

City of Fortuna

Request for Proposals

**Engineering Design Services, Permitting and Optional Construction
Engineering Services for the
CITY OF FORTUNA
WATER SYSTEM EMERGENCY GENERATORS PROJECT
(CIP# 9102)**



June 10, 2021

PROPOSALS MUST BE RECEIVED NO LATER THAN
2:00 P.M., July 2, 2021

Approved for release by

A handwritten signature in blue ink that reads "Kevin Carter".

June 10, 2021

Kevin Carter, Deputy Public Works Director
City of Fortuna

Date

**REQUEST FOR PROPOSALS
FOR
ENGINEERING DESIGN SERVICES, PERMITTING &
OPTIONAL CONSTRUCTION SERVICES
CITY OF FORTUNA
WATER SYSTEM EMERGENCY GENERATORS PROJECT (CIP #9102)**

I. Project Overview

Project Background

The City of Fortuna is located in Humboldt County, California, approximately 20 miles south of Eureka. The City operates a water system with four storage tanks, five wells, three hydropneumatic systems, and seven booster stations. These facilities supply or boost water to seven pressure zones. Two of those stations currently require towable generators to be driven to the site and manually connected to the stations. Those two stations are called the Kenmar Pump Station & the Drake Hill Road Pump House.

The Kenmar Pump Station is located within the City right-of-way at the intersection of Kenmar Road and South Fortuna Boulevard. This station boosts water to the Campton Heights storage tank, which is a steel, 1-million-gallon tank (water zone 6). The Drake Hill Pump Station is located at APN 203-141-012 (between 3383 & 3403 Drake Hill Road). The Drake Hill Pump Station is a hydropneumatic booster station that supplies water to the most southerly portion of Fortuna (pressure zone 7).

The City has obtained a grant from the Hazard Mitigation Program (FEMA) to contribute funding for this project. This project was originally included in the City's annex of the Humboldt County Operational Area Hazard Mitigation Updated Plan (2014). This Request for Proposals is seeking qualified firms to provide design, permitting and optional construction management services for the installation of two, new back-up emergency generators at the two locations above that follow the guidelines of the grant requirements.

Proposed Project

This project will provide emergency power generation to two of the City's water pump houses. The Kenmar pump station boosts water to pressure zones 6, 7, and 8, and can feed water to pressure zone 4 in an emergency. In pressure zone 6 water is boosted to the Campton Heights Reservoir serving 4,630 residents. In pressure zone 7 water is boosted to the Drake Hill pump station, which serves to maintain pressure for 150 residents, and CalFire's air attack base at Rohnerville Airport. In pressure Zone 8 water is boosted to the Seneca booster pump station which maintains the pressure for another 80 residents. In pressure zone 4 the Kenmar pump station can supply water to the Hillside reservoir serving 380 residents.

The project willby prevent loss of water and subsequent wastewater services and maintain fire protection service for 5,240 residents in Fortuna. The proposed project is to add permanently mounted generators at the Kenmar and Drake Hill water booster pump stations where no permanently mounted generators currently exist. The proposed project will provide backup power to Kenmar and Drake Hill water booster pump stations with the installation of a 250 kW generator at the Kenmar pump station, and a 80 kW generator at the Drake Hill pump station. The project

would include installation of a 12-foot by 4-foot concrete pad, minor grading (less than 5 cubic yards) mounting of the generator, and electrical connections to the existing system.

The City has existing permanently mounted generators that will further support the project. The water system supply wells and corrosion control facility have a separate backup generator for power. The Seneca pump station also has a permanently mounted generator to support pressure zone 8 after the water has been boosted from the Kenmar station.

A review of the FEMA 100-year flood mapping shows the location of both booster pump station sites and City corp yard staging site are out of the flood plain, within Zone X.

The proposed project would provide complete protection from power outages at the City's water booster pump stations caused by extreme weather, earthquakes, fires, and floods. Currently there is no permanent backup power for Kenmar or Drake Hill Pump Stations. The proposed generators would also provide complete protection from loss of electrical service.

It is anticipated that this project will qualify for a Categorical Exemption from CEQA and a Notice of Exemption will be filed with Humboldt County and made public as required by law.

II. Scope of Work

The scope of work consists of preparing bid-ready plans, specifications, and construction cost estimates (PS&E), obtaining all project permits, providing grant administrative assistance, and optionally provide for construction management services.

Consultants are expected to provide a detailed scope of work and schedule that covers the items outlined below, along with any additional items that the Consultant deems necessary to provide full service to the City in delivering the described project.

III. Schedule

The City is compelled to complete this project by June 17, 2022, which means the project must be substantially complete at least two months prior to allow for closeout work. The City has already requested a time extension which was approved in a letter from CalOES dated May 7, 2021. Below is a schedule which was included on the time extension request. The period of performance for the grant source is April 2, 2023, which may allow for another time extension request. However, the City desires the completion of this project by the June 17, 2022 deadline.

Date	Milestone
June 2021	City to publish a new Request for Proposals for Design and Permit Services
July 2021	City Council to Award Contract with Consultant
October 2021	Finalize Design and Permitting and Bid Project for Construction
November 2021	City Council to Award Contract with Construction Contractor
May 2022	Construction completion
June 2022	Project Closeout

IV. Project Funding

The design, permitting and construction of the project will be funded through a combination of City and FEMA grant funds. The grant will provide for 75% of the funding and the City will provide 25% of the funding from its water reserves fund. See table below for details and dollar amounts.

Federal	Non-Federal (City Water Res)	Project Total
Total	Total	
\$338,700.00	\$112,900.00	\$451,600.00

V. Contact Person

Questions regarding this RFP may be directed to the following person via e-mail or Fax only by June 21, 2021:

Kevin Carter
City of Fortuna Public Works
621 11th Street
Fortuna, CA95540
(707) 725-7651 (FAX)
kcarter@ci.fortuna.ca.us

1.0 PROPOSAL REQUIREMENTS

1.1 Cover Letter

The cover letter shall be signed by an official authorized to bind the firm and shall contain a statement that the proposal is valid for ninety (90) days.

1.2 Project Understanding

Provide an overview of the project, including a brief description of your understanding of the services to be provided, the project's objective, and your approach to accomplish the objectives.

1.3 Technical Approach/Scope of Work

Describe your technical approach for completing the scope of services. Identify and detail specific tasks as necessary to complete the work. Proposers are encouraged to amplify the scope of work, to identify any supplemental tasks necessary, and to recommend any alternatives that may enhance the project or reduce costs.

The City is particularly interested in a description of your team's approach for completing the project in a timely fashion so that the project is completed safely within the schedules noted above.

1.4 Project Team Organization

Identify proposed personnel and include an organization chart. Recognize that the City expects the proposer to contractually commit the proposed personnel to this level of effort when requested. Describe the reason for key personnel selection and their related experience. Please note that many of the services required of your firm may be on a specific time schedule and must be responded to promptly; therefore, consultant should be prepared to adjust the manpower to meet the pace of each specific project.

1.5 Experience and Qualifications

Describe the proposed personnel's qualifications for conducting the proposed work. Identify the key personnel for your team and provide a brief description of similar projects where that person provided similar services. The City is particularly interested in relevant experience in the field of emergency generator design and retrofit. For each of the projects referenced, provide the date when the service was provided, the client name, contact name, and contact telephone number. The City will contact these references, so it is important to provide accurate and current phone numbers. Inaccurate information will adversely reflect on the quality of the proposal.

1.6 Estimated Fee Schedule

The proposal shall define the total estimated contract price on a time-and-expenses basis. The price shall be an estimate of the time and expenses needed to complete the work as proposed, with a not to exceed amount noted. Please include this cost estimate in a separately sealed envelope. The estimate shall include:

- 1) A listing of tasks required to accomplish the proposed scope of services;
- 2) An estimate of the labor hours for each position classification and task;
- 3) The proposed hourly fee schedule for calendar year 2021 & 2022 for the primary staff proposed to complete work on the project;
- 4) All other reimbursable fees and expenses (noting that the City will **not** pay for lodging or vehicles);
- 5) Assumptions upon which estimate is based.

Since it is the City's intent to select the firm with the best qualifications, compensation will not be a selection criterion at this time.

1.7 Project Schedule

Develop a project schedule based on the City's project deadlines noted above. The schedule should include a level of detail that outlines each of the proposed tasks, and also identify key deliverable dates.

2.0 EVALUATION CRITERIA

The City's evaluation criterion for this work includes the following:

A. Responsiveness to Requirements, terms and conditions of the RFP 20 Points

- Ability to commence work immediately after execution of the contract;
- Name of consultant's project manager and individual authorized to negotiate the contract on behalf of the firm;
- Ability to meet the City's insurance requirements;
- Understanding the project and the needs of the City; and
- Ability of project team to deliver project in a timely manner consistent with FEMA requirements. Extra focus will be put on a proposal schedule that completes project tasks by the required date noted above.

B. Project Management/Firm(S) Strengths & Qualifications 30 Points

- Team management qualifications and strengths; identify lead entity for the overall proposal;
- Organized approach to work assignments; identify key staff including their names, classifications, professional history (attach resumes) and their respective roles and responsibilities in the program.
- Clear, effective organization chart;
- Thorough discussion of project management, sub-firm coordination, and quality controls; and familiarity with City, Federal financing and regulatory requirements.

C. Project Team/Previous Experience 50 Points

- Recent and significant experience and strong technical background in the field of expertise including prior experience in emergency on-site back-up power generation design;
- Depth and breadth of experience with FEMA funding programs;
- Demonstrated capability on similar projects;
- Ability and proven experience of working with, and responding to, a diverse project team.
- Past relevant projects and outcomes, i.e. federally funded grant projects;
- Provide references for projects of similar type and scope.

3.0 GENERAL INFORMATION

3.1 Proposal Requirements and Due Date

Proposals shall be limited to a maximum of 20 pages, excluding appendices and section 5 (Experience and Qualifications). Proposals shall be bound, tabbed, organized and numbered in the order presented below:

- Section 1 –Cover Letter
- Section 2 – Executive Summary
- Section 3 – Project Understanding, Approach & Scope of Work
- Section 4 – Project Team Organization/Staffing Plan
- Section 5 – Experience and Qualifications
- Section 6 – Project Schedule
- Appendix A – Resumes

Use of recycled and recyclable materials (no lamination) is strongly encouraged and appreciated. Proposals will be received by the City of Fortuna until 4:00 p.m. on July 2, 2021. Proposers shall send five (5) copies of their proposals to:

Kevin Carter
 City of Fortuna Public Works
 621 11th Street
 Fortuna, CA95540

The City may or may not hold formal interviews. E-mail updates will be provided to advise Proposers of the City’s selection process.

3.2 Project Time Schedule

The following schedule is provided as a guide:

Proposal due date	July 2, 2021 4:00 PM.,
Negotiate Fee	July 12, 2021
Consultants Selected	July 19, 2021
Professional Services Agreement Executed/Notice to Proceed (NTP) Issued	July 22, 2021

3.3 Attachments

Attached are the following:

Attachment A Example Professional Services Agreement (with Insurance)

4.0 PROFESSIONAL SERVICES AGREEMENT

The successful firm will be required to execute the City of Fortuna Professional Services Agreement (see Attachment A). The contract method of payment will be time and materials with a not to exceed maximum. The proposer should assure no exceptions to this agreement will be accepted and that any consultant submitting a proposal must be prepared to execute this agreement without modification. If a proposer believes that a modification of the Agreement will benefit the City, the proposer can describe such modification in their proposal, including a description of the perceived benefits. There is no obligation on the part of the City to accept such a modification.

5.0 NEGOTIATION OF CONTRACT

After selection of the consultant, the City and the consultant shall negotiate the contract under which the work shall be performed. All items submitted in the consultant's proposal shall be subject to negotiation.

Protest procedures and dispute resolution process will be based upon the procedures per 49 CFR 18.36(b)(12). Contracts shall not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 49 CFR Part 18, and 48 CFR Part 31.

Thank you for your interest in this Request for Proposal.

Attachment A

ENGINEERING SERVICES AGREEMENT

CITY OF FORTUNA (CIP# 9102)

WATER SYSTEM EMERGENCY GENERATORS PROJECT

This agreement (“Agreement”) is made and effective on _____, 20 (the “Effective Date”), between the City of Fortuna, a charter city organized and existing under California law (the “City”), and _____, a _____ (“Engineer”), for engineering services required by the City for the above-referenced project (“Project”) located on Kenmar Road in the City.

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1.0 ARTICLE 1 DEFINITIONS

Definitions. *The following definitions apply to this Agreement unless otherwise indicated. Defined terms are capitalized in the Agreement with the exception of the word “day.”*

Additional Services *means engineering services in addition to the Basic Services, and which are provided pursuant to the City’s written request or prior written authorization.*

Basic Services *means those engineering services necessary to design and construct the Project, including preparation of environmental documents, as specified in the City’s Request for Proposals (“RFP”), which is incorporated by reference and made part of this agreement, as further specified in Article 2, below.*

Change Order means a written document signed by the City and Contractor after execution of the Construction Contract, which changes the scope of Work, the Construction Contract Price, or the Construction Contract Time.

Construction Contract means the signed agreement between the City and Contractor, which includes and incorporates the Construction Documents, including, but not limited to the drawings, specifications, and General Conditions for the Project. If the Project will involve more than one Construction Contract, each reference to “Construction Contract” must be read to apply to all Construction Contracts for the Project.

Construction Contract Price means the total compensation to be paid to the Contractor for performance of the Work, as set forth in the Construction Contract.

Construction Contract Time means the number of calendar days within which the Contractor is required to perform the Work, as set forth in the Construction Contract and as may be amended by Change Order.

Construction Documents means all of the documents that are prepared following approval of the Design Development Documents for bidding and construction of the Project, as further detailed in Article 2, below.

Construction Manager means the individual(s) or firm, if any, retained by the City to provide construction management services for the Project. If the City has not retained a Construction Manager for this Project, all references to “Construction Manager” are understood to mean the City’s Director of Public Works.

Contractor means the individual, partnership, corporation, or joint-venture who has signed the Construction Contract with the City to perform the Work. “Contractor” includes the Contractor’s subcontractors, unless the context indicates otherwise. If the Project will include more than one Contractor, e.g., due to phased Work or a multi-prime delivery system, each reference to “Contractor” must be read to apply to all Contractors on the Project.

Day means a calendar day unless otherwise specified.

Inspector means the individual(s) or firm(s) retained by the City to inspect the workmanship, materials, and manner of construction of the Project and its components to ensure compliance with the Construction Contract.

Project means the Kenmar Road and Highway 101 Interchange Improvement Project, as more particularly described in the RFP.

Project Manager means the City’s Director of Public Works or designated representative who will have primary responsibility for overseeing design and

construction of the Project and who will be the sole point of contact for the City unless otherwise stated.

Work means the Contractor's construction and services necessary or incidental to constructing the Project in conformance with the requirements of the Construction Documents.

2.0 Article 2 ENGINEER'S RESPONSIBILITIES

2.1 General Responsibilities. *Engineer must provide the Basic Services necessary to design and construct the Project in accordance with the City's requirements, as set forth in the Request for Proposals, and as specified in this Article, and must provide those Additional Services, if any, as requested or authorized in writing by the City.*

2.1.1 Project Requirements. *Within 10 business days following the Effective Date of this Agreement, Engineer must conduct a preliminary evaluation of the information provided in RFP and must confirm its understanding of the Project requirements in a preliminary design conference with the Project Manager. At the request of the Project Manager, the Engineer must submit written minutes of the preliminary design conference in order to demonstrate its understanding of the Project requirements.*

2.1.2 City Approval. *Engineer may not proceed with the development of successive design documents, as detailed below, until it has received written approval from the City. Engineer must promptly review and revise the following to the City's satisfaction, which will not be unreasonably withheld, without additional compensation:*

2.1.3.1 Documents which have not previously been approved by the City and to which the City has objections; and

2.1.3.2 Documents which have been determined to present excessive cost or constructability problems.

2.1.3 Governmental Approval. *Engineer must assist the City with obtaining required approvals from governmental agencies with jurisdiction over the Project, including, but not limited to Caltrans.*

2.2 Basic Services. *Except as otherwise provided in RFP, Engineer's Basic Services for the include the following:*

2.2.1 Project Schedule. *Within 10 days following the Effective Date of this Agreement, Engineer must prepare and submit for the City's review and approval a preliminary Project Schedule, based on the Proposed Project*

Schedule included in RFP, showing the timing and sequencing of the major design and construction phases required to complete the Project. The preliminary Project Schedule should include times for completion of all major phases of environmental procedures, design and, if applicable, construction, including the environmental documentation described in RFP; Schematic Design Documents; Design Development Documents; Construction Documents; prequalification, if applicable; bidding; construction; final close out; or as otherwise specified by the Project Manager. The Project Schedule must be updated for the City's review and approval upon completion of each major phase included in the Project Schedule.

2.2.2 Cost Estimate. *With each design submittal identified in RFP, Engineer must prepare and submit for the City's review and approval a preliminary estimate of the cost to construct the Project. If at any time, an updated cost estimate exceeds the City's previously approved cost estimate, Engineer must provide the City with recommendations for constructing the Project within the City's budget.*

2.2.3 Environmental and Preliminary Design Documents. *Engineer must prepare for the City's review and approval, and required governmental agency approval(s), if applicable, and in accordance to RFP, Environmental and Preliminary Design Documents setting forth in detail the quality levels of and the requirements for construction of the Project, and consisting of drawings and specifications that comply with applicable codes, laws, and regulations in effect at the time of their preparation at the location of the Project, and as further specified in the RFP. The Construction Documents must also include all necessary bid and contract documents, consistent with federal requirements, and including general and supplemental conditions, all of which are subject to approval by the City and its legal counsel. When submitting the Construction Documents for the City's approval, the Engineer must communicate all changes and deviations, if any, that have taken place since approval of the previous design submittal, including, but not limited to, changes to the last updated cost estimate and the approved Project Schedule.*

2.2.4 Additional Services. *The Additional Services included in 2.3.4 are not included in the Basic Services and if requested by the City shall be provided by the Engineer and will be paid for on a time and materials basis based on the rates in the Engineer's fee proposal accepted by the City, subject to prior written authorization by the City and any agreed upon not-to-exceed amount:*

2.4 Personnel and Subconsultants.

2.4.1 Engineer's Key Personnel. *The names, titles, and contact information (telephone and email) for Engineer's key personnel assigned to this Project are listed below, and the designated key personnel may not be changed without the*

prior written approval of the City, which approval will not be unreasonably withheld:

Name:	Title:	Contact Information:
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

2.4.2 Engineer’s Principal Representative. *Engineer’s principal representative assigned to this Project is _____, who will have full authority from Engineer to receive and act on instructions from the City.*

2.4.3 Engineer’s Subconsultants. *Engineer may not engage the services of any subconsultant for this Project, including, but not limited to, firms or individuals providing special architectural or engineering services, without obtaining the City’s prior written approval, which approval must not be unreasonably withheld. The City’s approval must not be deemed to create any contractual relationship between the City and any such subconsultant, except that the City must be considered a third party beneficiary of such services for the Project. Engineer must bind its subconsultants in the same manner as Engineer is bound to the City under this Agreement, including, but not limited to, the insurance and indemnity requirements set forth herein.*

2.4.4 Warranty of Qualifications. *Engineer warrants and represents that Engineer, its personnel, and its subconsultants are each duly qualified, licensed, and authorized by law to perform the services required under this Agreement.*

2.4.5 Standard of Care. *The services provided by Engineer pursuant to this Agreement must, at all times, meet or exceed the standard of care applicable to Engineers performing similar work in the area in which the Project is located. Similarly, the services provided by any subconsultant must meet or exceed the standard of care applicable to others practicing in the subconsultant’s field and performing similar work in the area in which the Project is located.*

3.0 Article 3 TIME

3.1 Time of the Essence. *Time is of the essence in Engineer’s provision of services under this Agreement. Engineer must provide the services required by this Agreement in conformance with the most recent Project Schedule approved by the City. Engineer must maintain adequate staffing and resources necessary for the timely performance of*

Engineer's services under this Agreement. Engineer must review and respond to submittals, requests for information, change order requests, and the like, as expeditiously as possible to avoid delays to the Work.

3.2 Engineer-Caused Delay. *If the Work on the Project or completion of the Project is delayed because of any error or omission of Engineer, Engineer will be liable for all costs accrued by the City because of such delay, which costs may be deducted from progress payments or final payment to Engineer following written notice by the City. In addition, Engineer must, at no cost to the City, promptly take all necessary steps to correct the error or omission to the City's satisfaction, and must endeavor to avoid or mitigate the delay or costs caused by such error or omission.*

3.3 Unavoidable Delay. *If Engineer is delayed in the performances of its services due to circumstances which are not the result of Engineer's errors or omissions, and which are outside Engineer's control, including, but not limited to, acts or omissions by the City, or unforeseeable acts of third parties, then Engineer's time for performance of services may be extended for a period commensurate with such unavoidable delay, and Engineer may also be compensated for additional costs to Engineer resulting from such delay. As a condition precedent to an extension of time or discretionary compensation pursuant to this paragraph, Engineer must provide the City with prompt written notice as soon as practicable after learning of the delay. Notwithstanding the foregoing, Engineer must endeavor to avoid or minimize the impact of the delay.*

Article 4

COMPENSATION AND PAYMENT

4.1 Compensation for Basic Services. *For all Basic Services, as set forth above, the City will compensate Engineer based on Engineer's time to provide the Basic Services for an amount not to exceed \$XXXXXX for the First Phase Basic Services, and an amount not to exceed \$XXXXXX for the Second Phase Basic Services, if Second Phase services are authorized by the City by a written notice to proceed pursuant to section 2.1.1, above, for a combined not to exceed amount of \$XXXXXXXX without prior written authorization by City ("Basic Services Fee"), and for Reimbursable Expenses incurred in connection with such Basic Services in accordance with the reimbursement rates set forth in **Engineer's Fee Estimate**, attached hereto in **Exhibit B**, the total of which Reimbursable Expenses must not exceed the amount presented in the fee estimate, without the City's prior written consent.*

4.2 Compensation for Additional Services. *For all authorized Additional Services, as set forth above, the City will compensate Engineer on an hourly basis, based on the hourly rates set forth in Engineer's Fee Estimate in Exhibit B, and for Reimbursable Expenses incurred in connection with such Additional Services, subject to any not to exceed limit included in the City's written authorization for such Additional Services and associated Reimbursable Expenses. Engineer is not entitled to compensation for*

Additional Services or associated Reimbursable Expenses if such Additional Services are performed or expenditures incurred without the City's prior written authorization.

4.3 Payment. *Engineer must submit a monthly application for payment to the City for the City's approval, detailing Engineer's Basic Services, Additional Services and Reimbursable Expenses, if any, for the preceding month. The City will pay Engineer all undisputed and approved amounts within thirty (30) days following the City's receipt of each such payment application. Disputed amounts will be resolved in accordance to Article 7.*

4.3.1 Subconsultant Costs. *The cost of subconsultant services necessary for Basic Services must be included in the Basic Services Fee, above. The cost of subconsultant services necessary for authorized Additional Services will be compensated on an hourly basis not to exceed 110% of Engineer's actual costs for such services.*

4.3.2 Final Payment Conditions. *As a condition precedent to final payment, Engineer must attest, under penalty of perjury, that there are no outstanding claims, obligations, or liens in connection with Engineer's services under this Agreement. Engineer's acceptance of final payment from the City will constitute a waiver of any and all further claims by Engineer for compensation for services provided under this Agreement.*

4.3.3 Withholding. *If Engineer or its subconsultants cause damage to the Project, or fail to perform the required services, or are otherwise in default of the terms of this Agreement, the City reserves the right to withhold from any payment due or to become due, an amount sufficient to offset the resulting loss to the City. Payment of any amount withheld pursuant to this provision will be made if and when the grounds for withholding have been removed.*

4.3.4 Expense Records. *Engineer's expense records for all services and costs to be compensated on the basis of actual cost must be maintained in accordance with generally accepted accounting principles, and must be available to the City, upon request, at a mutually convenient time.*

4.4.4 Errors and Omissions. *Engineer is solely responsible for costs, including, but not limited to, increases in the Construction Contract Price, arising from or caused by Engineer's negligent or reckless errors and omissions, including, but not limited to, the costs of corrections such errors and omissions, any Change Order markup costs, or costs arising from delay caused by the errors and omissions or unreasonable delay in correcting the errors and omissions.*

Article 5

INDEMNITY AND INSURANCE

5.1 Indemnity. *To the full extent permitted by law, Engineer must indemnify, defend, and hold harmless the City, its governing body, officers, agents, employees, and volunteers from and against any and all liability, loss, damage, claims, expenses and costs (including, without limitation, attorney fees and costs and fees of litigation) (collectively, "Liability") of every nature which arises out of, pertains to, or relates to the negligence, recklessness, or willful misconduct of Engineer in the performance of this Agreement, except such Liability caused by the active negligence, sole negligence or willful misconduct of the City. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Engineer or its agents or employees under Workers' Compensation acts, disability benefits acts, or other employee benefit acts. This indemnification obligation is not limited by any limitation on the amount or type of damages available under any applicable insurance coverage and will survive the expiration or early termination of this Agreement with respect to Liability arising during the term of the Agreement.*

5.2 Patents and Copyrights. *Engineer must pay any and all royalties and license fees required for any patented or copyrighted materials, methods, or systems selected by Engineer and incorporated into the design documents by Engineer. To the full extent permitted by law, Engineer must indemnify, hold harmless, and defend the City from any and all claims or suits related to the infringement of any patent rights or copyrights arising from Engineer's selection.*

5.3 Insurance. *Before providing any services under this Agreement, Engineer must provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of Engineer and its employees or subconsultants relating to or arising from the performance of services under this Agreement, and must remain in full force and effect at all times during the term of the Agreement. Engineer is solely responsible for any deductible(s) required for covered events. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best financial strength rating of "A" or better and a financial size rating of "VIII" or better. If Engineer fails to provide or maintain any of the required coverage, the City may, at its sole discretion, purchase such coverage at Engineer's expense and deduct the cost from payments due to Engineer.*

5.3.1 Required Policies and Limits. *The following insurance policies and limits are required for this Agreement:*

5.3.1.1 Commercial General Liability Insurance ("CGL"): *The CGL policy must be issued on an occurrence basis, written on a comprehensive general liability form, and must include coverage for liability arising from*

Engineer's acts or omissions in the performance of services under this Agreement with limits of at least two million dollars (\$2,000,000.00) per occurrence. The CGL policy must name the City, its officers, employees, and agents, as additional insureds for all liability arising out of the operations by or on behalf of the named insured, and must protect the City, its officers, employees, and agents against any and all liability for personal injury, death, or property damage or destruction arising directly or indirectly in the performance of the Agreement. The CGL coverage may be provided under a single policy for the full limits required or by a combination of policies with the balance provided by excess or umbrella policies, provided each such policy otherwise complies with the requirements set forth herein.

5.3.1.2 Automobile Insurance: The automobile liability insurance must cover bodily injury and property damage in an amount no less than one million dollars (\$1,000,000.00) combined single limit for each occurrence, including owned, hired, and non-owned vehicles.

5.3.1.3 Workers' Compensation Insurance and Employer's Liability: The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act, of at

least two million dollars (\$2,000,000.00). If Engineer is self-insured, Engineer must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

5.3.1.4 Professional Liability: This insurance must insure against Engineer's negligent errors and omissions in the provision of services under this Agreement, in an amount no less than two million dollars (\$2,000,000.00) combined single limit. The Professional Liability insurance must include prior acts coverage sufficient to cover all services provided by Engineer for this Project, and this coverage must continue in effect for four (4) years following final payment to Engineer.

5.3.2 Notification to the City. *Each certificate of insurance must state that the coverage afforded by the policy or policies must not be reduced, cancelled or allowed to expire without at least thirty (30) days written notice to the City, unless due to non-payment of premiums, in which case ten (10) days written notice must be made to the City.*

5.3.3 Waiver of Subrogation. *Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against the City.*

5.3.4 CGL Endorsements. *The CGL policy must include the following endorsements:*

5.3.4.1 The inclusion of more than one insured must not operate to impair the rights of one insured against another, and the coverages afforded must apply as though separate policies have been issued to each insured.

5.3.4.2 The insurance provided is primary and no insurance held or owned by the City must be called upon to contribute to a loss.

4.0 Article 6 TERMINATION

6.1 Termination for Fault. *Either party may terminate this Agreement for the other party's material default or breach upon fifteen (15) days written notice and opportunity to cure. The termination must become effective if the default or breach is not cured within the notice period, or if the party in breach or default has not taken reasonable steps to diligently pursue a cure within the notice period.*

6.2 Termination for Convenience. *The City, acting in its sole discretion, may terminate this Agreement for convenience, upon seven (7) days written notice to Engineer. If the Agreement is terminated pursuant to this paragraph, the City will compensate Engineer for all services satisfactorily performed prior to the effective date and time of the termination, in accordance with this Agreement consistent with the payment provisions in Article 4, above, i.e., Engineer will be compensated for each specified phase which has been completed, and on a proportionate basis for any partially completed phase. In addition, the City will also pay Engineer an early termination fee which will be ten percent (10%) of the partial Basic Services Fee paid to Engineer, if the termination becomes effective prior to completion of the Construction Documents, or five percent (5%) of the partial Basic Services Fee if the termination becomes effective thereafter.*

6.3 Upon Termination. *Within seven (7) days of the effective date of termination, whether for fault or for convenience, Engineer must deliver, without further cost to the City, all documents and work product prepared for the City pursuant to this Agreement. Within thirty (30) days of Engineer's delivery of all such documents and work product to the City, the effective date of termination, the City will pay Engineer for all undisputed and approved invoices for services provided under this Agreement.*

5.0 Article 7 DISPUTE RESOLUTION

7.1 Meeting and Mediation. *In the event that any dispute arises between the parties in relation to this Agreement, the parties agree to meet face to face as soon as*

possible to engage in a good faith effort to resolve the matter informally. If the dispute is not resolved by informal negotiation, the parties agree to submit the dispute to mediation with a mutually acceptable, experienced third-party neutral. The parties further agree that their participation in mediation is a condition precedent to any party commencing litigation in relation to the dispute.

7.2 Mediation Procedures. *Following one or more good faith attempts at informal resolution, either party may give written notice to the other party of a request to submit a dispute to mediation, and a mediation session must take place within sixty (60) days after the date that such notice is given, or sooner if reasonably practicable. The parties must jointly appoint a mutually acceptable mediator. The parties further agree to share equally the costs of the mediation, except costs incurred by each party for representation by legal counsel.*

7.3 Arbitration. *If the parties are unable to resolve the dispute through mediation, they may mutually agreed to arbitration instead of litigation. However, it is expressly agreed, pursuant to California Civil Code Section 1296, that in any arbitration to resolve a dispute relating to this Agreement, the arbitrator's award must be supported by law and substantial evidence, and must include detailed written findings of law and fact.*

6.0 Article 8 MISCELLANEOUS PROVISIONS

8.1 Independent Contractor. *The parties agree that Engineer must act as an independent contractor under this Agreement and must have control of the work and the manner in which it is performed. Engineer is not an employee of the City and is not entitled to participate in any pension plans, insurance, bonus or similar benefits that the City provides to its employees.*

8.2 Notice. *Any notice, billing, or payment required by this Agreement must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:*

City of Fortuna:

*Public Works
621 11th Street
Fortuna, CA 94550
Phone: 707-725-1471
Fax: 707-725-7651
Attn: Kevin Carter
Email: kcarter@ci.fortuna.ca.us*

*And copy to:
ahubasec@ci.fortuna.ca.us*

Engineer:

*Phone:
Fax:
Attn:
Email:*

And copy to:

8.3 Nondiscrimination. *Engineer must comply with all applicable federal, state and local laws, rules and regulations regarding nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, disability, or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by this reference.*

8.4 Assignment and Successors. *Engineer may not assign its rights or obligations under this Agreement, in part or in whole, without the City's written consent. This Agreement is binding on Engineer's successors and permitted assigns.*

8.5 Third Party Beneficiaries. *There are no intended third party beneficiaries to this Agreement.*

8.6 Governing Law and Venue. *This Agreement is governed by California law and venue must be in the Superior Court of Humboldt County, and no other place.*

8.7 Attorneys' Fees. *If any legal action or proceeding is brought between the City and Engineer arising out of, relating to or seeking the interpretation or enforcement of the terms of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs, including the attorneys' fees and costs for any arbitration, appeal, or enforcement of judgment.*

8.8 Amendment. *No amendment or modification of this Agreement will be binding unless it is in a writing duly authorized and signed by the parties to this Agreement.*

8.9 Waiver. *No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement must 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 must be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor must any waiver constitute a continuing waiver unless specified in writing by the waiving party.*

8.10 Force Majeure. *If either party is delayed or hindered in or prevented from the performance of any act required hereunder because of strikes, lockouts, inability to procure labor or materials, failure of power, riots, insurrection, war, fire or other casualty, or other reason beyond the reasonable control of the party delayed, excluding financial inability ("Force Majeure Event"), performance of that act shall be excused for the period during which the Force Majeure Event prevents such performance, and the period for that performance shall be extended for an equivalent period. Delays or failures to perform resulting from lack of funds shall not be Force Majeure Events.*

8.11 Integration; Severability. *This Agreement and the Exhibits incorporated herein, including authorized addenda, amendments or change orders, if any, constitute the final, complete, and exclusive terms of the agreement between the City and Engineer. If any provision of this Agreement, or portion thereof, is determined to be illegal, invalid,*

or unenforceable, the remaining provisions of the Agreement will remain in full force and effect.

8.12 Conflicts. *If any provision in the RFP or Proposal conflicts with or is inconsistent with the provisions set forth in the body of this Agreement, the provisions set forth in the body of this Agreement will control over the conflicting or inconsistent provisions in the RFP or Proposal. If any provision in the attached Scope of Services conflicts with or is inconsistent with the provisions set forth in the body of this Agreement, the provisions in the Scope of Services will control over the conflicting or inconsistent provisions in the body of this Agreement.*

8.13 Headings. *The headings in this Agreement are included for convenience only and must neither affect the construction or interpretation of any provision in this Agreement nor affect any of the rights or obligations of the parties to this Agreement.*

8.14 Legal Counsel. *Each party to this Agreement warrants that it has had adequate opportunity to consult with its legal counsel before causing this Agreement to be executed.*

8.15 Authorization. *Each individual executing this Agreement or its counterpart, on behalf of the respective party, warrants that he or she is authorized to do so and that this Agreement constitutes the legally binding obligation of the entity which he or she represents. As to those parties that are corporations, signatures from two officers of the corporation are required pursuant to California Corporation Code section 313.*

8.16 Execution in Counterparts. *This Agreement may be executed in any number of counterparts, each of which must be an original, but all of which together must constitute one instrument.*

8.17 Electronic Transmission. *Executed copies of this Agreement may be transmitted electronically between the parties by facsimile or email, and signatures on such electronically transmitted copies will be deemed original signatures.*

The parties agree to this Agreement as witnessed by the signatures below:

THE CITY OF FORTUNA:

ENGINEER:

s/ _____

s/ _____

Name/Title [print]

Name/Title [print]

Date: _____ Date: _____