



## **CITY OF FORT BRAGG**

### **REQUEST FOR PROPOSALS FOR ENGINEERING DESIGN SERVICES FOR THE 2025 STREETS PAVEMENT PRESERVATION AND REHABILITATION PROJECT**

The City of Fort Bragg is seeking proposals from qualified engineering consultants interested in contracting with the City of Fort Bragg to prepare complete construction documents for the upcoming street pavement preservation and rehabilitation project.

#### **SCOPE OF WORK**

##### **Project Description**

The City of Fort Bragg has identified over 6 miles of City streets that are scheduled for pavement preservation maintenance using seal coats, micro-surfacing, and/or mill and overlay. Work is proposed on 36 street segments listed in (Attachment 1). The prioritization of work on this project is the performance of the preservation maintenance locations first and then the inclusion of the locations requiring rehabilitation second as funds allow. The selected locations are based on scenarios identified in the "City of Fort Bragg – 2021 Pavement Management Program Update". All locations are based on priority needs, resources, and funding, as a result, project limits may be subject to change after the recommendations produced by the technical memorandum are considered.

Design elements of this project may also include the construction/reconstruction of sidewalks, curbs, and gutters following the Americans with Disabilities Act (ADA) where selected treatments necessitate such work. The design of this project should focus on a cost-effective approach to preserve/rehabilitate the most pavement possible, understanding the economic advantages of creating a project with the fewest treatment types to maximize savings. This may mean strategically recommending the removal of locations from the project or creating project alternates for those locations for which the specified treatment is not appropriate.

##### **Project Background, Purpose, and Need**

The City of Fort Bragg is in a period of stable population; significant growth is not expected at this time. The selected City streets have adequate capacity. All work will take place within the existing, developed public right of way so no new right of way or easements are expected.

The City of Fort Bragg has identified 36 street segments equivalent to 6.4 miles of City Street. The City used the 2021 Pavement Management Program (PMP) (Attachment 3) to identify the locations selected for treatment in this project. The locations listed in Attachment 1 and shown in the map (Figure 1) include a variety of treatments, mostly focusing on pavement preservation using slurry seals and micro-surfacing. The selected locations are those identified in the PMP as the recommended scenario given the expected existing funding available.

As described in the “City of Fort Bragg – 2021 Pavement Management Program Update” (PMP), the City has implemented a multi-year street rehabilitation and maintenance program. The selected locations for pavement preservation using slurry seal and/or micro-surfacing include a combination of arterial and local streets in “good” condition as well as several streets in “fair” or “poor” condition requiring mill and overlay or more extensive rehabilitation strategies. Those locations scheduled for seals or micro-surfacing are priority with mill and overlay being secondary depending on recommendations made in the existing conditions assessment.

## **Design Notes**

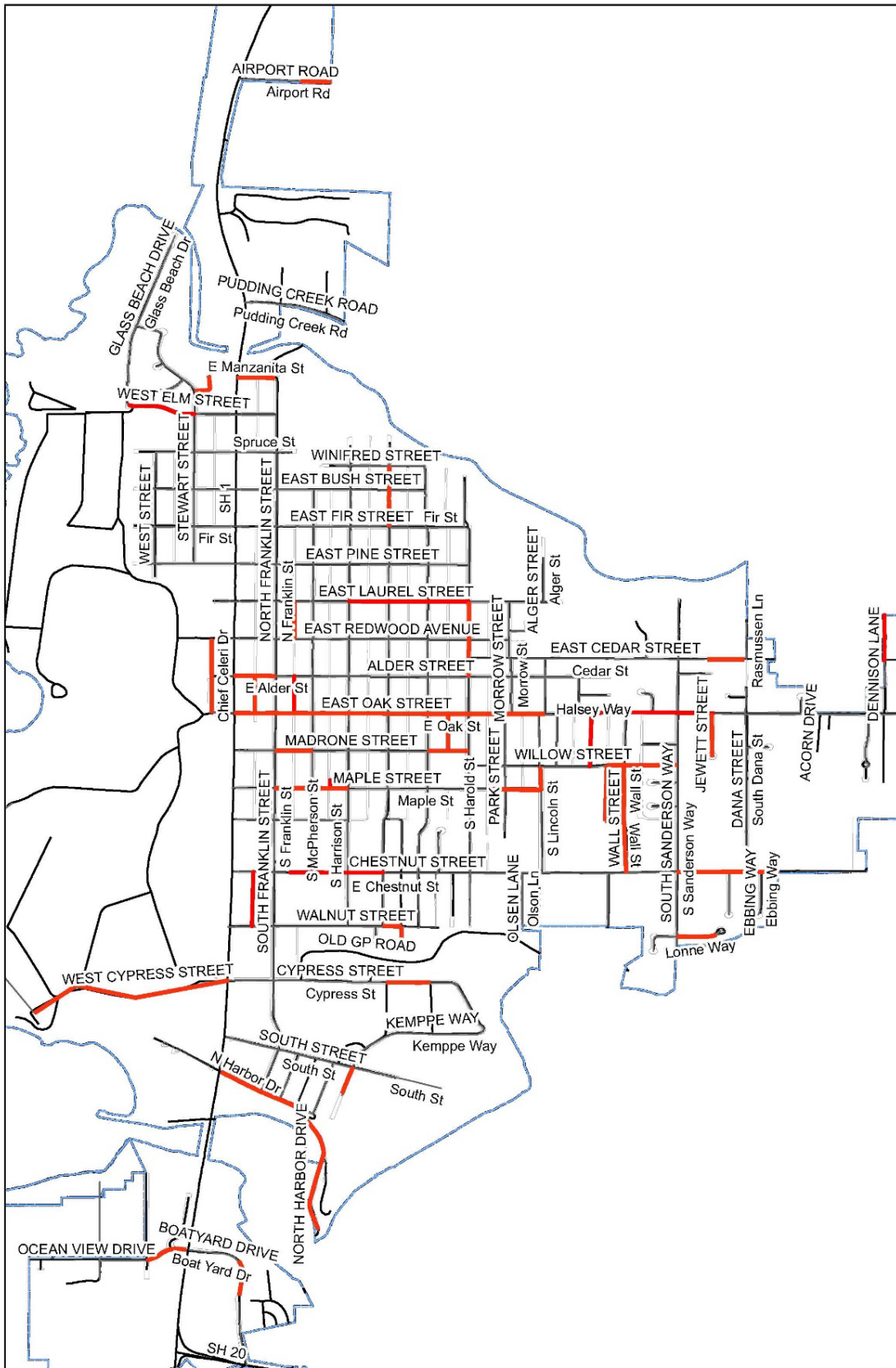
Key elements of the project should include an evaluation of the appropriateness of the PMP-suggested treatment options and include alternate construction methods for locations that will maximize the longevity of the streets while considering opportunities for cost savings.

The project shall be designed utilizing approved City of Fort Bragg Standard Specifications in combination with the most current Caltrans Standard Specifications where applicable. The City will provide maps of its existing underground infrastructure (water, stormwater, and wastewater), maintenance holes, water meters, existing street striping documents, and existing specs for locations where existing conditions have specialty treatments applied. As is typical, the mapping maintained by the City may be incomplete or incorrect and it is the design engineer's responsibility to field verify assumptions before completing 100% plans.

This project is funded in part with Local Partnership Program (LPP) monies as such all proposed treatment plans and specifications shall comply with the requirements of the funding entity. This also includes the design of construction/reconstruction of sidewalks, curbs, and gutters following the Americans with Disabilities Act (ADA) where selected treatments necessitate such work.

Value-added suggestions for cost savings, treatment selections, and opportunities for inclusion of other project elements spelled out in existing City Plans (Complete Streets, Roadway Safety Plans, Storm Drain Master Plan, etc.) are encouraged.

Figure 1- Street Rehab



0 Feet  
0 200

Street Rehab 2025

10-19-2022



Feature and boundary locations depicted are approximate only.

**This contract consists of the following tasks:**

**1. Project Management**

- A. Up to three (3) meetings with City staff for information gathering, general coordination during all phases of the work, and review and approval of contract plans and specifications.
- B. Fieldwork to determine topography, elevations, stationing, limits, and quantities for construction. Survey data shall be detailed enough to accurately predict and preserve drainage and linear connections between adjacent private properties and existing sidewalks, streets, and alleys. Special attention will be required to capture drainage issues including cross drains and under sidewalk drains.
- C. Potholing locations where utility conflicts are probable based on existing data. Potholing data shall be used to design the relocation of shallow and conflicting utilities.
- D. Presentation of Existing Conditions Assessment Technical Memorandum at one (1) City Council or Public Works and Facilities Committee Meeting (virtual attendance okay) to discuss recommendations of any significant changes from the initial project scope. This meeting will be held to receive procedural direction if there are substantial changes in locations or costs.

**2. Plans, Specs and Estimates**

- A. Preparation of an Existing Conditions Assessment Technical Memorandum. This report shall assess the current existing conditions of the proposed streets, include recommendations for alternate rehabilitation strategies to reduce costs and increase facility longevity, assess ease of construction, and include cost-driven scenarios to aid in determining the best probable project scope. The memo should include an engineer's cost estimate for the suggested treatments, including various funding scenarios needed to rehabilitate all locations, and include possible recommendations for which streets would be better bid as alternates. The goal of the memo is to ensure the most cost-effective treatments are recommended to competitively bid on the project. This task shall be completed before the starting plan sheets.
- B. Preparation of construction specifications containing State and City Standard Specifications and contract language that meets labor compliance provisions and funding source requirements. The City will prepare the contract portion of the bid documents, and the consultant will prepare the technical specifications and special provisions sections.
- C. Preparation of plans, technical specifications, and engineer's estimate for construction. Deliverables shall include 60% design; 90% design, and 100% final plans and specifications complete and ready to bid for construction.
- D. The 100% deliverable shall include one (1) stamped and signed original set of plans, electronic plans, and technical specifications. Submittal of an electronic copy of all finished products and deliverables in PDF, AutoCAD, Microsoft Word, and/or Excel (as applicable).
- E. Preparation of engineers probably estimate of cost for construction and alternates at the 100% phase. Unit prices on individual items shall consider bid results for recent local projects.

### 3. Bid Period Services and Construction Support

- A. Plans, Specifications, and Estimates (PS&E) construction documents shall be completed in a timely fashion to allow advertisement for construction in late winter to ensure a competitive bidding environment.
- B. Provide support services during the bid advertisement period as it relates to bidders' requests for information (RFI's) and the preparation of technical or design-related addenda as needed. This is anticipated to include one round of contractor-generated questions before the bid opening.
- C. Construction support services. These services are expected to be minor and incidental, as the City typically hires a Construction Management firm, however, there should be a small budget included for question, answer, and minor plan amendments to address unknowns and compare solutions throughout the construction phase.

#### **RFP Schedule**

RFP Release	February 27, 2024
Deadline for Written Questions	March 21, 2024
Proposals Due	March 29, 2024– 2:00 p.m.
Selection	April 22, 2024

#### **PROPOSAL SUBMITTAL REQUIREMENTS**

- 1. Proposers should send a complete digital proposal, collated into one PDF document and three (3) printed copies of the completed proposals so that it is received by the City no later than 2:00 p.m. on March 29, 2024, to:
  - City of Fort Bragg
  - Attention: Diana Sanchez, City Clerk
  - 416 North Franklin Street
  - Fort Bragg, CA 95437
  - [dsanchez@fortbragg.com](mailto:dsanchez@fortbragg.com)
- 2. Format: The printed proposal should be 8 ½ x 11 inches, printed two-sided on recycled and recyclable paper with removable bindings, bound in a single document, and organized in sections following the order specified under Contents.
- 3. Contents: The proposal shall contain the following information:
  - A. Firm Description  
Provide a description of your firm and list relevant information about capabilities, size, rate of services, and length of time in existence.
  - B. Relevant Experience  
Describe relevant experience designing street construction projects using the specified treatment technologies and preparing technical specifications for public works projects for other public agencies.
  - C. Key Personnel Qualifications  
Identify key personnel who would work on the project as assigned, their respective roles, and a synopsis of relevant experience.
  - D. References  
List of public agencies or clients for whom similar work has been performed, with the name, title, and phone number of a contact person. The City may request a copy of a similar report prepared previously by the firm for another agency.

- E. Scope of Work  
Provide an explanation of tasks associated with the project, including how you propose to complete each task.
- F. Budget and Schedule of Charges  
Provide a “Not to Exceed” amount and a list of Personnel Rates, Equipment Charges, and Travel Reimbursement Costs. Please be aware that prevailing wage rates apply to preconstruction work, such as inspection and land surveying, for public works projects.
- G. Work Schedule  
Provide a time schedule for completion of work. It is the City’s intent that 100% of plans, specifications, and estimates for this project will be completed by December 1, 2024, to ensure a competitive bid environment.
- H. Insurance  
The individual or firm receiving the contract shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, employees or subcontracts as outlined in Section 5.0 of Exhibit A which is attached hereto and incorporated by reference herein. Any requests for a reduction in the insurance amount shall be included in the proposal. The cost of such insurance shall be included in the consultant’s proposal.
- I. Consultant Agreement  
The City’s standard consultant services agreement is attached as Exhibit A. Please identify if your firm would have any issues with the provisions of the City’s standard consulting services agreement. All requests for amendments to language in the agreement **must** be included in the proposal.

### **EVALUATION CRITERIA**

Proposals will be evaluated based on the following criteria:

- Understanding of the work to be completed
- Experience with similar kinds of work
- Capabilities and resources of the firm
- Qualifications and experience of project personnel
- Schedule for completion of work

The above selection criteria are provided to assist proposers and are not meant to limit other considerations that may become apparent during the selection process.

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

### **OTHER CONSIDERATIONS**

The City of Fort Bragg reserves the right to reject any and all proposals. This Request for Proposals does not commit the City to award a contract, pay any costs incurred in the preparation of proposals, or procure or contract for supplies or services.

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

## **QUESTIONS**

Questions should be directed to:

Chantell O'Neal  
City of Fort Bragg  
416 North Franklin Street  
Fort Bragg, CA 95437  
(707) 961-2823 ext. 133  
Email: [coneal@fortbragg.com](mailto:coneal@fortbragg.com)

## **ATTACHMENTS**

Attachment 1. Selected Street Segments List

Attachment 2. Exhibit A – City's Standard Professional Services Agreement

Attachment 3. [Pavement Management Program 2021](#) (use the following electronic link:  
<https://www.city.fortbragg.com/home/showpublisheddocument/3779/638024000124370000>)

# Scenarios - Sections Selected for Treatment

Interest: 3.00%

Inflation: 3.00%

Printed: 1/28/2022

Scenario: 2021 S1: CITY'S EXISTING FUNDING (\$1.0M/YEAR)

Year: 2023

Street Name	Begin Location	End Location	Street ID	Section ID	Length	Width	Area	FC	Surface Type	Area ID	Treatment			Cost	Rating	Treatment	
											Current PCI	PCI Before	PCI After				
MAPLE ST. 005	ALLEY BETWN WHIPPLE HARRISON	S. FRANKLIN	MAPLE	005A	900	49	44,100	C	AC	0	68	66	100	\$251,089	8,571	AC OVERLAY 2 INCHES	
												<b>Treatment Total</b>	<b>\$251,089</b>				
AIRPORT ROAD	W/C.L. SIGN 5+87	E.EDGE HWY1 @ LIMIT LINE 8+55	AIRPOR	001B	268	22	5,896	R	AC	0	93	91	96	\$3,712	5,960	SLURRY SEAL W/ CRACK SEAL	
BOATYARD DR. 001	5+30 FORM HWY1 0+00	4+32 FROM BEGIN	BOATYA	001	432	24	10,368	A	AC/AC	0	92	89	95	\$7,713	13,070	SLURRY SEAL W/ CRACK SEAL	
EAST ALDER 001	E.F CURB HWY 1 0+00	W.F.CURB N.FRANKLIN ST. 3+40	EALDER	001	340	43	14,620	C	AC	0	83	82	89	\$10,040	26,615	SLURRY SEAL W/ CRACK SEAL	
EAST CYPRESS ST. 001	END OF KEMPEE @ VALVE BOX 0+0	W.F.CURB RIVER DRV 12+96	ECYPRES	001	1,296	40	51,840	C	AC/AC	0	81	80	88	\$35,597	31,682	SLURRY SEAL W/ CRACK SEAL	
NORTH HARBOR DRIVE 002	E.F.CURB S FRANKLIN ST. 0+00	E.F.CURB HWY 1 4+55	NHARBO	002	455	32	14,560	R	AC	0	81	80	87	\$9,165	17,685	SLURRY SEAL W/ CRACK SEAL	
NORTH HAROLD ST. 006	LAUREL ST	ALDER ST	NHAROL	006	920	52	47,840	C	AC/AC	0	74	73	82	\$32,851	31,155	SLURRY SEAL W/ CRACK SEAL	
EAST OAK ST. 001	E.F. CURB HWY 1 0+00	W.F.CURB MCKINLEY 32+25	OAK	001	3,225	45	145,125	A	AC	0	81	79	87	\$107,957	22,659	SLURRY SEAL W/ CRACK SEAL	
PERKINS WAY	N.F. CURB E. FIR ST. 0+00	@ DEAD END 10+53	PERKIN	001	1,053	33	34,749	R	AC	0	79	78	86	\$21,873	18,330	SLURRY SEAL W/ CRACK SEAL	
WALL ST. 001	WILLOW	N.F. CURB@ALLEY ST 13+50	WALL	001B	650	38	24,700	R	AC/AC	0	79	78	86	\$15,548	22,850	SLURRY SEAL W/ CRACK SEAL	
WALL ST. 002	E.F. CURB @ ALLEY 0+00	N.F. CURB CHESTNUT ST.	WALL	002	700	38	26,600	R	AC/AC	0	81	80	88	\$16,744	24,088	SLURRY SEAL W/ CRACK SEAL	
												<b>Treatment Total</b>	<b>\$261,200</b>				
HAZELWOOD ST.	S.F. SOUTH ST. 0+00	HYDRANT @ END OF ST.3+60	HAZELW	001	360	28	10,080	R	AC	0	64	63	73	\$9,229	15,147	MICROSURFACING W/ CRACK SEAL AND 3% DIGOUTS	
MADRONE ST. 002	CORRY ST	W.F. CURB @ HAROLD 13+00	MADRON	010	400	44	17,600	R	AC	0	63	61	72	\$16,114	12,083	MICROSURFACING W/ CRACK SEAL AND 3% DIGOUTS	
OCEAN VIEW DRV.WEST 001	W.F. CURB HWY1 0+00	4+18 FROM W.F. HWY1	OCEANV	001	418	36	15,048	R	AC/AC	0	68	67	76	\$13,778	14,815	MICROSURFACING W/ CRACK SEAL AND 3% DIGOUTS	
WALNUT ST. 001	W.F.CURB GROVE 0+00	WHIPPLE	WALNUT	001	340	39	13,260	R	AC	0	62	60	71	\$12,141	11,984	MICROSURFACING W/ CRACK SEAL AND 3% DIGOUTS	
												<b>Treatment Total</b>	<b>\$51,262</b>				
MADRONE ST. 001	E.F.CURB @ HWY 1 0+00	W.F.CURB @ McPHERSON ST.6+50	MADRON	001	650	43	27,950	R	AC	0	67	65	75	\$36,786	8,672	MICROSURFACING W/ CRACK SEAL AND 5% DIGOUTS	

\*\* - Treatment from Project Selection



# Scenarios - Sections Selected for Treatment

Interest: 3.00%

Inflation: 3.00%

Printed: 1/28/2022

Scenario: 2021 S1: CITY'S EXISTING FUNDING (\$1.0M/YEAR)

Year: 2023

Street Name	Begin Location	End Location	Street ID	Section ID	Length	Width	Area	FC	Surface Type	Area ID	Treatment			Cost	Rating	Treatment	
											Current PCI	PCI Before	PCI After				
MANZANITA ST.	W.F. CURB N. FRANKLIN ST.0+00	E.F. CURB HWY1 3+30	MANZAN	001	330	26	8,580	R	AC	0	69	67	77	\$11,293	8,800	MICROSURFACING W/ CRACK SEAL AND 5% DIGOUTS	
WILLOW ST. 001	W.F.CURB S.SANDERSON 0+00	E.EDGE ALLEY LIVINGSTON 6+23	WILLOW	001	623	32	19,936	R	AC	0	67	65	75	\$26,238	8,672	MICROSURFACING W/ CRACK SEAL AND 5% DIGOUTS	
<b>Treatment Total</b>													<b>\$74,317</b>				
CEDAR ST. 002	END CURB 1320 CEDAR 0+00	1631 EAST PROP. LINE 8+90	CEDAR	002	350	19	6,650	R	AC	0	42	40	100	\$67,734	5,007	THICK MILL AND OVERLAY	
HARBOR AVE	OCEAN VIEW DR	SOUTH END	HARAV	001	90	39	3,510	R	AC/AC	0	49	47	100	\$35,752	4,778	THICK MILL AND OVERLAY	
LONNE WAY	E.F. SNADERSON 0+00	END OF CULDESAC 4+87	LONNE	001	487	32	15,584	R	AC	0	42	40	100	\$158,732	5,009	THICK MILL AND OVERLAY	
N100D	E OAK ST	E ALDER ST	N100D	N100D1	417	20	8,340	O	AC		21	18	100	\$35,077	12,490	THICK MILL AND OVERLAY	
N102C	N101C	MAIN ST	N102C	N102C1	146	26	3,796	O	AC		16	13	100	\$15,966	12,490	THICK MILL AND OVERLAY	
<b>Treatment Total</b>													<b>\$313,261</b>				
<b>Year 2023 Area Total</b>										<b>595,980</b>	<b>Year 2023 Total</b>		<b>\$983,482</b>				

Year: 2024

Street Name	Begin Location	End Location	Street ID	Section ID	Length	Width	Area	FC	Surface Type	Area ID	Treatment			Cost	Rating	Treatment	
											Current PCI	PCI Before	PCI After				
SOUTH LINCOLN ST.	MAPLE ST	WILLOW ST	SLINCO	015A	282	30	8,460	C	AC	0	68	63	100	\$49,613	8,665	AC OVERLAY 2 INCHES	
<b>Treatment Total</b>													<b>\$49,613</b>				
CHESTNUT ST. 002	END CURB-GUTTER@001, 0+00	S. WHIPPLE	CHESTN	005	884	32	28,288	C	AC/AC	0	83	80	87	\$20,008	22,454	SLURRY SEAL W/ CRACK SEAL	

\*\* - Treatment from Project Selection

# Scenarios - Sections Selected for Treatment

Interest: 3.00%

Inflation: 3.00%

Printed: 1/28/2022

Scenario: 2021 S1: CITY'S EXISTING FUNDING (\$1.0M/YEAR)

Year: 2024

Street Name	Begin Location	End Location	Street ID	Section ID	Length	Width	Area	FC	Surface Type	Area ID	Treatment			Cost	Rating	Treatment
											Current PCI	PCI Before	PCI After			
DUBOIS LANE	S.F. CURB WALNUT 0+00	END OF PAVEMENT 2+07	DUBOIS	001	207	25	5,175	R	AC/AC	0	94	90	95	\$3,356	10,253	SLURRY SEAL W/ CRACK SEAL
EAST LAUREL 002	E.F.CURB N.HARRISON 0+00	W.F.CURB N.HAROLD 10+05	ELAURE	002	1,005	40	40,200	C	AC/AC	0	75	72	81	\$28,433	24,630	SLURRY SEAL W/ CRACK SEAL
EAST OAK ST. 002	E.F. CURB McKINLEY ST. 0+00	BACK E.SIDE SDWLK. DANA 17+25	OAK	002	1,725	40	69,000	R	AC	0	77	74	82	\$44,735	18,270	SLURRY SEAL W/ CRACK SEAL
<b>Treatment Total</b>													<b>\$96,532</b>			
CHESTNUT ST. 003	SANDERSON WY	END OF STREET (9+75)	CHESTN	015	975	32	31,200	C	AC/AC	0	73	70	79	\$50,570	10,029	RUBBERIZED CHIP SEAL+MICROSURFACING W/ 3% DIGOUTS
WEST ELM ST.	W.F. CURB HWY1 0+00	W.EDGE PAVEMENT 10+30	WELM	001	1,030	43	44,290	C	AC	0	73	68	78	\$71,787	6,987	RUBBERIZED CHIP SEAL+MICROSURFACING W/ 3% DIGOUTS
<b>Treatment Total</b>													<b>\$122,357</b>			
JEWETT ST.	S.F.SIDEWALK OAK ST.0+00	END OF CULDESAC 5+36	JEWETT	001	536	39	20,904	R	AC	0	72	69	78	\$28,338	8,626	MICROSURFACING W/ CRACK SEAL AND 5% DIGOUTS
LIVINGSTON ST.	S.F.CURB OAK 0+00	N.F.CURB WILLOW ST.6+17	LIVING	001	617	35	21,595	R	AC/AC	0	72	69	78	\$29,275	8,747	MICROSURFACING W/ CRACK SEAL AND 5% DIGOUTS
NORTH HARBOR DRIVE 001	CITY LIMITS @GUARD RAIL 0+00	E.F.CURB S. FRANKLIN 19+90	NHARBO	001	1,990	28	55,720	R	AC	0	72	69	78	\$75,534	8,626	MICROSURFACING W/ CRACK SEAL AND 5% DIGOUTS
<b>Treatment Total</b>													<b>\$133,147</b>			
DENNISON LANE	S.EDGE OF PAVEMANT 0+00	N.W.PROP LN. STANLEY 8+53	DENNIS	001	853	14	11,942	R	AC	0	46	41	100	\$125,285	4,839	THICK MILL AND OVERLAY
JOHN CIMOLINO WAY	STEWART ST	END	JOHNCIMO	001	286	36	10,296	R	AC		49	44	100	\$108,017	4,769	THICK MILL AND OVERLAY
N100E	E OAK ST	E ALDER ST	N100E	N100E1	413	16	6,608	O	AC		6	0	100	\$28,626	12,126	THICK MILL AND OVERLAY
S202F	MAPLE ST	105' N/O MAPLE ST	S202F	S202F1	105	14	1,470	O	AC		1	0	100	\$6,369	12,126	THICK MILL AND OVERLAY
WALNUT ST.	GROVE ST	EAST END	WALNUT	004	188	43	8,084	R	AC/AC	0	51	46	100	\$84,811	4,710	THICK MILL AND OVERLAY
WEST CYPRESS	WEST END	S MAIN ST	WCYPST	001	165	50	8,250	C	AC	0	51	43	100	\$109,406	4,431	THICK MILL AND OVERLAY
<b>Treatment Total</b>													<b>\$462,514</b>			
CHIEF CELERI DR	W OAK ST	W ALDER ST	CELERI	001	475	15	7,125	A	AC		4	0	100	\$121,573	4,384	12" FDR W/ 4" HMA
<b>Treatment Total</b>													<b>\$121,573</b>			

\*\* - Treatment from Project Selection

# Scenarios - Sections Selected for Treatment

Interest: 3.00%

Inflation: 3.00%

Printed: 1/28/2022

Scenario: 2021 S1: CITY'S EXISTING FUNDING (\$1.0M/YEAR)

Year: 2024

Street Name	Begin Location	End Location	Street ID	Section ID	Length	Width	Area	FC	Surface Type	Area ID	Treatment			Cost	Rating	Treatment
											Current PCI	PCI Before	PCI After			
S500D	WALNUT ST	E CHESTNUT ST	S500D	S500D1	614	16	9,824	O	AC		94	89	95	\$3,475	15,123	SINGLE CHIP SEAL
<b>Treatment Total</b>													<b>\$3,475</b>			
MAPLE ST. 001	W.F.CURB S.LINCOLN 0+00	S.HAROLD	MAPLE	001A	640	45	28,800	C	AC/AC	0	95	88	89	\$5	30,729,948	SEAL CRACKS
<b>Treatment Total</b>													<b>\$5</b>			
<b>Year 2024 Area Total</b>									<b>417,231</b>	<b>Year 2024 Total</b>			<b>\$989,216</b>			

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

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

**WITNESSETH:**

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

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

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

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

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

**[Delete whichever Paragraph E doesn't apply]**

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

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

**1.0. SERVICES PROVIDED BY CONSULTANT**

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

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

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

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

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

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

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

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

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this

Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

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

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

## 2.0. COMPENSATION, BILLING AND PREVAILING WAGES

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

**[Delete whichever paragraph 2.1 does not apply.]**

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

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

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

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient

times for a period of three (3) years from the date of final payment.

2.5 Prevailing Wage Laws. In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed. In accordance with California Labor Code Section 1773, the City has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project. In accordance with California Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at the City Public Works Department and will be made available on request. Throughout the performance of the Work the Contractor, and its subcontractors, must comply with all provisions of the Contract Documents and all applicable laws and regulations, including without limitation Labor Code Sections 1776 and 1810-1815, that apply to wages earned and hours worked in performance of the Work. Pursuant to California Labor Code Section 1771.1, this Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR). A Contractor may not bid, nor be listed as a subcontractor for any bid proposal submitted for public work without first registering with the DIR and paying the annual fee. Application and renewal are completed online at <http://www.dir.ca.gov/PublicWorks/PublicWorks.html>. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractor, and its subcontractors, shall be responsible for compliance with Labor Code Section 1776. This Project is subject to prevailing wage compliance monitoring and enforcement by the Department of Industrial Relations. Contractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the work for this Project. Each payroll record shall contain or be verified by a written declaration as required by Labor Code Section 1776. The payroll records must be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor as required by Labor Code Section 1776.

### 3.0. TIME OF PERFORMANCE

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

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

#### 4.0. TERM AND TERMINATION

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

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

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

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

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

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination within thirty-five (35) days after service of the notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant. City



shall not be liable for any claim of lost profits.

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

## 5.0. INSURANCE

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

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

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

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

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

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

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

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

- (a) Additional insureds: "The City of Fort Bragg and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant."
- (b) Notice: "Consultant shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, Consultant shall forthwith obtain and submit proof of substitute insurance. Should Consultant fail to immediately procure other insurance, as specified, to substitute for any canceled policy, the City may procure such insurance at Consultant's sole cost and expense."
- (c) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Fort Bragg, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Fort Bragg shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Fort Bragg, its officers, officials, agents, employees, and volunteers.

- (e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

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

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

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

## 6.0. GENERAL PROVISIONS

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

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

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

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

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

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile

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

IF TO CONSULTANT:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Tel: \_\_\_\_\_  
Fax: \_\_\_\_\_

IF TO CITY:

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

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

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

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

6.8. Indemnification and Hold Harmless.

If Consultant is not a design professional performing "design professional" services under this Agreement, as that term is defined in Civil Code Section 2782.8, Consultant agrees to defend, indemnify, hold free and harmless the City, its elected and appointed officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings brought against the City, its elected and appointed officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply whenever any claim, action, complaint or suit asserts liability against the City, its elected and appointed officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful

misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

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

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

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

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City,

including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

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

6.12. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, preliminary notes, working documents, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City, but shall be made available to the City within ten (10) days of request or within ten (10) days of termination. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, preliminary notes and working documents, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City. Consultant or Consultant's agents shall execute such documents as may be necessary from time to time to confirm City's ownership of the copyright in such documents.

6.13. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

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

6.15. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to

Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

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

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

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

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

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

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

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

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

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

then both parties agree to substitute such provision(s) through good faith negotiations.

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

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

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

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

CITY

CONSULTANT

By: \_\_\_\_\_  
Peggy Ducey  
Its: City Manager

By: \_\_\_\_\_  
\_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
June Lemos, MMC  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Keith F. Collins  
City Attorney



**EXHIBIT A**

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

**EXHIBIT B**  
**CERTIFICATES OF INSURANCE AND ENDORSEMENTS**