution of this Agreement and shall continue until the completion of the twelve (12) month Maintenance and Operation Period. (the "Term") Upon completion of the Term, ONEKA will purchase the Desalination Plant from CITY for the Desalination Plant Buyback Price in the amount of One and 00/100 Dollars (\$1.00).

3. EQUIPMENT PURCHASE AND INSTALLATION.

- 3.1 City purchases from Oneka and Oneka agrees to sell to City, and install at the site described in the **Project Description** attached as **Exhibit 1** to this Agreement, the Desalination Plant as defined in sec. 1.1 above.
- 3.2 Oneka will install the Desalination Plant pursuant to the **Schedule of Performance** attached as **Exhibit 1 Section 7** to this Agreement.
- 3.3 Upon completion of the Term of this Agreement and pilot program, Oneka will decommission the Desalination Plant, remove the complete installation up to the connection point at the WWT Plant Site, and Buy Back the Desalination Plant from City for the amount of One Dollar (\$1.00).

4. OPERATIONS AND MAINTENANCE.

- 4.1 ONEKA'S Responsibilities - During the Term, ONEKA shall have complete obligation and responsibility for the operation, full functionality and maintenance of the Desalination Plant and all pipelines, fixtures, fittings, wires, cable or any other ancillary structure or accessory up to and including the point of connection at the CITY WWT Plant Site.
- 4.2 Oneka shall be responsible for ALL repairs, replacements, spare parts, etc. required to keep the equipment in operating condition and producing as close to nameplate capacity as possible for the duration of the Term.
- 4.3 Oneka will provide on-site support to operate and maintain the buoy and associated systems and will also collect water quality information in preparation of CITY applying for a Division of Drinking Water permit, and any other permits needed, to facilitate the delivery of produced, potable water into the City's distribution system. From these efforts, a detailed operation and maintenance profile and manual can be created to support future installations in California.
- 4.4 Oneka will provide data collection for operational parameters such as flow rate, movement of the buoy and pipeline in response to wave energy, and water quality. The product water flow rate will be measured to verify production rates. The movement of the buoy and pipeline will be monitored to evaluate the anchorage in response to the area's wave climate. The product water quality will be tested in accordance with Division of Drinking Water requirements for potable water. Maintenance activities will be recorded to create an operations profile for the future utility-scale installation. Maintenance will include routine cleaning of the intake screens, routine inspections of the buoy to identify any damage or unexpected wear, inspections of the pipeline to check for damage or unexpected wear, and potential emergency responses if the buoy becomes a danger or endangered due to storm energy.
- 4.5 City Responsibilities - During the Term, CITY shall have complete obligation and responsibility for the operation and maintenance of the Water Storage Reservoir, the WWT Plant Site and all related post treatment equipment, and water distribution equipment.

5. COMPLIANCE WITH CALIFORNIA DEPARTMENT OF WATER RESOURCES GRANT AGREEMENT.

The terms of this Agreement are intended to be in compliance with the Funding Agreement Between The State of California, Department of Water Resources and City Of Fort Bragg For Funding Assistance From The Water Desalination Grant Program For A Design Pilot Project Titled Oneka Seawater Desalination Buoy Design Pilot Study Department of Water Resources Agreement No. 4600015131, Pursuant To The Water Quality, Supply and Infrastructure Improvement Act of 2014 agreement (the "DWR Funding Agreement"), Water Desalination Funding Program Project No. CAP5 DP-2022-02, attached hereto as Exhibit 2 and incorporated herein by this reference. Oneka shall undertake all required efforts and acts to ensure full compliance with the above referenced DWR Funding Agreement and fully comply with all requirements set forth in the DWR Funding Agreement. Should a conflict arise between the terms and conditions of this Agreement and the DWR Funding Agreement the terms and conditions of the DWR Funding Agreement shall control except for terms related to compensation. Oneka must provide all data and information to City that is required for the submission and final approval by the DWR of all reports required by the DWR Funding Agreement.

6. PERMITS AND REGULATORY COMPLIANCE

- 6.1 CITY shall take reasonable steps to advise ONEKA of any local laws, requirements, and

permits that would affect the execution of ONEKA's duties, but does not warrant nor guarantee the accuracy of this advice.

- 6.2 CITY shall be responsible for obtaining all permits required under local laws and shall be responsible to obtain all necessary licenses and permits needed for the use and distribution of the desalinated water.
- 6.3 CITY shall be the Lead Agency for purposes of compliance with the California Environmental Quality Act (CEQA) certification with support from ONEKA including but not limited to all required technical studies and information.
- 6.4 ONEKA shall be responsible for obtaining all other permits, leases and studies related to installation of the Desalination Plant in the ocean, installing a pipeline to the CITY WWT Plant Site and operating the Desalination Plant (State Land Commission (SLC) Lease, National Pollutant Discharge Elimination System (NPDES) permit, California Coastal Commission (CCC) permit, 401 Water Quality Certification (WQC) permit, US Army Corp of Engineers 404, etc.)

7. COMPENSATION AND PAYMENT TERMS.

7.1 Payment Schedule for Desalination Plant

Project Administration	Not to Exceed \$100,000
Permits and Regulatory Compliance required of Oneka. PERMITTING (WITH ENVIRONMENTAL ENGINEERING CONTRACTOR) OF THE BUOY EXCLUDING THE CEQA CERTIFICATION (LED BY CITY) BUT INCLUDING REQUIRED SENSITIVE SPECIES SURVEY, HYDROGRAPHIC SURVEY, SLC LEASE, NPDES LOW THREAT APPLICATION, CA COASTAL COMMISSION APPLICATION, USACE 401, 404 WQC PREP, ETC.	Not to Exceed \$250,000
Project Mobilization	20% of Desalination Plant Installed Cost
Turnkey Installed Desalination Plant - Complete Oneka Wave Powered Desalination system, complete with proprietary wave powered pressurization, primary and secondary anchoring, desalinated water piping from the desalination buoy to clients WWT Plant Site boundary. Shipping to Site, City of Fort Bragg WWT Plant.	Total Desalination Plant Installed Cost Seven Hundred Forty Five Thousand and 00/100 Dollars (\$745,000) 55% upon delivery to City.
Installation of the desalination buoy and desalinated water piping to Clients WWT Plant boundary. System Installation and Startup. Membrane Cleaning In Place System and Specialty tools required	20% upon completion of installation, Desalination Plant startup and initial delivery of water to City.
Reporting	NOT TO EXCEED \$50,000

7.2 All payments required to be made to ONEKA under this contract shall be in free and unblocked currency of the United States.

7.3 ONEKA shall invoice CITY by the fifth (5th) of each three-month period for Operation and Maintenance Services rendered to CITY during the immediately preceding three-month period, and CITY agrees to include the amount of the Oneka Invoice in their quarterly Fee Disbursement to DWR in the next request cycle after receiving the ONEKA invoice. CITY agrees to pay ONEKA such invoiced amounts within ten (10) days of receiving the Quarterly Fee Disbursement from DWR. No payments shall be due from CITY to ONEKA until funds are received by CITY from DWR.

7.4 Oneka must provide evidence to verify the amounts of costs incurred as claimed in the invoice, when they occurred, and the nature of the costs (e.g., items purchased, work performed). Evidence may be receipts, billings, copies of checks, or invoices submitted to Funding Recipient. In lieu of time sheets for labor, summary sheets may be submitted listing employees, time period, hours or days worked, and pay rate. Additional guidance on documentation is provided in Exhibit H to the DWR Funding Agreement (State Audit Document Requirements and Funding Match Guidelines for Funding Recipients).

7.5 All withheld retention shall be released to Oneka within 30 days of final invoice and the City Engineer has issued a certificate of completion for all of the equipment and installation required under this Agreement.

8. WWT PLANT SITE AND WATER STORAGE RESEVOIR ACCESS AND USAGE

During the term of this agreement, CITY shall provide ONEKA, its subcontractors, and agents with the right to have access to the WWT Plant Site during the Term of this agreement, together with the right of ingress to and egress from the WWT Plant Site so as to permit ONEKA access to the WWT Plant Site, all without cost or charges to ONEKA, its subcontractors, or agents for the sole purpose of performing ONEKA's obligations and exercising ONEKA's rights under this Agreement. The access rights herein granted to ONEKA by CITY are for the limited purpose stated and are to be strictly construed to limit ONEKA, its subcontractors, and agents to only a commercially reasonable work area necessary for the required work to be completed and the routes of ingress and egress shall be designated by the City Engineer in their sole discretion.

9. PAYMENT FOR OPERATION AND MAINTENANCE SERVICES

During the Operation and Maintenance period, ONEKA shall deliver Desalinated Water to CITY and CITY shall accept and pay an Operation and Maintenance Service Fee to ONEKA at the rate of \$US Seventy-Eight Thousand, Seven Hundred and Fifty Dollars (US \$78,750.00) for each three-month "QUARTERLY" period. The Operation and Maintenance Fee is exclusive of any sales, utility, excise, property, extraction, disposal, or other tax or charge imposed by any government authority. In the event that any tax or fee is imposed later, these charges will be passed on to CITY at actual cost.

10. REPRESENTATIONS AND WARRANTIES.

10.1 Water Quantity

ONEKA will maintain and operate the Plant to produce as close to the Monthly Rated Capacity of the Plant as possible (up to 1,521 M3/month / 401,500 US Gallons/month) for twelve (12) months.

However, CITY understands that the Plant will be a single demonstration pilot unit that has variable production dependent upon wave height and may not always produce the maximum rated average capacity each month.

10.2 Water Quality

ONEKA will maintain and operate the Plant to produce desalinated water with an average salinity below 500 PPM TDS for twelve (12) months. However, CITY understands that the Plant will be a demonstration Plant that has variable production depending upon wave height and may produce desalinated water at a higher salinity. Desalinated water with a salinity greater than 750 PPM TDS will be diverted back to the ocean.

10.3 Warranties. Seller warrants for the period ending twelve months after Equipment start-up or eighteen months after shipment, whichever occurs earlier, that Equipment manufactured by Seller will conform in all material respects to any descriptions, plans or specifications included in the Agreement, and will be free of defects in materials and workmanship. Any performance warranties stated elsewhere in the Agreement shall apply only if Equipment is operated in accordance with Seller's instructions when operated on water or other liquids having the characteristics specified in the Agreement. Components and materials of the type that need replacement periodically due to normal wear and tear, such as membranes, frames, gaskets, filter cartridges, pump seals, etc. are warranted against defects only as of the shipment date, unless expressly stated otherwise. Warranties do not apply to damage or wear resulting from accidents, negligence, abuse, or misuse by Purchaser or third parties; from failure to follow Seller's instructions for installation, operation or maintenance; or from alterations or repairs not performed in accordance with Seller's instructions. Seller shall assign to Purchaser any manufacturer's warranties of equipment or materials purchased from others, to the extent they are assignable, and Purchaser's sole recourse shall be against the manufacturer. Seller warrants that any Services will be performed in a good and workmanlike manner. Purchaser shall promptly notify Seller of any warranty claim, and Purchaser's sole remedy shall be the repair or replacement (at Seller's election) of defective Equipment or the correction of deficient Services. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SELLER MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OTHER THAN AS EXPRESSLY STATED IN THIS AGREEMENT.

11. INSURANCE.

11.1 Commercial General Liability and Automobile Liability Insurance. Coverage for liability because of Bodily Injury and Property Damage including, but not limited to the following coverage:

- Completed Operations and Products Liability
- Bodily Injury
- Personal Injury
- Broad Form Property Damage Liability
- Contractual Liability insuring the obligations assumed by the Contractor under the Contract Documents

Commercial General Liability Self-Insured Retentions:

- 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 the City.

- The 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.

11.2 Commercial Umbrella Policy. The limits of insurance required in these Contract Documents 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.

11.3 The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and 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.

11.4 The limits of the insurance required above will be at least:

	Comprehensive General Liability		
	Bodily Injury Liability	\$5,000,000	each occurrence
		\$10,000,000	each aggregate
	Property Damage Liability	\$5,000,000	each occurrence
		\$10,000,000	each aggregate

11.5 Vehicle Insurance. Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (nonowned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

11.6 Workers' Compensation insurance as required by the State of California.

11.7 For each insurance policy required under the Agreement except for the required workers compensation insurance policy, the Contractor must provide endorsements that add the City, its officials, officers, employees, agents and volunteers as an additional insured ("Additional Insured"). Such endorsements must: provide that the insurance required to be furnished by the Contractor will be primary as regards the City, and that the City's insurance will be excess of and not contribute to the insurance required to be furnished by the Contractor; that the City will receive 30 day written notice of any reduction or cancellation of such insurance required to be furnished by the Contractor; and include a severability of interest clause acceptable to the City. Said endorsement shall be at least as broad as Insurance Services Office form number CG2010 (Ed. 11/85).

11.8 If Oneka maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by Oneka. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

12. INDEMNIFICATION.

To the extent permitted by law, Oneka does hereby assume liability for, and agrees to defend, with counsel acceptable to City, indemnify, protect, save and keep harmless City and its directors, officers, employees, and its successors and assigns from and against any and all

liabilities, obligations, losses, damages, penalties, fines, claims, actions, suits, costs and expenses and disbursements including reasonable attorneys' fees and expenses (including allocated costs of City staff attorneys) of any kind and nature (collectively "claims") imposed in, asserted against, incurred or suffered by City or its directors, officers or employees or its successors and assigns by reason of damage, loss or injury (including death) of any kind or nature whatsoever to persons or property in any way relating to or arising out of:

12.1. any negligent act or action, or any negligent omission or failure to act when under a duty to act on the part of Oneka or any of its officers, agents, servants, employees, or subcontractors of any tier in its or their performance hereunder whether or not caused in part by City's negligence, but not to the extent of City's sole negligence or willful misconduct; and/or

12.2. any claims of patent, copyright or trade secret infringement in connection with the services performed and/or work products provided under this Agreement by Oneka or any of its officers, agents, servants, employees, subcontractors or subcontractors of any tier; and/or

12.3. a defect in any product supplied by Oneka except that claims indemnified under this section must be claims caused by such defect prior to City acceptance of that product.

12.4. In addition to any other remedy authorized by law, so much of the money due Oneka under this Agreement as shall be considered necessary by City may be retained until disposition has been made of any claim for damages. The foregoing requirements are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Oneka pursuant to this Agreement, including, but not limited to, the provisions concerning insurance and warranty.

13. PERFORMANCE BOND.

13.1. Oneka will, within ten (10) days of execution of this Agreement, and before the City will make any payments required under this Agreement, submit performance security in the form of a faithful Performance Bond or Irrevocable Standby Letter of Credit duly issued by a corporate surety authorized to do business in California and satisfactory to the City, in an amount equal to one hundred percent (100%) of the Agreement price as required by the DWR Funding Agreement.

13.2. Said surety shall be admitted to do business in the State of California. If, during the term of this Agreement, the rating for said surety is below a Best's rating of A or is below the comparable rating provided by another nationally recognized rating provider if Best's ratings are discontinued, then Oneka shall immediately replace said performance bond with another that satisfies all of the above requirements upon City's written request therefor. City may withhold any payment otherwise due to Oneka until Oneka complies with the requirements of this section.

13.3. If Oneka elects to submit a letter of credit as performance security, Oneka agrees to submit replacement security acceptable to City, if so notified by City, if the letter of credit expires and/or is not renewed prior to completion of performance under the Agreement and Agreement Documents.

13.4. The Performance Bond shall ensure the timely delivery of the Desalination Plant equipment meeting the specifications required by this Agreement. The Performance Bond will be released within 10 days after the City receives the first operational waterflow from the Desalination Plant. The Performance Bond is not intended to cover any warranties required by this Agreement.

14. CALIFORNIA LABOR CODE REQUIREMENTS.

14.1 In accordance with California Labor Code Section 1771.1, this Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR). The Contractor and subcontractors engaged in performance of the Work must comply with Labor Code Section 1771.1.

14.2 In accordance with California Labor Code Section 1810, eight (8) hours of labor in performance of the Work shall constitute a legal day's work under the Agreement.

14.3 In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the Work is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.

14.4 The Contractor and its subcontractors will forfeit as a penalty to the City \$25 for each worker employed in the performance of the Work for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one calendar day, or more than forty (40) hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 et seq.

14.5 In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the Work is to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the Public Works Department and shall be made available on request. The Contractor and subcontractors engaged in the performance of the Work shall pay no less than these rates to all persons engaged in performance of the Work.

14.6 In accordance with California Labor Code Section 1775, the Contractor and any subcontractors engaged in performance of the Work must comply with Labor Code Section 1775 which establishes a penalty of up to \$200 per day for each worker engaged in the performance of the Work that the Contractor or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner. The Contractor or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the Work is not paid the general prevailing per diem wages by the subcontractor, the Contractor is not liable for any penalties therefor unless the Contractor had knowledge of that failure or unless the Contractor fails to comply with all of the following requirements:

14.6.1 The contract executed between the Contractor and the subcontractor for the performance of part of the Work must include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

14.6.2 The Contractor must monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.

14.6.3 Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Contractor must diligently take corrective action to halt or rectify the failure,

including, but not limited to, retaining sufficient funds due the subcontractor for performance of the Work.

14.6.4 Prior to making final payment to the subcontractor, the Contractor must obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to employees engaged in the performance of the Work and any amounts due pursuant to California Labor Code Section 1813.

14.7 In accordance with California Labor Code Section 1776, the Contractor and each subcontractor engaged in performance of the Work, must keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating that the information contained in the payroll record is true and correct and that the employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project. The payroll records required pursuant to California Labor Code Section 1776 must be certified and must be available for inspection by the City and its authorized representatives, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations and must otherwise be available for inspection in accordance with California Labor Code Section 1776.

14.8 In accordance with California Labor Code Section 1777.5, the Contractor, on behalf of the Contractor and any subcontractors engaged in performance of the Work, will be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.

14.9 In case it becomes necessary for the Contractor or any subcontractor engaged in performance of the Work to employ on the Work any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor must pay the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by that person. The minimum rate thus furnished will be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

15. NO ASSIGNMENT OF WORK.

No party to this Agreement may assign any right or obligation under this Agreement. Any attempted or purported assignment of any right or obligation under this Agreement shall be void and of no effect.

16. INDEPENDENT CONTRACTOR.

In performing this Agreement, Oneka shall act as an independent contractor and not as an employee of City. In accordance with that relationship, Oneka shall assume all responsibility for Federal and State income tax withholding, FICA, SDI, and any other deduction from income that Oneka is properly required to make as an independent contractor.

17. ATTORNEY'S FEES AND COSTS; WAIVER OF DAMAGES.

If the services of any attorney are required by any party to secure the performance of this Agreement or otherwise upon the breach or default of another party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provisions of this Agreement or the rights and duties of any person in relation to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law. Whenever provision is made in this Agreement for the payment of attorney's fees, such fees shall be payable whether the legal services are rendered by a salaried employee for the party or by independent counsel and shall include such fees as are incurred in connection with any alternative dispute resolution, pretrial proceeding, trial, or appeal of the action.

Neither ONEKA nor City shall be responsible for any consequential or incidental damages arising out of or related to the Party's performance under this Agreement. City assumes all risks associated with the distribution, ultimate use and disposal of the Desalinated Water delivered to City by ONEKA and agrees to indemnify ONEKA from any consequential damages arising out of or related to the use of the Desalinated Water.

18. COVENANT AGAINST GRATUITIES.

Oneka covenants and warrants that it has not offered or given gratuities in the form of entertainment, gifts, compensation, or otherwise to any member, officer, or employee of City with a view toward securing favorable treatment in the award, modification or performance evaluation of the Agreement. For breach or violation of this covenant, City shall have the right to terminate this Agreement without liability.

19. NON-WAIVER.

Waiver of any breach of default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement.

20. MODIFICATION.

No waiver, alteration, modification or termination of this Agreement shall be valid unless made in writing and signed by the authorized parties hereof.

21. THIRD PARTY OBLIGATIONS.

Oneka shall be solely liable to third parties with whom it enters into contracts to effectuate the purposes of this Agreement. Oneka shall pay directly such parties for all amounts due under said arrangement. Oneka shall indemnify and hold City harmless from any and all claims and liabilities arising from this Agreement. Oneka shall exert its best efforts to prevent any loss to City from the failure of proper performance of any third party. City's only obligation with respect to such third parties shall be limited to reimbursement to Oneka for those expenses for which City is obligated to reimburse by virtue of the terms of this Agreement.

22. TERMINATION.

22.1 City may terminate this Agreement, in whole or in part, at any time by written notice to Oneka. In the event of termination before delivery, the City will reject delivery and cancel the project. Oneka shall be paid its costs, including contract close-out costs and profit on work performed, up to the time of termination. Oneka shall promptly submit its termination claim to be

paid to Oneka. If Oneka has any property in its possession belonging to the City, Oneka will account for it and dispose of it in the manner City directs.

22.2 In addition to the above obligation in paragraph 22.1, in the event of termination of this agreement, CITY shall pay ONEKA for all Operation and Maintenance Services rendered until the point of termination and Oneka shall repurchase all rights, title and interest in the Desalination Plant from City for the amount of One Dollar (\$1.00).

22.3 This agreement may be terminated by ONEKA if CITY has failed to pay ONEKA any sums due, and after said sums have been more than ninety (90) days overdue, by means of a written notice of thirty (30) days from ONEKA to CITY. ONEKA is obligated to give CITY proper notice.

23. FORCE MAJEURE

The Parties shall not be liable to each other for any loss or damage, and shall not be considered in breach of their obligations under this Agreement for any delay or failure to perform their obligations hereunder, if such delay or failure results from any Force Majeure, provided that the affected Party (i) promptly notifies the other Party of the situation and the anticipated delays, and (ii) makes diligent efforts to minimize the impact of the Force Majeure on the performance of its obligations, including by continuing to perform its obligations as reasonably possible in light of the Force Majeure.

24. NOTICE

Any written notice required or permitted under the terms of this agreement shall be sent by certified or registered mail to the following address:

City Of Fort Bragg

City of Fort Bragg – Department of Public Works
Street Address: 416 North Franklin Street, Fort Bragg, CA 95437, USA
Mailing Address: 416 North Franklin Street, Fort Bragg, CA 95437, USA
Phone: +1(707) 961-2823

ONEKA:

Oneka Technologies US Inc
Street Address: 600 W. Broadway, Suite 1200, San Diego, CA 92101, USA
Mailing Address: 600 W. Broadway, Suite 1200, San Diego, CA 92101, USA
Phone : + 1 (819) 485-0335

Or other such addresses as the parties may designate from time to time by written notice to the other. Notice shall be deemed received five (5) business days following the date postmarked in the event of mailing.

25. GOVERNING LAW.

The interpretation and enforcement of the Agreement shall be governed by the laws of the State of California, the state in which the Agreement is signed. This transaction is further governed by the California Uniform Commercial Code; certain terms used in this Agreement are used in the same manner as those terms are used in the Uniform Commercial Code.

26. AUTHORITY.

Each of the signatories to this Agreement represent that he or she is authorized to sign the Agreement on behalf of such party and that all approvals, resolutions and consents which must be obtained to bind such party have been obtained and that no further approvals, acts or consents are required to bind such party to this Agreement.

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

CITY OF FORT BRAGG,
A municipal corporation

Isaac Whippy, City Manager

Date: _____

ATTEST:

Diana Sanchez, City Clerk

ONEKA EMERGENCY EQUIPMENT

Signature

Date: _____

Name and Title

Social Security or Taxpayer ID Number

APPROVED AS TO FORM:

Baron J. Bettenhausen, City Attorney

Date: _____

DEPARTMENTAL APPROVAL:

John Smith, Director of Public Works

Date: _____

EXHIBIT 1

**PROJECT DESCRIPTION AND DESALINATION PLANT LOCATION, CITY WASTEWATER
TREATMENT PLANT LOCATION AND DESCRIPTION OF CONNECTION POINT FOR
DESALINATION PLANT WATER LINE, SCHEDULE OF PERFORMANCE**

Project Description

This document presents a description of the City of Fort Bragg's (City's) Oneka Desalination Buoy Pilot Project (Pilot Project). It provides the project background, the environmental setting for the deployment area offshore of the City, the design of the Pilot Project components, the construction/installation methods, the operation and maintenance (O&M) plan, the decommissioning approach, and the requisite permits and approvals.

1. Project Background

The City has suffered water reliability concerns in recent years during the severe droughts California has endured. In response, the City installed portable, containerized desalination units to treat the brackish or saline waters at a diversion point approximately 4.5 miles upriver from the Noyo River mouth. To avert future challenges, the City has sought out new, reliable water supply alternatives. One promising technology is the Oneka Technologies (Oneka) wave-powered desalination system. The Oneka units convert seawater into freshwater through reverse osmosis (RO), using only the power of ocean waves. The Oneka design will be the first of its kind in California and would therefore benefit from a pilot study to demonstrate its effectiveness and refine its operational parameters to inform a future utility-scale deployment.

In consultation with the City, Oneka identified their Iceberg class unit as the most appropriate to pilot test off the coast of the City. The Iceberg unit is the 9th generation of this technology developed over seven years in the ocean environment. The pilot study will deploy a single Iceberg class unit that will produce on average 13,200 gal/day or 0.013 million gallon/day (MGD) for a period of 12 months. Over the course of the pilot study, the operational parameters and environmental impact of the Iceberg's operation will be monitored to support permitting of a future array of Iceberg units to provide a utility-scale water supply.

2. Environmental Setting

The City is located in western Mendocino County on a stretch of the rugged Northern California coastline between the Noyo River and Pudding Creek. It is one of the, comparatively, more urban areas within the mostly rural Mendocino County. Historically, the local economy has been dominated by natural resource-based business enterprises such as timber, fishing, and tourism. The 2002 closure of the Georgia-Pacific Mill reduced the timber industry's stake in the local economy. Fishing and tourism remain significant parts of the coastal economy.

The coastal waters where the buoy for this pilot project will be moored is a mix of sandy plains interspersed among high-rugosity rocky reefs underlying a high-wave-energy environment (Figure 1). In support of the pilot study, a detailed map of the seafloor was created using side-scan sonar imaging followed by remotely operated vehicle surveys to verify the structures identified during the sonar imaging. This resulted in identifying the mapped soft-bottom habitat displayed in tan in Figure 1. Kelp canopy mapped for three years (1989, 1999, and 2016) is also shown in Figure 1. Two of the years represent near-maximum canopy area (1989 and 1999) and the most recent year for which a GIS shapefile is available (2016) from the California Department of Fish and Wildlife's Marine GIS unit

(https://filelib.wildlife.ca.gov/Public/R7_MR/). Kelp canopy areas can be used as a proxy for the presence of hard substrate. Canopy forming kelps require hard substrate to attach to in high-energy wave areas to maintain position. Not all hard substrate, however, supports canopy-forming kelp. This can be due to turbidity, high-concentration of suspended solids that scour the substrate and eliminate canopy-forming kelp holdfasts, an abundance of herbivorous predators, and others (Foster and Schiel 2015). Marine protected areas (MPAs) in the area were also added to the map (Figure 1) to assess the spatial proximity of the proposed project to protected areas.

Recent environmental surveys in compliance with the City’s wastewater treatment plant (AMS 2023) documented a variety of marine resources such as various algal species, sea urchins (including *Strongylocentrotus purpuratus* and *S. franciscanus*), and red abalone (*Haliotis rufescens*). Foliose algal species such as *Desmarestia* and *Nereocystis* were either absent or present in very low densities consistent with the overall trend of declining algal communities along the Northern California coastline (Rodgers-Bennet and Catton 2019). The algal community decline has coincided with an increase in the sea urchin populations, which may be correlated to the algal decline, and an increase in exposed rocky habitat. During the four surveys in the area since 2007, AMS (2023) reported a gradual habitat conversion from sand to rocky substrate throughout the area. This coincides with two significant drought episodes in California.

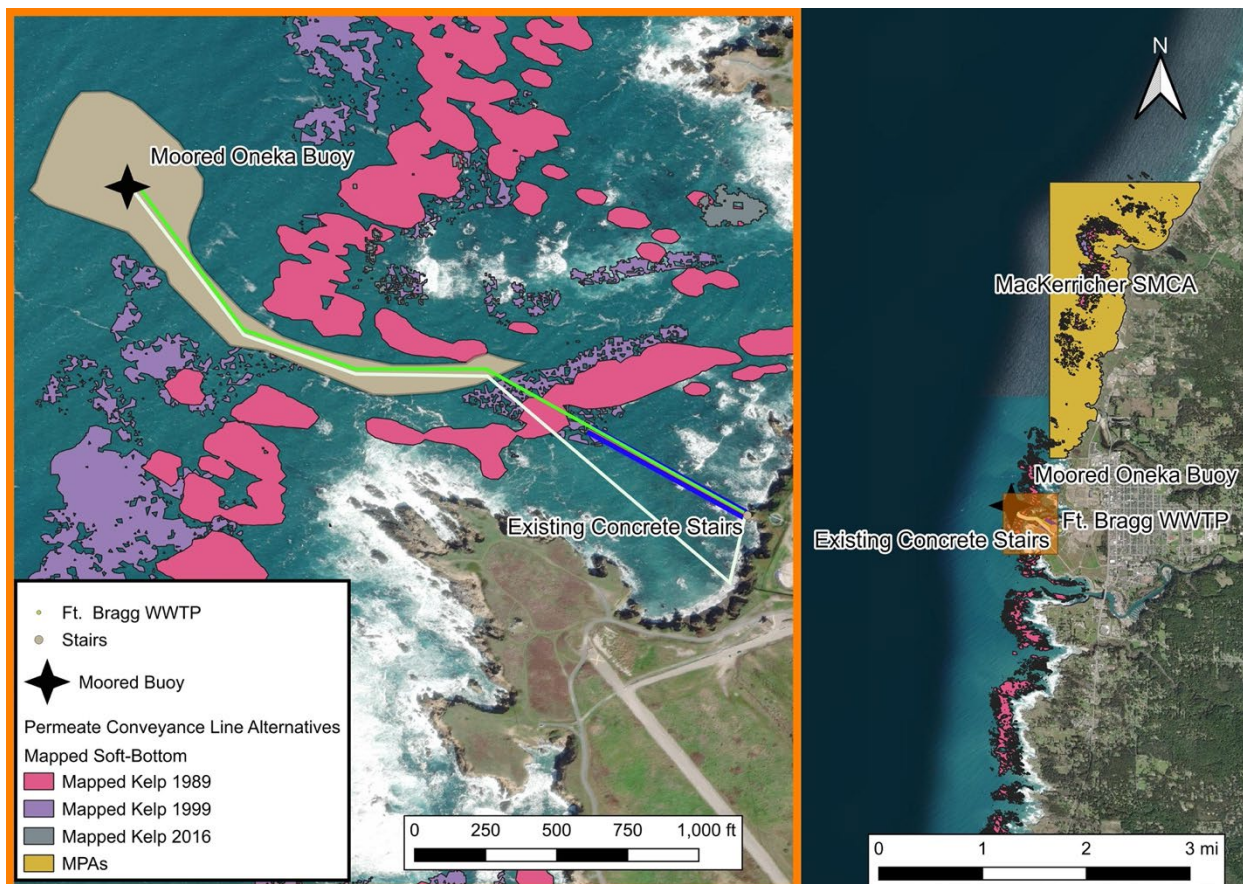


Figure 1: Map of the proposed pilot project and surrounding habitat, existing infrastructure, and location of the nearest Marine Protected Area (MPA). Mapped kelp areas drawn from the California Department of Fish and Wildlife’s Marine GIS. Mapped soft-bottom from side-scan sonar survey summarized in Appendix I. Green (preferred) and white (alternative) permeate conveyance lines depicted on the map.

A circular area measuring approximately 6.3 acres of predominantly sandy substrate (the bowl) was identified offshore of the City wastewater treatment plant and deemed suitable for the placement of the buoy mooring system with minimal risk to sensitive habitat. A sand channel extending from the offshore bowl inshore to near the terminus of the City’s wastewater treatment plant ocean outfall was identified and deemed suitable for the placement of the permeate pipeline. The permeate pipeline will have to cross hard substrate that supported canopy-forming kelp in both the 1989 and 1999 mapping surveys. No kelp canopy was reported in this area during 2016 mapping effort or during the side-scan sonar and ROV surveys performed for this project. The proposed channel from the offshore bowl to the existing wastewater treatment plant ocean outfall is the least impactful identified. The channel’s minimum width is 71 ft; wide enough for the permeate pipeline and its anchoring system to reach the shoreline.

Two sites were initially evaluated for the deployment, the preferred site in Mill Bay offshore of the Wastewater Treatment Plant, and the alternative site offshore Noyo Harbor (Figure 2). The mooring system is approximately 427 ft in diameter. This size was used on the map in Figure 2 to represent the area likely closed to vessel traffic in each alternative site. The preferred site is positioned approximately 0.5 mile offshore of the wastewater treatment plant. Mill Bay does not support any marinas, ports, harbors, or other high-traffic areas for commercial and recreational vessels. It does, however, already contain habitat disturbed for the installation and operation of the wastewater treatment plant’s ocean outfall. Noyo Harbor contains a working marina and port supporting the local blue economy with consistent vessel traffic. The Noyo Harbor entrance channel is approximately 1,400 wide with kelp canopy mapped along both sides of the channel further constricting the safe passage. No infrastructure exists on the bluffs on either side of the Noyo Harbor channel that could temporarily support the Iceberg pilot study, thus requiring the permeate pipeline to make landfall in Noyo Harbor at the docks. Additional infrastructure would be needed to accept the permeate in a way that would allow for the proper discharge of unused permeate while providing access to the permeate for testing and non-potable uses at the City’s discretion.

Using these maps (Figures 1 and 2), the preferred Iceberg mooring site is approximately 570 ft from the nearest canopy-forming kelp based on the 1989 mapping survey, 317 ft from the nearest canopy-forming kelp based on the 1999 mapping survey, and 0.75 miles from the nearest MPA, MacKerricher State Marine Conservation Area (SMCA).

2.1 Water Quality

AMS (2023) measured four water quality parameters at five stations (Figure 3) in the area on August 31, 2022. The parameters were stable throughout the water column and across the monitoring area. A summary of these data is provided in Table 1. All parameters were within the ranges specified in the California Ocean Plan. For the purposes of this analysis, no stations were considered as the reference site. The pH was less than 0.2 units different among any of the stations. All dissolved oxygen concentrations were within 90%, or more, of each other indicating the concentration at any one station was depressed no more than 10% from ambient. Salinity and water temperature were nearly identical across the area. The salinity in the area on August 31, 2022 was between 33.0 and 33.1 PSS (Table 1). This was consistent with the long term average salinity (33.0 PSS, standard error = 0.007) recorded in Humboldt Bay between March 22, 2021 and March 22, 2024 (<https://data.caloos.org/#metadata/20363/station/data>).

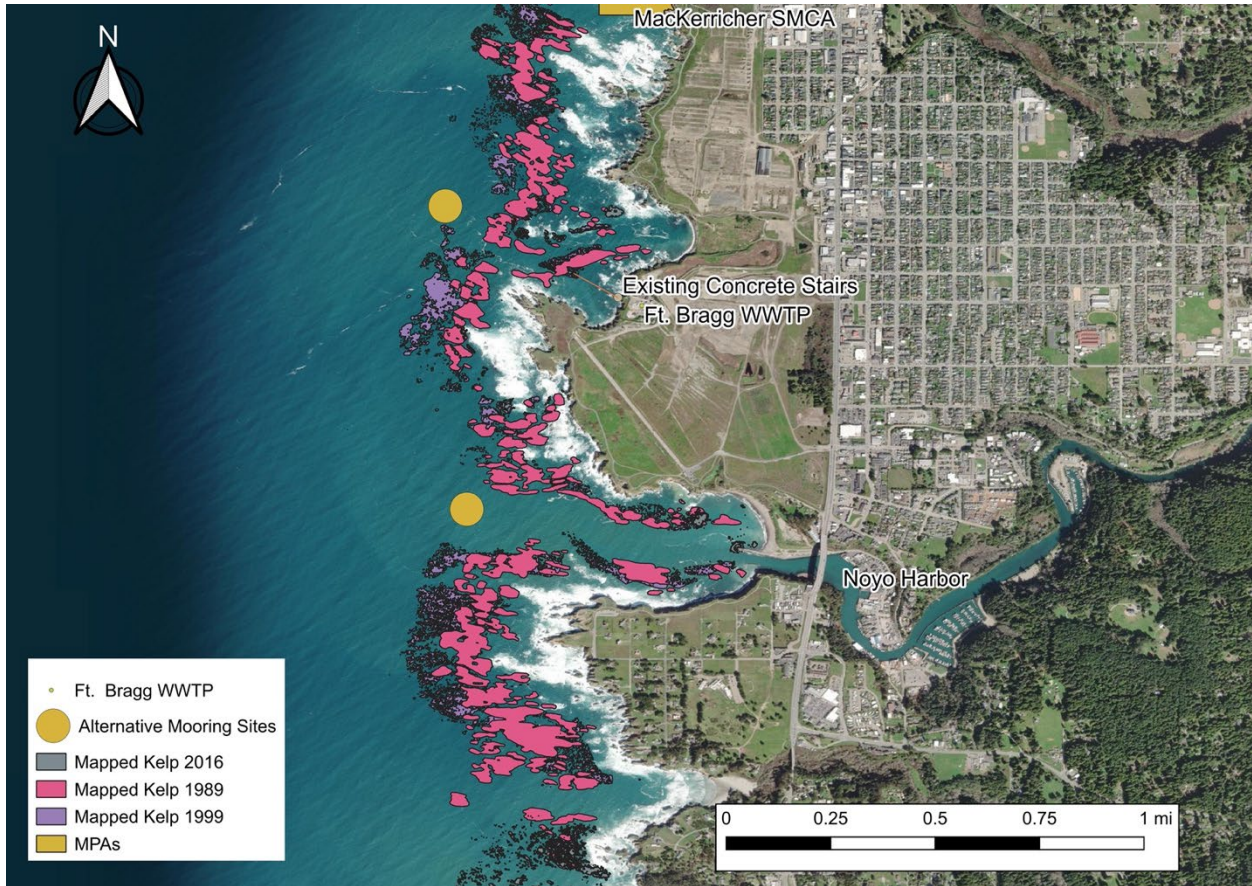


Figure 2. Iceberg buoy mooring sites considered in this analysis with habitat layers included for reference.

On August 9, 2023, seawater was collected from the surface where the Iceberg will be deployed. The seawater sample was delivered to Alpha Analytical Laboratories, Inc. (ELAP# 1551) for analytical testing. Testing was for the Ocean Plan Table 1 list of analytes with the full results in Appendix 2. Only five analytes were detected in the water sample (Table 2).

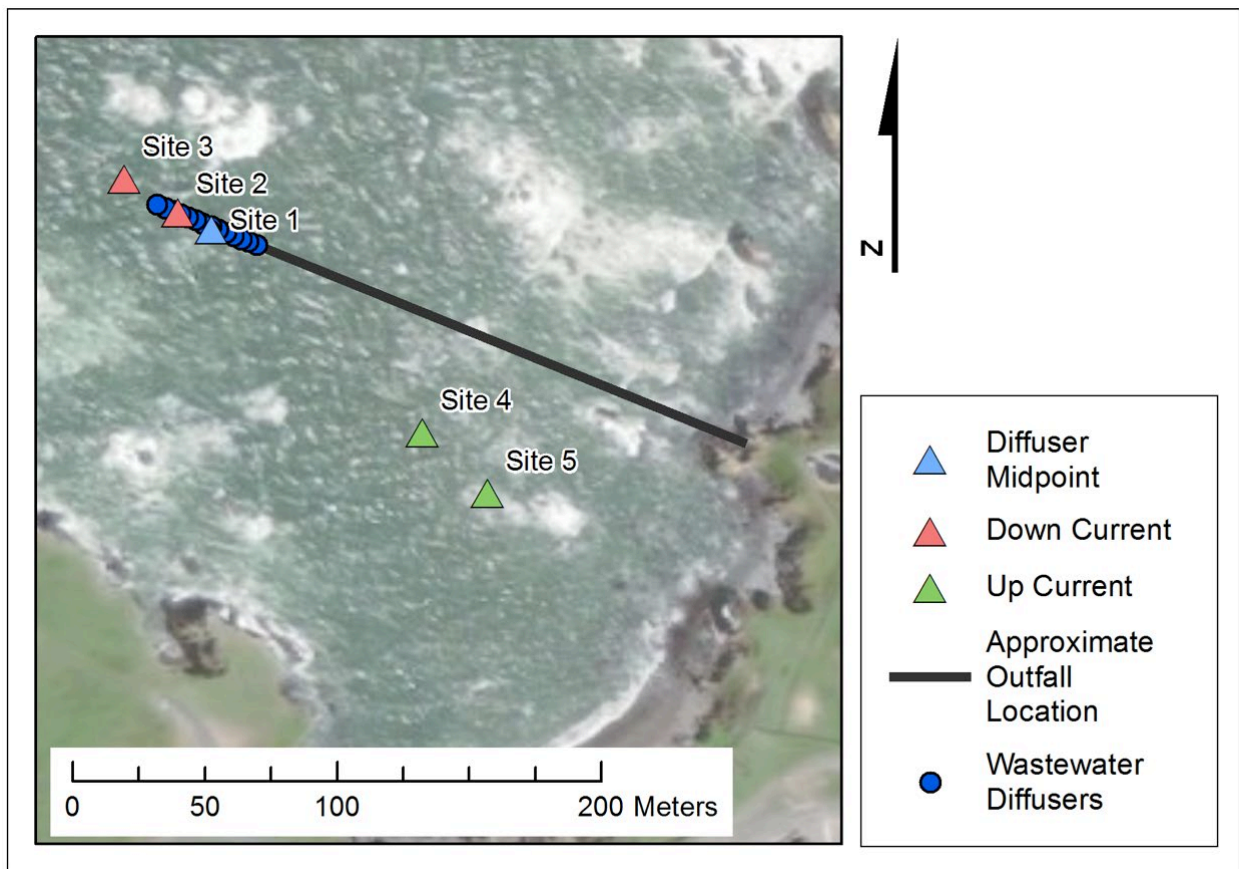


Figure 3. Water quality monitoring stations. From AMS (2023).

Table 1. Average water quality parameter values recorded throughout the water column at each Site surveyed on August 31, 2022. Data provided by Applied Marine Sciences.

Parameter	Site 1	Site 2	Site 3	Site 4	Site 5
Water Temperature (°C)	11.4	11.4	11.5	11.6	11.5
Salinity (PSS)	33.1	33.0	33.1	33.0	33.1
pH	8.0	8.0	8.1	8.1	8.1
Dissolved Oxygen (mg/l)	8.2	8.4	8.7	9.0	8.7

Table 2. Analytical chemistry results for a water sample collected on August 9, 2023 at the proposed location of the moored Iceberg.

Parameter	Value	Units
Copper	5.4	µg/L
Nickel	8.1	µg/L
Ammonia	0.17	mg/L
Acetone	5.5	µg/L
Di-n-butyl phthalate	6.2	µg/L

3 Design of Components

The Pilot Project is designed to produce a maximum of 22,000 gal/day or 0.022 MGD for a period of 12 months. The system is comprised of the following components. A site layout is provided in Figure 8 and shows all the principal project components. The design of each component is described in greater detail in the following subsections

- Iceberg buoy – the buoy is the floating structure that houses the wave power-generating device, the seawater intake system, the seawater RO membranes, and the brine discharge system.
- Mooring/anchoring system – the mooring/anchoring system keeps the Iceberg unit anchored to the seafloor with built-in redundancy providing a safety back-up in the event that the principal mooring system fails for any reason.
- Permeate pipeline – the permeate pipeline is used to convey desalinated permeate from the Iceberg buoy to shore. It will also be anchored to the seafloor.

3.1 Buoy

The Oneka Iceberg-class wave-powered desalination buoy weighs 22 tons and measures 19.7 ft wide by 28.7 ft long. The Iceberg is 21.7 ft tall with 15.6 ft above the water line and 6.1 ft below the water line (Figure 4). The Iceberg is designed to be towed to and from the dock and deployment site using a towboat. It can be installed or removed within a few hours.

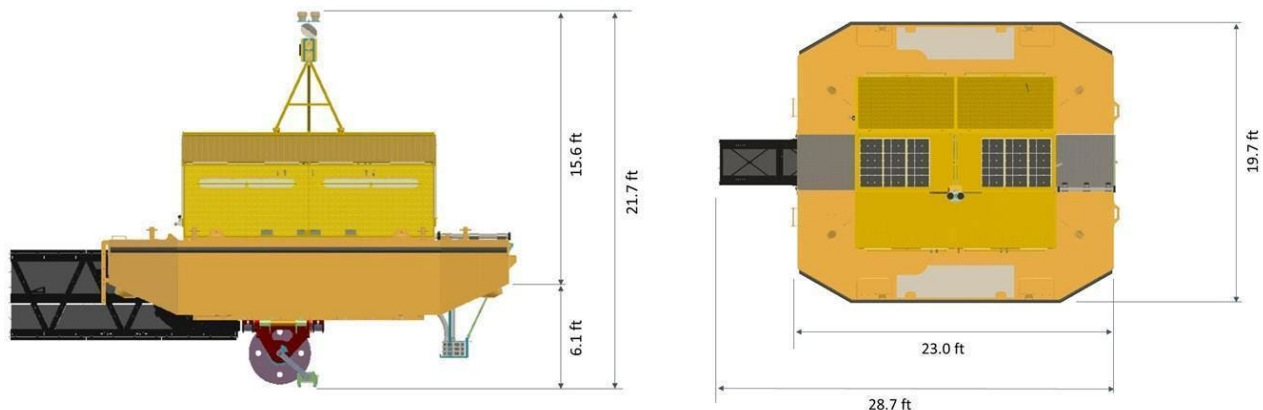


Figure 4: Dimensions of the Iceberg unit

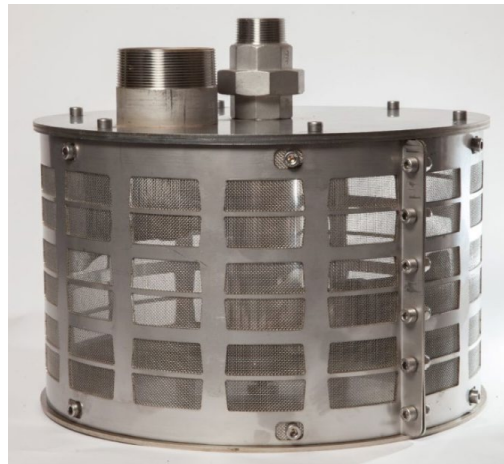
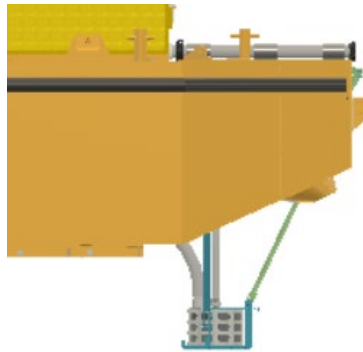
The buoy is a fully self-contained desalination system powered exclusively by mechanical wave energy and uses no chemicals in the treatment process. Using the point absorber principle, the buoy gathers energy with every wave. The patented Power Take Off (PTO) mechanism drives a water pump which has a self-cleaning, 60-micron mesh, cylindrical intake screen at a nominal depth of four ft below the ocean surface. All material, including nearly all forms of marine life, are passively excluded by the 60-micron mesh intake screen at the point of withdrawal.

Once into the system, the pressurized water is filtered through 5-micron mesh cartridge filters before entering the RO membranes. Before discharging back to the ocean, the high-pressure brine is used to power an energy recovery device for maximum efficiency.

3.1.1 Intake System

The intake screen is 16.5 inch in diameter and 10.3 inch long (Figure 5) and is designed to withdraw a nominal 66,000 gal/day (0.07 MGD). The calculated through-screen intake velocity is approximately 0.22 ft/sec at the design flow rate and 0.27 ft/sec with an assumed 15% open area blocked. Under all operating scenarios, the intake for the Pilot Project will not exceed 0.5 ft/sec.

The screening mesh is 316 stainless steel. The intake screen is automatically cleaned via a rotary cleaning device inside the screen which is driven mechanically by intake and discharge flow. This internal cleaning is continuous as long as the buoy is operating. The intake system is also retrievable to the surface, so manual cleaning can be done (if required) without divers.



[Figure 5: Seawater intake and brine discharge system with 60-micron mesh screening](https://www.rotorflush.com/products/rf400a/#models)

<https://www.rotorflush.com/products/rf400a/#models>

3.1.2 SWRO System

The Iceberg buoy will contain four RO membranes distributed across two pressure vessels (two RO membranes per pressure vessel).

While capable of a maximum production of 21,134 gal/day (0.021 MGD), during the Pilot Project the buoy will nominally produce 13,200 gal/day (0.013 MGD) of permeate, on average. The 13,209 gal/day (0.013 MGD) production rate is analyzed here as it represents average operating conditions and produces the

highest salinity brine depending on the recovery percentage (Table 2). A range of potential recovery percentages are also presented to describe the average operational envelope.

Assuming ambient salinity is 33.1 ppt in the deployment area, the maximum seawater intake volume will occur with 20% recovery but will result in the least saline brine (41.38 ppt). As the recovery percentage increases the brine volume decreases, but its salinity increases to an estimated maximum of 50.92 ppt salinity at a 35% recovery rate.

Table 2. Iceberg buoy seawater desalination processing parameters with a nominal permeate production of 13,200 gallons/day.

Recovery %	Seawater Intake		Brine Discharge		Produced water	
	Volume (x1000 G)	Salinity (ppt)	Volume (x1000 G)	Salinity (ppt)	Volume (x1000 G)	Salinity (ppt)*
20	66	33.1	52.8	41.38	13.2	0.167
25	52.8	33.1	39.6	44.13	13.2	0.175
30	44	33.1	30.8	47.29	13.2	0.185
35	37.7	33.1	24.5	50.92	13.2	0.196

3.1.3 Brine Discharge System

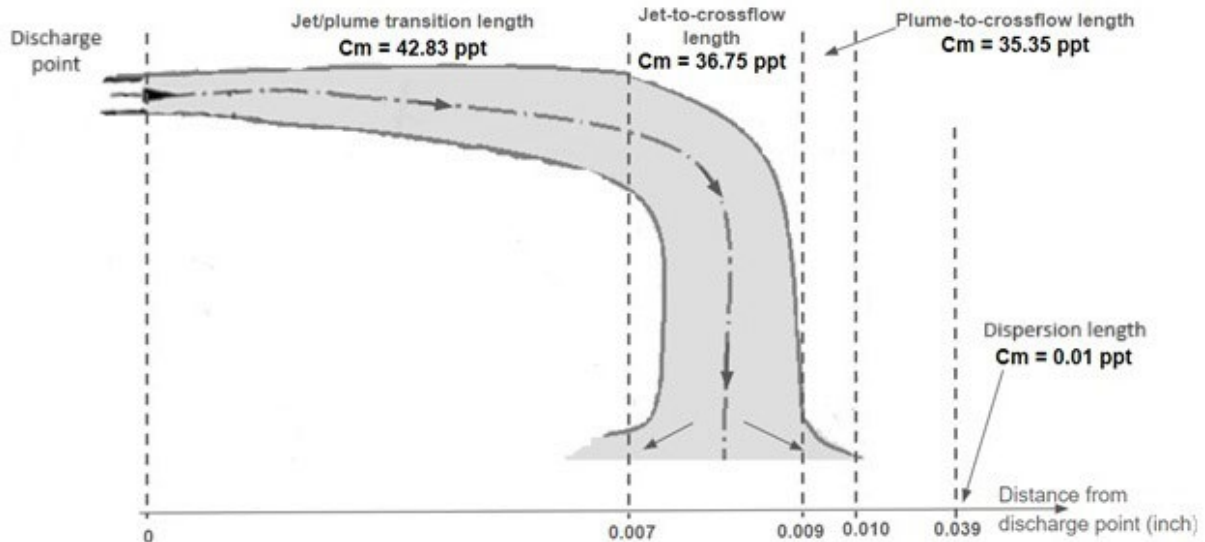
Brine rejected from the RO system first passes through the energy recovery device before being discharged through the same component used for the intake (Figure 5). The point of discharge is therefore in the face of the 60-micron screen. Since brine is discharged at the same point of intake, brine discharge is diluted to ambient salinity quickly (see figure xx). The maximum brine velocity at the point of discharge is 0.23 ft/sec.

Modeling in the case of highest salinity discharge (35 % recovery) and a stagnant sea, brine dilutes to no more than 2.0 ppt over ambient salinity within 0.01 inches from the discharge point and to ambient salinity (33.1 ppt) at about .039 inches from the discharge point.

Table 3: Brine discharge dilution model at 35 % recovery (highest salinity discharge) and stagnant sea, showing the different lengths of the brine mixing zone and their relative distance from the discharge point.

Position	mixed concentration (Cm) (ppt)	Difference with ambient salinity (ppt)	distance from discharge point (inch)
Jet/plume transition length	42.83	6.62	0.007
Jet-to-crossflow length	36.75	2.48	0.009
Plume-to-crossflow length	35.35	1.53	0.010
Dispersion length	33.11	0.01	0.039

Figure xx: Visual representation of the mixed brine concentration (C_m) within the brine mixing zone at 35 % recovery (highest salinity discharge) and stagnant sea



3.2 Mooring/Anchoring System

The mooring/anchoring system is comprised of two parts: the components required to anchor the Iceberg buoy and the components required for the secondary back-up anchoring system which would keep project components in place if the principal system failed for any reason. The buoy's position is constantly monitored via electronic telemetry. Solar-powered systems onboard the buoy transmit the buoy's coordinates to Oneka servers in real time to monitor its position and operation. Available data confirm that the units are securely attached and performing well.

The mooring/anchoring design is streamlined to reduce the amount of seafloor anchors, vertical and horizontal mooring lines to mitigate entanglement of marine animals. Vertical and horizontal mooring lines are designed to be kept under a minimum of tension, avoiding looping of lines, and furthering entanglement mitigation. Periodic inspections of the mooring/anchoring system will allow the Iceberg maintenance staff the opportunity to monitor entanglement risks and act proactively.

3.2.1 Principal Mooring/Anchoring

The primary mooring system for the Iceberg will consist of a main tether running between the underside of the Iceberg and a gravity anchor placed on the seafloor. The tether will be part of the heave compensation system built into the Iceberg that will accommodate the vertical movement of the Iceberg with the swells. The gravity anchor will consist of a structural steel frame that will hold removable concrete blocks, which will be set in place after landing the frame on the seafloor. This modular design may reduce the overall anchor weight for deployment and recovery purposes. See Figure 5.

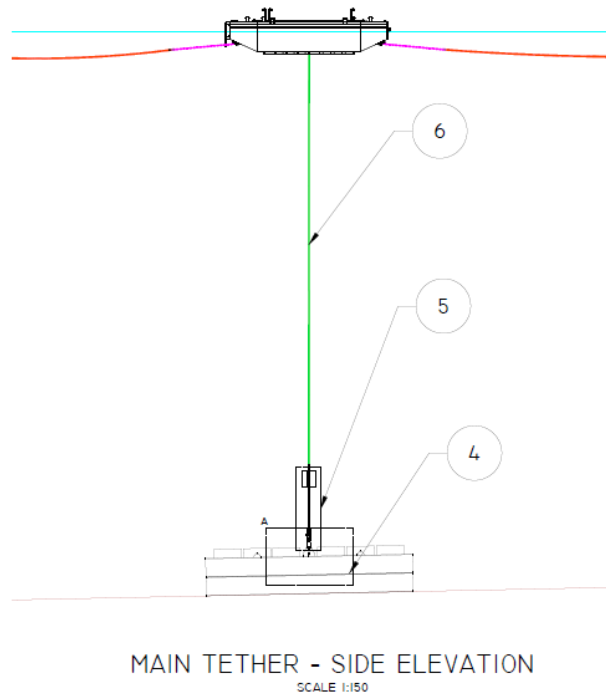


Figure 6: Main tether and gravity anchor.

3.2.2 Back-up Mooring/Anchoring

The secondary mooring system for the Iceberg will consist of four traditional anchors, ground leg and mooring line spreads. Each spread will consist of a gravity anchor (comprised of either concrete or chain) connected to a marker buoy via a synthetic riser line running to the surface; a ground leg laying on the seafloor consisting of studlink chain; a synthetic riser line connected to the ground leg and running up to a surface buoy; and a surface mooring line running between the buoy and the Iceberg (Figures 7 and 8). The four secondary mooring spreads will be placed to best accommodate the prevailing swells and will stay within the seafloor footprint limitations. The design of these spreads, with a single riser between the ground leg on the seafloor and the buoy, will minimize the potential for interference with marine animals.

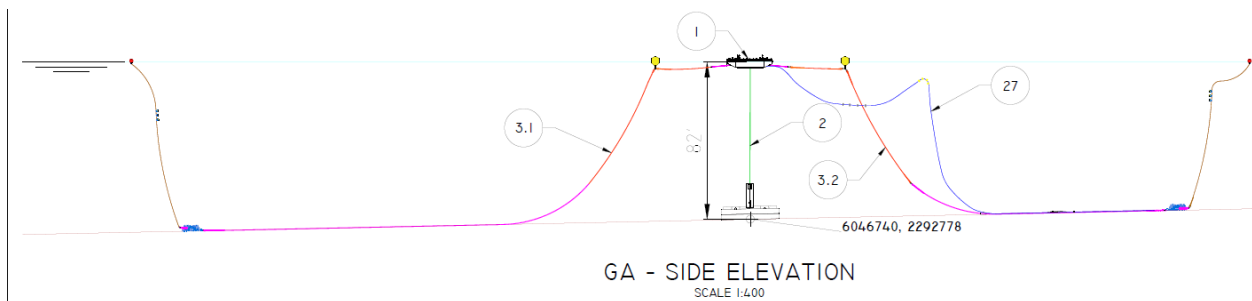


Figure 7: Mooring system and location

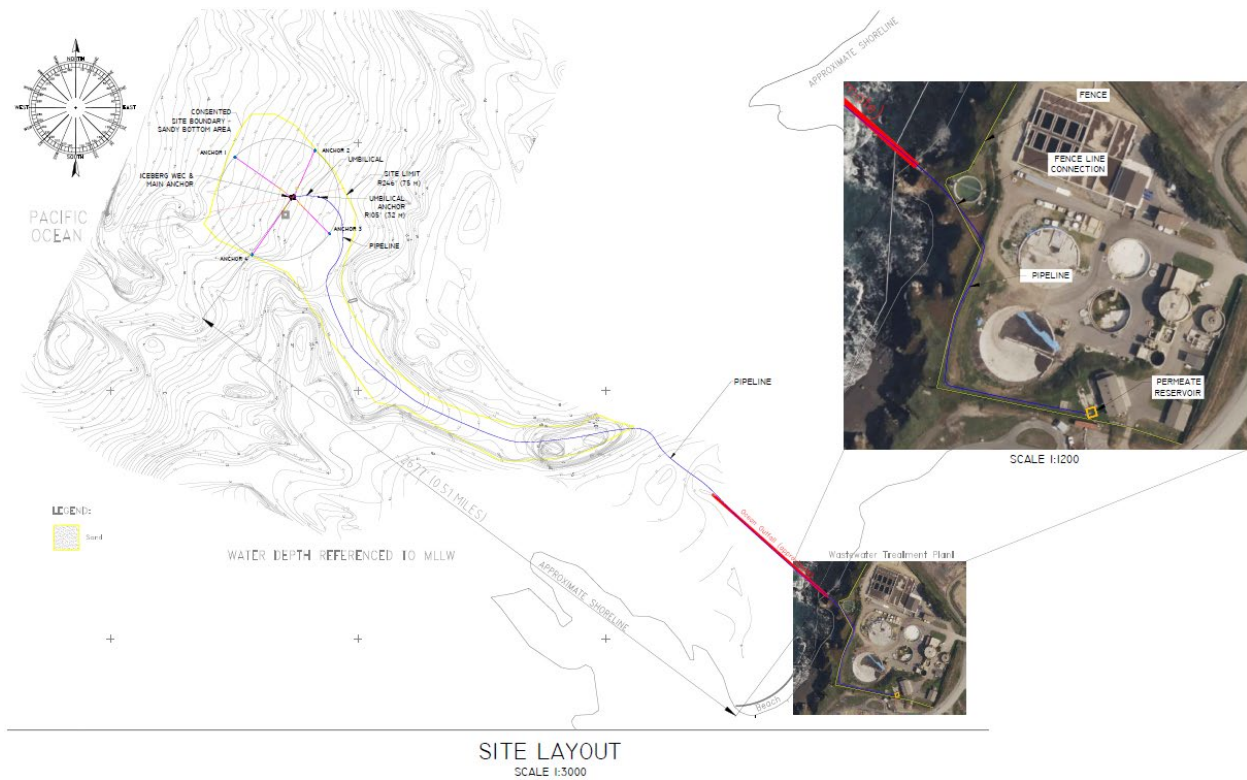


Figure 8: Site layout showing the Iceberg proposed location over Mill Bay sand bowl, including mooring lines, anchors, pipeline, existing wastewater treatment plant ocean outfall, and onshore connection to permeate reservoir.

3.3 Permeate Pipeline

3.3.1 Pipeline

A High-Density Polyethylene (HDPE) pipe will be used to transfer permeate from the Iceberg buoy to shore. HDPE is commonly used for marine pipeline installations due to its flexibility, corrosion resistance, and compatibility with fresh water. The pipe will be three-inch diameter DR 11 (200 psi) and based on the benthic survey (Figure 2) will have a total length of 3,600 feet, of which 2,900 feet will be below sea.

The offshore connection of the pipeline to the buoy will feature a standard lazy wave configuration used in most pipeline-to-floating-structure connections to reduce strain on the pipeline and avoid damage. The lazy wave will use buoy supports and mid-water weights to lift and bend the pipeline before connecting to the buoy’s permeate outtake (Figure 9). The connection of the pipeline to the outtake will feature a breakaway link which would disconnect the pipeline from the buoy for entanglement prevention and to prevent damage.

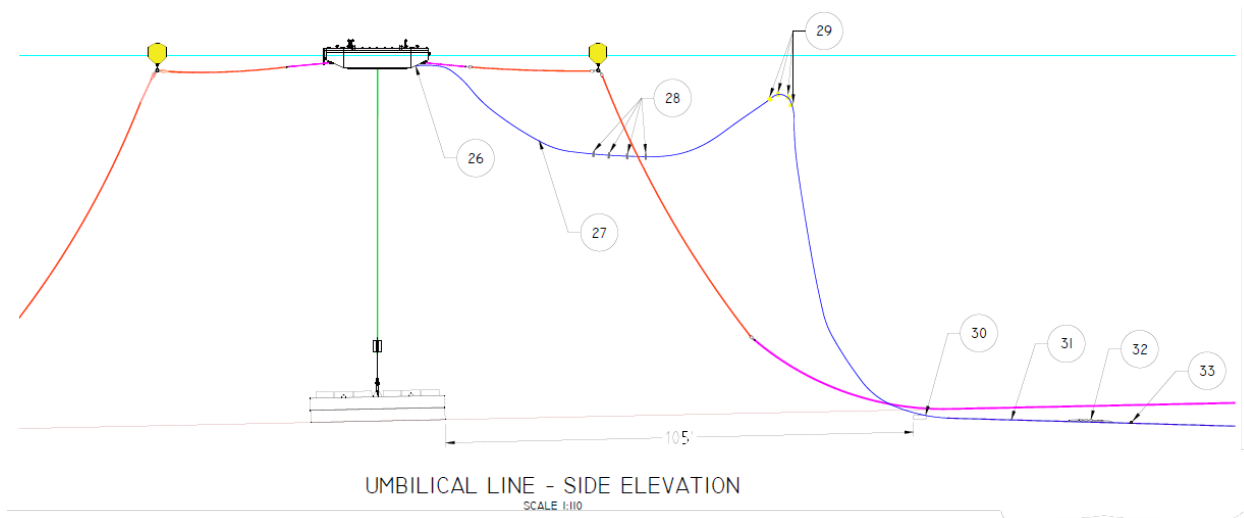


Figure 9: Offshore pipeline connection to the Iceberg featuring a lazy wave configuration

4. Construction/Installation Method

4.1 Pre-Construction Surveys

Prior to the installation of the Iceberg mooring system, pre-construction multibeam hydrographic surveys will be performed to confirm the bathymetry and identify any surficial features within the project boundaries. Based on the bathymetry, the specific locations for the primary mooring spread anchor and the secondary mooring spread anchors and ground legs will be identified and plotted. In addition, the anchor locations for the derrick barge mooring spreads will be identified and plotted. This will ensure that impacts any impacts to environmentally-sensitive areas are minimized. The plots will be detailed in an Anchoring Plan, along with the procedures for setting and recovering anchors and mooring system components. The Anchoring Plan will identify sensitive habitats in the area and avoid these areas, if possible, without creating an unsafe anchoring situation. Some anchors and anchor lines may contact hard-bottom habitat, but every effort will be made to avoid vegetated habitat in those instances where hard-bottom habitat must be contacted by the anchoring system.

4.2 Primary and Secondary Mooring Spreads Installation

Using the plots detailed in the Anchoring Plan and employing real-time survey and positioning services on the barge, the derrick barge spread will set up in a 4-point or 6-point anchor spread at the primary mooring location defined in the Anchoring Plan. The barge will first deploy the primary mooring anchor frame followed by the concrete ballast weights into the frame.

After deployment of the primary mooring anchor frame, the derrick barge anchors will be raised allowing the barge to move. The derrick barge will then move to each of the secondary anchor locations and deploy the chain clump gravity anchor, ground leg chain, synthetic line riser and buoy. The derrick barge will work in “live boat” mode, so no barge anchors or ground tackle will be deployed on the seafloor. Tugboats fore and aft, along with a lateral push boat, will position the barge over the location specified in the Anchoring Plan and the barge will use its crane to drop the clump weight in position. The tugs and push

boat will then move the barge along the approved path as the ground leg chain and riser are deployed from the barge. The onboard survey spread will confirm and document that all anchors and mooring components are within their pre-approved areas and alignments. Once all the anchors and mooring components are installed and confirmed in place, the surface synthetic lines from the buoys will be temporarily secured together to keep the buoys from drifting during deployment of the Iceberg.

4.3 Towing Iceberg

The Iceberg will be launched from a local dock in Noyo Harbor and towed out to the installation site using a towboat, with an assist vessel supporting the tow as needed. If sufficient space or capacity on a local dock is not available at the time of deployment, the Iceberg can be transported to the installation site aboard the materials barge that will be bringing in the mooring system components. During installation and final removal, the derrick barge that will accompany the materials barge will have sufficient capacity to deploy the Iceberg as well as the mooring system components.

4.4 Anchoring Iceberg

During installation, upon arrival of the Iceberg at the offshore installation site, installation-support vessels will hold the Iceberg in place while two of the surface synthetic lines from the buoys are secured to the mooring components on the Iceberg. Divers will then connect the main tether from the Iceberg to the primary mooring anchor on the seafloor, and the main tether system will be actuated to secure the Iceberg in place. The final two surface synthetic lines from the remaining buoys will be secured to the mooring components on the Iceberg and the towboat will release the Iceberg. This will complete the installation of the primary and secondary moorings, and the Iceberg will be captured within the primary and secondary moorings.

4.5 Laying Permeate Pipe

To facilitate a safe and efficient process under the challenging environmental conditions, the permeate pipe will be installed in sections. The first section to be installed will run from the top of the bluff at the wastewater treatment plant, down the vertical cliff face along the existing concrete previously installed to support the maintenance stairwell from the wastewater treatment plant down to ground level, and out to the mean high tide line where it will be connected to the offshore, submerged pipe. The HDPE pipe will be secured to the existing cement covering the vertical cliff face using traditional concrete anchors and saddles. The lower end of the pipe on the beach will be secured with an overlay of articulated concrete mats. No attachments to the underlying dirt or native materials will be required. A flange connection will be provided on end of the pipe on the beach to attach to the offshore portions of the permeate pipe.

The offshore portions of the permeate pipe will consist of sections of HDPE pipe. These will be rolled off of spools on the deployment vessel and pulled to shore using a winch mounted on the bluff and reeved along the onshore portion of the pipe mounts to the beach flange connection point. The first section will be pulled to shore and connected to the beach flange connection. For protective purposes, the permeate pipe may be run through a slightly larger HDPE pipe through the surf zone segment. Since the HDPE pipe is slightly positive buoyant, concrete or steel bullet weights will be added at intervals so that the pipe will sink to the seafloor when pulled into place and flooded down. Additional sections of the nearshore pipe will be deployed, pulled into place and connected to the previously installed section via a flange connection. Once the water depth is sufficient, the pipe will be unspooled and deployed as the deployment vessel fleets further offshore, until all of the pipe is on the seafloor. Divers will support the

pipe deployment to ensure that the pipe is within the pre-approved, designated alignment so that there will be no damage to local ocean flora and fauna.

4.6 Anchoring Permeate Pipe

Once connected to the beach flange, the offshore section of the pipe will be aligned over the top of the existing outfall, which is encased in a concrete overpour. Articulated concrete mats (Submar or equivalent) will be placed over the pipe on top of the existing concrete encasement at intervals between the concrete or steel bullet weights (Figure 10). There will be no mechanical attachment to the concrete encasement or surrounding rock. Near shore, the mats will be placed by a hydraulic RT crane working from the bluff inside the wastewater treatment plant. Offshore, the mats will be placed by the diving support vessel using the deck crane (Figure 11). Divers will support the deployment and placement of the mats once they are near the seafloor in the final location, while always maintaining a safe working distance from the fall zone of the load. The mats have rope loops around the perimeter for rigging attachment and utilize a quick release deployment frame to quickly and safely set mats with minimal support (Figure 12). In the area inaccessible by either the onshore crane or the offshore diving support vessel, divers will deploy sections of the articulated concrete mats and float them into place using air bags or buoys, with movement and alignment assisted by the pull winch on the bluff and cable running along the pipe track.

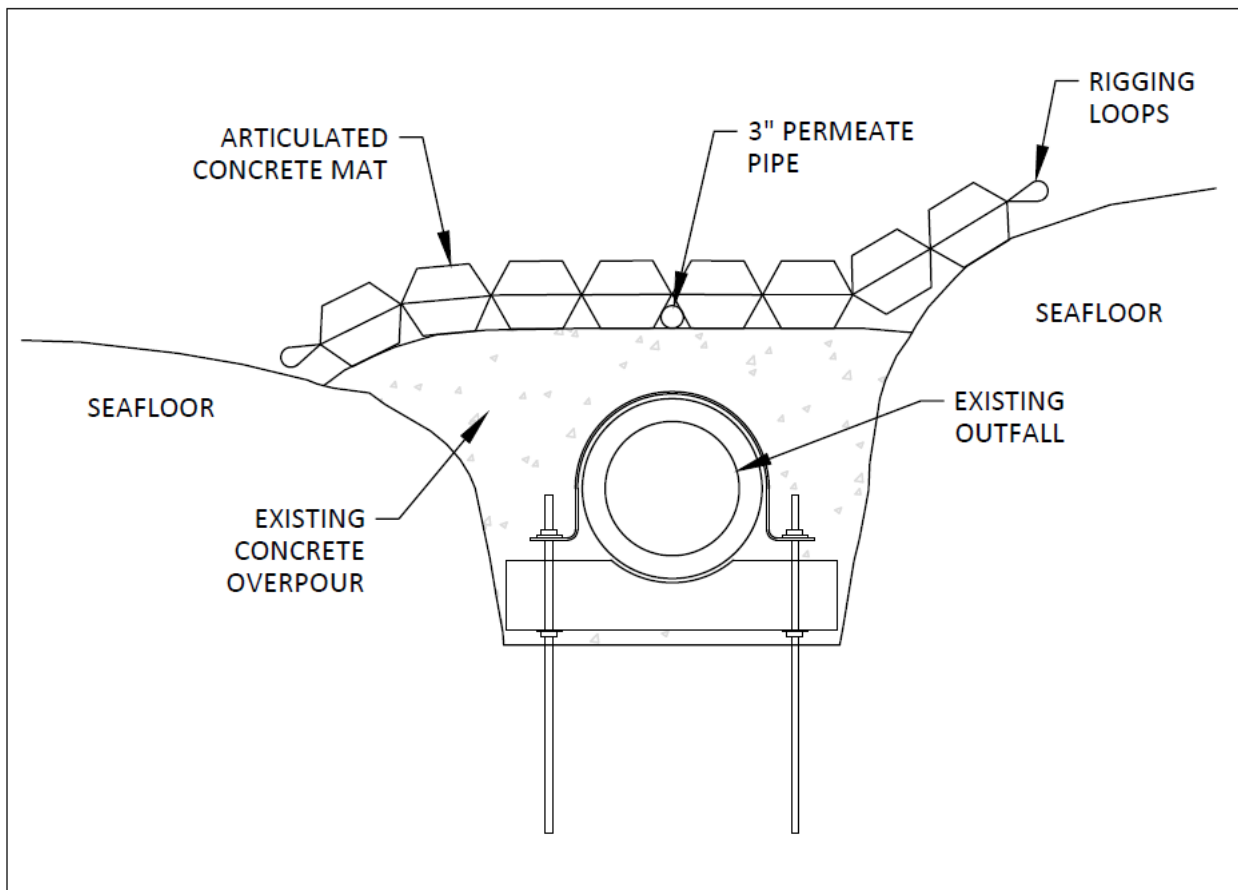


Figure 10 – Articulated Concrete Mat Over Permeate Pipe and Existing Outfall

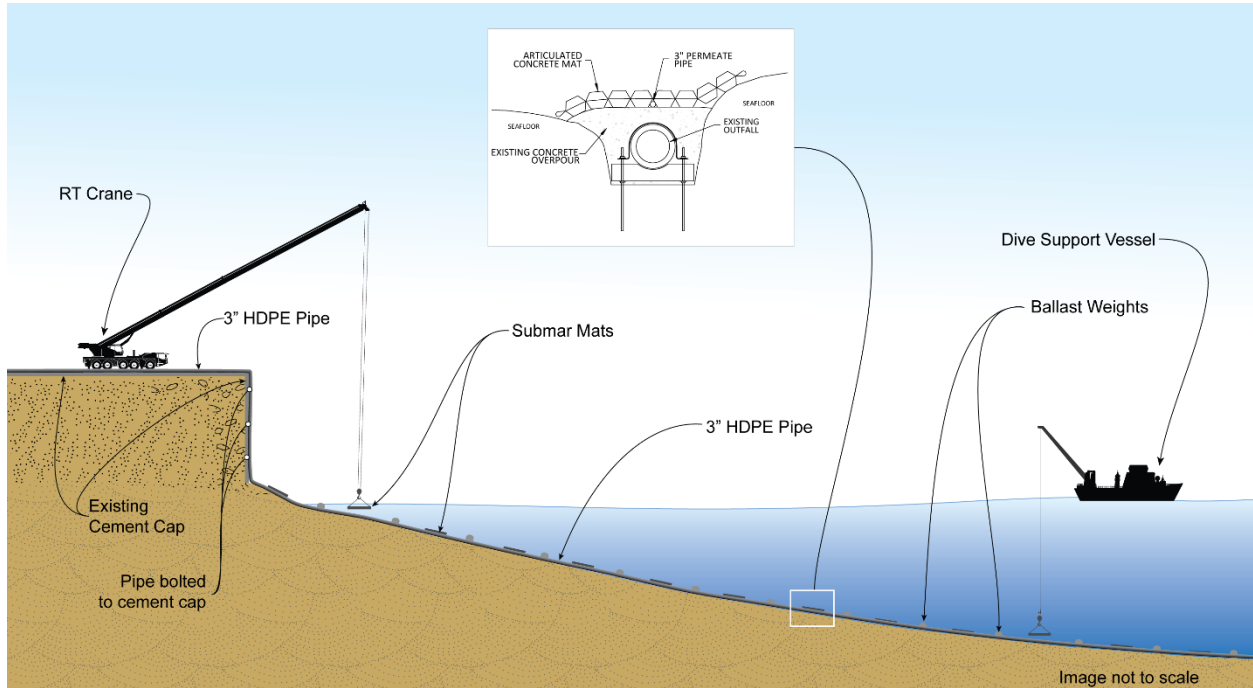


Figure 11 – Placement of Articulated Concrete Mats and Ballast Weights on Permeate Pipe

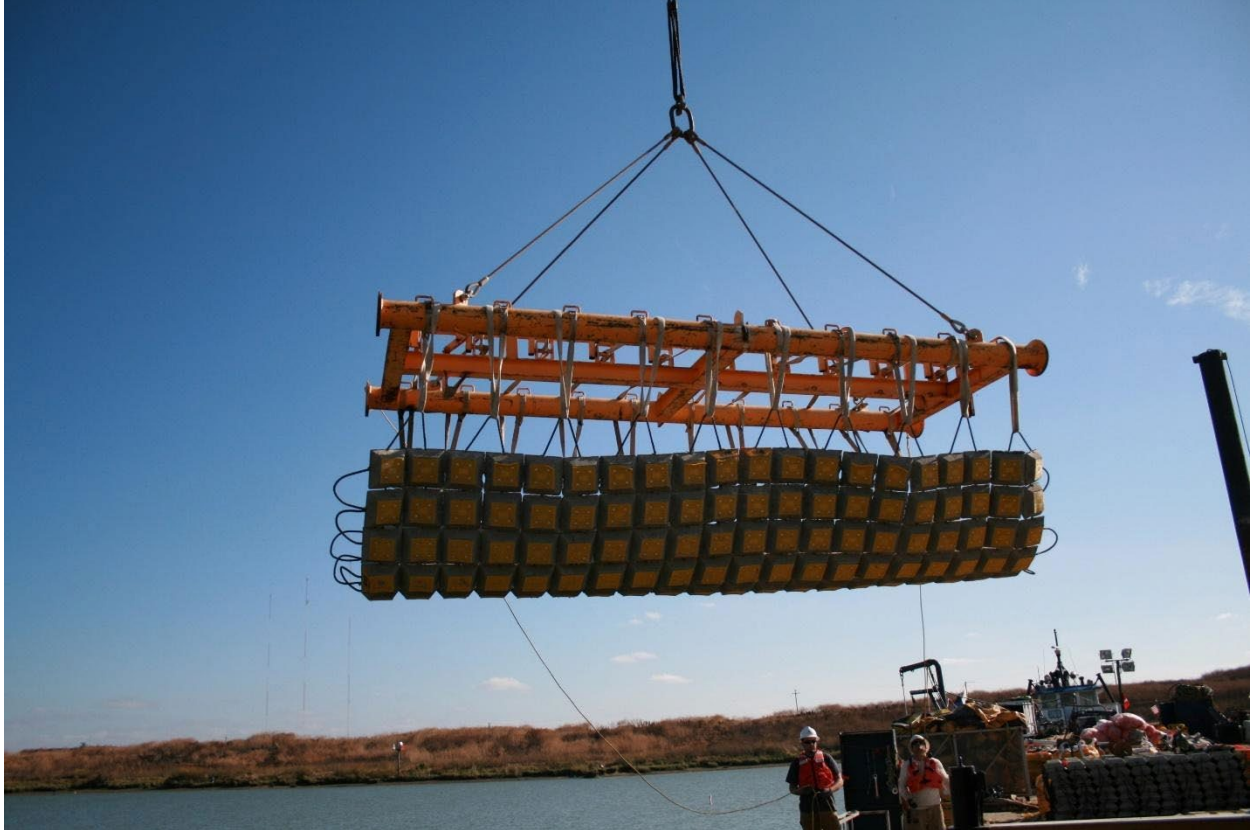


Figure 12 – Articulated Concrete Mat with Deployment Frame

4.7 Connecting Permeate Pipe to Iceberg

Once the Iceberg has been fully connected and secured to the primary and secondary mooring spreads, the offshore end of the permeate pipe will be connected by divers to the Iceberg via the pipeline riser. The tie-in will include a breakaway link at the buoy connection point to prevent damage to the buoy or riser in case of excessive movements due to high seas. This will complete the installation process.

5. Operation and Maintenance Plan

For operations and maintenance activities throughout the project period, the City will contract with Oneka for technical support in the operation and maintenance of the Iceberg. The Iceberg is a new technology that does not incorporate standard water plant operator criteria as certified under the Drinking Water Operator Certification Program. To support the City, Oneka intends to maintain a project staff of three operations personnel on site in Fort Bragg. This team will include the following:

- Operator/Technician
- Field Service Engineer
- Operations Coordinator

The operations team will be based in the the Noyo Harbor area to facilitate rapid response to the Iceberg if needed.

5.1 Operation

The Iceberg desalination buoy is designed to operate continuously throughout the 12-month pilot test period, producing permeate constantly unless planned maintenance activities and/or extreme sea conditions (hurricanes, typhoons, tsunamis, etc) trigger a temporary removal of the device. Once maintenance is completed or extreme sea conditions have subsided, the Iceberg buoy will be moved back into position to resume permeate production. The permeate pumped to shore will have multiple potential uses, but none of them potable at this time. Before any use by the City, the permeate will be tested in accordance with California Division of Drinking Water standards. During this time, the permeate will be directly routed to the wastewater treatment plant outfall as part of the City’s normal discharge. After testing, the City will evaluate the results and determine if the water is suitable for non-potable uses, and thereby replace the potential use of some potable water, such as watering City-owned vegetation, washing down surfaces and equipment at the wastewater treatment plant, and other instances where the small-volume, non-potable water could replace other water sources in the course of existing City operations without altering the City’s operations.

5.1 Testing

The primary purpose of the project is to collect data while demonstrating the functionality of the Oneka desalination buoy technology. Through the course of the project, data will be collected across a range of operating conditions, including wave height and wave frequency, across all seasons. Monitoring and data collection are therefore the focus of the testing program as detailed in Table 3.

Table 3: Iceberg inspection and testing Activities

Inspection/Testing Activity	Frequency
Data collection, analysis and reporting	Daily
Water flows	
Water pressures (Intake, prefilters, pump, process plant, RO membranes, brine, permeate)	
Water quality – feed, brine, and permeate	
Pump performance	
Energy recovery	
Observe and monitor the Sofar meteorologic buoy data	Daily
Monitor weather forecasts (local and internet) for wind and wave notifications	Daily
Storms	
Algae blooms	

Travel to and visually inspect the buoy (all mechanical and electrical items) and mooring lines	Weekly
Sample and analyze permeate samples at shore pipeline connection for comparison with California Division of Drinking Water standards and to identify additional treatment that would be required to meet the standards	Daily
Health, Safety, Security, and Environment (HSSE) – ensuring compliance with all local, state, regional and federal rules and regulations	Ongoing as required throughout the project
Internal and external reporting	As required throughout the project: <ul style="list-style-type: none"> ● Internal R&D requirements ● Internal QA/QC requirements ● Regulatory compliance submissions
Procurement of buoys consumables, lab equipment and test kits/reagents, spare parts, equipment replacement, etc.	Ongoing throughout the project

The testing program will commence in conjunction with installation of the Iceberg buoy. All monitoring sensors and related equipment will be tested and commissioned prior to installation of the buoy and commencement of operation. The testing program described above will be carried out for the duration of the project.

5.2 Maintenance

Maintenance of the Iceberg is accomplished through a combination of on-water maintenance and on-shore maintenance. The buoys are designed to be easily removable from their moorings to enable them to be taken ashore for planned inspections and maintenance, and to carry out any unscheduled maintenance.

The buoy hull and structure will be inspected and cleaned monthly. The buoy hull will be painted with a non-toxic epoxy which will require periodic scraping while at sea. The Iceberg will be brought into Noyo Harbor as needed for pressure-washing and maintenance as needed. Diver surveys will be carried out weekly to ensure the integrity and condition of the moorings and anchors. Oneka will work with the City and local community groups to recruit skilled local tradespeople and engineers to undergo training to form the service team and carry out the planned maintenance of the Iceberg, process plant, and electronics systems. A stock of appropriate spare parts and consumables will be maintained close to the site and will be available to the service teams.

System service requirements are as shown in the following table:

Table 4: Iceberg maintenance schedule

Maintenance Activity	Frequency
General inspection of buoy and mooring from vessel	weekly
Buoy Onboard Systems	
Inspect inlet strainer and clean as required	weekly
Check accumulator pressure	weekly
Sample and verify water quality	weekly
Inspect ultra-filtration and clean as required	monthly
Pump house maintenance	monthly
Pre-Filter cartridges change	monthly
Reverse Osmosis membrane cleaning	every 3-6 months
Process plant check valve inspections	every 3 months
Calibration of permeate water quality sensor	every 3 months
Calibrate check and relief valves	every 3 months
Calibration of pressure transmitters	every 6 months
Inspect battery health	weekly
Clean solar panel	weekly
Sensor validation and calibration	every 6 months
Inspect buoy frame for integrity	every 6 months (when buoy is on land)
Replace pump seals	every 6 months (when buoy is on land)
Repair and replace pulley bushings	every 6 months (when buoy is on land)
Inspect/Replace check valve seals	every 6 months
Replace back pressure regulator seal	every 6 months
Inspect/Replace cathodic protection	every 6 months

Winch maintenance	every 6 months
Accumulator bladder inspection	every 6 months
Buoy Hull (when buoy is on land)	
Hull cleaning	every 3 months or as needed
Paint hull and frame	every 3 months or as needed
Mooring System (diving operations)	
Inspection of BOB rope - main mooring line	weekly
Inspect/Replace mooring main line nylon absorber	every 3 months or as needed
Inspect anchoring links	monthly
Pipeline to Shore	
Inspection pipeline (diving operation)	quarterly

6. Decommissioning Approach

The decommissioning and removal of the Iceberg and associated equipment is the reverse of the installation process, as detailed in the following sections.

6.1 Disconnecting Permeate Pipe from Iceberg

The first step in the decommissioning process will be to disconnect the permeate pipe from the Iceberg. Once the disconnect is complete, the permeate pipe will be weighted down using ballast weights and placed on the seafloor away from the primary mooring system so it will not be affected by or become entangled with the mooring system during the complete recovery.

6.2 Removing Iceberg

While the Iceberg is fully secured in the primary and secondary moorings, divers will disconnect the main tether of the primary mooring from the Iceberg. The towboat will move into position and securely rig the Iceberg, and then disconnect the four synthetic surface lines. Once the Iceberg is free from the primary and secondary mooring lines, the tug will tow the Iceberg either to the derrick barge for recovery to the deck or directly to the dock in Noyo Harbor for recovery.

6.3 Primary and Secondary Mooring Spreads Removal

Using the plots detailed in the Anchoring Plan, and employing real-time survey and positioning services on the barge, the derrick barge spread will set up in a 4-point or 6-point anchor spread at the primary mooring location defined in the Anchoring Plan. The barge will recover the concrete ballast weights and

the primary mooring anchor frame to the deck. The derrick barge will then set up in live boat mode at each of the secondary mooring locations and recover the synthetic line riser and buoy, ground leg chain and the gravity anchor to the deck.

6.4 Recovering Permeate Pipe

The onshore portion of the permeate pipe, running from the top of the bluff at the wastewater treatment plant, down the vertical cliff face and out to the mean high tide line, will be disconnected at the flange connection at the mean high tide line. The vertical pipe section will be supported with rigging and the attachment points to the concrete cap on the cliff face will be disconnected and removed. The onshore pipe section will then be recovered to the wastewater treatment plant, sectioned, and dispositioned for recycling or disposal.

For the nearshore portion of the permeate pipe above the tide line, beach crews or divers will rig the mat deployment frame to the rigging loops on the articulated concrete mats covering the pipe and the RT crane on the bluff in the wastewater treatment plant will recover the mats to the facility.

Similarly, for the offshore portion of the permeate pipe, divers will rig the mat deployment frame to the rigging loops on the articulated concrete mats covering the pipe and the crane on the diving support vessel will recover the mats to the deck.

In the area inaccessible by either the onshore crane or the offshore diving support vessel, divers will rig air bags or buoys to the rope loops on the articulated concrete mats and float them up to the surface, where they will be pulled to the diving support vessel using a deck winch and then recovered to the deck using the crane.

Once all of the articulated concrete mats have been removed from over top of the permeate pipe and are recovered, compressed air will be pumped into the pipe at the offshore terminus to push out the entrained water. The entrained water will empty into the holding tank within the wastewater treatment plant. This will float the pipe making its retrieval easier. This will allow the pipe to float to the surface. The pipe will then be pulled to the derrick barge or the diving support vessel, where it will be recovered to the deck and cut into sections for recycling or disposal.

6.5 Post-Construction Surveys

Once the Iceberg, mooring spreads and permeate pipe have all been recovered, a post-construction multibeam hydrographic survey will be performed and compared to the pre-construction survey to: 1. Confirm that no project-related materials or debris remain in the work space, 2. Examine for any detectable changes in the marine habitat attributable to the installation and removal of the Iceberg and associated systems, 3. Estimate any changes to the habitat that may have occurred and could be attributed to the installation, operation, and removal of the Iceberg and associated systems.

7. Project Timeline

Permitting - TBD

Manufacturing – Completed and Tested

Start- final permit delivery Starts W0.

- W1. main anchor deployment
- W2. secondary mooring anchor deployment
- W3. Mooring and main anchor line install
- W4. site preparation for the arrival of the buoy
- W5. Crane rental
- W5. Delivery of the buoy in pieces to site and unloading with crane
- W6-7. assembly of the buoy on site
- W8. On land testing of the buoy, including hydraulic and sensor systems
- W9. Deployment the buoy with towing
- W9. install of the buoy
- W10. Monitoring of the water production and quality using Data

8. Water Boards' Requested Application Materials

The Regional Water Quality Control Board, in consultation with the State Water Resources Control Board, provided a file titled *City of Fort Bragg Seawater Desalination Pilot Buoy Application Materials* via email on March 12, 2024. The file *identifies information necessary for the North Coast Regional Water Quality Control Board (North Coast Water Board) to (1) determine if the City of Fort Bragg's proposed pilot wave-powered seawater desalination buoy (Project) is exempt from Water Quality Control Plan for Ocean Waters of California (Ocean Plan) Chapter III.M.2, M.3, and M.4 as a small, portable desalination facility, (2) make findings pursuant to Water Code section 13142.5(b), and (3) determine whether notice of applicability under the North Coast Water Board's Low Threat General Order (Order No. R1-2020-0006) can be issued.* The following sections provide responses to the information requested in that file.

8.1 Proposed Exemption from Chapters III.M.2, M.3, and M.4 of the Ocean Plan

- Project name, physical address, contact information: City of Fort Bragg Pilot Test of Oneka Wave-Powered Desalination Buoy, 416 North Franklin Street, City of Fort Bragg, CA 95437; John Smith (jsmith@fortbragg.com; 707-961-2823 ex. 136)
- Project owner, project operator, landowner, address for correspondence, Billing address: City of Fort Bragg, 416 North Franklin Street, City of Fort Bragg, CA 95437; John Smith (jsmith@fortbragg.com; 707-961-2823 ex. 136); billing address is the same as physical address?
- Project location: The project will be located offshore of the City of Fort Bragg in Mill Bay at Lat: 39.44° Lon:-123.82°. The existing wastewater treatment plant ocean outfall discharge point 001 is located at Lat:39.44 and Lon:-123.82. The permeate from the desalination buoy will make landfall at the City of Fort Bragg wastewater treatment plant where it will be piped directly to the ocean outfall to discharge unused permeate. Some permeate will be drawn from the pipeline inside the wastewater treatment plant for testing and non-potable uses.

- Information showing that the Project withdraws less than 0.10 million gallons per day of seawater: See Section 3.1.1.
- Operational agreement to demonstrate that City of Fort Bragg staff will be responsible for operating the Project: See Attachment Purchase, Operation and Maintenance Agreement.
- Duration of the proposed Project: 12 months; see Sections 1 and 3
- Plan for Project decommissioning to demonstrate that the Project is portable: See Section 6
- Other information demonstrating that the Project is portable (e.g., size or scalability, short-term duration, ability to relocate the Project, logistical or operational constraints unique to portable facilities, frequency of use, or other information that is unique to small, portable desalination facilities relative to permanent facilities): Please refer to Sections 3.0 and 4.0 above.

8.2 Water Code Section 13142.5(b) Determination

8.2.1 Site

8.2.1.1 Infrastructure to be Used or Constructed

Section 3.0 above details the Iceberg design, mooring system, and permeate pipeline to be used and constructed.

The Iceberg is described in detail in Section 3.1 above. In brief, the Iceberg is a self-contained seawater desalination system that uses ambient wave energy to pressurize seawater and pass it through RO membranes to remove all salts, pathogens, and contaminants of emerging concern in the source seawater. The resulting permeate remains pressurized as it is conveyed to shore through a three-in diameter HDPE pipe. Sufficient wave energy is required to pressurize the seawater enough to force the water through the reverse osmosis membranes and travel to the permeate receiving point at the seaward fenceline of the City's wastewater treatment plant. The City will extend the permeate pipeline inside the wastewater treatment plant to an in-plant discharge point where the permeate will be routed back to the ocean via the existing ocean outfall. The City's permeate pipeline within the wastewater treatment plant will include valving to allow permeate to be drawn from the line for testing and potentially for alternative, non-potable uses at the City's determination. After the 12-month pilot testing deployment, the Iceberg will be removed from service, disconnected from the permeate pipeline and mooring system, and towed into Noyo Harbor for final decommissioning. The final decommissioning of the Iceberg will culminate with its removal from the water.

The mooring system is described in detail in Section 3.2 above. The mooring system will include a single primary anchor located directly beneath the Iceberg and a secondary mooring system to protect the environment, residents, and Iceberg should the primary anchor line fail at any point during the deployment. All lines will be sufficiently tensioned to eliminate any chance of loops developing that could act as primary entanglement snares for marine life. The primary anchor will consist of a 44T wet weight gravity anchor. The secondary mooring system will consist of 8 to 11 T wet weight gravity anchors with a surface marker buoy denoting the location of the anchor and a mooring line connected to the Iceberg. All mooring system elements will be placed within the soft-bottom area identified during the hydrographic survey and habitat visual inspection (Figure 1 and Appendix 1). After the Iceberg has been removed from

service and towed into Noyo Harbor, the mooring system will be removed from the water as described in Section 6.3.

8.2.1.2 Preferred Site

The site depicted in Figure 8 (Site layout) was selected after examining the general area for suitable submerged sites to place the mooring and conveyance system and the terrestrial site to receive the permeate. The permeate would not be usable as a potable supply until tested and certified by the California Division of Drinking Water. Testing supporting such a certification was planned to occur during the pilot study. Therefore, a permeate delivery location was required that could both accept the permeate flow and properly use or dispose of the water. The City's wastewater treatment plant is located on the coast. It has space to accept the permeate with plumbing infrastructure in place to either store small amounts of permeate or directly dispose of the permeate into its operating wastewater outfall.

The ideal distance from shore for the Iceberg is less than one mile. Positioning the Iceberg requires careful consideration of pumping efficiency, ambient wave energy, water depth for brine dispersion, and visual impacts. The preferred site is located 0.5 miles offshore. At this distance, the system's pumping capacity to deliver the permeate to shore is not exceeded and would not require supplemental pumping that would require energy beyond the wave power available in the existing design. The distance minimizes the visual impact of the Iceberg in comparison to maintaining a position closer to shore. The low profile of the Iceberg will make it difficult to see from shore. Lastly, the water depth is optimal to tap into the natural wave energy without being in the dominant surf zone where the breaking waves could damage the Iceberg.

The preferred site minimizes the impact to all forms of marine life in comparison to the alternatives (discussed below) by:

1. Preferentially placing the mooring system within an area dominated by soft-bottom habitat.
2. Minimizing the permeate pipeline distance to shore to maximize the efficiency of the wave-powered system to pump the water to shore without supplemental energy requirements.
3. The pipeline alignment can follow the existing, previously disturbed habitat created by the installation of the wastewater treatment plant's ocean outfall.

The preferred site is presented in Figure 1 along with the locations of previously mapped kelp canopy and MPAs. The mapped kelp canopy was also used as a general proxy for the location of hard substrate due to kelp's reliance on hard substrate in high-wave-energy environments as the anchorage for the kelp's holdfast. Using the available data, both from public sources such as the California Department of Fish and Wildlife, and data acquired for the project using side scan sonar and ROV surveys, the preferred site is located approximately 0.75 miles from the nearest MPA and at least 300 ft from the nearest, historic kelp canopy. No kelp canopy was observed during the 2023 side scan and ROV surveys conducted explicitly for the project.

Alternative sites were initially screened. Noyo Harbor was considered as it is near the water treatment plant and close to the City's harbor-based marine infrastructure. The location was considered infeasible due to the potential impact on the rest of the Noyo Harbor activities, especially vessel traffic. To operate, the Iceberg would need to be placed in the mouth of the harbor or outside the harbor but close enough to route the permeate pipeline to shore. In either location, the Iceberg and its mooring system would create a significant hazard to navigation.

Additional sites within Mill Bay were screened using available desktop resources. The presence of previously mapped kelp beds indicates likely areas of hard bottom that would be impacted by the mooring system and conveyance pipeline. Historic nautical maps further indicate hard substrate in most of Mill Cove which was reinforced by the rocky shoreline. The preferred location is directly offshore of the lone sandy beach in the area indicating a potential area of soft-substrate offshore. This was confirmed with the 2023 hydrographic survey completed explicitly for this project (Appendix 1).

8.2.1.3 Ambient Salinity

The area does not have any ongoing water quality monitoring programs. In Section 2.0 above, two sources of data were aggregated to determine ambient salinity. The AMS (2023) once-a-permit monitoring in support of the City's wastewater treatment plant measured salinity on August 31, 2022 at five stations surrounding the City's ocean outfall in the vicinity of the preferred site for the Iceberg. Salinity averaged 33.0 PSS during this monitoring. The nearest source of long-term salinity monitoring, Humboldt Bay, recorded the same average salinity (33.0 PSS) for the three-year period of March 22, 2021 – March 22, 2024.

8.2.2 Design

Section 3.0 above contains a detailed description of the system's design and engineering. The following discussion highlights some of the salient features that minimize impacts to water quality, the surrounding environment, and all forms of marine life.

The intake structure (Figure 5) also serves as the discharge. Seawater will be withdrawn from up to six feet below the water's surface through 60-micron (0.06 mm) mesh screening on the intake, with a maximum through-screen velocity of 0.22 ft/sec (includes a 15% blockage of open screen area). The through-screen velocity would be lower when the screen is cleaner. The Iceberg screen's mesh is significantly finer than the 1-mm mesh required under the California Ocean Plan Section M. This increases the protection of all forms of marine life. Considering 60 microns is finer than the area's average sediment grain size, the Iceberg mesh will exclude all forms of marine life to a level commensurate with a subsurface intake.

The intake through-screen velocity (0.22 ft/sec) is less than the 0.5 ft/sec required in the California Ocean Plan Section M. This velocity is considered to be effective for essentially eliminating impingement. The near-surface location of the intake structure means it will exclusively interact with mobile organisms that are characterized as strong swimmers and capable of evading the 0.5 ft/sec through-screen velocity. Furthermore, the 60-micron mesh intake screen excludes all juvenile and adult fish and invertebrates in addition to a substantial portion of the plankton community. No impingement will occur.

The discharge through the intake screen backflushes the screen, helping to maintain a clean screen face. The screen is also mechanically brushed with rotating brushes to maintain a cleaner screen face and minimize the through-screen velocity for both the intake and discharge operational modes. The maximum brine velocity at the point of discharge is 0.23 ft/sec and brine will be diluted to within 2 ppt (PSS) of ambient within 50 ft of the discharge even when discharging the most saline brine listed in Table 2 above. Discharging the brine through the intake structure at a nominal depth of six ft eliminates the potential for suspension of seafloor sediments. The brine mixes naturally without added energy to enhance mixing, such as with a diffuser, as it falls through the water column until achieving dilution. No brine is expected to reach the seafloor. The near-passive discharge does not induce shearing forces as expected from a

standard multiport diffuser. This process minimizes impacts to all forms of marine life to the extent possible.

The mooring system will consist of as few midwater lines as possible to minimize the entanglement risk. All lines will be tensioned enough to prevent loops large enough to ensnare marine life, e.g., marine mammal tail or flippers. During weekly inspections, the operations and maintenance staff will inspect all mooring lines for the presence of nets and associated marine debris that could pose a risk of secondary entanglement. If detected, the debris will be removed as soon as safely possible. The entanglement mitigation plan is included in Appendix II and provides additional detail.

8.2.3 Technology

The Iceberg minimizes impacts to all forms of marine life, water quality, and the marine environment through the use of its 60-micron mesh intake screen, shallow intake point, low through-screen velocity, and low intake volume. Passive discharge of the brine through the intake structure also minimizes impacts to all forms of marine life, water quality, and the marine environment. The passive diffusion of brine does not generate shearing forces as would occur with a multiport diffuser. Discharging low volumes of brine near the ocean's surface allows the brine to mix as it falls through the water column until it has diluted to near-ambient salinity within 50 ft of the discharge. The Iceberg will be moored along the 80-ft, or deeper, isobath allowing for sufficient water depth for the brine to fall and mix well before contacting the seafloor. The near-surface passive discharge also eliminates the chance of suspending any seafloor sediments.

Energy use is a common concern with seawater desalination. The Iceberg operates carbon-free with no added energy from the local power grid. Ambient waves generate the energy needed to operate the Iceberg's desalination system and deliver permeate to shore through patented wave actuators. Additional electrical power, if needed, for ancillary systems will be generated by on-board solar panels. However, these ancillary systems are not required to produce permeate.

8.2.4 Mitigation

No forms of marine life that can be assessed using the Empirical Transport Model and Area of Production Forgone (ETM/APF) as required under Section M of the California Ocean Plan will be entrained through the 60-micron mesh intake screen. All marine life with sufficient ancillary information to conduct an ETM/APF analysis are larger in all morphometric dimensions than 60-microns. Phytoplankton, nanoplankton, and microplankton that would pass through the standard 335-micron mesh net may be entrained during the Iceberg's operation.

The Iceberg will be moored over a soft-bottom area that does not support vegetative life. Furthermore, kelp resources are not known to persist in either the mooring area or along the permeate conduit to shore. Lastly, most of coastal California suffers from urchin overgrazing, substantially reducing kelp prevalence. The City's coast also suffers this urchin plague, as evidenced by the AMS (2023) survey results. The sea urchin populations have increased in response to predator declines, especially predatory sea stars that have declined due to wasting disease. Shading from the Iceberg is not considered a threat to the local photosynthetic resources.

No impingement or entrapment will occur during the Iceberg deployment and operation. The low through-screen velocity and the small mesh size of the intake eliminates impingement. In addition, there is no forebay or similar area where marine life can accumulate and become entrapped; the screening surface is at the point of withdrawal. No entanglement is expected because of the proposed entanglement

mitigation plan (Appendix II). Tensioned lines and frequent inspections are planned to minimize the risk of primary and secondary entanglement.

No impacts to sensitive marine habitats are expected. A pre- and post-construction survey of the final deployment areas will indicate if the Iceberg, mooring system, and permeate pipeline installation, operation, and removal resulted in any impacts to the area's marine habitat.

Any mitigation needed for the project would be offset by contributions to the University of California, Davis Lost Fishing Gear Recovery Project. (<https://whc.vetmed.ucdavis.edu/california-lost-fishing-gear-recovery-project>). The project removes ghost fishing gear from the marine environment. Removing lost fishing gear reduces the chances for secondary entanglement and additional environmental benefits with removing lost fishing gear.

9. References

Foster and Schiel 2015

AMEC

AMS 2023

Rodgers-Bennet and Catton 2019

EXHIBIT 2
DWR AND CITY GRANT FUNDING AGREEMENT

**FUNDING AGREEMENT
BETWEEN
THE STATE OF CALIFORNIA, DEPARTMENT OF WATER RESOURCES
AND
CITY OF FORT BRAGG
FOR FUNDING ASSISTANCE FROM THE WATER DESALINATION GRANT PROGRAM
FOR A DESIGN PILOT PROJECT
TITLED
ONEKA SEAWATER DESALINATION BUOY DESIGN PILOT STUDY
DEPARTMENT OF WATER RESOURCES AGREEMENT NO. 4600015131
PURSUANT TO THE
WATER QUALITY, SUPPLY AND INFRASTRUCTURE IMPROVEMENT ACT OF 2014**

THIS FUNDING AGREEMENT is entered into by and between the Department of Water Resources of the State of California, herein referred to as the "State" and the City of Fort Bragg, a public agency in the State of California, duly organized, existing, and acting pursuant to the laws thereof, herein referred to as the "Funding Recipient", which parties do hereby agree as follows:

1. **AUTHORIZATION AND AWARD.** The State is entering into this Funding Agreement pursuant to the following:

California Water Code Section 79765, enacted pursuant to Proposition 1, the Water Quality, Supply and Infrastructure Improvement Act of 2014, California Water Code, Division 26.7, Section 79700 et seq.

The "Final Water Desalination Grant Program Round 4 Proposal Solicitation Package" dated June 16, 2017, hereinafter referred to as "PSP", as approved by the Director of the Department of Water Resources on June 15, 2017, by memorandum dated June 9, 2017.

The award of funds to the Eligible Project by memorandum approved by the Director of the Department of Water Resources on March 1, 2023, hereinafter referred to as "Award Date". The subject of this memorandum was Continuous Application Process Group 5 (CAP 5) Grant Funding and the date of this memorandum was February 23, 2023.

The Funding Recipient is authorized to enter into this Funding Agreement pursuant to the resolution incorporated into this agreement as Exhibit E (Funding Recipient Resolution).
2. **PURPOSE AND ELIGIBLE PROJECT.** State shall provide a grant to and for the benefit of Funding Recipient for the purpose of Oneka Seawater Desalination Buoy Design Pilot Study, herein referred to as the "Eligible Project". The Eligible Project consists of only the portion of the project that is considered consistent with the goals and scope of the grant solicitation as defined in Section 3.2 of the PSP and is necessary to achieve its intended objectives as stated in Exhibit A. The Eligible Project is more particularly described in Exhibit A (Project Description).
3. **ELIGIBLE PROJECT COST.** The reasonable cost of the Eligible Project is estimated to be \$1,490,000.
4. **GRANT AMOUNT AND REIMBURSEMENT PERIOD.** The maximum amount payable by the State under this Funding Agreement shall not exceed \$1,490,000. Grant funds shall be applied to Reimbursable Costs incurred on the Funded Project after March 1, 2023, and on or before the Project Completion Date specified in Section 8.
5. **FINANCIAL OBLIGATION OF FUNDING RECIPIENT.** The Funding Recipient agrees to pay any and all costs associated with the completion of the Eligible Project, including without limitation any and all Eligible Project costs exceeding the Grant Amount specified in Section 4. This financial obligation in excess of the Grant

Amount necessary for completion of the Eligible Project is estimated to be \$0.00, as shown in Exhibit B (Budget).

6. **FUNDING MATCH.** The Funding Recipient is required to provide a Funding Match toward Reimbursable Costs of the Eligible Project equal to at least 50 percent of the costs of the Funded Project, which is the Eligible Project less the Non-Funded Portion of Eligible Project. Reimbursable Cost is defined in paragraph AA5, Exhibit AA of this Funding Agreement. The Funding Match must be in the form of either funds applied to costs incurred or services provided for the Funded Project specified in Exhibit A (Project Description) but cannot include Other State Funding, which is funding or services provided by another state program administered by the Department of Water Resources or another state agency. Proposition 1 provides for an exception to the Funding Match requirement for projects benefitting a Disadvantaged Community (DAC) or an Economically Distressed Area (EDA), which may be eligible for a waiver or reduction in the Funding Match. The Funding Recipient's Funding Match has been waived since the Funding Recipient has established DAC status in accordance with the PSP.
7. **EXECUTION DATE.** "Execution Date" means the date the State signs the Funding Agreement indicated on page 4.
8. **PROJECT COMPLETION DATE.** Project Completion Date is the date of approval by the State of the Final Report required pursuant to Section AA15. This date is scheduled to be March 1, 2025.
9. **TERM OF FUNDING AGREEMENT.** The term of this Funding Agreement begins on Execution Date. The term of this Funding Agreement terminates on the March 1, 2029, hereinafter referred to as "Agreement End Date", to allow for the Post-Project Performance Reporting. These dates are in effect unless the Funding Agreement is otherwise amended or terminated as provided in this Funding Agreement.
10. **PROJECT REPRESENTATIVES.** The Project Representatives during the term of this Funding Agreement are as follows:

State	Funding Recipient
Name: Sean Sou, Manager Alternative Supplies and Operations Section Statewide Infrastructure Investigations Branch Division of Planning	Name: Peggy Ducey, City Manager
Department of Water Resources	City of Fort Bragg
Street Address: 715 P Street Sacramento, CA 95814	Street Address: 416 North Franklin Street Fort Bragg, CA 95437
Mailing Address: P.O. Box 942836 Sacramento, CA 94236	Mailing Address: 416 North Franklin Street Fort Bragg, CA 95437
Phone: (916) 902-7722	Phone: 707-961-2823
e-mail: sean.sou@water.ca.gov	e-mail: pducey@fortbragg.com

Direct all communications to the Project Managers as follows:

State	Funding Recipient
Attention: Clark Churchill, Engineer, Water Resources	Attention: John Smith Title: Director of Public Works
Section/Unit: Division of Planning	Section/Unit: Public Works
Department of Water Resources	City of Fort Bragg
Street Address: 715 P Street Sacramento, CA 95814	Street Address: 416 North Franklin Street Fort Bragg, CA 95437
Mailing Address: P.O. Box 942836 Sacramento, CA 94236	Mailing Address: 416 North Franklin Street Fort Bragg, CA 95437
Phone: 279-599-7292	Phone: 707-961-2823 ex. 136
e-mail: clark.churchill@water.ca.gov	e-mail: jsmith@fortbragg.com

Either party may change its Project Representative or Project Manager upon written notice to the other party.

11. STANDARD PROVISIONS AND INCORPORATION OF DOCUMENTS. This Funding Agreement is complete and is the final Agreement between the parties. The following exhibits are attached and made a part of this Funding Agreement by this reference:

Exhibit AA – State Funding Program Provisions

Exhibit A – Project Description

Exhibit B – Budget

Exhibit C – Schedule

Exhibit D – Standard Conditions

Exhibit E – Funding Recipient Resolution

Exhibit F – Report Formats and Requirements

Exhibit G – Requirements for Data Submittal **(Not applicable; Not attached.)**

Exhibit H – State Audit Document Requirements and Funding Match Guidelines for Funding Recipients

Exhibit I – Monitoring and Maintenance Plan Components **(Not applicable; Not attached.)**

Exhibit J – Project Location

Exhibit K – Information Needed for Escrow Process and Closure **(Not applicable; Not attached.)**

Exhibit L – Appraisal Specifications **(Not applicable; Not attached.)**

Exhibit M – Local Project Sponsors **(Not applicable; Not attached.)**

Exhibit N – Special Conditions **(Not applicable; Not attached.)**

12. PROGRAM PROVISIONS. Unless otherwise provided herein, the funding provided under this Funding Agreement will be administered according to the provisions in the PSP.

13. EXECUTIVE ORDER N-6-22 COMPLIANCE: On March 4, 2022, the Governor issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. The EO may be found at: <https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf>. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine, as well as any sanctions imposed under State law. The EO directs DWR to terminate funding agreements with, and to refrain from entering any new agreements with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine that the Funding Recipient is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Agreement. The State shall provide the Funding Recipient advance written notice of such termination, allowing the Funding Recipient at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.

IN WITNESS WHEREOF, the parties hereto have executed this Funding Agreement.

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

CITY OF FORT BRAGG

Ajay Goyal

Peggy Ducey

Ajay Goyal, Manager
Statewide Infrastructure Investigations Branch
Division of Planning

Peggy Ducey, City Manager

5/4/2023
Date _____

5/4/2023
Date _____

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

Kamyar Guivetchi

Kamyar Guivetchi, Manager
Division of Planning

5/4/2023
Date _____

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

Approved as to Legal Form and Sufficiency

James Herink

For Robin Brewer, Assistant General Counsel
Office of the General Counsel

5/4/2023
Date _____

Attorney Initial Review
Initials *JH* Date 5/4/2023

Exhibit AA

State Funding Program Provisions

- AA1. ENVIRONMENTAL DOCUMENTATION. Under provisions of the California Environmental Quality Act (CEQA), State may have the role of Responsible Agency.
- a. State's concurrence with Lead Agency's CEQA documents is fully discretionary and shall constitute a condition precedent to any work (i.e., construction or implementation activities) for which it is required. Once CEQA documentation has been completed, State will consider the environmental documents and decide whether to continue to fund the project or to require changes, alterations or other mitigation. Funding Recipient must demonstrate compliance with all applicable requirements of CEQA, including but not limited to tribal notification and consultation imposed by AB 52 (Gatto, 2014).
 - b. Prior to commencement of construction, implementation, or other activities that are subject to CEQA or environmental permitting, the following actions must be performed:
 - (1) Funding Recipient shall submit to the State all applicable environmental permits as indicated on the Environmental Information Form (see PSP Attachment 15) provided by the State,
 - (2) Funding Recipient shall submit to the State all documents that satisfy the CEQA process,
 - (3) State has completed its CEQA compliance review as a Responsible Agency, and
 - (4) Funding Recipient has received from the State written concurrence with Lead Agency's CEQA documents and State notice of verification of environmental permit submittal.
 - c. Prior to commencement of construction, implementation, or other activities that are subject to the National Environmental Policy Act (NEPA), the Funding Recipient must demonstrate that it has complied with all applicable requirements of NEPA by submitting copies of any environmental documents, including environmental impact statements, Finding of No Significant Impact, mitigation monitoring programs, and environmental permits as may be required.
- AA2. FINANCIAL CAPABILITY DOCUMENTATION. Prior to disbursement of any money under this Funding Agreement, the Funding Recipient shall assure State that it has the financial capability to meet its obligations to pay for the Total Eligible Project costs less the Grant Amount received, as provided in Section 5 (Financial Obligation of Funding Recipient) of this Funding Agreement. As part of this assurance, the Funding Recipient may be required to submit the most recent three (3) years of audited financial statements and any cost sharing agreements with other entities providing Funding Match for the Funded Project, as defined in Exhibit A (Project Description).
- AA3. COMMENCEMENT OF CONSTRUCTION OR IMPLEMENTATION. Prior to commencement of construction or implementation activities, the following actions must be performed:
- a. Funding Recipient shall submit to the State final hard copy and e-file plans and specifications signed by a California Registered Civil Engineer or other qualified licensed professional for each approved project listed in Exhibit A (Project Description) of this Funding Agreement. The hard copy plan documents are to be submitted in half size.
 - b. Environmental documentation actions specified in Sections AA1.b and AA1.c must be completed.
 - c. Funding Recipient shall submit to the State a monitoring plan as required by Section AA18 and Exhibit I (Monitoring and Maintenance Plan Components).
- AA4. COMPLIANCE WITH LAWS AND POLICIES. Funding Recipient shall comply with and require its contractors and subcontractors to comply with all applicable local, state, and federal laws, regulations, and policies. State funding is conditioned upon the Funding Recipient's compliance with the following laws, as applicable. State is under no obligation to disburse money for the Project until Funding Recipient has demonstrated compliance with these and other applicable laws as State determines appropriate.

- a. Urban Water Management Plans. California Water Code, section 10656.
- b. Water Conservation. California Water Code, section 10608.56, paragraph (a).
- c. Water Meters. California Water Code, section 525 et seq.
- d. Agricultural Water Management Plans. California Water Code, section 10608.56, paragraph (b).
- e. Groundwater Monitoring. California Water Code, sections 10920 et seq. and 10933.7.
- f. Groundwater Management Plans. California Water Code, section 10753.7.
- g. Surface Water Diversion Reporting Compliance. California Water Code, section 5103, paragraph (e).
- h. Open and Transparent Water Data Act. California Water Code, section 12406.

At the State's request, Funding Recipient may be required to demonstrate continuing compliance with these laws during the performance of this Funding Agreement.

AA5. REIMBURSABLE COSTS. Reimbursable Costs are costs that may be reimbursed by State grant or may be paid for using funding sources qualifying as Funding Match. Reimbursable Costs must be incurred on the Funded Project within the dates specified in Section 4 for Grant Reimbursement and Section 6 for Funding Match. Reimbursable Costs must be reasonable and necessary to perform the work for the Funded Project as described in Exhibit A (Project Description). Reimbursable Costs include the following:

- a. Costs of studies, engineering, and design.
- b. Preparation of environmental documentation.
- c. Environmental mitigation.
- d. Monitoring during the Funded Project, as described in Exhibit A.
- e. Project construction, fabrication, installation, and improvement of facilities.
- f. Project-specific equipment dedicated to the Funded Project and that cannot be used for other purposes.
- g. Operation and maintenance during the operation of projects designated as research pilot or design pilot projects.
- h. Research activities for projects designated as research pilot projects.
- i. Travel expenses identified in Exhibit A (Project Description) as essential to specific tasks for the Funded Project and incurred in accordance with Section D45.
- j. Administrative costs. Reimbursable administrative expenses are the necessary costs incidental but directly related to the Funded Project included in this Funding Agreement, including the portion of overhead and administrative expenses that are directly related to the Funded Project, that are supported in accounting records in accordance with Exhibit D (Standard Conditions), Section D1.a., and Exhibit H (State Audit Document Requirements and Funding Match Guidelines for Funding Recipients). Reimbursable administrative costs will be limited to ten percent (10%) of the State grant provided through this Funding Agreement or ten percent (10%) of the amount counted toward the minimum Funding Match.

Any and all money disbursed to Funding Recipient under this Funding Agreement shall be used solely to pay Reimbursable Costs in accordance with applicable provisions of the law. Funds or services claimed by Funding Recipient as Funding Match must be applied to Reimbursable Costs of the Funded Project.

Costs designated as contingency costs in the budget are Reimbursable Costs insofar as contingency funds are actually spent for otherwise Reimbursable Costs described in this section. Reimbursable Costs may be incurred by use of Funding Recipient labor (that is, force account, including direct labor overhead), by contract, or by consultant services.

- AA6. NON-REIMBURSABLE COSTS. Costs that are not reimbursable with State funds and cannot be counted as Funding Match include but are not limited to the following items:
- a. Costs incurred prior to or after the time period specified in Section AA5 for Reimbursable Costs.
 - b. Operation and maintenance costs of permanent facilities.
 - c. Purchase of equipment not an integral part of a project.
 - d. Repair or replacement of equipment.
 - e. Equipment not dedicated to the project (for example, desktop computers and monitoring equipment) that can be used for other purposes.
 - f. Vehicles.
 - g. Establishing a reserve fund.
 - h. Purchase of water supply.
 - i. Performance review, monitoring, and assessment costs for efforts required after project construction is complete.
 - j. Replacement of existing funding sources for ongoing programs.
 - k. Travel and per diem costs, except as allowed in Section AA5.i.
 - l. Support of existing agency requirements and mandates in response to negligent behavior (e.g., punitive regulatory agency requirement).
 - m. Legal and court costs resulting from the CEQA process, violation of laws, or civil actions.
 - n. Costs of applying for funding.
 - o. Costs of land, easements, and rights-of-way.
 - p. Meals, food items, or refreshments unless part of approved per diem travel expense in accordance with Exhibit D (Standard Conditions), Section D45.
 - q. Payment of principal or interest on indebtedness.
 - r. Administrative costs directly related to the Funded Project as described in Section AA5.j that exceed ten percent (10%) of the State grant or ten percent (10%) of the amount counted toward the minimum Funding Match.
 - s. Overhead and indirect costs. "Indirect Costs", also called "Overhead Costs", means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the Funded Project (i.e., costs that are not directly related to the funded project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Funding Recipient; non-project-specific accounting and personnel services performed within the Funding Recipient's organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; and, generic overhead or markup. This prohibition applies to the Funding Recipient and any subcontract or sub-agreement for work on the Project.
- AA7. DISBURSEMENT OF FUNDS. Following the review of each invoice, State will disburse to Funding Recipient the amount approved, subject to the availability of funds through normal State processes. Notwithstanding any other provision of this Funding Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations, or which may require any rebates to the federal government or cause any loss of tax-free status on State bonds, pursuant to any federal statute or regulation. Disbursement is also contingent upon compliance with provisions of this Funding Agreement, including but not limited to environmental documentation (Section AA1), demonstration of financial capability (Section AA2), submission of reports (Section AA15), submission of deliverables specified in Exhibit A (Project Description), and compliance with laws (Section

AA4). Any and all money disbursed to Funding Recipient under this Funding Agreement shall be deposited in a non-interest bearing account and shall be used solely to pay Reimbursable Costs.

- AA8. REQUESTS FOR DISBURSEMENT OF FUNDS. After meeting the disbursement requirements in Section AA7, Funding Recipient may request disbursement of grant funds from State no more frequently than quarterly. Disbursements cannot be made in advance of incurring the costs.
- a. The following procedures will be followed for requests for disbursement:
 - (1) Reimbursable Costs are incurred on the Funded Project and either have been paid or are due and payable by Funding Recipient.
 - (2) Funding Recipient submits an invoice and associated documentation to State requesting disbursement to pay for Reimbursable Costs incurred.
 - (3) State reviews invoice and associated documentation and compliance to date with other Funding Agreement provisions, including submittal of reports and deliverables.
 - (4) If State finds the request for disbursement acceptable and Funding Recipient in compliance with Funding Agreement provisions, State approves the invoice and processes the invoice for disbursement to Funding Recipient.
 - (5) If State finds that the request for disbursement is unacceptable, that the Funding Recipient is out of compliance with Funding Agreement provisions, that any portion of costs claimed are not Reimbursable Costs, or that any portion of costs is not supported by documentation acceptable to State, State will notify Funding Recipient in a timely manner. Funding Recipient may, within 30 calendar days of the date of receipt of such notice, submit additional documentation or Project deliverables to cure deficiencies. If Funding Recipient fails to submit adequate documentation or deliverables curing the deficiencies, State will adjust the pending invoice by the amount of unapproved costs and process the invoice for disbursement to Funding Recipient.
 - (6) All invoices submitted shall be accurate and signed under penalty of law. Any and all costs submitted pursuant to this Agreement shall only be for the tasks set forth herein. The Funding Recipient shall not submit any invoice containing costs that are non-reimbursable or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., Funding Match). Any reimbursable costs for which the Funding Recipient is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for reimbursable costs, such as time or services, is illegal and constitutes fraud. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements of grant funds and/or termination of this Agreement requiring the repayment of all funds disbursed hereunder plus interest. Additionally, the State may request an audit pursuant to Paragraph D5. and refer the matter to the Attorney General's Office or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability. (Civ. Code, §§ 1572-1573; Pen. Code, §§ 470, 489-490.)
 - b. If State provides a standard invoice form, Funding Recipient shall use this form. Otherwise, invoices submitted by Funding Recipient shall include the following information:
 - (1) Date of invoice.
 - (2) Time period of costs incurred covered by the invoice.
 - (3) Total amount requested for disbursement.
 - (4) Itemization of costs incurred on the Funded Project based on the categories (e.g., tasks) specified in Exhibit B (Budget). The amounts claimed for salaries, wages, or consultant fees must include the calculation of costs (i.e., hours or days worked, hourly or daily rates, total amount claimed).

- (5) The itemization of costs shall delineate Funded Project costs incurred between Reimbursable Costs claimed for State grant reimbursement as part of Funding Amount specified in Section 4 (Grant Amount) of this Funding Agreement, Reimbursable Costs financed by Funding Match as specified in Section 6 (Funding Match) of this Funding Agreement, and Reimbursable Costs financed by Other State Funding, as specified in Section 6 (Funding Match) of this Funding Agreement.
- (6) Original signature and date (in ink) or an electronic signature certified and transmitted via DocuSign of Funding Recipient's Project Representative as specified in the first table in Section 10 (Project Representatives).
- c. Documentation that must be submitted with invoices must include the following:
- (1) Evidence to verify the amounts of costs incurred as claimed in the invoice, when they occurred, and the nature of the costs (e.g., items purchased, work performed). Evidence may be receipts, billings, copies of checks, or invoices submitted to Funding Recipient. In lieu of time sheets for labor, summary sheets may be submitted listing employees, time period, hours or days worked, and pay rate. Additional guidance on documentation is provided in Exhibit H (State Audit Document Requirements and Funding Match Guidelines for Funding Recipients).
- (2) The evidence must cover all Funded Project expenditures and keyed to the itemization summary by task and funding source (grant reimbursement, Funding Match, or Other State Funding).
- (3) If completed deliverables (e.g., quarterly reports, annual or final reports, technical reports, or journal articles) related to costs incurred have not otherwise been submitted by Funding Recipient, they may be submitted with an invoice to avoid delay in State approval of disbursement.
- d. The invoice with original signature or an electronic signature certified and transmitted via DocuSign and associated documentation shall be submitted by Funding Recipient to the State Project Manager at the address as specified in the second table in Section 10 (Project Representatives) of this Funding Agreement. Invoices shall be uploaded via GRanTS, and the State's Project Manager notified of upload.
- e. All requests for grant reimbursement must be submitted no later than six (6) months after Project Completion Date.
- AA9. RETENTION OF FUNDS. The provisions of Section D35 shall apply for retention of funds.
- AA10. WITHHOLDING OF DISBURSEMENTS BY STATE. If State determines at any time that a project is not being implemented in accordance with the provisions of this Funding Agreement, or that Funding Recipient has failed in any other respect to comply with the provisions of this Funding Agreement, and if Funding Recipient does not remedy any such failure to State's satisfaction, State may withhold from Funding Recipient all or any portion of the State Grant Amount that has not already been disbursed and may take any other action that it deems necessary to protect its interests, including demand for return of State funds already disbursed. Where a portion of the State funding has been disbursed to the Funding Recipient and State notifies Funding Recipient of its decision to demand return of funds that have been disbursed, the portion that has been disbursed shall thereafter be repaid immediately with interest at the California general obligation bond interest rate at the time the State notifies the Funding Recipient, as directed by State. State may consider Funding Recipient's refusal to repay the requested disbursed amount a contract breach subject to the default provisions in Section AA12 (Default Notice and Remedies). If State notifies Funding Recipient of its decision to withdraw the entire Grant Amount from Funding Recipient pursuant to this section, this Funding Agreement shall terminate upon receipt of such notice by Funding Recipient, the State shall no longer be required to provide funds under this Funding Agreement, and the Funding Agreement shall no longer be binding on either party.

- AA11. DEFAULT STATUS. Funding Recipient will be in default under this Funding Agreement if any of the following occur:
- a. Substantial breaches of this Funding Agreement, or any supplement or amendment to it, or any other agreement between Funding Recipient and State evidencing or securing Funding Recipient's obligations.
 - b. Making any false warranty, representation, or statement with respect to this Funding Agreement or the application filed to obtain this Funding Agreement.
 - c. Failure to operate or maintain project in accordance with this Funding Agreement, including any remittance recommended as the result of an audit conducted pursuant to Paragraph D.5.
 - d. Failure to make any remittance required by this Funding Agreement.
 - e. Failure to submit timely progress reports.
 - f. Failure to routinely invoice State.
 - g. Failure to meet any of the requirements set forth in Section AA4 (Compliance with Laws and Policies).
 - h. A determination pursuant to Government Code section 11137 that the Funding Recipient has violated any of the following: Government Code sections 11135 or 12960 et seq.; Civil Code sections 51-54.2, inclusive; or any regulations adopted to implement these sections.
- AA12. DEFAULT NOTICE AND REMEDIES. Should an event of default occur, State shall provide a notice of default to the Funding Recipient and shall give Funding Recipient at least ten calendar days to cure the default from the date the notice is sent via first-class mail to the Funding Recipient. If the Funding Recipient fails to cure the default within the time prescribed by the State, State may do any of the following:
- a. Declare that all funding received by Funding Recipient through this Funding Agreement be immediately repaid, with interest, which shall be equal to State of California general obligation bond interest rate in effect at the time of the default.
 - b. Terminate any obligation to make future payments to Funding Recipient.
 - c. Terminate the Funding Agreement.
 - d. Take any other action that it deems necessary to protect its interests.
- In the event State finds it necessary to enforce this provision of this Funding Agreement in the manner provided by law, Funding Recipient agrees to pay all costs incurred by State including, but not limited to, reasonable attorneys' fees, legal expenses, and costs.
- AA13. DISPUTE RESOLUTION. Any dispute between the State and Funding Recipient that either party may have regarding performance of this Funding Agreement, including but not limited to compensation or time extension, shall be submitted to the opposite party's Project Manager within 30 days of knowledge of the dispute. State and Funding Recipient shall then attempt to negotiate a resolution of such dispute and, if appropriate, process an amendment to this funding Agreement to implement the terms of such resolution.
- AA14. FUNDING RECIPIENT NAME CHANGE: Approval of the State's Program Manager is required to change the Funding Recipient's name as listed on this Funding Agreement. Upon receipt of legal documentation of the name change the State will process an amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
- AA15. SUBMISSION OF REPORTS. The submittal and approval of all reports, including any specified in Exhibit A (Project Description), is a requirement for the successful completion of this Funding Agreement. Reports shall meet generally accepted professional standards for technical reporting and shall be proof read for content, numerical accuracy, spelling, and grammar prior to submittal to State. All reports shall be submitted to the State's Project Manager, and shall be submitted via DWR's "Grant Review and Tracking System" (GRanTS). The Final Report shall also be submitted in electronic copy format as specified in

Exhibit F (Report Formats and Requirements). If requested, Funding Recipient shall promptly provide any additional information deemed necessary by State for the approval of reports. Reports shall be presented in the formats described in the applicable portion of Exhibit F (Report Formats and Requirements). The timely submittal of reports is a requirement for initial and continued disbursement of State funds. Submittal and subsequent approval by the State of a Final Report is a requirement for the release of any funds retained for the Project.

- a. Quarterly Progress Reports: Funding Recipient shall submit Quarterly Progress Reports to provide a brief summary of the work performed, an update on the status of the Project at the end of the quarter and documentation for invoices for grant disbursement. Quarterly Progress Reports shall be uploaded via GRanTS, and the State's Project Manager notified of upload. Quarterly Progress Reports shall, in part, provide a brief description of the work performed, Funding Recipient's activities, milestones achieved, any accomplishments and any problems encountered in the performance of the work under this Funding Agreement during the reporting period. The first Quarterly Progress Report should be prepared and submitted to the State in accordance with Exhibit F (Report Formats and Requirements).
- b. Annual Reports: Funding Recipient shall prepare and submit to State Annual Reports in accordance with Exhibit F (Report Formats and Requirements). The purpose of Annual Reports is to document project accomplishments, findings, data collection, and progress for the calendar year. Other interim project deliverables may be submitted in lieu of Annual Reports if they provide the information specified in Exhibit F for Annual Reports, they are identified as deliverables in Exhibit A (Project Description), and they are approved by the State Project Manager as a substitute for Annual Reports.
- c. Final Report: Funding Recipient shall prepare and submit to State a Final Report in accordance with the due date, content, and format specified in Exhibit F (Report Formats and Requirements). The Final Report shall include, in part, a description of actual work done and deliverables produced, any changes or amendments to the project, a final schedule of work performed, and a summary of project costs.
- d. Performance Reports: Funding Recipient shall submit Performance Reports in accordance with Exhibit F (Report Formats and Requirements). A Performance Report shall be submitted to State by March 31st of the year following the Project Completion Date or, in the case of construction projects, the date of initial operation. This reporting process shall be repeated annually for the following five calendar years. For projects other than construction projects, the number of annual Performance Reports may be reduced upon approval by the State Project Manager.

AA16. OPERATION AND MAINTENANCE OF PROJECT. For construction projects Funding Recipient shall be responsible for operating and maintaining the Eligible Project for the useful life of the Eligible Project in accordance with its intended purpose as described in the funding application and as provided in this Funding Agreement. In consideration of the funding made by State, Funding Recipient agrees to ensure or cause to be performed the commencement and continued operation of the project, and shall ensure or cause the project to be operated in an efficient and economical manner; shall ensure all repairs, renewals, and replacements necessary to the efficient operation of the same are provided; and shall ensure or cause the same to be maintained in as good and efficient condition as upon its construction, ordinary and reasonable wear and depreciation excepted. The State shall not be liable for any cost of such maintenance, management, or operation. Funding Recipient or its successors may, with the written approval of State, transfer this responsibility to use, manage, and maintain the property. For purposes of this Funding Agreement, "useful life" means period during which an asset, property, or activity is expected to be usable for the purpose it was acquired or implemented; "operation costs" include direct costs incurred for material and labor needed for operations, utilities, insurance, and similar expenses, and "maintenance costs" include ordinary repairs and replacements of a recurring nature necessary for capital assets and basic structures and the expenditure of funds necessary to replace or reconstruct capital assets or basic structures. The useful life is specified in Section 13 (Useful Life). Refusal of Funding Recipient to ensure

operation and maintenance of the project in accordance with this provision may, at the option of State, be considered a breach of this Funding Agreement and may be treated as default under Sections AA11 and AA12 (Default Status and Default Notice and Remedies).

AA17. OWNERSHIP OF FACILITIES.

- a. For construction projects, the ownership of all facilities that are part of the Funded Project shall be owned by the Funding Recipient unless provided otherwise in this Funding Agreement. Ownership shall not transfer to another entity during the useful life of the Eligible Project without prior notification of and written approval by the State Program Manager. Ownership must remain with an entity that meets the requirements of an eligible applicant specified in the PSP.
- b. For projects other than construction projects, ownership shall be in accordance with Exhibit D (Standard Conditions), Section D15 (Disposition of Equipment).

AA18. PROJECT MONITORING. Exhibit A (Project Description) of this Funding Agreement shall contain a description of project monitoring activities, and Exhibit F (Report Formats and Requirements) contains a description of monitoring data to be included in Performance Reports. As appropriate, groundwater quality, ambient surface water quality, and groundwater level data shall be submitted to state data repositories as described in Exhibit G (Requirements for Data Submittal).

AA19. NOTIFICATION OF STATE. Funding Recipient shall promptly notify State, in writing, of the following items:

- a. Events or proposed changes that could affect the scope, budget, or work performed under this Funding Agreement. Funding Recipient agrees that no substantial change in the scope of a project will be undertaken until written notice of the proposed change has been provided to State and State has given written approval for such change. Substantial changes generally include changes to the work specified in Exhibit A (Project Description), schedule or term, and budget, and such changes may require amendment of this Funding Agreement.
- b. Any public or media event publicizing the accomplishments and/or results of this Funding Agreement. Funding Recipient shall provide the opportunity for attendance and participation by State's representatives, and shall notify State's Project Manager at least fourteen (14) calendar days prior to the event.
- c. For construction projects, the final inspection of the completed work on a project by a Registered Civil Engineer, in accordance with Exhibit D (Standard Conditions), Section D18. Funding Recipient shall notify the State's Project Manager of the inspection date at least 14 calendar days prior to the inspection in order to provide State the opportunity to participate in the inspection.
- d. For construction projects, the date of initial operation of the project to produce or deliver water for use, to be reported within 30 days of initial operation.
- e. Discovery of any potential archaeological or historical resource. Should a potential archaeological or historical resource be discovered during construction, the Funding Recipient agrees that all work in the area of the find will cease until a qualified archaeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the State has determined what actions should be taken to protect and preserve the resource. The Funding Recipient agrees to implement appropriate actions as directed by the State.
- f. The initiation of any litigation or the threat of litigation against the Funding Recipient regarding the Project or that may affect the Project in any way.

AA20. NOTICES. Any notice, demand, request, consent, or approval that either party desires or is required to give to the other party under this Funding Agreement shall be in writing. Notices may be transmitted by any of the following means:

- a. By delivery in person.

- b. By certified U.S. mail, return receipt requested, postage prepaid.
- c. By “overnight” delivery service; provided that next-business-day delivery is requested by the sender.
- d. By electronic means.

Notices delivered in person will be deemed effective immediately on receipt (or refusal of delivery or receipt). Notices sent by certified mail will be deemed effective given ten (10) calendar days after the date deposited with the U. S. Postal Service. Notices sent by overnight delivery service will be deemed effective one business day after the date deposited with the delivery service. Notices sent electronically will be effective on the date of transmission, which is documented in writing. Notices shall be sent to the Project Representatives at the addresses provided in Section 10 of this Funding Agreement. Either party may, by written notice to the other, designate a different address that shall be substituted for the one shown in Section 10.

- AA21. PERFORMANCE EVALUATION. Upon completion of this Funding Agreement, Funding Recipient’s performance will be evaluated by the State and a copy of the evaluation will be placed in the State file and a copy sent to the Funding Recipient.
- AA22. SURVIVING OBLIGATIONS. Any provision of this Funding Agreement that imposes an obligation after the termination or expiration of this Agreement shall survive the termination or expiration of this Funding Agreement.

Exhibit A
Project Description

A1. PROJECT DEFINITION AND ASSUMPTIONS

The project components and their definitions as used in this exhibit are project-specific applications of the same terms found in Section 4.2 of the PSP and are to be applied to the Eligible Project referred to in Section A2 of this exhibit.

a. **Eligible Project Title:** The Eligible Project title is Oneka Seawater Desalination Buoy Design Pilot Study

b. **Total Project:**

Objectives of the Total Project: The objective of this project is to test the efficacy of the Oneka Iceberg seawater desalination buoy's ability to deliver water to water-stressed communities with limited access to inland resources. Further, the results of the buoy's real-time application towards producing desalinated water supplies will be used to inform drought planning for the Funding Recipient and a possible utility-scale deployment of the technology.

Description of Total Project: This project entails the permitting, purchase, shipping, deployment, and monitoring of an Oneka Technologies desalination buoy at 281 Jere Melo Street for the purposes of a pilot study. The pilot study will determine the efficacy of water production and reliability of the Oneka Technologies Iceberg buoy as a tool to aid in drought and to inform a potential large utility-scale application of the technology.

c. **Eligible Project:** The Eligible Project is the portion of the Total Project that is considered consistent with the goals and scope of the Water Desalination Grant Program and is necessary for an operable project. "The Eligible Project is the same as the Total Project for this Funding Agreement.

(1). All tasks associated with the Eligible Project are described in Section A2, which supersedes the scope of work included in the funding application.

d. **Funded Project:** The Funded Project is the portion of the Eligible Project for which costs are eligible for grant reimbursement or for reimbursement by other funds qualifying as Funding Match. The Funded Project is the same as the Eligible Project for this Funding Agreement.

(1). All tasks associated with the Funded Project are described in Section A2, which supersedes the scope of work included in the funding application.

e. **Project Assumptions:** The assumptions in this subsection are given to aid grant administration. They represent understandings and expectations that are not included in other sections of this Funding Agreement.

(1). **General Project Assumptions**

(a) The State will not take title to any equipment or other real property (assets) fabricated or otherwise produced under this Funding Agreement pursuant to Section D15 (Disposition of Equipment). The various research-related reports or other deliverables will be provided to the State as provided for in this Funding Agreement.

(2). **Cost Share Assumptions:**

(a) There is no cost share for the Funding Recipient. The Funding Recipient's Funding Match has been waived since the Funding Recipient has established DAC status in accordance with the PSP.

- (3). **Project Partner Assumptions:** The Funding Recipient has identified participant project partners and their roles, as described in Table A1, as of the date of execution of this Funding Agreement. Funding Recipient will notify State of any changes and will report changes in the Quarterly Progress Reports.

Table A1. Project Participants		
Participant Name	Role	Brief Description of Work
City of Fort Bragg	Construction Manager	Project Management
Oneka Technologies	Engineer	Design, Construction, Fabrication, Maintenance, Product Testing

A2. SCOPE OF WORK

The Scope of Work consists of all tasks required for performing and completing the Eligible Project, as described in Section A1.

a. TASK 1: PROJECT ADMINISTRATION

- (1). **Description:** Conduct administrative services to complete the project; monitor, supervise and review all work performed; and coordinate with DWR to assure that the scope of work is completed within budget, on schedule, and in accordance with approved procedures, applicable laws, and regulations. Oversee all subcontractors and consultants to the project to ensure timely, effective, and accurate services are rendered in support of the project.

Prepare quarterly progress reports. Quarterly reports will describe the work performed and accomplishments of each task, or task phase, milestones achieved, documentation of contractor activities, and project meetings. Also, document any experienced or anticipated problems encountered in the performance of this agreement's work.

- (2). **Assumptions:** A copy of all deliverables will be uploaded to GRanTS and also an electronic copy will be provided to the DWR contract manager.

- (3). **Task 1 Deliverables/Products:**

- (a) Invoices & Quarterly Reports. Quarterly reports shall contain meeting agendas, minutes, and sign-in sheets as applicable.

b. TASK 2: PERMITTING

- (1). **Description:** Under Task 2 the Funding Recipient will acquire all necessary permits to deploy the buoy to support the Oneka Seawater Desalination Buoy Design Pilot Study . Further the Funding Recipient will collect environmental data that will inform permitting a future utility-scale installation.

- (2). **Data to be Collected:**

- (a) Pre-construction bathymetry survey to identify sensitive habitats to avoid during anchor deployment and pipeline placement. Water quality data including: temperature, conductivity, dissolved oxygen, and pH. Salinity will be reported as calculated by the sonde using the temperature and conductivity measurements

- (3). **Assumptions:**

- (a) The Design Pilot permitting will be streamlined in accordance with the Oct. 19, 2021 proclamation by Governor Gavin Newsom extending the drought emergency to include all of California's counties. Likewise, the 2015 desalination amendment to Water Quality Control Plan for Ocean Waters of California exempts small (<0.1 million gallons per day (MGD)) portable desalination facilities operated by a governmental agency which includes the Oneka buoy to be deployed by the City of Fort Bragg. The environmental data collected during the Oneka Seawater Desalination Buoy Design Pilot Study will both meet the pilot study permit requirement but also create technical data that will be needed for future utility-scale installation permitting.

- (4). **Deliverables:**

- (a) All permits received for the Oneka Seawater Desalination Buoy Design Pilot Study from these agencies:
 - i. North Coast Regional Water Quality Control Board

- ii. California Coastal Commission
- iii. California State Lands Commission
- iv. United States Army Corps of Engineers.

c. TASK 3: CONSTRUCTION/COMMISSIONING/DECOMMISSIONING

- (1). **Description:** Oneka Technologies (Contractor) will fabricate and deploy the Iceberg buoy on behalf of the City at the project site identified Exhibit J (J2) and also in the applicable permits obtained under Task 2. The Contractor will also install relevant pipeline conveying product water from the buoy to the shore-based reservoir. At the end of the 12-month study, the buoy and associated systems will either be removed or connected to the City's water supply based on a new agreement between the City and Oneka with all applicable permits in place.
- (2). **Deliverables:**
- (a) An installed and commissioned Oneka buoy located offshore of the City with a pipeline to deliver product water to the City's wastewater treatment plant where it can be collected and tested.

d. TASK 4: OPERATIONS AND MAINTENANCE

- (1). **Description:** The Oneka Seawater Desalination Buoy Design Pilot Study will provide an opportunity to collect much of the data needed to deploy a larger utility-scale installation. A larger, utility-scale installation will require clear and careful operations and maintenance information to manage costs to keep the price of water economically feasible for the ratepayers. The Contractor will provide on-site support to operate and maintain the buoy and associated systems and will also collect water quality information in preparation of applying for a Division of Drinking Water permit, and any other permits needed, to facilitate the delivery of produced, potable water into the City's distribution system. From these efforts, a detailed operation and maintenance profile and manual can be created to support future installations in California
- (2). **Data to be Collected:**
- (a) Operational parameters such as flow rate, movement of the buoy and pipeline in response to wave energy, and water quality. The product water flow rate will be measured to verify production rates. The movement of the buoy and pipeline will be monitored to evaluate the anchorage in response to the area's wave climate. The product water quality will be tested in accordance with Division of Drinking Water requirements for potable water. Maintenance activities will be recorded to create an operations profile for the future utility-scale installation. Maintenance will include routine cleaning of the intake screens, routine inspections of the buoy to identify any damage or unexpected wear, inspections of the pipeline to check for damage or unexpected wear, and potential emergency responses if the buoy becomes a danger or endangered due to storm energy.
- (3). **Assumptions:**
- (a) The buoy and ancillary systems are able to operate for the duration of the 12-month study.
- (4). **Deliverables:**
- (a) Detailed operational, maintenance, and water quality monitoring records and a report summarizing these experiences.

e. TASK 5: FINAL REPORT

- (1). **Description:** This task consists of the preparation of a draft of the Final Report [per Exhibit F, F3] and, after review by the State, the preparation of the final version of the Final Report. The Final Report provides a record of the project and its results, including those efforts to permit, deploy, install, monitor, and maintain the buoy. It is a comprehensive self-contained document which will serve as a resource for large audiences including State agencies, water agencies and industry, as well as the general public. The following subtasks comprise this work:
 - (a) Prepare a draft of the Final Report and submit the draft to the State for review and comment.
 - (b) After receipt of the comments from the State on the draft Final Report, prepare and submit to the State the final version of the Final Report.
- (2). **Deliverables:**
 - (a) Draft of Final Report.
 - (b) Final of Final Report

Exhibit B
Budget

Task No.	Total Project Budget	Funding Match	Grant Funds	Total Grant Budget
1. Project Administration	\$ 100,000.00		\$ 100,000.00	\$ 100,000.00
2. Permitting	\$ 250,000.00		\$ 250,000.00	\$ 250,000.00
3. Construction/Commissioning/Decommissioning	\$ 725,000.00		\$ 725,000.00	\$ 725,000.00
4. Operations and Maintenance	\$ 315,000.00		\$ 315,000.00	\$ 315,000.00
5. Final Report	\$ 100,000.00		\$ 100,000.00	\$ 100,000.00
TOTAL	\$ 1,490,000.00	\$ -	\$ 1,490,000.00	\$ 1,490,000.00

Funded project shown in Grey.

Notes:

- From Exhibit A, Section A1.d: The funded project is the portion of the Eligible Project for which costs are eligible for grant reimbursement by other funds qualifying as Funding Match. The Funded Project consists of Tasks 1-5 as described in Section A2. All tasks associated with the Funded Project are described in Section A2, which supersedes the scope of work included in the funding applications.
- Total Grant Budget:** The sum of awarded grant funding (\$1,490,000) and the minimum required funding match (\$0). The total grant budget is \$1,490,000.

Exhibit C
Schedule

Task No.	2023				2024				2025			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
1. Project Administration												
2. Permitting												
3. Construction/Commissioning/Decommissioning												
4. Operations and Maintenance												
5. Final Report												

Exhibit D
Standard Conditions

- D1. ACCOUNTING AND DEPOSIT OF FUNDING DISBURSEMENT:
- a. **Separate Accounting of Funding Disbursements:** Funding Recipient shall account for the money disbursed pursuant to this Funding Agreement separately from all other Funding Recipient funds. Funding Recipient shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices, consistently applied. Funding Recipient shall keep complete and accurate records of all receipts and disbursements on expenditures of such funds. Funding Recipient shall require its contractors or subcontractors to maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records are subject to inspection by State at any and all reasonable times.
 - b. **Disposition of Money Disbursed:** All money disbursed pursuant to this Funding Agreement shall be deposited, administered, and accounted for pursuant to the provisions of applicable law, and placed in a non-interest bearing account.
 - c. **Remittance of Unexpended Funds:** Funding Recipient shall remit to State any unexpended funds that were disbursed to Funding Recipient under this Funding Agreement and were not used to pay Eligible Project Costs within a period of sixty (60) calendar days from the final disbursement from State to Funding Recipient of funds or, within thirty (30) calendar days of the expiration of the Funding Agreement, whichever comes first.
- D2. ACKNOWLEDGEMENT OF CREDIT AND SIGNAGE: Funding Recipient shall include appropriate acknowledgement of credit to the State for its support when promoting the Project or using any data and/or information developed under this Funding Agreement. Signage shall be posted in a prominent location at Project site(s) (if applicable) or at the Funding Recipient's headquarters and shall include the Department of Water Resources color logo and the following disclosure statement: "Funding for this project has been provided in full or in part from the Water Quality, Supply and Infrastructure Improvement Act of 2014 and through an agreement with the State Department of Water Resources." The Funding Recipient shall also include in each of its contracts for work under this Agreement a provision that incorporates the requirements stated within this Paragraph.
- D3. AMENDMENT: This Funding Agreement may be amended at any time by mutual agreement of the Parties, except insofar as any proposed amendments are in any way contrary to applicable law. Requests by the Funding Recipient for amendments must be in writing stating the amendment request and the reason for the request. Requests solely for a time extension must be submitted at least 90 days prior to the Project Completion Date set forth in Section 8 of this Funding Agreement. Any other request for an amendment must be submitted at least 180 days prior to the Project Completion Date set forth in Section 8. State shall have no obligation to agree to an amendment.
- D4. AMERICANS WITH DISABILITIES ACT: By signing this Funding Agreement, Funding Recipient assures State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. §12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

- D5. **AUDITS:** State reserves the right to conduct an audit at any time between the execution of this Funding Agreement and the completion of the Project, with the costs of such audit borne by State. After completion of the Project, State may require Funding Recipient to conduct a final audit to State's specifications, at Funding Recipient's expense, such audit to be conducted by and a report prepared by an independent Certified Public Accountant. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this Funding Agreement, and State may elect to pursue any remedies provided in Section AA12 (Default Notice and Remedies) or take any other action it deems necessary to protect its interests. The Funding Recipient agrees it shall return any audit disallowances to the State.
- Pursuant to Government Code section 8546.7, the Funding Recipient shall be subject to the examination and audit by the State for a period of three (3) years after final payment under this Funding Agreement with respect of all matters connected with this Funding Agreement, including but not limited to, the cost of administering this Funding Agreement. All records of Funding Recipient or its contractor or subcontractors shall be preserved for this purpose for at least three (3) years after receipt of the final disbursement under this Agreement. If an audit reveals any impropriety, the Bureau of State Audits or the State Controller's Office may conduct a full audit of any or all of the Funding Recipient's activities. (Wat. Code, § 79708, subd. (c).)
- D6. **BUDGET CONTINGENCY:** If the Budget Act of the current year covered under this Funding Agreement does not appropriate sufficient funds for this program, this Funding Agreement shall be of no force and effect. This provision shall be construed as a condition precedent to the obligation of State to make any payments under this Funding Agreement. In this event, State shall have no liability to pay any funds whatsoever to Funding Recipient or to furnish any other considerations under this Funding Agreement and Funding Recipient shall not be obligated to perform any provisions of this Funding Agreement. Nothing in this Funding Agreement shall be construed to provide Funding Recipient with a right of priority for payment over any other Funding Recipient. If funding for any fiscal year after the current year covered by this Funding Agreement is reduced or deleted by the Budget Act, by Executive Order, or by order of the Department of Finance, the State shall have the option to either cancel this Funding Agreement with no liability occurring to State, or offer a Funding Agreement amendment to Funding Recipient to reflect the reduced amount.
- D7. **CALIFORNIA CONSERVATION CORPS:** Funding Recipient may use the services of the California Conservation Corps or other community conservation corps as defined in Public Resources Code section 14507.5.
- D8. **CEQA:** Activities funded under this Funding Agreement, regardless of funding source, must be in compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, §21000 et seq.). Any work that is subject to CEQA and funded under this Agreement shall not proceed until documents that satisfy the CEQA process are received by the State's Project Manager and the State has completed its CEQA compliance. Work funded under this Agreement that is subject to a CEQA document shall not proceed until and unless approved by the Department of Water Resources. Such approval is fully discretionary and shall constitute a condition precedent to any work for which it is required. If CEQA compliance by the Funding Recipient is not complete at the time the State signs this Agreement, once State has considered the environmental documents, it may decide to require changes, alterations, or other mitigation to the Project; or to not fund the Project. Should the State decide to not fund the Project, this Agreement shall be terminated in accordance with Section AA12 (Default Notice and Remedies).
- D9. **CHILD SUPPORT COMPLIANCE ACT:** The Funding Recipient acknowledges in accordance with Public Contract Code section 7110, that:
- a. The Funding Recipient recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement,

including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Family Code 5200 et seq.; and

- b. The Funding Recipient, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

D10. CLAIMS DISPUTE: See Section AA13 (Dispute Resolution).

D11. COMPETITIVE BIDDING AND PROCUREMENTS: Funding Recipient's contracts with other entities for the acquisition of goods and services and construction of public works with funds provided by State under this Funding Agreement must be in writing and shall comply with all applicable laws and regulations regarding the securing of competitive bids and undertaking competitive negotiations. If the Funding Recipient does not have a written policy to award contracts through a competitive bidding or sole source process, the Department of General Services' State Contracting Manual rules must be followed and are available at: <https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/State-Contracting>.

D12. COMPUTER SOFTWARE: Funding Recipient certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Funding Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

D13. CONFLICT OF INTEREST: All participants are subject to State and Federal conflict of interest laws. Failure to comply with these laws, including business and financial disclosure provisions, will result in the application being rejected and any subsequent contract being declared void. Other legal action may also be taken. Applicable statutes include, but are not limited to, Government Code section 1090 and Public Contract Code sections 10410 and 10411, for State conflict of interest requirements.

- a. **Current State Employees**: No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
- b. **Former State Employees**: For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.
- c. **Employees of the Funding Recipient**: Employees of the Funding Recipient shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act, (Gov. Code, § 87100 et seq.).
- d. **Employees and Consultants to the Funding Recipient**: Individuals working on behalf of a Funding Recipient may be required by the Department to file a Statement of Economic Interests (Fair Political Practices Commission Form 700) if it is determined that an individual is a consultant for Political Reform Act purposes.

- D14. DELIVERY OF INFORMATION, REPORTS, AND DATA: Funding Recipient agrees to expeditiously provide throughout the term of this Funding Agreement, such reports, data, information, and certifications as may be reasonably required by State.
- D15. DISPOSITION OF EQUIPMENT: Funding Recipient shall provide to State, not less than 30 calendar days prior to submission of the final invoice, an itemized inventory of equipment purchased with funds provided by State. The inventory shall include all items with a current estimated fair market value of more than \$5,000.00 per item. Within 60 calendar days of receipt of such inventory State shall provide Funding Recipient with a list of the items on the inventory that State will take title to. All other items shall become the property of Funding Recipient. State shall arrange for delivery from Funding Recipient of items that it takes title to. Cost of transportation, if any, shall be borne by State.
- D16. DRUG-FREE WORKPLACE CERTIFICATION OF COMPLIANCE: By signing this Funding Agreement, Funding Recipient, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Gov. Code, § 8350 *et seq.*) and have or will provide a drug-free workplace by taking the following actions:
- a. Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code section 8355.
 - b. Establish a Drug-Free Awareness Program, as required by Gov. Code, Section 8355 to inform employees, contractors, or subcontractors about all of the following:
 - c. The dangers of drug abuse in the workplace,
 1. Funding Recipient's policy of maintaining a drug-free workplace,
 2. Any available counseling, rehabilitation, and employee assistance programs, and
 3. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
 - d. Provide, as required by Government Code section 8355, that every employee, contractor, and/or subcontractor who works under this Funding Agreement:
 1. Will receive a copy of Funding Recipient's drug-free policy statement, and
 2. Will agree to abide by terms of Funding Recipient's condition of employment, contract or subcontract.
- D17. EASEMENTS: Where the Funding Recipient acquires property in fee title or funds improvements to real property already owned in fee by the Funding Recipient using State funds provided through this Funding Agreement, an appropriate easement or other title restriction providing for floodplain preservation and agricultural and/or wildlife habitat conservation for the subject property in perpetuity, approved by the State, shall be conveyed to a regulatory or trustee agency or conservation group acceptable to the State. The easement or other title restriction must be in first position ahead of any recorded mortgage or lien on the property unless this requirement is waived by the State.

Where the Funding Recipient acquires an easement under this Funding Agreement, the Funding Recipient agrees to monitor and enforce the terms of the easement, unless the easement is subsequently transferred to another land management or conservation organization or entity with State permission, at which time monitoring and enforcement responsibilities will transfer to the new easement owner.

Failure to provide an easement acceptable to the State may result in termination of this Funding Agreement.

- D18. FINAL INSPECTIONS AND CERTIFICATION BY REGISTERED CIVIL ENGINEER: For construction projects, upon completion of the Project, Funding Recipient shall provide for a final inspection and certification by a California Registered Civil Engineer that the Project has been completed in accordance with submitted final plans and specifications and any modifications thereto and in accordance with this Funding Agreement. The State's Project Manager shall be notified prior to the final inspection in accordance with Section AA19 (Notification of State).
- D19. FUNDING RECIPIENT'S RESPONSIBILITIES: Funding Recipient and its representatives shall:
- a. Faithfully and expeditiously perform or cause to be performed all project work as described in Exhibit A (Project Description) and in accordance with Exhibit B (Budget) and Exhibit C (Schedule).
 - b. Accept and agree to comply with all terms, provisions, conditions, and written commitments of this Funding Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by Funding Recipient in the application, documents, amendments, and communications filed in support of its request for funding.
 - c. Comply with all applicable California, federal, and local laws and regulations.
 - d. Implement the Project in accordance with applicable provisions of the law.
 - e. Fulfill its obligations under the Funding Agreement and be responsible for the performance of the Project.
 - f. Obtain any and all permits, licenses, and approvals required for performing any work under this Funding Agreement, including those necessary to perform design, construction, or operation and maintenance of the Project. Funding Recipient shall provide copies of permits and approvals to State.
 - g. Be solely responsible for design, construction, and operation and maintenance of Project specified in Exhibit A (Project Description). Review or approval of plans, specifications, bid documents, or other construction documents by State is solely for the purpose of proper administration of funds by State and shall not be deemed to relieve or restrict responsibilities of Funding Recipient under this Agreement.
 - h. Be solely responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Funding Recipient shall be responsible for any and all disputes arising out of its contracts for work on the Project, including but not limited to payment disputes with contractors and subcontractors. The State will not mediate disputes between the Funding Recipient and any other entity concerning responsibility for performance of work.
- D20. GOVERNING LAW: This Funding Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
- D21. INCOME RESTRICTIONS: The Funding Recipient agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Funding Recipient under this Agreement shall be paid by the Funding Recipient to the State, to the extent that they are properly allocable to costs for which the Funding Recipient has been reimbursed by the State under this Agreement. The Funding Recipient shall also include in each of its contracts for work under this Agreement a provision that incorporates the requirements stated within this Section.
- D22. INDEMNIFICATION: Funding Recipient shall indemnify and hold and save the State, its officers, agents, and employees, free and harmless from any and all liabilities for any claims and damages (including

- inverse condemnation) that may arise out of the Project and this Funding Agreement and any breach of this Funding Agreement. Funding Recipient shall require its contractors or subcontractors to name the State, its officers, agents and employees as additional insureds on their liability insurance for activities undertaken pursuant to this Funding Agreement.
- D23. INDEPENDENT CAPACITY: Funding Recipient, and the agents and employees of Funding Recipients, in the performance of the Funding Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.
- D24. INSPECTION OF BOOKS, RECORDS, AND REPORTS: During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this Funding Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this Funding Agreement. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this Funding Agreement, and State may withhold disbursements to Funding Recipient or take any other action it deems necessary to protect its interests.
- D25. INSPECTIONS OF PROJECT BY STATE: State shall have the right to inspect the work being performed at any and all reasonable times during the term of the Funding Agreement. This right shall extend to any subcontracts, and Funding Recipient shall include provisions ensuring such access in all its contracts or subcontracts entered into pursuant to its Funding Agreement with State.
- D26. LABOR CODE COMPLIANCE: The Funding Recipient agrees to be bound by all the provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to reimbursement from this Agreement to assure that the prevailing wage provisions of the Labor Code are being met. Current Department of Industrial Relations (DIR) requirements may be found at <http://www.dir.ca.gov/lcp.asp>. For more information, please refer to DIR's *Public Works Manual* at: <http://www.dir.ca.gov/dlse/PWManualCombined.pdf>. The Funding Recipient affirms that it is aware of the provisions of section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance, and the Funding Recipient affirms that it will comply with such provisions before commencing the performance of the work under this Agreement and will make its contractors and subcontractors aware of this provision.
- D27. MODIFICATION OF OVERALL PROJECT DESCRIPTION: At the request of the Funding Recipient, the State may at its sole discretion approve non-material changes to the portions of Exhibit A (Project Description) which concern the budget and schedule without formally amending this Funding Agreement. Non-material changes with respect to the budget are changes that only result in reallocation of the budget and will not result in an increase in the amount of the State Funding Agreement. Non-material changes with respect to the Project schedule are changes that will not extend the term of this Funding Agreement. Requests for non-material changes to the budget and schedule must be submitted by the Funding Recipient to the State in writing and are not effective unless and until specifically approved by the State's Program Manager in writing.
- D28. NONDISCRIMINATION: During the performance of this Funding Agreement, Funding Recipient and its contractors or subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), marital status, and denial of medial and family care leave or pregnancy disability leave. Funding Recipient and its contractors or subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Funding Recipient and its

contractors or subcontractors shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code §12990) and the applicable regulations promulgated there under (Cal. Code Regs., tit. 2, §11000 *et seq.*). The applicable regulations of the Fair Employment and Housing Act are incorporated into this Funding Agreement by reference a. Funding Recipient and its contractors or subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Funding Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Funding Agreement.

- D29. OPINIONS AND DETERMINATIONS: Where the terms of this Funding Agreement provide for action to be based upon judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.
- D30. PERFORMANCE BOND: Where contractors are used, the Funding Recipient shall not authorize construction to begin until each contractor has furnished a performance bond in favor of the Funding Recipient in the following amounts: faithful performance (100%) of contract value, and labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$25,000.00. Any bond issued pursuant to this paragraph must be issued by a California-admitted surety. (Pub. Contract Code, § 7103; Code Civ. Proc., § 995.311.)
- D31. PRIORITY HIRING CONSIDERATIONS: If this Funding Agreement includes services in excess of \$200,000, the Funding Recipient shall give priority consideration in filling vacancies in positions funded by the Funding Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with Public Contract Code section 10353.
- D32. PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION: The Funding Recipient shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Project, or with Funding Recipient's service of water, without prior permission of State. Funding Recipient shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of Funding Recipient to meet its obligations under this Funding Agreement, without prior written permission of State. State may require that the proceeds from the disposition of any real or personal property be remitted to State.
- D33. PROJECT ACCESS: The Funding Recipient shall ensure that the State, the Governor of the State, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during Project construction and thereafter for the term of this Agreement.
- D34. REMEDIES NOT EXCLUSIVE: The use by either party of any remedy specified herein for the enforcement of this Funding Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.
- D35. RETENTION: The State shall withhold ten percent (10%) of the funds requested by the Funding Recipient for reimbursement of Reimbursable Project Costs until the Project is completed and Final Report is approved. Any retained amounts due to the Funding Recipient will be promptly disbursed to the Funding Recipient, without interest, upon completion of the Project.
- D36. RIGHTS IN DATA: Funding Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes and other written or graphic work produced in the performance of this Funding Agreement shall be made available to the State and shall be in the public domain to the extent to which release of such materials is required under the California Public Records Act

(Gov. Code, § 6250 *et seq.*). Funding Recipient may disclose, disseminate and use in whole or in part, any final form data and information received, collected and developed under this Funding Agreement, subject to appropriate acknowledgement of credit to State for financial support. Funding Recipient shall not have exclusive rights to utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so. The State shall have the right to use any data described in this paragraph for any public purpose.

- D37. SEVERABILITY: Should any portion of this Funding Agreement be determined to be void or unenforceable, such shall be severed from the whole and the Funding Agreement shall continue as modified.
- D38. SUSPENSION OF PAYMENTS: This Funding Agreement may be subject to suspension of payments or termination, or both, if the State determines that:
- a. Funding Recipient, its contractors, or subcontractors have made a false certification, or
 - b. Funding Recipient, its contractors, or subcontractors violates the certification by failing to carry out the requirements noted in this Funding Agreement.
- D39. SUCCESSORS AND ASSIGNS: This Funding Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this Funding Agreement or any part thereof, rights hereunder, or interest herein by the Funding Recipient shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.
- D40. TERMINATION BY FUNDING RECIPIENT: Subject to State approval which may be reasonably withheld, Funding Recipient may terminate this Agreement and be relieved of contractual obligations. In doing so, Funding Recipient must provide a reason(s) for termination. Funding Recipient must submit all progress reports summarizing accomplishments up until termination date.
- D41. TERMINATION FOR CAUSE: Subject to the right to cure under Section AA12 (Default Notice and Remedies), the State may terminate this Funding Agreement and be relieved of any payments should Funding Recipient fail to perform the requirements of this Funding Agreement at the time and in the manner herein, including but not limited to reasons of default under Section AA11 (Default Status).
- D42. TERMINATION WITHOUT CAUSE: The State may terminate this Agreement without cause on thirty (30) days' advance written notice. The Funding Recipient shall be reimbursed for all reasonable expenses incurred up to the date of termination.
- D43. THIRD PARTY BENEFICIARIES: The parties to this Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or any duty, covenant, obligation or understanding established herein.
- D44. TIMELINESS: Time is of the essence in this Funding Agreement.
- D45. TRAVEL: Travel includes the reasonable and necessary costs of transportation, subsistence, and other associated costs incurred by personnel during the term of this Funding Agreement. Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the California Department of Human Resources. These rates may be found at: <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>. Reimbursement will be at the State travel and per diem amounts that are current as of the date costs are incurred. For the purpose of computing such expenses, Funding Recipient's designated headquarters shall be the street address of the Funding Recipient Project Representative designated in Section 10 of the main body of this Funding Agreement. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the State.

- D46. UNION ORGANIZING: Funding Recipient, by signing this Funding Agreement, hereby acknowledges the applicability of Government Code sections 16645 through 16649 to this Funding Agreement. Furthermore, Funding Recipient, by signing this Funding Agreement, hereby certifies that:
- a. No State funds disbursed by this Funding Agreement will be used to assist, promote, or deter union organizing.
 - b. Funding Recipient shall account for State funds disbursed for a specific expenditure by this Funding Agreement to show those funds were allocated to that expenditure.
 - c. Funding Recipient shall, where State funds are not designated as described in (b) above, allocate, on a pro rata basis, all disbursements that support the program.
 - d. If Funding Recipient makes expenditures to assist, promote, or deter union organizing, Funding Recipient will maintain records sufficient to show that no State funds were used for those expenditures and that Funding Recipient shall provide those records to the Attorney General upon request.
- D47. VENUE: The State and the Funding Recipient hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California. The Funding Recipient hereby waives any existing sovereign immunity for the purposes of this Agreement.
- D48. WAIVER OF RIGHTS: None of the provisions of this Funding Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties here to that from time to time either party may waive any of its rights under this Funding Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the Funding Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.

Exhibit E
Funding Recipient Resolution

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RESOLUTION NO. 4604-2022

RESOLUTION OF THE FORT BRAGG CITY COUNCIL AUTHORIZING THE GRANT APPLICATION, ACCEPTANCE, AND EXECUTION FOR THE ONEKA SEAWATER DESALINATION BUOY DESIGN PILOT STUDY

WHEREAS, pursuant and subject to all of the terms and provisions of the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1, California Water Code Section 79700 et seq.) the California Department of Water Resources is sponsoring Round 4 funding of the Water Desalination Grant Program.


NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Fort Bragg does hereby authorize and direct the City Manager to sign and file for, and on behalf of the Fort Bragg City Council, an application for funding from the Department of Water Resources for an amount not to exceed **\$1,500,000**, for the project entitled Oneka Seawater Desalination Buoy Design Pilot Study, under the terms and provisions of the Water Desalination Grant Program, and

BE IT FURTHER RESOLVED that the City of Fort Bragg hereby agrees and further does authorize the aforementioned City Manager or his/her designee to certify that the City of Fort Bragg has and will comply will all applicable state and federal statutory and regulatory requirements related to any federal and state funds received, and

BE IT FURTHER RESOLVED that the City Manager of the City of Fort Bragg or his/her designee is hereby authorized to negotiate and execute a funding agreement and any amendments or change orders thereto, and to certify funding disbursement on behalf of the City of Fort Bragg.

The above and foregoing Resolution was introduced by Councilmember Peters, seconded by Councilmember Morsell-Haye, and passed and adopted at a special meeting of the City Council of the City of Fort Bragg held on the 3rd day of October, 2022, by the following vote:

- AYES:** Councilmembers Albin-Smith, Morsell-Haye, Peters, Rafanan and Mayor Norvell.
- NOES:** None.
- ABSENT:** None.
- ABSTAIN:** None.
- RECUSED:** None.

DocuSigned by:

BERNIE NORVELL
Mayor

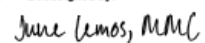
ATTEST:
DocuSigned by:

June Lemos, MMC
City Clerk

Exhibit E
Funding Recipient Resolution
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City of Fort Bragg
Department of Water Resources Agreement No. 4600015131
Water Desalination Funding Program Project No. CAP5 DP-2022-02

DocuSign Envelope ID: 3F5EBCF1-D903-4961-B79F-C4676F10B970

DocuSigned by:
Peggy Ducey
(Authoring Signature)

Peggy Ducey
(Printed Name)

City Manager
(Title)

DocuSigned by:
Jane Lemos, MMC
(City Secretary)

Exhibit F

Report Formats and Requirements

F1. QUARTERLY PROGRESS REPORTS

Quarterly Progress Reports are intended to be a brief summary of the work performed and an update on the status of the Eligible Project at the end of the quarter. The reports are documentation of work performed with Grant funds and Funding Match and claimed in invoices for grant reimbursement. It is expected that Quarterly Progress Reports be consistent with invoices. These reports are not intended to contain technical information and results of work performed, which should be included in other project deliverables or Annual Reports.

a. Schedule

Quarterly Progress Reports shall be submitted to the Department of Water Resources (DWR) according to the following schedule:

- First quarter (Jan through March): May 31
- Second quarter (April through June): August 31
- Third quarter (July through September): November 30
- Fourth quarter (October through December): March 31 of the subsequent year

If an executed Funding Agreement begins in the middle of a quarter, it is at the Funding Recipient's discretion to submit the first quarterly report for a partial quarter or a longer-duration quarterly report from project inception through the first full quarter. Before submittal of the first Quarterly Progress Report, Funding Recipient shall inform Project Manager by email or other written communication regarding whether the first quarterly report will include only a partial quarter or a longer duration than a quarter and the estimated date of initial submittal.

For projects that have commenced work before the Execution Date of the Funding Agreement, the first Quarterly Progress Report will cover a consolidated period from the beginning of work on the Eligible Project and the ending date of the first quarterly report. In order to correlate work performed and the timing of this work with expenditure reports and expense receipts of Funding Match and grant reimbursement, the first Quarterly Progress Report may have to describe work broken down by time periods when (1) work was conducted before either Funding Match or grant reimbursement expenses were incurred, (2) work was conducted with Funding Match expenditures but before grant reimbursable costs were incurred, and (3) after costs were incurred qualifying for both Funding Match and grant reimbursement. The State Project Manager shall agree to the planned submittal of the first quarterly report and the time breakdown of work description and costs.

b. Content

The quarterly report is to provide information by task, as well as include a total Eligible Project summary. It must document the activities of any associated invoice disbursement requests. The tasks are to be the same as those provided in Exhibit A, unless a revision of tasks has been approved by DWR. All quarterly reports are public documents and should not contain confidential, proprietary or business sensitive information.

The quarterly reports shall include:

- DWR Funding Agreement Number

- Eligible Project Title
- Funding Recipient Organization
- Funding Recipient's Project Partners
- Funding Recipient's Contact Person and contact information
- The quarter covered or reporting period
- Date of report submittal
- Whether an invoice for grant disbursement request is included
- An overall work history of the Eligible Project – project history
- Progress and status of each task and activity completed during the reporting period
- Percent of work completed of the Eligible Project and Funded Project through the end of the reporting period
- Tasks and activities planned for the upcoming quarter
- Current total Funded Project budget, actual expenses, and projected expenses, by quarter and by budget category or task description as described in Exhibit B.
- Budget Changes – any changes in the (a) total Funded Project budget or budget breakdown, or (b) Funding Match commitments, especially by partners
- Issues or problems that occurred during the quarter and how they were resolved
- Anticipated issues or problems that may occur and if they are expected to impact the project schedule, budget, and scope
- Current schedule and explanation of any deviations from the previous quarterly report schedule

The quarterly report is not a technical report and is not to provide any project data or results or analyses. Technical information and data are to be included in other project deliverables or annual reports.

If contingency funds in the budget were billed during the reporting quarter, or are anticipated to be accessed during the upcoming quarter, provide detailed justification in the associated quarterly report. It is expected that invoices for grant disbursement will be submitted quarterly in conjunction with Quarterly Progress Reports. If an invoice is not being submitted concurrent with the quarterly report, the report should explain why.

c. Template

The following template is provided for Quarterly Progress Reports.

Template for Quarterly Progress Report

Quarterly Progress Report
Covering Period for example, January 1 to March 31, 2017

DWR Funding Agreement Number: 46000XXXXX
DWR Project ID Number: XXXXXXXX
Eligible Project Title: Official project title (Section 2 of the Funding Agreement)
Funding Recipient Organization: Name and address of organization
Project Partners: List names of all participants doing work on the project, including consultants or other subcontractors and cost-sharing partners.
Funding Recipient Contact Person: Name, address, telephone, facsimile and electronic address.
Date Submitted: Date

Signature of Funding Recipient Authorized Representative or Project Manager _____ Date _____

Printed NAME _____ and _____ TITLE _____

1. **Eligible Project Objective:** One paragraph stating overall project objectives.
2. **Project Description / Background:** One or two paragraphs outlining the reason(s) and/or goals for the Eligible Project; the technical issues being addressed, and the project tasks.
3. **Funding Agreement Dates:**
 - Funding Agreement Execution Date (per Section 7): _____
 - Project Completion Date (per Funding Agreement Section 8): _____
 - Funding Agreement End Date (per Section 9): _____ *(If the agreement has been extended, put in new end date. This is not the anticipated end date, but the end date per the signed agreement amendment.)*
 - Grant Reimbursement Beginning Date (per Funding Agreement Section 4): _____
 - Funding Match Beginning Date (per Funding Agreement Section 6): _____
4. **Work History.** Provide the date work actually began on the Eligible Project and an updated brief summary of work accomplished in the previous quarters condensed from the work history descriptions provided in previous quarterly progress reports.

5. **Progress and Status:** The progress and status should be reported relative to the tasks identified in the Scope of Work in Exhibit A, including both the Eligible Project and the Funded Project tasks. When describing the progress and status, specifically, state which work tasks are in the scope of the Funded Project and which are in the scope of the Eligible Project. This section should be updated every report with the work accomplished in the current quarter and the previous quarter's work description moved to the Work History section. Include the activities performed during the reporting period identifying those performed by the grantee organization, as well as by its partners, and identify any issues or concerns related to tasks. Include project committee meetings, Project Description status, agreement status, significant progress, project's milestone, lessons learned, etc. Note: (1) The information contained in this section must easily reconcile with Expenditures reported in the budget tables (see item 8), and in invoices and Funding Match expenditures reporting. Failure to provide easily reconcilable progress and status with invoices will result in returned invoices. (2) If for some reason a Quarterly Progress Report must cover more than one quarter, list each quarter separately with a detailed description of each quarter so that each quarter's work and its costs can be reconciled. (3) For projects that commenced work before the Execution Date of the Funding Agreement, the first Quarterly Progress Report will cover a consolidated period from the time of commencement of work, as provided in Section F1.a of the Funding Agreement.
6. If there is a conflict between easily matching the description of activities in the progress report with the expenditures reported in the invoice, consider adding an appendix that contains the details necessary for correlation of work performed with expenditures.
7. **Percent Complete of Eligible Project:**
8. **Percent Complete of Funded Project:**
9. **Deliverables:**
 - a. **Publications:** Identify publications made during this quarter for industry, government, public, or other groups resulting from the project.
 - b. **Outreach activities, Workshops, Presentations:** Identify outreach activities, workshops, presentations, etc., made during this quarter for industry, government, public, or other groups resulting from the project.
10. **Quarterly Budget Status:** The Funded Project budget should be updated in each quarterly report using the Quarterly Budget Status for Funded Project template below. The table shows expended or projected expenses allocated to State Share, Funding Match, and Other Contributions expended or projected by quarter and by budget category or task description as described in the budget. Explain any issues, concerns, or changes to the approved budget.
11. **Schedule Status:** Provide a current project schedule, including work already performed and planned work, with a breakdown by task and with key deliverables and milestones noted. This can be in the form of a Gantt chart. Explain any issues, concerns, or changes to the schedule provided previously.
12. **Plans for Next Quarter:** This section should identify activities to be performed during the next quarter.

Template for Quarterly Budget Status for Funded Project
Quarterly Budget Status for Funded Project
 (Updated on __/__/__)

Budget Category OR Task Description	Funded Project Budget	Reporting Dates <i>(add quarters as necessary)</i>				Total Actual Expended	Total Projected Expenses	Funded Project Grand Total
		Q1	Q2	Q3	Q4			
		From __/__/__ To __/__/__ <input type="checkbox"/> Expended <input type="checkbox"/> Projected	From __/__/__ To __/__/__ <input type="checkbox"/> Expended <input type="checkbox"/> Projected	From __/__/__ To __/__/__ <input type="checkbox"/> Expended <input type="checkbox"/> Projected	From __/__/__ To __/__/__ <input type="checkbox"/> Expended <input type="checkbox"/> Projected			
State (DWR Water Desalination Grant Program) Grant Share								
Totals								
Funding Match								
Totals								
Other Contribution								
Totals								
Funded Project Totals								

F2. ANNUAL REPORTS

Annual Reports document the calendar year activity for Desalination Grant projects of any category. The reports document Eligible Project accomplishments, findings, data collection, and progress for the calendar year. They are to provide more detail on actual project findings than provided in the quarterly reports. Annual reports shall be submitted with the fourth Quarterly Progress Report of each calendar year by March 31 of the subsequent year.

Other interim project deliverables may be submitted in lieu of the Annual Report if they provide the information specified below. The Funding Recipient shall submit a request for approval by email or other written communication to the State Project Manager before substituting another project deliverable for an Annual Report.

a. Content for Construction Project Annual Report

Section 1: Eligible and Funded Project Summary

- Summarize the Eligible Project and its purpose as well as the Funded Project portion of the Eligible Project
- Describe the project accomplishments during the calendar year
- Indicate how the project accomplishments interface with those of both the previous and subsequent years, if applicable.
- Identify project documents prepared during the calendar year

Section 2: Eligible and Funded Project Accomplishments

- Describe in detail the design and construction tasks accomplished during the calendar year
- Describe the status of completion of design and construction of each facility component
- Describe any challenges that were encountered during the year and how they were overcome
- Describe any challenges that are anticipated in the future and any actions planned to meet the challenges
- Describe, any environmental mitigation measures performed during the year
- Describe any changes in the project and the reasons for the changes

Section 3: Deliverables

- List any deliverables (reports, maps, flyers, environmental documents, etc.) that have been delivered to the State as part of implementation of the Eligible Project
- List any other deliverables accomplished, such as completed facilities

b. Content for Pilot, Demonstration, and Research Project Annual Report

Section 1: Eligible and Funded Project Summary

- Summarize the Eligible Project and its purpose as well as the Funded Project portion of the Eligible Project
- Describe the project accomplishments during the calendar year
- Indicate how the project accomplishments interface with those of both the previous and subsequent years, if applicable
- Identify project documents prepared during the calendar year

Section 2: Eligible and Funded Project Accomplishments

- Describe the equipment or facilities that are the basis of the project, their functions, and their status of fabrication or construction
- Provide in-depth discussion on the project findings and/or accomplishments during the calendar year
- Describe, in detail, what data were collected during the calendar year
- Summarize and evaluate the project findings
- Indicate how the project accomplishments interface with those of both the previous and subsequent years, if applicable.
- Identify project documents prepared during the calendar year
- Describe any changes in the project and the reasons for the changes

Section 3: Monitoring and Performance Evaluation

This section is required where the project relies upon assessing changes in pre-project conditions, such as, of the environment, water quality, water demand or use.

- Describe qualitatively/quantitatively pre-project condition(s) which are expected to be improved by implementation of this project
- Describe how monitoring and assessment were conducted for pre-project conditions and what tools/methods/measures were used for monitoring & assessment
- If applicable, describe how monitoring and assessment were conducted for post-project conditions and what tools/methods/measures were used for monitoring & assessment
- Describe the main indicators of success to achieve goals/objectives of this project
- Describe how Funding Recipient will continue the monitoring and assessment for post project updates and reports
- Describe any changes in the project and the reasons for the changes

Section 4: Deliverables

- List all deliverables (reports, maps, flyers, environmental documents, etc) that have been produced as part of the implementation of this project and indicate which deliverables were submitted to the State

c. Content for Feasibility Study and Environmental Documentation Project Annual Report

Section 1: Eligible and Funded Project Summary

- Summarize the Eligible Project and its purpose as well as the Funded Project portion of the Eligible Project (Unless otherwise stated, “project” refers to the development of a feasibility study or environmental document, not to the projects being analyzed in these reports.)
- Describe the project accomplishments during the calendar year
- Indicate how the project accomplishments interface with those of both the previous and subsequent years, if applicable
- Identify project documents prepared during the calendar year

Section 2: Eligible and Funded Project Accomplishments

- Describe in detail the tasks accomplished during the calendar year

- Describe the status of information development, analyses, and drafting of (1) feasibility sections identified in Appendix I of the Final 2017 Water Desalination Proposal Solicitation Package, or (2) environmental documentation components
- Describe the alternatives that are being analyzed. If alternatives have been screened and eliminated from more detailed analyses, describe the basis for elimination
- If an alternative has been selected for a recommended alternative, describe the alternative and the basis for selection
- Describe any challenges that were encountered during the year and how they were overcome
- Describe any challenges that are anticipated in the future and any actions planned to meet the challenges
- Describe any changes and the reasons for the changes from the Funding Application's Plan of Study (Attachment 19) and from the Funding Agreement's Project Description (Exhibit A). Include changes in the alternatives being analyzed, site location, etc.

Section 3: Deliverables

- List any deliverables (reports, maps, flyers, environmental documents, etc) that have been delivered to the State as part of implementation of this project
- List any other deliverables accomplished

F3. **FINAL REPORT**

The Final Report provides a record of the project and its results. It is a comprehensive self-contained document which will serve as a resource for large audiences including State agencies, water agencies and industry, as well as the general public. Submission of an approved final report allows DWR to proceed with the closeout of the grant in good standing. Reimbursement of any portion of the grant can be withheld pending the completion and submission of a satisfactory Final Report to DWR.

The draft Final Report documenting Desalination Grant projects of any category shall be submitted to DWR within two months after the following event, as applicable:

- Construction Project: The date of initial operation of the project (after start-up testing and permit approval for operation).
- Feasibility Study: The date of State approval of the final feasibility study.
- Environmental Documentation Project: The date of State approval of the final environmental document deliverables as specified in Exhibit A.
- Pilot, Demonstration, or Research Project: The date of either completion of data collection and evaluation or, if applicable, the State approval of a final technical report if the technical report will be a stand-alone document separate from the Final Report.

The Final Report, prepared after State approval of the draft, is due six months after the applicable event described above.

An electronic copy of the DRAFT final report is to be submitted to DWR. If DWR provides comments on the DRAFT, a revised DRAFT addressing the comments is to be submitted by the Funding Recipient to DWR for review. After a satisfactory DRAFT has been submitted to DWR, DWR will approve the DRAFT and the Funding Recipient will provide to DWR one electronic copy of the approved Final Report.

a. **Content of Final Report**

The final report should include the following main sections and information. See Section F3.b for additional instructions if there are other final deliverable documents.

Section 1: Project Information

- Project Category
- Project Title
- Start / End Dates
- General Location Map
- Project Map
- Grantee Information
- Contact Person Information
- Grant Awarded
- Total Cost of the Eligible Project and the Funded Project portion
- Cooperating/Contributing/Participating Organizations and Roles

Section 2: Executive Summary

Provide a brief summary of your project, its purpose, and a short description of your main findings/accomplishments.

Section 3: Goals and Objectives of the Project

Section 4: Project Implementation

- Describe in detail the project tasks and their accomplishment, e.g., activities, implementation methods, and procedures
- Describe project tasks that were not fully implemented or deliverables that were not produced and the reasons they were not accomplished
- Describe the environmental mitigation measures performed
- Describe the scientific basis of research projects

Section 5: Project Results

- List/describe in detail the results and data that were obtained from the tasks that were performed. Present your project results in an accessible way. Tables, graphs and other figures representing your data are excellent ways to summarize data and present them.
- For construction projects, provide desalinated water capacity constructed and the associated unit costs
- Assess the success of meeting each objective identified in the proposal, as initially approved or later modified in Exhibit A
- Describe the findings or conclusions of pilot, demonstration, and research projects
- Half-size as built drawings for construction projects

Section 6: Project Deliverables

List the deliverables and materials produced during the project (e.g., constructed facilities, publications, brochures, manuals, posters, patents, technology licensing, audio or audio-visual media, CD-ROM, website). Submit copies of such deliverables whenever possible.

Section 7: Dissemination / Outreach Activities

Describe the types of outreach performed for the project to solicit public participation and input and disseminate project results and information, including presentations at public meetings, community groups, conferences, or workshops; tours of facilities; publication of information materials; news media coverage; and coordination with various stakeholders.

Section 8: Conclusions / Lessons Learned

Discuss the results of the project, problems encountered, and lessons learned. If possible include recommendations for future similar work and potential practical applications of the results.

Section 9: Final Financial Statement

Include pertinent budget information including comparison of actual expenditures with the original spending plan. Include expenditures from the Grant Funds, as well as the Funding Match, and other contributions to accomplish the Eligible Project. Costs for construction projects should be broken down by major facility components.

Appendix: Certification of Completion

- For construction projects, a copy of a certification of project completion by a registered civil engineer, consistent with Exhibit D (Standard Conditions), Section D18. A DWR "Certification of Project Completion" form will be provided by the State.

b. Other Final Deliverable Documents

Feasibility studies, environmental documentation projects, and pilot, demonstration, and research projects may have final stand-alone deliverable documents in addition to the Final Report. The following instructions should be followed.

(1) Feasibility Study Projects:

- The final feasibility study report is a stand-alone document consisting of the content specified in Appendix I of the Final 2017 Water Desalination Proposal Solicitation Package.
- Section 5 of the Final Report should contain a brief summary of the feasibility study.

(2) Environmental Documentation Projects:

- Any environmental documentation shall be considered separate project deliverables subject to State review and approval. They shall conform to the requirements of applicable environmental laws, rules, and regulations in content and organization.
- Section 5 of the Final Report should contain a brief summary of the environmental documents.

(3) Pilot, Demonstration, and Research Projects

- Pilot, demonstration, or research projects may have a stand-alone final technical report with detailed study procedures and technical results. This stand-alone report should be specified in Exhibit A as a deliverable or be approved by the State Project Manager as an acceptable final technical report to supplement the Final Report.
- If a separate final technical report is permitted, the Final Report may summarize the technical report information with references to specific pages or sections in the technical report where the detailed information may be found.

F4. PERFORMANCE REPORTS

Performance Reports shall be submitted by Funding Recipient to State annually after project completion as provided in Section AA15.d. Performance Reports are expected to be no more than ten pages. The performance reports shall contain the following information.

- A brief summary of the Eligible Project and the Funded Project portion of the Eligible Project
- Subsequent work related to the original grant project. For example, if the grant funded a pilot project or research, what activities building on the project has been done subsequently?
- For construction projects, provide a summary of project operation for the year, including the amount of desalinated water produced, amount of feed water to the facility, water quality of feed and product waters, periods of non-operation (including explanatory text), modifications to the project, amount of energy used to produce the desalinated water, annual operations and maintenance (O&M) costs, water pricing, and challenges or issues faced. Amounts and quality of water, including total dissolved solids concentration, shall be reported by month.
- Changes in benefits and costs of project since its completion, if any
- Describe impacts of implementation of this project on Funding Recipient's water management

Exhibit H

State Audit Document Requirements and Funding Match Guidelines for Funding Recipients

The following provides a list of documents typically required by State Auditors and Funding Match general guidelines for Funding Recipients. The list of documents pertains to both State funding and Funding Recipient's Funding Match and details the documents/records that State Auditors would need to review in the event that this Funding Agreement is audited. Funding Recipients should ensure that such records are maintained for each funded project. Documentation that is specified for tracking State funds shall also apply to the tracking of Funding Match funds.

H1. State Audit Document Requirements

A. Internal Controls

1. Organization chart (e.g., Funding Recipient's overall organization chart and organization chart for the State funded Program/Project).
2. Written internal procedures and flowcharts for the following:
 - a. Receipts and deposits
 - b. Disbursements
 - c. State reimbursement requests
 - d. Expenditure tracking of State funds
 - e. Guidelines, policy, and procedures on State funded Program/Project
3. Audit reports of the Funding Recipient internal control structure and/or financial statements within the last two years.
4. Prior audit reports on the State funded Program/Project.

B. State Funding

1. Original Funding Agreement, any amendments, change orders, and budget, task, or schedule modification documents.
2. A listing of all bond-funded grants, loans, or subventions received from the State for the Eligible Project.
3. A listing of all other funding sources for the Eligible Project.

C. Contracts

1. All subcontractor, consultant, and partnering contracts and related documents, if applicable, including subcontractors or consultants to Funding Recipient partners responsible for Project implementation.
2. Contracts between the Funding Recipient and other agencies or Project partners for implementation of the Project or operation of the Project after its completion.

D. Invoices

1. Vendors and subcontractors invoices for expenditures submitted to the State for payments under the Funding Agreement.
2. Reimbursement requests submitted to the State pursuant to the Funding Agreement.
3. Documentation linking vendor and subcontractor invoices to State reimbursement, reimbursement requests, and related Funding Agreement budget line items.

E. Cash Documents

1. Receipts (copies of warrants) showing payments received from the State.
2. Deposit slips (or bank statements) showing deposit of the payments received from the State.
3. Cancelled checks or disbursement documents showing payments made to vendors, subcontractors, consultants, and/or agents for expenditures reimbursed by the State.
4. Bank statements showing the deposit of the receipts from other funding sources.

F. Accounting Records

1. Ledgers showing entries for State funding receipts and cash disbursements of these funds.
2. Ledgers showing receipts and cash disbursement entries of other funding sources.
3. Bridging documents that tie the general ledger to requests for Funding Agreement reimbursement.

G. Administration Costs

1. Supporting documents showing the calculation of administration costs.

H. Personnel

1. List of all contractors and Funding Recipient staff that worked on the State funded Program/Project.
2. Payroll records including timesheets for contractor staff and the Funding Recipient personnel who provided services charged to the Project

I. Project Files

1. All supporting documentation maintained in the project files.
2. All Funding Agreement related correspondence.

H2. Funding Match Guidelines

- A. Funding Match (often referred to as cost share) consists of non-State funds, including in-kind services. In-kind services are defined as non-cash contributions consisting of work performed or items contributed by the Funding Recipient (and potentially other parties) directly related to the execution of the funded project. Examples include volunteer services, equipment use, and use of facilities. The dollar value of in-kind service can be counted as Funding Match in-lieu of actual funds (or revenue) provided by the Funding Recipient. Other funding match and in-kind service eligibility conditions may apply. Provided below is guidance for documenting Funding Match with and without in-kind services.

1. Although tracked separately, in-kind services shall be documented and, to the extent feasible, supported by the same methods used by the Funding Recipient for its own employees. Such documentation should include the following:
 - a. Detailed description of the contributed item(s) or service(s)

- b. Purpose for which the contribution was made (tied to Project Description)
 - c. Name of contributing organization and date of contribution
 - d. Real or approximate value of contribution. Provide the name of the person who valued the contribution and how the value was determined (e.g., actual, appraisal, fair market value, etc.). Justification of rate. (See item #2, below)
 - e. For contributed labor, person's name, work performed by the person, the number of hours contributed, and the hourly rate used to value the contribution
 - f. If multiple sources exist, these should be summarized on a table with summed charges
 - g. Source of contribution and whether it was provided by, obtained with, or supported by government funds
2. Rates for volunteer or in-kind services shall be consistent with rates paid for similar work in the Funding Recipient's organization. For example, volunteer service of clearing vegetation performed by an attorney shall be valued at a fair market value for this service, not the rate for professional legal services. In those instances, in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market. Paid fringe benefits that are reasonable, allowable and allocable may be included in the valuation.
 3. Funding Match contribution (including in-kind services) shall be for costs and services directly attributed to activities included in the Funding Agreement. These services, furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as Funding Match if the activities are an integral and necessary part of the project funded by the Funding Agreement.
 4. Cash contributions made to a project shall be recorded as revenue, but they will not be counted as a Funding Match unless they are disbursed for Project costs incurred. In-kind services are recorded as both Project costs and as equivalent revenue. These costs should be tracked separately in the Funding Recipient's accounting system.

Exhibit J Project Location

J1. PROJECT LOCATION

This project is located in Mendocino County in California as shown in Section J2. 281 Jere Melo Street City of Fort Bragg Wastewater Treatment Plant, Municipal Improvement District No. 1 (APN 008-020-07-00), (39.438688, -123.814781)

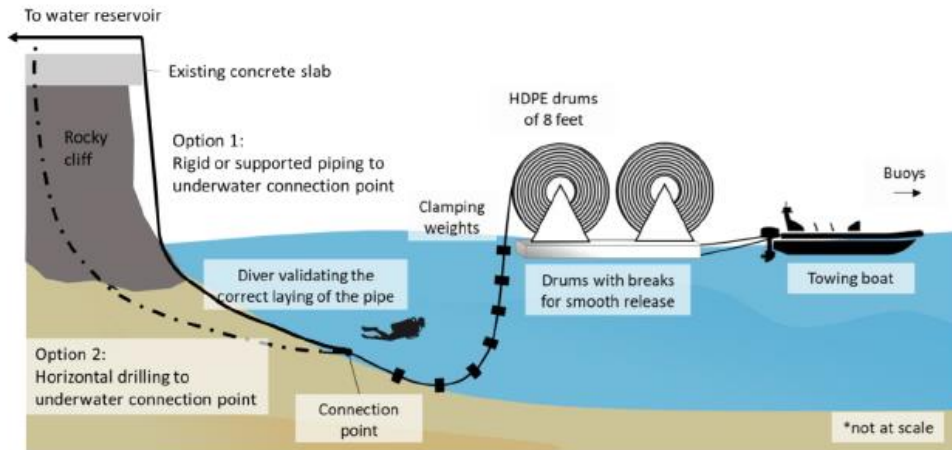
The Buoy will be moored at approximately 39.4° Latitude and -123.8° Longitude. The exact position of the intake and underwater pipeline to shore will be described in the still-to-be-issued California State Lands Lease.

J2. MAP



J3. DRAWINGS AND SKETCHES

Only Option 1 will be pursued for the demonstration pilot study.



Pipeline and Buoy Installation Concept



WAVE POWERED SUSTAINABLE DESALINATION PROJECT

Making the oceans a sustainable
and affordable source of drinking
water



Presented by Dragan Tutic
CEO & Cofounder of Oneka Technologies
November 2022

Blue Economy Initiative Goals, Fort Bragg, California



Ocean Resiliency

**Mitigation, Sequestration
and Adaptation**

Renewable Energy

Emissions Reduction

Aquaculture and
Sustainable Fishing

Marine Cleantech

**Protection of Ocean
Ecosystems**

Promote Jobs in the
Environmental Sphere

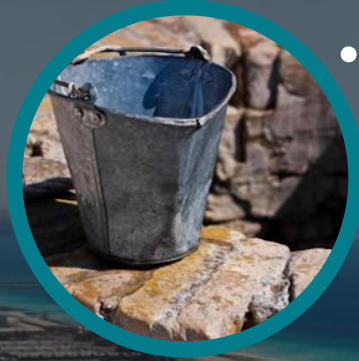


Fort Bragg City water challenges



- ✔ Dependence on rainfall and riverwater for water supply
- ✔ Repetitive droughts strained the water supply
- ✔ Brackish water desalination plant added as supplement
- ✔ Water availability too low to supply local communities and required expensive supplemental long-haul trucking
- ✔ Situation unlikely to improve naturally
- ✔ Long-term, affordable & sustainable water supply is required

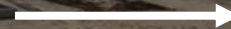
**WATER
SCARCITY**



**CONVENTIONAL
DESALINATION**



**CLIMATE
CHANGE**



WE NEED TO ELIMINATE FOSSIL FUELS FROM THE PRIMARY ENERGY SUPPLY



2020

2050

~1 %
of world's population
lives on desalinated
water

=

~0,5 %
of world's CO₂
emissions

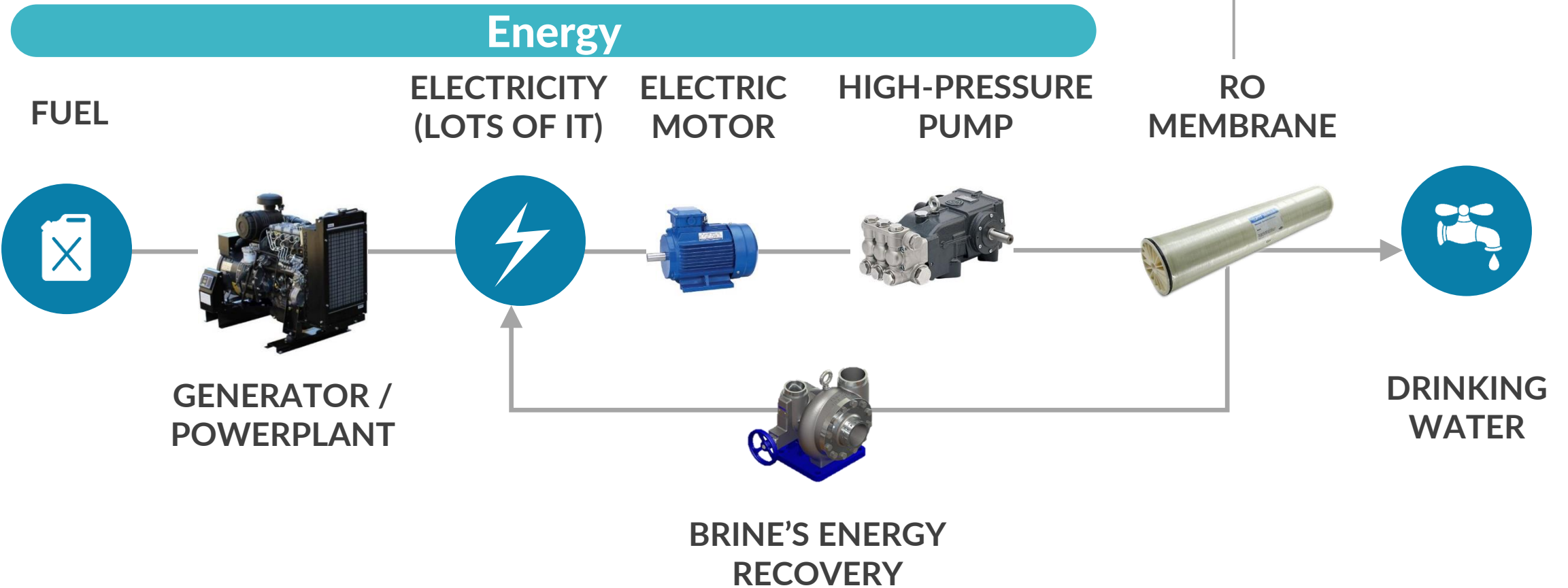
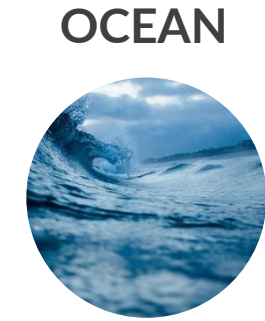
10 %
of population
desalination expected to
increase at current
growth rate

=

~ 5 %
of today's world's CO₂
emissions
about twice the
aviation industry

CONVENTIONAL DESALINATION IS NOT SUSTAINABLE

A GROWING ALTERNATIVE



CONVENTIONAL DESALINATION TURNS FUEL INTO WATER ³⁵⁷



Oceans, the perfect match for a sustainable source of drinking water

RESOURCE
(Water)

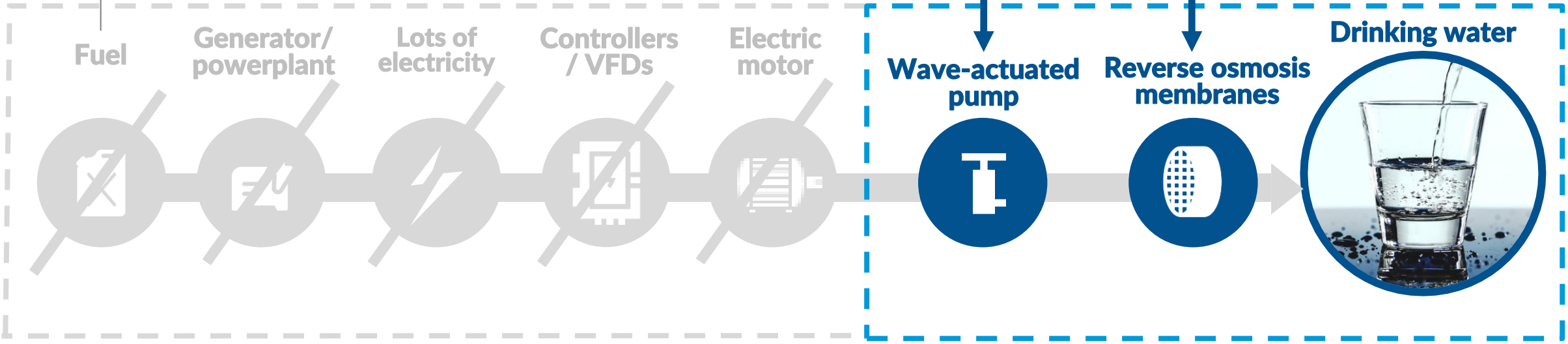
ENERGY
(Waves)

PROXIMITY
(to coastal
populations)

ONEKA SUSTAINABLY TURNS WAVES INTO WATER



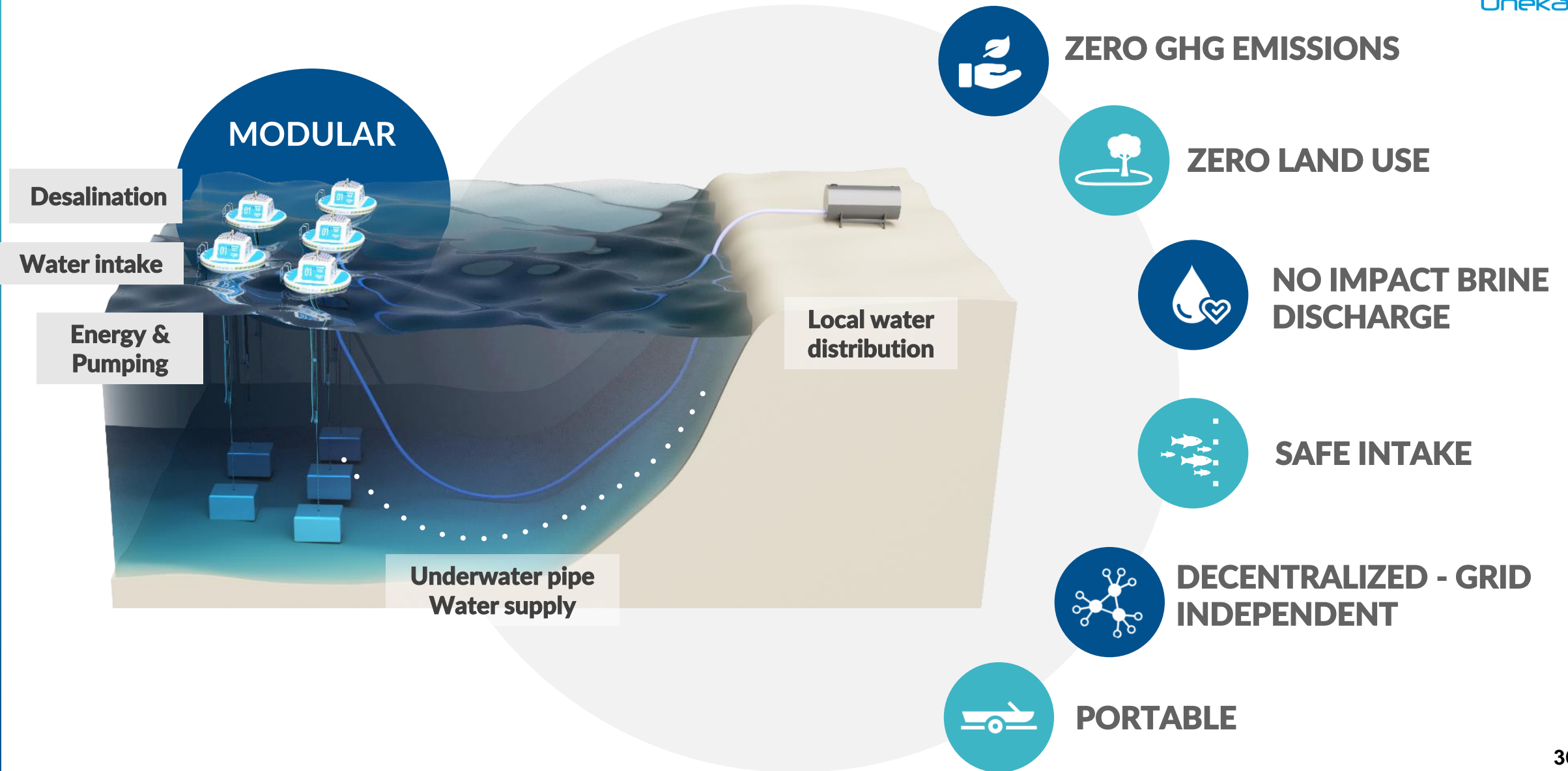
30-50% of
cost eliminated

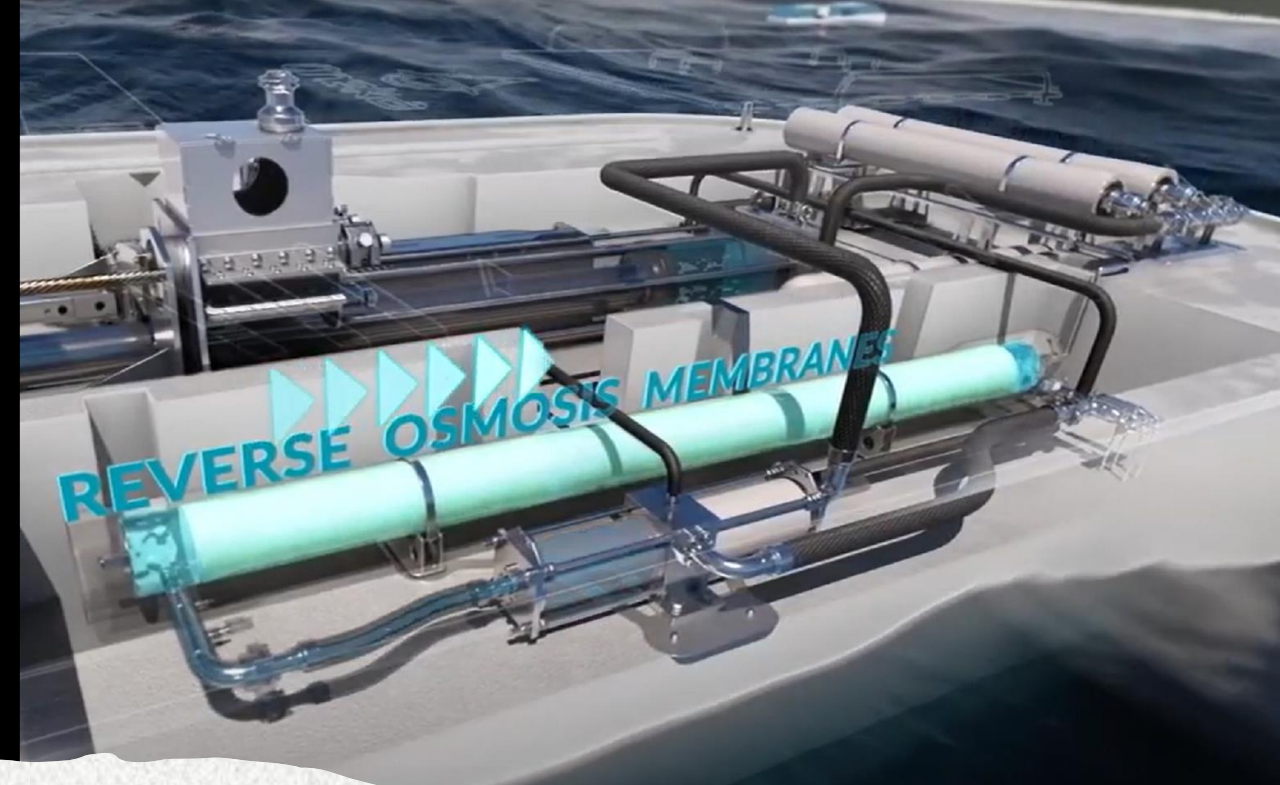


Conventional desalination extra components

Oneka

ONEKA'S WATER TAP FROM THE OCEAN

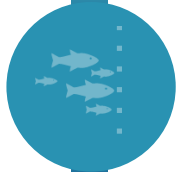




3D VIDEO EXPLAINING HOW IT WORKS

Link sent in chat

CARBON-FREE DESALINATION PROCESS



AVOIDED CARBON EMISSIONS:

Saves about
1 m³/d of desalinated water produced = 0.75 to 1 ton of CO₂e per year

Compared to fossil-fuel powered high efficiency desalination (with ER)

Small community project example

3500 m³/d project (for Fort Bragg)
(640 gpm)

2500 to 3500 T of CO₂e saved per year

Large project

185,000 m³/d for larger city needs
(50 MGD)

140,000 to 185,000 T of CO₂e saved per year

G R O U P E
AGĒCO

Preliminary assesement based
on the Project International
Standard - Part 2 (ISO 14064-2)
on the Oneka Technology

New study planned in 2023

No Land or Visual Impact

Nova Scotia, Canada, 2020

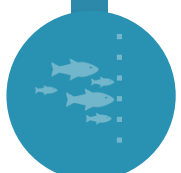


1 mile offshore

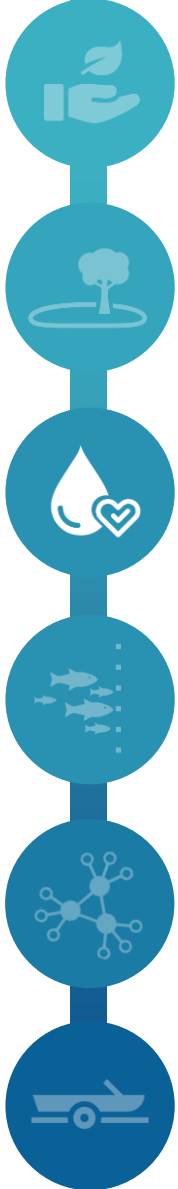
Algarrobo, Chile, Nov 2022



0.5 mile offshore

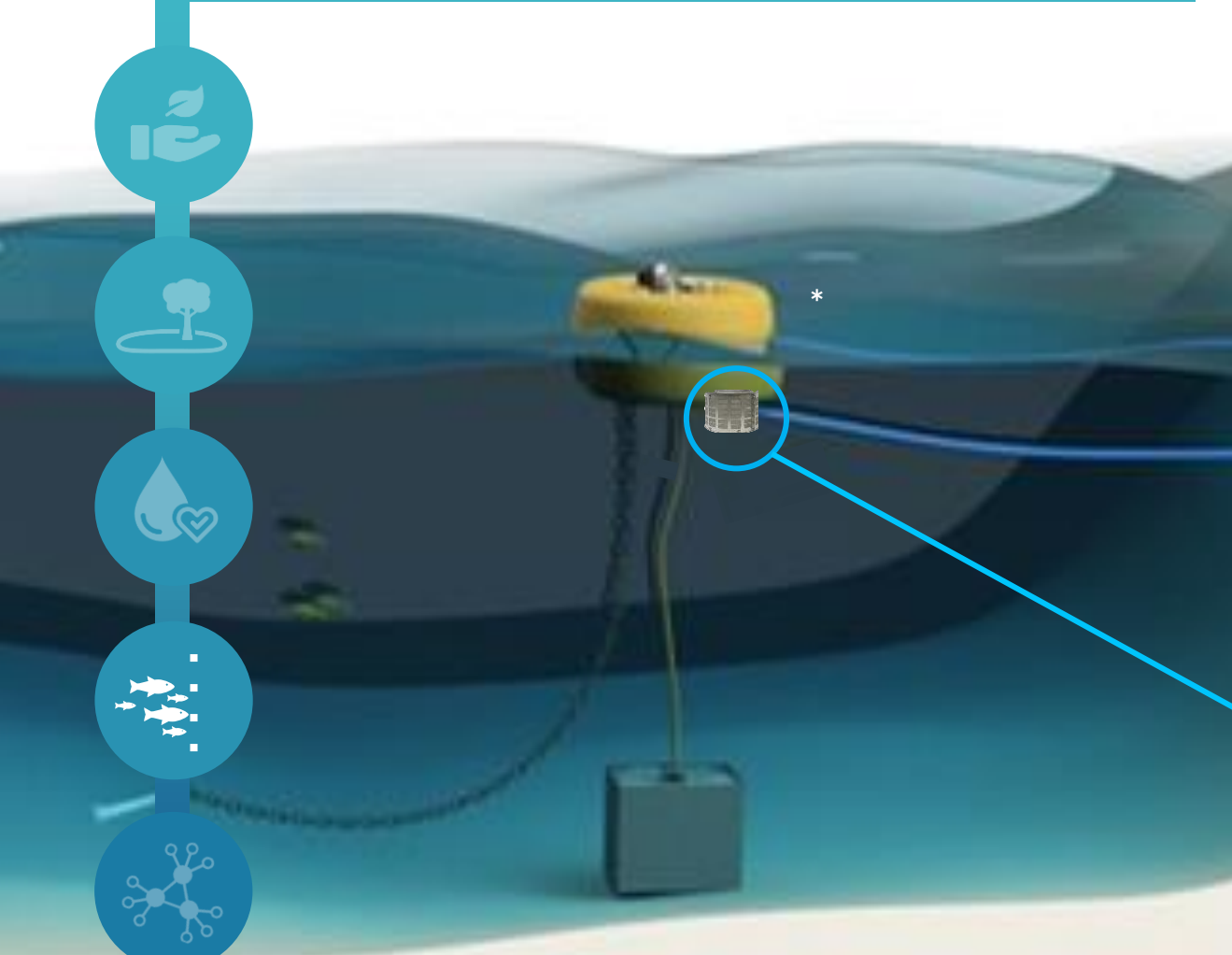
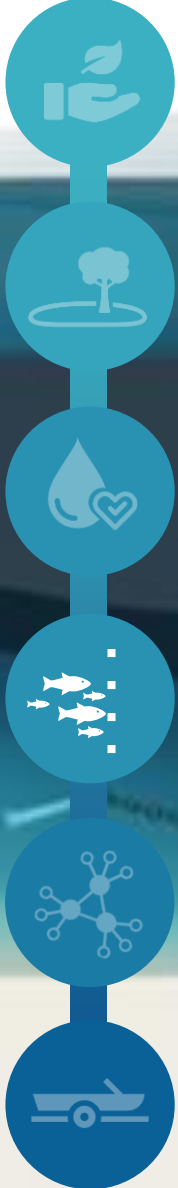


Responsible Brine: Low Concentration + Effective Diffusion



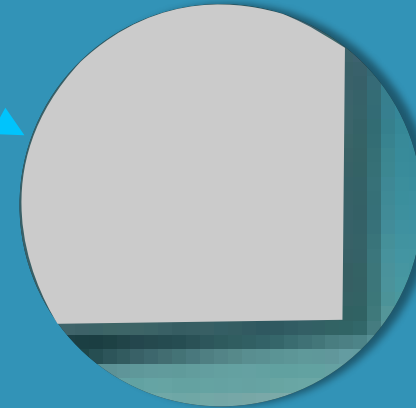
	WAVE POWERED DESALINATION	CONVENTIONAL DESALINATION
Salinity	<p>±35% higher salinity than seawater</p> <p>High efficiency energy recovery enables low recovery and reduces membrane fouling</p>	<p>±100-150% higher salinity than seawater</p> <p>Maximize recovery for energy cost efficiency, results in high salinity brine</p>
Diffusion	<p>Brine released over a vast area</p> <p>Modular system, offshore release combined with wave action mixing</p>	<p>Localized brine released zone</p> <p>Released from the coast, any diffusion systems are an additional burden or cost</p>
Result	<p>The salinity variation is extremely limited</p>	<p>Localised salinity increase can be significant in some cases</p>

Safe Intakes



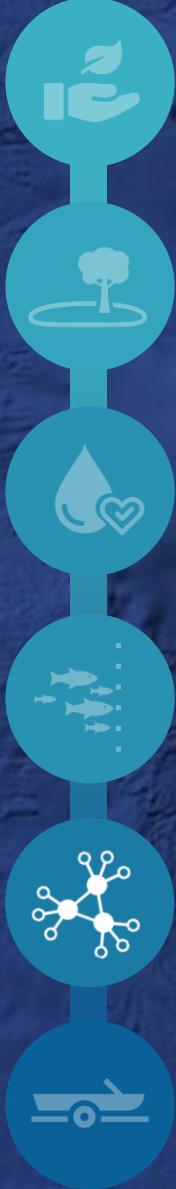
Engineered to protect sea life:

- ✓ 60-micron-size intake holes to prevent harmful impact on ecosystems (adjustable)
- ✓ 60 micron is smaller than nearly all fish larvae at any stage including egg
- ✓ Backwashed to reduce maintenance and ensure enhanced suction protection



*ONEKA ICECUBE UNIT
AS AN EXAMPLE
(EMERGENCY RELIEF)

Decentralized Water Output: Minimize Infrastructure Costs



New potential water source locations

Fort Bragg

Mendocino

Examples of communities exposed to water scarcity risks

Laytonville, California

Covelo, California

Willits

Ukiah

Lakeport

Gualala

Sea Ranch

Easily Movable, Portable



- ✓ Towed by a boat
- ✓ Installation and removal:
 - Less than 2 hours/unit

The same P1 unit was installed, operated and moved to:

- Nova scotia, Canada, 2020
- Florida, USA, 2021
- Algarrobo, Chile, 2022



VIDEOS SHOWING THE TECHNOLOGY OPERATING IN CHILE & FLORIDA

Video link sent in chat



PROVEN AND RELIABLE TECHNOLOGY



- #1 trial: Extreme wave conditions in Canada
- #2 trial: Tough feed water in Florida
- #3 trial: Deployment at user site in Chile



Survived Storms with
14 ft Hs Waves (near 20ft max)



10 m³/d capacity

**Ocean-Test Early
Learn and Iterate Rapidly**



V1



V2



V3



V4



V5

AWARD WINNING TECHNOLOGY

US DOE - WAVE TO WATER PRIZE GRANDPRIZE



- World renowned competition
- Total of \$1,3M CAD in winnings
- 1st place among 70 participants
 - Highest water production
 - Best water quality
 - Fastest assembly & deployment

PEERS RECOGNITION



2022 Innovation Award



Innovative game-changing desalination or water reuse technical solution reaching a commercial stage.

Voted by a panel of industry experts

MARKETS & PRODUCT CLASSES

READY FOR COMMERCIALISATION

SMALL-SCALE

Remote coastal bases, disaster recovery, coastal refugee camps



ICECUBE

1000 L/d per unit

- Diameter: 1.5 m

MID-SIZE

Communities, Resorts/Tourism, Small Industries.



ICEBERG

50 m³/d per unit

- < 2000 m³/d projects
- Eq. diameter: 6 m

IN DEVELOPMENT

UTILITY SCALE

Municipal, Mining, Large industries, Ag.



GLACIER

500 m³/d per unit

- < 10 000 m³/d projects
- Eq. diameter: 12-15 m

FULL PROJECT DEPLOYMENTS

FL, USA



FL Coastal community

- Gated community
- Water as a service agreement
- Well placed for Caribbean potential users to see

**300 m³/d in water need
(75k gal/day)**

300 T CO₂_{eq}/yr
avoided

Baseline: conventional
desalination solution

Status:

- Commissioning early
2023

CHILE



Cofradia Nautica Del Pacifico

- Marina near Santiago
- Launching pad for Chile

50 m³/d

50 T CO₂_{eq}/yr avoided

Baseline: conventional
desalination solution

Status:

- Operating
(commissioned in July
2022)
10 of 50 m³/d installed

SUSTAINABLE DESALINATION PROJECT PROPOSAL

CITY OF FORT BRAGG



Project deployed
in phases

*Flexible installation
approach to minimize
environmental impacts

Array of Oneka
desalination buoys*

Underwater pipe*

Fort Bragg
Wastewater
Treatment Plant

Connection to
water storage
and distribution

SUSTAINABLE DESALINATION PROJECT PROPOSAL

CITY OF FORT BRAGG



**Employment of
Local people &
Contractors**



**Training Program for
Local Technicians for
O&M**



**Permitting with
Local Agencies &
Partners**



**Custom Project
Design & System
Manufacturing**



**Water Needs & Site
Analysis**



**Offshore
Installation**



**Increases Community
Resilience to Drought**



**Monitoring of Water
Quality & System
Performance**

ONEKA'S ICEBERG – Pilot project Unit

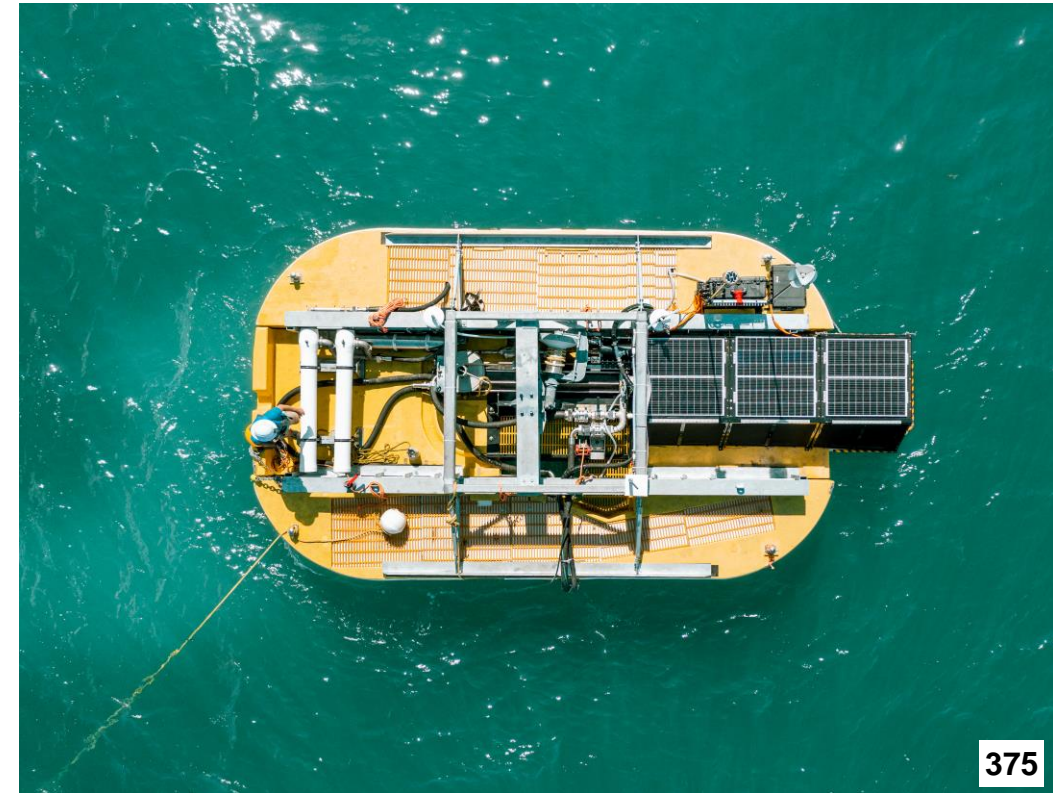
Typical Project Deployment – up to 40 units :

< 2 000 m³/d or 520 000 gallons per day per full scale project

Pilot project : 1 single unit

Capacity per Iceberg : 50 m³/d or 13 000 gallons per day

Ed diameter : 6,5 m || 20 ft



Pilot Project permitting



The California Ocean Plan’s Desalination Amendment (OPA) provisions don’t apply with the following conditions :

OPA Criterion (at M.1.a.)	Oneka Pilot Project Satisfies Criterion?
“desalination facilities that are operating to serve as a critical short-term water supply during a state of emergency declared by the Governor”	Yes
portable desalination facility	Yes
withdraw less than 0.10 MGD	Yes
operated by a governmental agency	Yes

GENERAL PERMITTING PROCESS SUBJECTS

ENVIRONMENT: OCEAN - BEACH & COAST

KEY CONCERN(S)

- Hard bottom impacts
- Brine
- Animal Entanglements
- Intakes

CONCESSIONARY RIGHTS

- Location
- Ocean, coastal and land use

NAVIGATION SAFETY

- Navigation international codes
- IMO safety standards

HEALTH

- Water quality
- WHO standards

Oneka is working with governments and local agencies to minimize negative impacts and maximize positive impacts of each project we undertake.

Building and implement best practices and strong relationship with local communities is central to our permitting process.

EXCELLENT TRACK RECORD IN PERMITTING

Past permitting sites

FORT PIERCE DEMO SITE, FL, USA (2017-2022)

5-year authorization used for V4, V5, P1, S1
(Approved or exempted by USCG, USACE, FDEP)

OCEAN VILLAGE, FL, USA (NOW-)

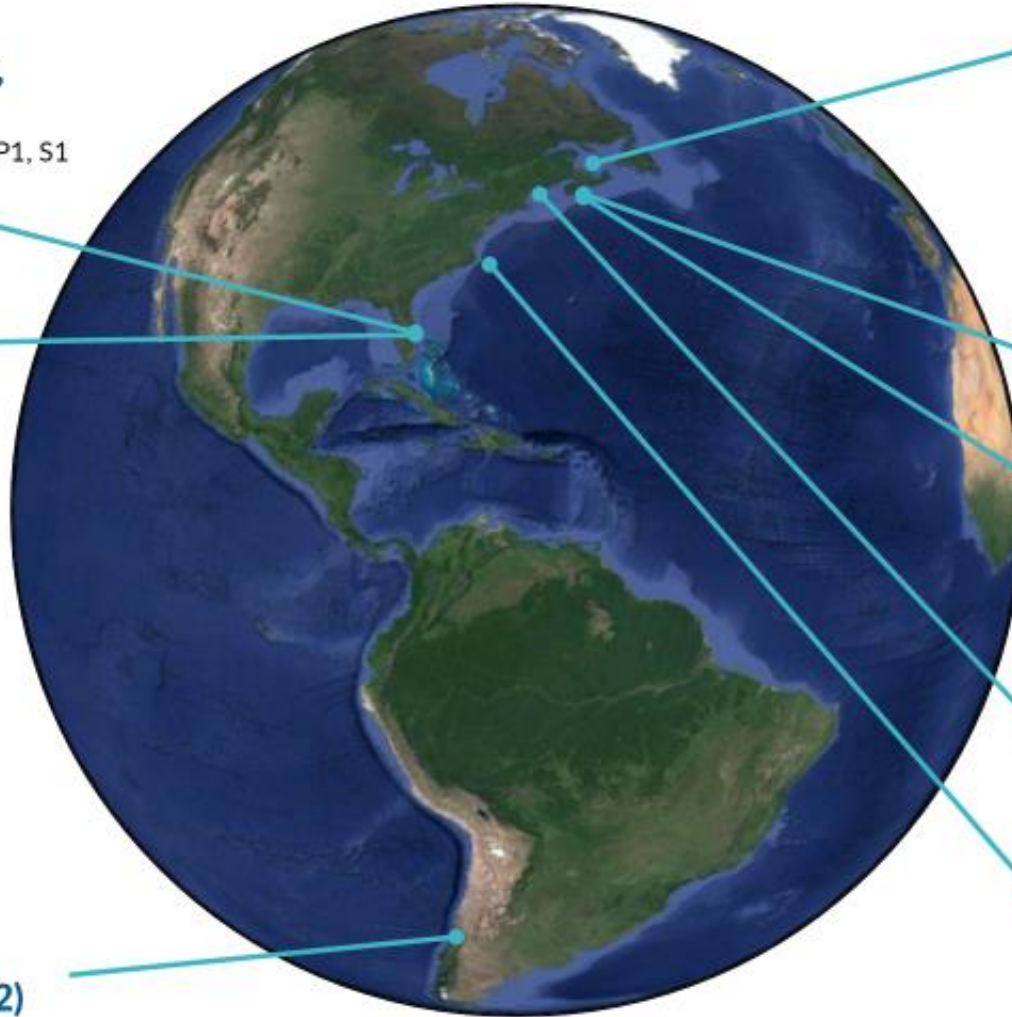
5-yr+ Commercial site permitting
Including pipe to shore
(Reviewed by USCG, USACE, FDEP, FWC, FWS, NFMS)

Steps completed: brine release, navigation hazards, animal entanglement, coral reefs (hard bottoms impacts), turtle nesting, public noticing etc. currently finishing the lease as the final step)



COFRADIA SITE, ALGARROBO, CHILE (2022)

1-yr Commercial demo permit including pipe to shore and optional on-shore process plant (led by our partner REDE)



MAGDALEN ISLANDS, QC, V1 TESTING

in partnership with CTMA - 1 week

NOVA SCOTIA



HALIFAX

EASTERN PASSAGE, NS, P1 TESTING (2020-2021)

1 month testing, 1 year authorization

COW BAY, NS, S1 DEMO (2021)

7 months authorization, including pipe to shore and process plant on shore for Snowflake
(Approved or exempted by Transport Canada, NSLF, DFO & Municipality)

SCARBOROUGH BEACH, ME, V3 TESTING (2016-2017)

4 to 12 mth authorization for testing and improvements

WILMINGTON, NC, USA, V2 TESTING, (2016)

in partnership with local partner - 2 weeks

Use the pilot project to conduct studies



Potential studies that could be conducted concurrently

1. **Entrainment Study.** A technical, field sampling study to determine what impact the seawater withdrawal will have on the plankton resources that include fish larvae.
2. **Benthic Habitat Survey.** A sonar survey of the seafloor to document the area's habitat to determine what type of seafloor habitat is present (rocky reef, kelp, sandy bottom, or some combination).
3. **Water Need.** Ideally this must be cataloged in a water planning document from the local water authority.
4. **Subsurface Intake Feasibility.** The Oneka buoy includes an integrated surface water intake. Therefore, before it can be used, at least at utility scale, the feasibility of a subsurface intake must be determined.
5. **Brine Discharge Technology Empirical Study.**
6. **Essential Fish Habitat Assessment.** A review by the National Marine Fisheries Service to ensure the project does not have an adverse impact on any Federally managed fisheries.
7. **Sensitive Species Survey.** A survey to ensure the installation and operation will not adversely impact any sensitive species in the area.

MANAGEMENT



DRAGAN TUTIĆ, P. Eng
Founder & CEO

- Vision
- Partnerships & Team
- Strategic planning & Sales
- Fundraising



ALAIN-OLIVIER DESBOIS, CFA
EVP Impact & Financing

- 25 years experience impact financing, Cleantech VC, coach and strategist for startups and PE/VC funds



SHAWN MEYER-STEELE,
Chief Commercial Officer

- Desalination market veteran
- Caribbean Desal Asso. President
- Previously with Ionics, VP ERI, VP Seven Seas Water (all exited)



ALEXANDRE BERTRAND P.Eng, MBA
VP of Operations

- Goal-oriented management executive in operations, engineering and manufacturing.
- Execution & quality processes expert

MULTIDISCIPLINARY TEAM OF > 30 EMPLOYEES



Ocean Engineering
and modelling



Mechanical
Engineering



Marine Operations
and experience



Desalination



Build dedicated
manufacturing team



Offices in Qc, Canada &
Florida, USA



FORT BRAGG BENEFITS FROM THE PROJECT



TRANSITION

to a sustainable water solution



ALIGNMENT

with its Blue Economy Initiative goals



INCREASE

community resilience to climate change

AND CALIFORNIA



OPPORTUNITY

to demonstrate a new scalable & sustainable desalination solution adapted for the state



Project proponent – City of Fort Bragg

John Smith, Director of public works

jsmith@fortbragg.com
+1 (707) 961-2823

Technical support - Oneka Technologies

Dragan Tutic, CEO & Founder

DT@OnekaWater.com
+1 819-485-0335

Pilot Project permitting



The California Ocean Plan’s Desalination Amendment (OPA) provisions apply to the buoys under most circumstances. Under the two following conditions the OPA would not apply:

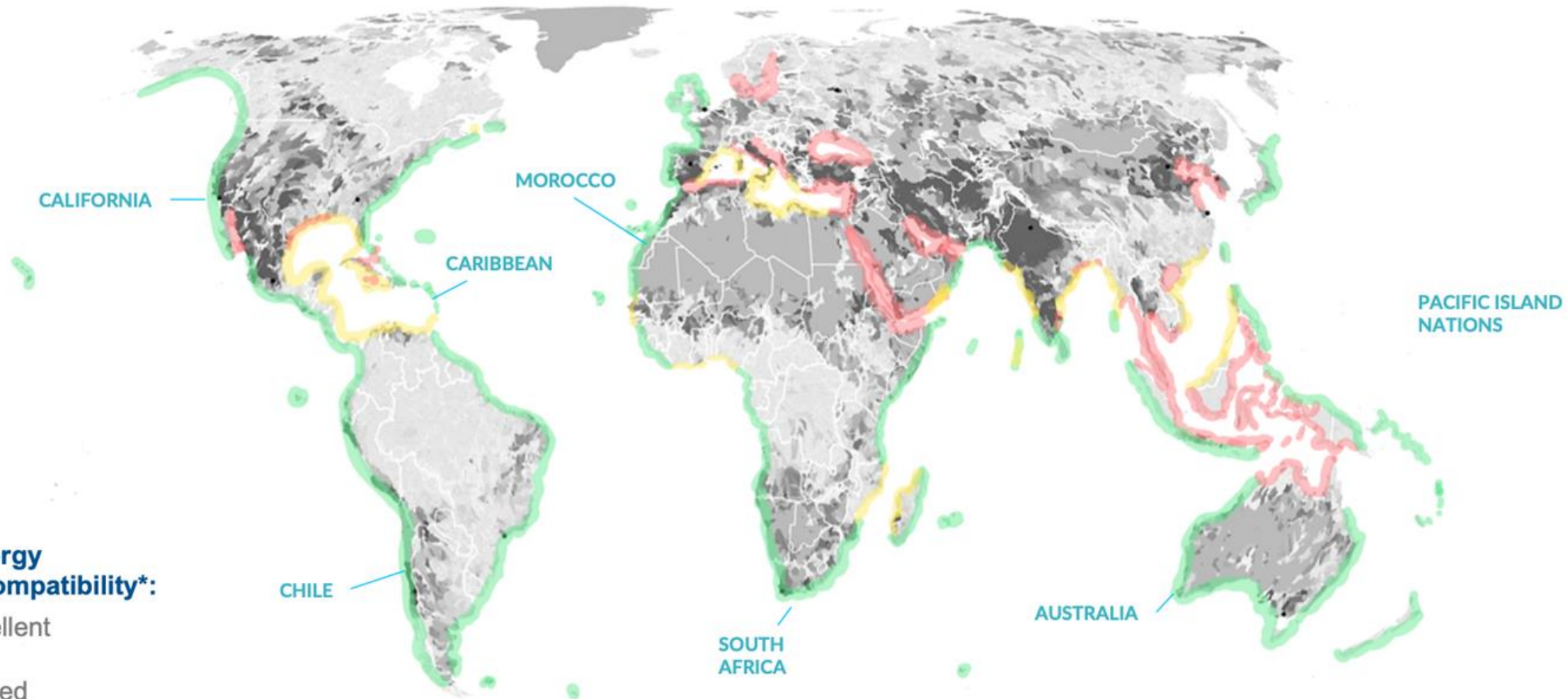
1. “desalination facilities that are operating to serve as a critical short-term water supply during a state of emergency declared by the Governor” would not need to comply with any of the OPA;

The unit of the pilot project would be sold to the city of Fort Bragg who would also own it (exception to typical business model)

2. “portable desalination facilities that withdraw less than 0.10 (MGD) of seawater and are operated by a governmental agency” would not need to comply with the OPA in the following sections:

- o Chapter III.M.2 (Water Code section 13142.5(b) Determinations for New and Expanded Facilities: Site, Design, Technology, and Mitigation Measures Feasibility Considerations),
- o Chapter III.M.3 (Receiving Water Limitation for Salinity), and
- o Chapter III.M.4 (Monitoring and Reporting Programs).

WAVE ENERGY MEETS WATER SCARCITY



Wave Energy density compatibility*:

- Excellent
- Ok
- Limited

*approximative zones for indicative purposes

Market examples facing water scarcity

ADVISORS



BUSINESS DEVELOPMENT



MARK LAMBERT

Desalination industry and Water project financing expert. Previously IDE Tech CEO (Carlsbad Desal)

TECHNICAL & OPERATIONS



PETER TYSZEWICZ

Operations, Manufacturing and Scaling Specialist. CEO Core Energy Recovery, Previous Executive in Wind, Hydrogen, Solar, Automotive Sectors



COLIN RYAN

Industrial Equipment Developer
Supply Chain Expert,
Serial Entrepreneur, Former
CanSolv Shenzhen CEO, Effenco CEO



PIERRE CÔTÉ

Expert in membrane and filtration technologies, Zenon's CTO
Veteran in the Desalination Industry



ALAN TAYLOR

Naval Architecture & Engineer
Renewable Energy Project Finance
Marine Technologies Expert

Advantages of Oneka vs Renewable Energy + DESAL

- ✓ No land costs
- ✓ No building
- ✓ No electrical motors, electrical panels or components (except sensors for info.)
- ✓ No need for batteries or grid connection
- ✓ No losses in energy conversion
- ✓ No additional intake costs
- ✓ No pretreatment energy costs
- ✓ Sustainable brine discharge

Advantages of Oneka vs fuel + desal

In addition to RE Desal comparison

- ✓ No fuel needed
- ✓ Potential CO2 avoidance/reduction monetization

Fundamentals vs other conventional desal solutions

RESOLUTION NO. XXXX-2024

RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING PURCHASE AGREEMENT WITH ONEKA TECHNOLOGIES FOR THE ONEKA DESALINATION BUOY PROJECT, AND AUTHORIZING CITY MANAGER TO EXECUTE AGREEMENT (AMOUNT NOT TO EXCEED \$1,490,000)

WHEREAS, The City of Fort Bragg has been challenged by drought conditions over the past ten years; and

WHEREAS, the City's surface water sources have been impacted by the lack of rainfall reducing flow; and

WHEREAS, interruption in service has had an impact on businesses and threatened the health and safety of our city; and

WHEREAS, The Department of Water Resources has provided grand funds in the amount of \$1,490,000 to complete a pilot project to test a new desalination technology; and

WHEREAS, Oneka Technologies has built a floating desalination buoy to test in Fort Bragg; and

WHEREAS, This project will be a test for the performance and review potential impacts to the ecosystem; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FORT BRAGG FINDS, DETERMINES, AND RESOLVES AS FOLLOWS:

1. The City Council of the City of Fort Bragg hereby approves the temporary installation of the Oneka desalination buoy for the pilot study to accomplish a twelve month study period and hereby approve the purchase agreement with Oneka Technologies, subject to the City's compliance with the California Environmental Quality Act; and authorizes the City Manager to execute the same (Amount Not to Exceed \$1,490,000).
2. Approval of this Agreement is not subject to CEQA because it does not constitute a "project" pursuant to State CEQA guidelines section 15378(a). The Agreement has no potential to result in a direct or reasonably foreseeable indirect physical change in the environment in the foreseeable future for the following reasons:
 - (a) Installation and/or construction will not commence until the City complies with the requirements of CEQA and adopts appropriate documents.
 - (b) Approval of this Resolution shall not be interpreted to include authority to install or construct the desalinization unit or appurtenant structures until it has complied with CEQA.
3. Even if approval of the Agreement did constitute a "project" subject to CEQA, the action would be exempt from CEQA pursuant to State CEQA Guidelines 15061(b)(3)

Common Sense exemption because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

The above and foregoing Resolution was introduced by Councilmember _____, seconded by Councilmember _____, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 10th day of June 2024, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSED:

BERNIE NORVELL
Mayor

ATTEST:

Diana Sanchez
City Clerk



City of Fort Bragg

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Text File

File Number: 24-812

Agenda Date: 6/10/2024

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Status: Business

In Control: City Council

File Type: Staff Report

Agenda Number: 8C.

Continuation of Fiscal Year 2025 Budget Workshop and Provide Direction to Staff