

**City of Fortuna**

**Request for Proposals**

**Engineering Design Services, Permitting and Optional Construction  
Engineering Services for the  
CITY OF FORTUNA  
NPDES COMPLIANCE PROJECT  
(CIP# 0171)**

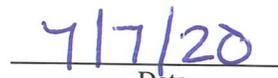


July 6<sup>th</sup>, 2020

PROPOSALS MUST BE RECEIVED NO LATER THAN  
2:00 P.M., August 4<sup>th</sup>, 2020

Approved for release by

  
Brendan Byrd, PE. Deputy City Engineer  
City of Fortuna

  
Date

**REQUEST FOR PROPOSALS  
FOR  
ENGINEERING DESIGN AND ENVIRONMENTAL SERVICES FOR THE  
CITY OF FORTUNA NPDES COMPLIANCE PROJECT (CIP #0171)**

***I. Project Overview***

**Project Background**

The City of Fortuna is located in Humboldt County, California, approximately 20 miles south of Eureka. The City operates the Tom Cook Memorial Wastewater Treatment Plant, which is a secondary treatment activated sludge facility. Currently, the plant's effluent treatment system includes rough screening/grit removal, primary and secondary clarification, aeration, and chlorine disinfection. The solids handling system includes anaerobic digestion, sludge dewatering, and composting. The City's effluent treatment system currently does not include any nutrient removal processes.

The treatment plant is located along the eastern bank of the Eel River, and is bordered on the south by Strong's Creek. In the winter (October 1 – May 15) the City discharges treated effluent to Strong's Creek, approximately 1,000 feet upstream from its confluence with the Eel River. During the summer months (May 15 – October 1), the City discharges to two percolation basins, located along the eastern bank of the Eel River.

The City's Wastewater Treatment Plant (WWTP) operates under permit Order No. R1-2017-0005. This permit includes a compliance schedule requiring treatment plant upgrades, including nutrient removal. Additionally, the City was issued a Time Schedule Order (TSO) No. R1-2017-0026, due to the potential that the summer discharge prohibition is being violated by the City's existing percolation ponds, which are suspected of being hydraulically connected to Eel River surface water.

Based on the City's NPDES permit compliance schedule and TSO, the City has been compelled to undertake a wastewater project to complete effluent disposal and treatment system upgrades to address current and future compliance issues. Over the past several years, the City has developed a number of technical studies and analysis to assess design alternatives, and the current preferred alternatives for the City's final wastewater project is outlined below.

**Proposed Project**

The City's preferred alternative to address the potential summertime discharge prohibition violation is to abandon the existing percolation ponds in favor of a new subsurface percolation field. The effluent disposal system has been developed to the 30% design level, and includes two subsurface percolations fields along the west bank of the Eel River, a pump station at the existing WWTP, and approximately 4,800 feet of directionally bored transmission pipe connecting the two. The basis of design report and preliminary designs can be found on the City's website at the link shown in Section V. The subsurface percolation field would be located on APN's 106-091-030 and 106-091-040, which the City is currently working to acquire. The City will be leading the effort to acquire the property and secure access easements from a neighboring landowner.

Based on the preferred effluent disposal alternative, the City is proposing to implement a new non-proprietary Biological Nutrient Removal (BNR) system as the preferred treatment alternative. The

proposed project involves modification and expansion of the existing aeration basins to achieve biological removal of nitrogen and phosphorus. The proposed work includes reconfiguring the existing aeration basins in a Modified Ludzack-Ettinger (MLE) configuration and incorporating additional aerations basin volume by modifying the existing waste activated sludge and filtrate storage tank into an aeration basin. Lastly, the work includes a new automatic dissolved oxygen control system and motorized inlet valves for the existing blowers, and a new primary effluent/return activated sludge distribution box. The preliminary concept layout for this system can be found in the report on the City's website at the link shown in Section V. The preferred treatment alternative is C1B (beginning on page 43).

In addition to the treatment and disposal upgrades noted above to address compliance issues, the City would also like to explore three optional design components including a full wastewater effluent UV disinfection system to replace the existing chlorine system, including a solar array to help offset the cost of the plant's power usage from the grid, and modifying the City's existing effluent overflow ponds to function as automated flow equalization basins.

The City has completed a CEQA initial study mitigated negative declaration for each of the project components noted above. The projects final CEQA document can be found on the City's website at the link shown in Section V. The City has also completed a number of environmental special studies, including a Biological Resources Report, a Wetland Delineation Report, and a Rare Plant and Sensitive Vegetation Report.

## ***II. Scope of Work***

The scope of work consists of preparing bid-ready plans, specifications, and construction cost estimates (PS&E) for the preferred design alternative, obtaining all project permits, providing funding assistance, and performing a water and wastewater rate study. In addition, the City may consider authorizing optional tasks to the selected consultant including construction engineering, and project design peer review, and landowner outreach assistance.

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***

As noted previously, the City is compelled to complete this project bases on permit compliance issues. The City's baseline proposed project completion schedule from the TSO and NPDES permit is shown below:

- Secure funding for the preferred alternative and provide the Regional Board with documentation, **complete by June 30<sup>th</sup>, 2021.**
- Submit documentation that the land necessary for the Preferred Alternative has been acquired, rights of way have been secured, or a long-term lease is secured, **complete by December 31<sup>st</sup>, 2021.** (this task to be led by the City)

- Submit a report of completion verifying the complete design plans and specifications for construction of the preferred alternative have been completed, along with a complete Report of Waste Discharge, **complete by December 31<sup>st</sup>, 2022.**
- Submit a progress report on the status of construction for the preferred disposal alternative, **complete by December 31<sup>st</sup>, 2023.**
- Complete construction of the preferred alternative and achieve compliance with all Regional Water Board waste discharge requirements including discharge prohibitions, **complete by December 31<sup>st</sup>, 2024.**

#### ***IV. Project Funding***

The design, permitting and construction of the project will be funded through a combination of City and wastewater grant funds. Grant funds have yet to be obtained for this project and the selected consultant should include a plan for identifying, applying for, and procuring funding for this project (see attached project scope).

#### ***V. Summary of Additional Resources***

As noted above, several technical documents and studies have been made available on the City's website for review as part of this RFP, including:

- Basis of Design – Conceptual Seasonal Percolation Disposal System for the Fortuna WWTP  
<https://www.friendlyfortuna.com/Document%20center/Government/Public%20Notices/NPDES%20Compliance%20Project/Disposal%20System%20Basis%20of%20Design.pdf>
- Treatment Alternatives Technical Memorandum - Alternative C1-B  
<https://www.friendlyfortuna.com/Document%20center/Government/Public%20Notices/NPDES%20Compliance%20Project/Wastewater%20Treatment%20System%20Alternatives%20Analysis.pdf>
- Final Initial Study and Mitigated Negative Declaration  
<https://www.friendlyfortuna.com/Document%20center/Government/Public%20Notices/NPDES%20Compliance%20Project/Final%20Fortuna%20WW%20ISMND.pdf>

#### ***VI. Contact Person***

Questions regarding this RFP may be directed to the following person via e-mail or Fax only by July 24, 2020:

Brendan Byrd  
City of Fortuna Engineering  
621 11<sup>th</sup> Street  
Fortuna, CA95540  
(707) 725-7651 (FAX)  
bbyrd@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 compliance 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 why key personnel were selected 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 wastewater treatment design and retrofit, and directional drilling design. For each of the projects referenced, provide the date when the service was provided, the client name, contact name, and contact telephone number. These references will be contacted, so it is important that accurate and current phone numbers are provided. 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. 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 2020 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 regional board requirements. Extra focus will be put on a proposal schedule that completes projects tasks prior to the required date imposed by the Regional Board.

### **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, State 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 wastewater treatment and directional drilling design;
- Depth and breadth of experience with wastewater funding programs and opportunities, demonstrated experience in obtaining and managing external project funding programs;
- Demonstrated capability on similar projects;
- Ability and proven experience of working with, and responding to, a diverse project team including City of Fortuna staff, the public, landowners, and Regional Board staff.
- Past relevant projects and outcomes;
- 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 30 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 31<sup>st</sup>, 2020. Proposers shall send five (5) copies of their proposals to:

Brendan Byrd  
City of Fortuna Engineering  
621 11<sup>th</sup> 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	August 4, 2020, <b>2:00 PM.</b> ,
Consultants Selected	August 10, 2020
Negotiate Fee	August 13, 2020
Professional Services Agreement	
Executed/Notice to Proceed (NTP) Issued	August 18, 2020

#### **3.3 Attachments**

Attached are the following:

Attachment A	Scope of Services
Attachment B	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 B). 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**

**SCOPE OF SERVICES**

**FOR**

**ENGINEERING DESIGN AND ENVIRONMENTAL SERVICES FOR THE**

**CITY OF FORTUNA NPDES COMPLIANCE PROJECT (CIP #0171)**

The City of Fortuna ("City") is requesting your firm to prepare a proposal for the City of Fortuna NPDES Compliance Project. The focus of the scope of work will be to prepare bid-ready plans specifications, and construction estimates, secure all necessary project permits, and complete a water/wastewater rate study. In addition, the City may consider the selected consultant to perform Construction Engineering Services during the construction phase of the project, and may also request third party design review services. Funding sources for this project will be a mix of grant funds and City of Fortuna funds.

**1.0 PROJECT MANAGEMENT, MEETINGS AND COORDINATION**

Organize and attend numerous meetings with City staff as required during progress of design for status reporting, sharing and dissemination of information, appropriate guidance and coordination.

**2.0 PERMITTING**

Acquire all project permits, and coordinate with all relevant permitting agencies, including field tours if necessary. Below is a list of all anticipated project permits:

- Humboldt County Conditional Use Permit
- California Coastal Commission Coastal Development Permit
- North Coast Regional Water Quality Control Board 401
- Habitat Mitigation and Monitoring Plan
- US Army Corp of Engineers 404
- California Department of Fish and Wildlife 1600
- State Lands Commission Permit (if needed)

**3.0 ENGINEERING DESIGN**

**3.1 Effluent Disposal System**

The goal of this task is to produce bid-ready PS&E for the City's effluent disposal system preferred alternative. The design will be based on the current 30% designs that have been developed for the project, which are included in the disposal system basis of design technical memorandum. The overall PS&E work shall be generally phased in 60%, and 90% levels of completion and finalized with the 100% PS&E package. Consultant shall provide submittals to the City corresponding to these phases of PS&E and address the City's and other agencies'

comments from the review of the submittal in the next phase, as appropriate. Comments from previous phase shall be saved by consultant and returned with the next submittal.

The City's boilerplate provisions will be supplied by for incorporating into bid documents package. Preliminary specifications shall be required with the levels of completion list above and finalized with the 100% PS&E package. In addition, quantity take off calculations and summary shall be provided by Consultant to aid the City during construction.

The design shall include, but shall not be limited to, field reconnaissance, geotechnical investigation/study (if needed), topographic and boundary survey, plans, profiles, layouts, typical sections, electrical, and construction details necessary to construct the required work, project field review, and quality assurance/quality control (*QA/QC*) work, if any.

### **3.2 WWTP Treatment Upgrades**

The goal of this task is to produce bid-ready PS&E for the City's treatment system upgrade preferred alternative (Treatment Alternatives Technical Memorandum Alternative C1-B). The overall PS&E work shall be generally phased in 30%, 60%, and 90% levels of completion and finalized with the 100% PS&E package. Consultant shall provide submittals to the City corresponding to these phases of PS&E and address the City's and other agencies' comments from the review of the submittal in the next phase, as appropriate. Comments from previous phase shall be saved by consultant and returned with the next submittal.

The City's boilerplate provisions will be supplied by for incorporating into bid documents package. Preliminary specifications shall be required beginning with the 60% level of completion list above and finalized with the 100% PS&E package. In addition, quantity take off calculations and summary shall be provided by Consultant to aid the City during construction.

The design shall include, but shall not be limited to, field reconnaissance, geotechnical investigation/study (if needed), topographic and boundary survey, plans, profiles, layouts, typical sections, electrical, mechanical, and construction details necessary to construct the required work, project field review, and quality assurance/quality control (*QA/QC*) work, if any.

#### **3.2.1 Flow Equalization Design (Include as Optional Task)**

The goal of this task is to produce bid-ready PS&E for the City's automated flow equalization system, which would use existing overflow ponds as the storage reservoir. The delivery phasing and requirements would be the same as listed in scope task item 6.2, and the designs for this system would be included in the construction plans for the treatment upgrades. In addition to the PS&E work, this task would include any and all engineering studies to size and design system components, including but not limited to pipes, pumps, etc.

### **3.2.2 UV Disinfection System Design (Include as Optional Task)**

The goal of this task is to produce bid-ready PS&E for the City's effluent UV disinfection system, which could use the existing chlorine contact basins. The delivery phasing and requirements would be the same as listed in scope task item 6.2, and the designs for this system would be included in the construction plans for the treatment upgrades. In addition to the PS&E work, this task would include any and all engineering studies to size and design system components.

### **3.2.3 Wastewater Treatment Plant PV Solar Array Design (Include as Optional Task)**

The goal of this task is to produce bid-ready PS&E for the City's PV solar array system. The delivery phasing and requirements would be the same as listed in scope task item 6.2, and the designs for this system would be included in the construction plans for the treatment upgrades. In addition to the PS&E work, this task would include any and all engineering studies to locate, size and design system components, including but not limited to solar energy analyses, energy use audits, and structural evaluations for existing facilities that could receive solar arrays.

## **4.0 FUNDING ASSISTANCE**

Research, identify and apply for applicable project grants or other funding programs, and provide assistance in grant administration. Anticipated grant sources could include broadly applicable programs such as the Clean Water SRF, or component specific grants such as for solar or UV disinfection systems. Typical tasks could include funding research, developing and submitting grant application packages, completing and submitting quarterly reports and reimbursement requests. Some funding programs are anticipated to be dependent upon the City's water and sewer rates, and therefore there may be some coordination between this task and Task 5 below.

## **5.0 WATER AND WASTEWATER RATE STUDY**

Conduct a water and sewer rate study with the goal of identifying the true cost of utility service, and the rate structure necessary to ensure that the City's water and sewer infrastructure can be operated and maintained over a 10-year period. The study shall include a financial analysis on current existing utility operating costs, as well as take into account the cost of maintenance projects included in the City's 5-year Capital Improvement Program. The study shall also include an analysis of rate increases over the 10-year period to ensure that revenues remain current with expenditures over time.

A key component in the rate study will include the fiscal impact of the City's NPDES compliance project, which is likely to be the one of the largest capital project the City has undertaken. The fiscal impact to the ratepayers as a result of this project will come as a result of the true cost of this project, taking into account any grant opportunities that are identified and secured (noted in Task 2 of this scope of work). It possible that rates may need to be raised to qualify for certain grant programs that may accelerate the timing of this task with regard to overall schedule.

## **6.0 LANDOWNER OUTREACH SUPPORT (INCLUDE AS OPTIONAL TASK)**

The City will be leading landowner outreach including property- and right of way acquisition. This optional task is intended to provide technical support for these efforts, including but not limited producing figures, attending meetings, performing field reviews, or participating in conference calls.

## **7.0 DISPOSAL SYSTEM DESIGN, TREATMENT DESIGN, AND CONSTRUCTION COST ESTIMATE PEER REVIEW (INCLUDE AS OPTIONAL TASK)**

Perform an independent peer review of the basis of technical designs and construction cost estimates that have been completed to date for the treatment system and disposal system design. The review includes, but is not limited to the Disposal System Basis of Design Technical Memorandum, the Treatment Alternatives Technical Memorandum, and the Construction Cost Estimates. The review must be completed by a third party, and a summary memo of findings and design efficacy shall be provided.

## **8.0 CONSTRUCTION ENGINEERING SERVICES (INCLUDE AS OPTIONAL TASK)**

The City may consider the selected consultant to perform Construction Engineering Services during the construction phase of the project. These services include, but are not limited to:

- Pre Bid and Bidding Assistance
- Biological Clearance Surveys
- Construction Management
- Construction Observation
- Project Closeout

## ENGINEERING SERVICES AGREEMENT

City of Fortuna NPDES Compliance Project (CIP 0171)

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 around the City’s wastewater treatment plant.

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### 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”), dated July 6, 2020, and Engineer’s Proposal, dated \_\_\_\_\_, (“Proposal”), both of which are incorporated into and made part of this Agreement, and as further specified in Article 2, below.

## Attachment B

**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.

**Design Development Documents** means detailed documents which are prepared following approval of the Schematic Design Documents, as further detailed in Article 2, below.

**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 City of Fortuna NPDES Compliance 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.

**Schematic Design Documents** means preliminary drawings and related documents showing the Project's basic components, scale and location, as further detailed in Article 2, below.

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

## **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 **Scope of Services and Proposed Project Schedule**, attached hereto as **Attachment A** ("Scope of Services"), 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 days following the Effective Date of this Agreement, Engineer must conduct a preliminary evaluation of the information provided in Attachment A 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:

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

## Attachment B

2.1.2.2 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 and the Federal Highway Administration.

2.2 **Basic Services.** Except as otherwise provided in Attachment A, Engineer's Basic Services 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 Attachment A, 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 Attachment A; 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.** Within 21 days following the Effective Date of this Agreement, Engineer must prepare and submit for the City's review and approval a preliminary estimate of the cost to construct the Project. As the design process progresses, Engineer must submit updates to the preliminary cost estimate for the City's approval concurrent with its submission of the Schematic Design Documents, Design Development Documents, and Construction Documents, respectively. 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 **Schematic Design Documents.** Within the time specified in the approved Project Schedule, Engineer must prepare and submit for the City's review and approval Schematic Design Documents consisting of drawings, outline specifications, and other documents showing the Project's basic components, scale, and location on the Project site. The Schematic Design Documents must include, to the extent applicable, conceptual plans of the site and structures; preliminary sections and elevations; approximate areas, volumes, and dimensions; and preliminary selections of materials and systems. Two printed sets and one

reproducible set of Schematic Design Documents must be provided to the City, along with an updated cost estimate.

**2.2.4 Design Development Documents.** Based on the approved Schematic Design Documents and within the time specified in the approved Project Schedule, Engineer must prepare for the City's review and approval the Design Development Documents. The Design Development Documents must further define the Project, including drawings and outline specifications fixing and describing the Project size, character and site relationships, and other appropriate elements describing the structural, engineering, mechanical and electrical systems. The Design Development Documents must include, as applicable, plans, sections and elevations; criteria and sizing of major components; equipment sizes and capacities and approximate layouts, including required spaces and clearances; typical details; materials selections and general quality levels. When submitting the Design Development Documents for the City's approval, the Engineer must identify in writing all material changes and deviations, if any, that have taken place since approval of the Schematic Design Documents, including, but not limited to, changes to the last updated cost estimate and the approved Project Schedule. Two printed sets and one reproducible set of Design Development Documents must be provided to the City, along with an updated cost estimate.

**2.2.5 Construction Documents.** Based on the approved Design Development Documents and within the time specified in the approved Project Schedule, Engineer must prepare for the City's review and approval, and required governmental agency approval(s), if applicable, Construction 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, 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 identify in writing all material changes and deviations, if any, that have taken place since approval of the Design Development Documents including, but not limited to, changes to the last updated cost estimate and the approved Project Schedule. Two printed sets and one reproducible set of Design Development Documents must be provided to the City, along with an updated cost estimate.

**2.2.6 Bidding Phase Services.** If Engineer is retained for construction engineering services pursuant to Section 4.0 of Attachment A, Engineer

## Attachment B

must assist the City during the bidding phase, including, if applicable, prequalification of contractors; reproduction and dissemination of approved plans, specifications, and contract documents; advertising for bids; conducting pre-bid meetings or site walks; issuance of addenda; bid review; and review of bid protests.

2.2.6.1 If the lowest responsive bid exceeds the final approved construction cost estimate by fifteen percent (15%) or more, and the City, acting in its sole discretion decides to reject all bids and re-bid the Project, Engineer must, at no additional cost to the City, work with the City to make the modifications to the Construction Documents to reduce the cost of construction so as not to exceed the previously approved construction cost estimate by more than the stated additional percentage.

**2.2.7 Construction Phase Services.** If Engineer is retained for construction engineering services pursuant to Section 4.0 of Attachment A, the construction phase will commence upon award of the Construction Contract and will conclude upon completion of Project closeout. During the Construction Phase the Engineer must provide the following services to the City:

2.2.7.1 General administration of the Construction Contract including, but not limited to: 1) review and advise the City as to the accuracy and sufficiency of Contractor's schedule of values; 2) coordinate the Project Schedule with the Contractor's the City-approved Work schedule; 3) provide prompt and complete responses to Contractor's requests for information; and 4) coordinate efforts with the City and its Construction Manager, as applicable, to ensure the Project is completed in a timely, cost-effective manner, consistent with the City's requirements.

2.2.7.2 Ongoing design services as needed, including, but not limited to: 1) interpretations and clarifications of the drawings and specifications; and 2) preparation of design documents for change orders, all as needed for the proper execution and progress of the Work, and consistent with the intent of the approved Construction Documents.

2.2.7.3 Engineer must timely review Contractor's submittals, including shop drawings, product data and samples, and issue written approvals of and/or recommendations to the City within ten (10) days of receipt of each such submittal, unless additional time is required based on the nature of the submittal, in which case the review must be completed as soon as practicable under the circumstances. Engineer must check the submittals for

## Attachment B

conformance with the design and scope of the Project, and for compliance with the approved Construction Documents. Engineer's review must not extend to the Contractor's means, methods, techniques, sequences, or procedures, unless such have previously been specified by the City or Engineer.

2.2.7.4 Engineer must assist the City and its Construction Manager, if applicable, in evaluating, processing, and determining whether to recommend approval of requests for changes in the Work, and, if applicable, must prepare and submit proposed Change Orders.

2.2.7.5 Engineer must visit the Project site at intervals sufficient to monitor the progress and quality of the Work and to determine whether the Work is proceeding in conformance with the Construction Contract. Following each Project site visit, Engineer must promptly provide the City with a written report of Engineer's observations and recommendations, if any. If Engineer becomes aware of any defects or deficiencies in the Work, Engineer must provide prompt notice to the City, followed by written confirmation of that notice. If, in Engineer's opinion, special testing or inspection of the Work is needed, Engineer must recommend appropriate procedures and consultants to the City. Engineer is not responsible for construction means, methods, techniques, and procedures unless such have been specified by Engineer. Engineer is not responsible for Contractor's safety precautions and programs. However, if Engineer has knowledge of safety violations, Engineer must give prompt notice to the City and to its Construction Manager, of such violations.

2.2.7.6 Engineer must assist the City in processing the Contractor's payment applications in accordance with the provisions of the Construction Contract. Based on on-site observations and review of other relevant information, Engineer must certify to the City the amounts due to the Contractor and whether the Work has progressed to the point indicated in the payment application based on the Contractor's schedule of values. Engineer's review must include review of the status of the Contractor's record drawings. Engineer's certification for payment will not be considered a representation that Engineer has made exhaustive or continuous on-site inspections to verify the quality or quantity of the Work, or that Engineer has reviewed the Contractor's means, methods, techniques, sequences or procedures.

2.2.7.7 Engineer must attend meetings with the Project Manager or the Contractor(s) as specified: *[specify total number or frequency of regular meetings]* \_\_\_\_\_.

2.2.7.8 Engineer must prepare and submit reports on the progress or status of the Work to the City as specified: *[specify frequency, timing, content, the person(s) to whom the reports should be addressed, and person(s) who should receive copies, etc.]*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_.

2.2.7.9 Engineer must conduct inspections reasonably necessary to determine whether Contractor has achieved final completion of the Work in accordance with the Construction Contract, and must prepare a list of items to be completed or corrected (the “punch list”) as well as required final submittals (e.g., warranties, manuals, as-built drawings, etc.) in order to achieve final completion. Once final completion has been achieved in accordance with the Construction Contract, Engineer must issue a certificate of completion and certify final payment to the Contractor.

**2.2.8 Close Out and Post-Construction Services.** This section 2.2.8 applies if Engineer is retained to provide construction engineering services pursuant to Section 4.0 of Attachment A.

2.2.8.1 Engineer must promptly perform all tasks reasonably necessary for Project close out. If requested, Engineer must provide the City with a color schedule of all finished materials incorporated into the Project.

2.2.8.2 If requested by the City, Engineer must make up to \_\_\_\_\_ (\_\_\_) visits to the Project site during the warranty period to advise the City on the need for warranty work.

2.2.8.3 All Project plans, including, but not limited to, record drawings, specifications, and estimates prepared pursuant thereto, must be and remain the property of the City for the purposes of repair, maintenance, renovation, modernization, or other purposes, only as they relate to the Project. The City reserves the right to use the Project plans, record drawings, specifications, or estimates related to the Project for the purposes of additions, alignments, or other development on or near the site. Nothing in this provision is intended to transfer or waive Engineer’s copyrights over these documents, including, but not limited to, all common law, statutory, and other reserved rights, unless transferred or waived in writing by

Engineer. Notwithstanding the foregoing, if the City proposes to reuse the plans the City and Engineer will specify the terms and conditions for the reuse in this Agreement or by an amendment or addendum thereto. If the City reuses the plans prepared by Engineer for this Project and retains another certified Engineer for the preparation of those plans for the reuse, the City will indemnify and hold harmless Engineer and its subconsultants, agents, and employees, from and against any claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from, in whole or in part, the reuse.

**2.3 Additional Services.** If not included in Basic Services, above, the following services must be provided by Engineer and will be paid for as Additional Services, subject to prior written authorization by the City:

2.3.1 Investigation of financing or other special studies to determine the financial feasibility of the Project.

2.3.2 Consultations, negotiation, and the like for procurement of Project financing.

2.3.3 Investigation of or measured drawings of existing conditions or improvements or verification of the accuracy of the City-provided drawings or other information on existing conditions.

2.3.4 Surveys, site evaluations, or legal descriptions.

2.3.5 Design services unrelated to the Project.

2.3.6 Soils, subsurface and environmental studies, reports and investigations required by outside agencies with jurisdiction over the Project.

2.3.7 Services, including inventory and interior design services, related to the selection and placement of furnishings, equipment, and the like which are not included in the Construction Contract.

2.3.8 Revisions to the City-approved drawings and documents which are required due to circumstances outside of Engineer's control.

2.3.9 Design, coordination, management, expediting and other services for the procurement of materials to be obtained or work to be performed by the City, including, but not limited to technology or other specialty systems which are not otherwise required by this Agreement.

Attachment B

2.3.10 Estimates, appraisals, consultations, and related services required for the repair or replacement of an insured loss.

2.3.11 Preparing for or providing expert witness services in connection with any adversarial proceeding to which the Engineer is not a party.

2.3.12 Out of town travel in connection with the Project, other than travel between Engineer's office, the City's offices, and the Project site.

2.3.13 The City-requested services which are not specified in the Construction Documents and which are not customarily provided as part of generally accepted design and construction practice for this type of project and the region in which the Project is located.

2.3.14 Extended services required by non-performance, suspension, termination, or default of the Contractor in the performance of the Work, through no fault of Engineer.

2.3.15 Preparation of special models, renderings or mock-ups.

2.3.16 Other services as agreed to by the Parties as set forth in an exhibit attached to and incorporated into this Agreement.

**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:

<b>Name:</b>	<b>Title:</b>	<b>Contact Information:</b>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**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.

### **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 \$\_\_\_\_\_ 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 Rate Schedule**, attached hereto as **Attachment B**, the total of which Reimbursable Expenses must not exceed \$\_\_\_\_\_, 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 Rate Schedule in Attachment 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.

**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

## Attachment B

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.

## Attachment B

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.

## **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.

## **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.

## **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:**  
City of Fortuna Engineering  
621 11<sup>th</sup> Street  
Fortuna, CA 94550  
Phone: 707-725-1471  
Fax: 707-725-7651  
Attn: Merritt Perry  
Email: mperry@ci.fortuna.ca.us

**Engineer:**  
[Name]  
[Address]  
[City/state/zip]  
Phone:  
Fax:  
Attn:  
Email:

And copy to:

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 attachments 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: \_\_\_\_\_

## Attachment B