

Attachment C

DRAFT EXAMPLE ENGINEERING SERVICES AGREEMENT

**CITY OF FORTUNA
PROFESSIONAL SERVICES AGREEMENT**

This Agreement (“Agreement”) for professional services is made on _____, 2021 (“Effective Date”), between the City of Fortuna, a California municipality (“City”), and _____, an _____ (“Consultant”).

RECITALS

- A. The City of Fortuna;
- B. The City desires to retain a consultant, who is knowledgeable in stormwater infrastructure assessment and design for the City’s Storm water Infrastructure Hazard Identification Project; and;
- C. Consultant possesses the necessary knowledge, skill, experience, and qualifications to provide the consulting services to the City.

AGREEMENT

NOW, THEREFORE, in consideration of this Agreement, and the mutual promises, covenants and stipulations contained herein, the parties hereto agree as follows.

- 1. Scope of Services.** Consultant shall provide to City the professional services described in the Scope of Services, attached hereto as **Attachment A** and incorporated herein (the “Services”). Only the City’s governing body or the City Manager may authorize any change or addition to the Scope of Services specified in **Attachment A**.
- 2. Term.** This Agreement shall become effective on _____, 2021, and shall expire on _____, unless terminated sooner in accordance with Section 11 of this Agreement.
- 3. Compensation.** For the full and satisfactory completion of the Services, City shall compensate Consultant on a time and materials basis for a total amount not to exceed \$_____.
- 4. Allowable Reimbursable Expenses.** City will not compensate Consultant for any Reimbursable Expenses without prior written authorization.
- 5. Payment.** City shall pay Consultant for Services satisfactorily provided during each calendar month following within thirty (30) days following City receipt and approval of a detailed invoice. The invoice must include, at a minimum:
 - 5.1 A description of the specific Services provided,

- 5.2 the name of the individual providing the Services,
- 5.3 the date(s) upon which the Services were provided,
- 5.4 the time spent providing the Services,
- 5.5 the amount due for the Services and the basis for calculating the amount due, and
- 5.6 an itemized summary of Allowable Reimbursable Expenses (if applicable and authorized by City).

6. Key Personnel. Key Personnel are any individuals that are designated by name in the list below. In the event the Consultant desires to substitute any Key Personnel, either permanently or temporarily, or utilize any subconsultants not approved by the City, the Contractor shall provide written notice to the City of the proposed substitution and the City shall have the right to disapprove the proposed personnel change by written notice to the Consultant.

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

7. Prevailing Wage Laws. Services by persons deemed to be employees of Consultant possibly may be subject to prevailing wages under California Labor Code Sections 1770-1781. Consultant has the sole responsibility to comply with those requirements, should they apply. If a dispute based upon the prevailing wage laws occurs, Consultant, at its expense, shall indemnify, defend (including Consultant’s providing and paying for legal counsel for City), and hold harmless City, its officers, agents, employees, and representatives from and against all liability, claims, suits, demands, damages, fines, penalties, wages, costs, or expenses pertaining to the prevailing wage laws.

8. Independent Contractor. The parties agree that Consultant must act as an independent contractor under this Agreement and must have control of the work and the manner in which it is performed. Consultant 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. Consultant’s Warranties.

8.1 Consultant warrants that all Services provided under this Agreement shall be performed in accordance with generally accepted professional practices and standards for Consultant’s profession in the state.

8.2 Consultant warrants that all Services provided under this Agreement shall be performed in accordance with applicable federal, state, and local laws and regulations, including, but not limited to, conflict of interest laws.

8.3 Consultant warrants that Consultant has no present interest which would conflict in any manner with the performance of Services on the City's behalf.

8.4 Consultant has specialized, skill, knowledge and experience providing the Services.

8.5 Consultant represents that he is engaged in an independent calling and has complied with all local, state, and federal laws regarding business permits and licenses that may be required to carry out the independent calling and to perform the Services.

9. 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 e-mail as a .pdf (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party shall be given as follows:

City:

City of Fortuna
PO Box 545
Fortuna, CA 95540
Attention: Brendan Byrd
Phone: 707-725-1469
Fax: 707-725-7651
Email: bbyrd@ci.fortuna.ca.us

And copy to Amanda Hubacek
ahubacek@ci.fortuna.ca.us

Consultant:

[Name]
[address]
[City/State/Zip]
Phone:
Fax:
Attn:
Email:

And copy to:

10. Indemnity. To the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless 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 Consultant in the performance of this Agreement, except such Liability caused by the active negligence, sole negligence or willful misconduct of 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 Consultant 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 shall survive the expiration or early termination of this Agreement with respect to Liability arising during the term of the Agreement.

11. Insurance. Before providing any services under this Agreement, Consultant shall be required to procure and 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 Consultant and its employees, agents, or subcontractors 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. All required insurance must be issued by an insurer 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 Consultant fails to provide any of the required coverage, City may, at its sole discretion, purchase such coverage at Consultant's expense and deduct the cost from payments due to Consultant.

11.1 The following insurance policies and limits are required for this Agreement:

11.1.1 Commercial **General Liability Insurance ("CGL")**. Consultant will file with the City before beginning professional services, certificates of insurance satisfactory to the City evidencing general liability coverage of not less than \$2,000,000 per occurrence for bodily injury, personal injury and property damage; auto liability of at least \$1,000,000 for bodily injury and property damage each accident limit; workers' compensation (statutory limits) and employer's liability \$2,000,000 (if applicable). The general liability coverage is to state or be endorsed to state (i) "such insurance shall be primary and any insurance, self-insurance or other coverage maintained by City of Fortuna, its officers, employees, or authorized volunteers shall not contribute to it" and (ii) the inclusion of more than one insured shall not operate to impair the rights of one insured against another, and the coverages afforded shall apply as though separate policies have been issued to each insured.

The general liability coverage shall give the City, its officers, employees, and authorized volunteers insured status using ISO endorsement CG2010, CG2033, or equivalent. In the event that the Consultant employs other consultants (sub-consultants) as part of the Services covered by this Agreement, it shall be the Consultant's responsibility to require and confirm that each sub-consultant meets the minimum insurance requirements specified above.

11.1.2 **Workers' Compensation Insurance.** By his/her signature hereunder, Consultant certifies that it/he/she is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake

self-insurance in accordance with the provisions of that Code, and that Consultant will comply with such provisions before commencing the performance of the professional services and work under this Agreement. Consultant and sub-consultants will keep workers' compensation insurance for their employees in effect during all Services covered by this Agreement.

11.1.3 **Professional Liability.** Consultant will file with the City, before beginning professional services, a certificate of insurance satisfactory to the City evidencing professional liability coverage of not less than two million dollars (\$2,000,000.00) per claim and annual aggregate. The retroactive date (if any) is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the contract Services. Consultant shall purchase a one-year extended reporting period i) if the retroactive date is advanced past the effective date of this Agreement; ii) if the policy is canceled or not renewed; or iii) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement. The professional liability coverage shall give the City, its officers, employees, and authorized volunteers insured status. In the event that the Consultant employs other consultants (sub-consultants) as part of the Services covered by this Agreement, it shall be the Consultant's responsibility to require and confirm that each sub-consultant meets the minimum insurance requirements specified above prior to the commencement of any Services by the sub-consultant.

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

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

11.4 If any of the required coverages expire during the term of this Agreement, the Consultant shall deliver the renewal certificate(s) including the general liability additional insured endorsement to the City at least ten (10) days prior to the expiration date.

12. Non-Exclusive Services. The parties understand and agree that the Services are provided to City on a non-exclusive basis, meaning Consultant retains the right to provide the same or similar services for other clients and City retains the right to contract for the same or similar services by others.

13. Dispute Resolution. 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. In the event that any dispute arises between the parties in relation to this Agreement, and the dispute is not resolved by informal discussions, the parties agree to submit the dispute to mediation.

13.1 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 shall 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.

13.2 Good faith participation in mediation pursuant to this Section is a condition precedent to either party commencing litigation in relation to the dispute.

14. Early Termination.

14.1 **Termination for Convenience.** Either City or Consultant may terminate this Agreement for convenience by giving ten (10) calendar days written notice to the other. In the event of termination for convenience, the City shall pay Consultant for services satisfactorily provided up to that date.

14.2 **Termination for Cause.** If either party breaches this Agreement by failing to timely or satisfactorily perform any of its obligations or otherwise violates the terms of this Agreement, the other party may terminate this Agreement by giving written notice five (5) calendar days prior to the effective date of termination, specifying the reason and the effective date of the termination. Consultant shall be entitled to payment for all services satisfactorily provided up to the effective date of termination, except that the City may deduct from that payment the amount of costs the City incurred, if any, because of Consultant's breach of the Agreement.

14.3 **Upon Termination.** Within seven (7) days of the effective date of termination, whether for fault or for convenience, Consultant 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 Consultant's delivery of all such documents and work product to the City, the effective date of termination, the City will pay Consultant for all undisputed and approved invoices for services provided under this Agreement.

15. Work Product. City shall be the sole owner of all rights to any work product in any form which has been prepared by Consultant on City's behalf pursuant to this Agreement, unless otherwise specified in writing by the parties.

16. General Provisions.

16.1 Assignment and Successors. Neither party may transfer or assign its rights or obligations under this Agreement, in part or in whole, without the other party's prior written consent. This Agreement is binding on the heirs, successors, and permitted assigns of the parties hereto.

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

16.3 Nondiscrimination. Consultant shall 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.

16.4 Choice of Law and Venue. This Agreement shall be governed by California law, and venue shall be in the Superior Court for the county in which City is located, and no other place.

16.5 Severability. If any provision of this Agreement is determined to be illegal, invalid, or unenforceable, in part or in whole, the remaining provisions, or portions of the Agreement shall remain in full force and effect.

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

16.7 Provisions Deemed Inserted. Every provision of law required to be inserted in this Agreement shall be deemed to be inserted, and this Agreement shall be construed and enforced as though included. If it is discovered that through mistake or otherwise that any required provision is not inserted, or not correctly inserted, this Agreement shall be amended to make the insertion or correction.

16.8 Entire Agreement. This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties regarding the subject matter of this Agreement and supersedes all prior written or oral understandings or agreements of the parties.

16.9 Attachments. If any provision in any attachment to this Agreement 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 shall control over the conflicting or inconsistent provisions in the attachment.

16.10 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 shall be

effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

16.11 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.

16.12 Headings. The headings in this Agreement are included for convenience only and shall 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.

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

16.14 Authorization. Each individual executing this Agreement, or its counterpart, on behalf of the respective party, warrants that he/she is authorized to do so and that this Agreement constitutes the legally binding obligation of the entity which he/she represents.

16.15 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.

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

CITY:

CONSULTANT:

s/_____

s/_____

Name/Title [print]

Name/Title [print]

Date: _____

Date: _____

Attachments:

Attachment A: Scope of Services