

Appendix C – Sample Contract

Purchase Order No. _____

**CITY OF ARCATA PROFESSIONAL SERVICES AGREEMENT WITH
FOR RECONNECTING ARCATA PROJECT- PHASE 1A & 1B**

This Agreement is made on _____ between the City of Arcata, a municipal corporation (referred to as "City"), and _____, a _____ (referred to as "Consultant"). City and Consultant may herein be referred to individually as a "Party" and collectively as the "Parties." There are no other parties to this Agreement.

RECITALS

WHEREAS, the City desires professional services to assist in certain work described briefly as _____ referred to herein as the "Services" or "Project".

WHEREAS, Consultant has demonstrated competence, experience and qualifications adequate to perform said professional Services, and the City desires to retain Consultant for such Services.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below, the Parties agree as follows:

AGREEMENT

1. **Recitals:** The recitals set forth above ("Recitals") are true and correct and are hereby incorporated into and made part of this Agreement by this reference. In the event of any inconsistency between the Recitals and Section 1 through 29 of this Agreement, Sections 1 through 29 shall prevail.
2. **Scope of Services:** Consultant agrees to perform services as set out in Exhibit A, "Scope of Work, Compensation" attached hereto and incorporated herein, and duly authorized by issuance of Purchase Order No. set out above. No purchase orders are issued without a valid Agreement. Any request for Services not included in Exhibit A will be considered a request for additional or modified Services ("Modification" or "Modifications"). Consultant shall not receive additional compensation for any Modification of the Services unless the Parties agree otherwise in a writing executed by both Parties.
 - A. *City Requested Modification of Services.* City may, by written order, authorize Modifications to the Services described in Exhibit A. If such Modifications cause an increase in the cost or time required for performance of Consultant's Services, the Parties shall enter into a written amendment to this Agreement to adjust the Services and the rates to be paid to Consultant. The Services shall not be revised unless City and Consultant mutually agree to a written amendment to this Agreement reflecting such revisions, additional compensation, time for performance, or such other terms or conditions mutually agreed upon by the Parties.
 - B. *Consultant Requested Modification in Services.* Consultant shall not be compensated for work outside the Services described in this Agreement, unless, prior to the commencement of the Services:
 - i. Consultant provides City with written notice that specific work requested by City or required to complete the Project is outside the agreed upon Services. Such notice shall: (i) be supported by substantial evidence that the work is outside the Services; and (ii) set forth the Consultant's proposed course of action for completing the work and a specific request for City to approve the Modification to the Services; and

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- ii. City agrees that the work requires a Modification;
- iii. The Parties execute a written amendment to this Agreement describing any Modification. Compensation for any additional Services shall not exceed _____ Dollars (\$_____) per hour.

3. Standards of Performance:

- A. *Standard of Care.* The standard of care for all professional services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.
- B. *Accuracy of Services.* City shall not be responsible for discovering deficiencies in the technical accuracy of Consultant's Services. Consultant shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in City-furnished information. However, City shall be responsible for, and Consultant may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by City to Consultant pursuant to this Agreement. Consultant may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.
- C. *No Conflict of Interest.* Consultant represents that no conflict of interest will be created under state or federal law by entering into or in carrying out this Agreement.
- D. *Special Conditions.* Consultant shall comply with all additional terms set forth in Exhibit B "Special Conditions," if any are so required: ____ Special Conditions; ____ No Special Conditions.
- E. *Special Insurance Conditions.* Consultant shall comply with all additional terms set forth in Exhibit C "Special Insurance Conditions," if any are so required:
_____ Special Insurance Conditions; _____ No Special Insurance Conditions.

4. Compensation for Services, Payment:

- A. *Compensation.* City shall pay Consultant as set forth in Exhibit A, not to exceed \$_____.
- B. *Preparation and Submittal of Invoices.* Consultant shall prepare and submit its invoices to the person and address specified by the City's Designated Representative no more than once per month and no later than the _____ day of each month.
- C. *Payments.* All reasonable efforts will be made by City to pay undisputed invoices within _____ days of receipt. If City contests an invoice, City may withhold that portion so contested and pay the undisputed portion. Payment shall be made to the address specified by Consultant's Designated Representative.
- D. *Withholding of Payment.* The City may withhold all or any portion of the funds provided for by this Agreement in the event that the Consultant has materially violated, or threatens to materially violate, any term, provision, or condition of this Agreement; or the Consultant fails to maintain reasonable progress toward completion of the Services or any component thereof.
- E. *No Waiver of Claims.* The granting of any payment by City, or the receipt thereof by Consultant, or any inspection, review, approval or oral statement by any representative of City, or state certification shall not, in any way, waive, limit, or replace any certification or approval procedures normally required or lessen the liability of Consultant to re-perform or replace unsatisfactory Service, including, but not limited to, cases

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where the unsatisfactory character of such Service may not have been apparent or detected at the time of such payment, inspection, review or approval. Nothing in this Section shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which City or Consultant may have under this Agreement or any applicable law. All rights and remedies of City, whether under this Agreement or applicable law, shall be cumulative.

5. Commencement, Completion:

- A. *Commencement.* Services of Consultant shall commence upon full execution of this Agreement by all parties, and the Agreement shall remain in full force until _____. No work, services, material or equipment shall be performed or furnished under this Agreement until the City has delivered a fully executed Agreement to the Consultant. A signed Agreement is considered notice to proceed.
- B. *Time for Completion.* Consultant shall complete Services as set forth in Section 2 of this Agreement. If Consultant fails, through its own fault, to complete the performance required in this Agreement within the time set forth, then City shall be entitled to the recovery of proximate damages resulting from such failure.
- C. *Extension of Agreement.* Parties may elect to extend this Agreement for an additional period of time by executing an Amendment in accordance with Section 13.
- D. *Suspension and Termination.*
- 1) Suspension. At any time and for any reason, the City may temporarily suspend the Services upon five days' written notice to Consultant. In such event, Consultant shall perform no additional Services under this Agreement until the City has provided written notice to Consultant to re-commence Services.
 - 2) Cancellation for Breach by Either Party. Should either Party fail to substantially perform its obligations in accordance with the provisions of this Agreement, the other Party shall thereupon have the right to cancel the Agreement by giving written notice and specifying the effective date of such cancellation. If City cancels this Agreement for breach and it is subsequently determined that Consultant did not fail to substantially perform its obligations in accordance with this Agreement, then cancellation for breach by City shall be deemed, and treated, as termination for convenience. Neither Party waives the right to recover damages against the other for breach of this Agreement, including any amount necessary to compensate City for all detriment proximately caused by Consultant's failure to perform its obligations hereunder or which in the ordinary course of things would be likely to result therefrom. City reserves the right to offset such damages against any payments owed to Consultant. City shall not in any manner be liable for Consultant's actual or projected lost profits had Consultant completed the Services required by this Agreement.
 - 3) Project Suspension or Termination for Convenience. The City may for any reason and at any time suspend indefinitely the Services and/or Terminate the Project, or any part thereof, upon written notice to Consultant. In the event City shall give such notice of termination, Consultant shall cease rendering Services upon receipt of said notice given as required in this Agreement. If City terminates this Agreement for convenience before Consultant commences any Services hereunder, City shall not be obligated to make any payment to Consultant. If City terminates this Agreement after Consultant has commenced performance under this Agreement, City shall pay Consultant the reasonable value of the Services rendered by Consultant pursuant to this Agreement prior to termination of this Agreement. City shall not in any manner be liable for Consultant's actual or projected lost profits had Consultant completed the Services. Consultant shall furnish to City such financial information that, in the judgment of the City Manager, is necessary to determine the reasonable value of the Services rendered by Consultant prior to

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termination. Except as provided in this Agreement, in no event shall City be liable for costs incurred by or on behalf of Consultant after the date of the notice of termination.

This Agreement may be terminated by City for cause based on the loss or suspension of any licenses, permits or registrations required for the continued provision of the Services, or Consultant's malfeasance. Termination of the Agreement for cause as set forth in this Section shall relieve City from compensating Consultant.

- E. *Delivery of Project Materials to City.* Prior to the effective date of termination, the Consultant will deliver to City all data and originals of all plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work and other materials for which City has compensated Consultant, and all such material shall become the property of the City upon delivery.
6. **Independent Contractor:** Consultant, in performing Services, shall act as an independent contractor and shall have control of his work and the manner in which it is performed. Consultant shall be liable for its acts and omissions and those of its employees, contractors, subcontractors, representatives, volunteers, and its agents. Consultant shall be free to contract for similar services to be performed for others while under contract with the City. Consultant is not to be considered an agent or employee of the City. Consultant agrees to furnish at his/her own expense all tools, equipment, services, labor and materials necessary to complete all requirements of this Agreement. Payment of any taxes, including California sales and use taxes, levied upon this Agreement, the transaction, or the Services or goods delivered pursuant hereto, shall be the obligation of Consultant.
7. **Indemnity:** When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City and any and all of its boards (including the council, boards, commissions, committees and task forces), officials, employees and agents (collectively, "Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or sub-contractors or any entity or individual for which Consultant shall bear legal liability in the performance of professional services under this Agreement.

Other than in the performance of professional services and to the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any all of the Indemnified Parties from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or sub-contractors of Consultant.

Consultant's responsibility for defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

The defense and indemnification obligations of the Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

Notwithstanding any other provision of this Agreement, in no event shall City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect, or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.

8. **Insurance:** Consultant shall procure and for the duration of this Agreement insurance against claims for injuries

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to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, or employees; and shall provide Certificates of Insurance as specified below. If Special Insurance Conditions are contained in Exhibit C, said conditions shall control.

Coverage shall be at least as broad as:

- A. *Commercial General Liability (CGL)*: Insurance Services Office (ISO) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000 per occurrence for all covered losses. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit. Additional insured coverage for the City shall not be limited to its vicarious liability. Defense costs must be paid in addition to limits.
- B. *Automobile Liability*: ISO Form Number CA 00 01, covering Code 1 (Any Auto) or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned). Limits are subject to review, but in no event to be less than \$2,000,000 per accident for bodily injury and property damage. If City approves Consultant or Consultant’s employees use of personal autos on this project, Consultant shall provide evidence of personal auto liability coverage for each such person.
- C. *Workers Compensation Insurance*: covering all employees and volunteers as required by the State of California, with Statutory Limits, on a state-approved policy form, and Employer’s Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease. (Not required if Consultant provides written verification that it has no employees.)
- D. *Excess or Umbrella Liability Insurance (Over Primary)*: if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverage. Such policy or policies shall include a drop-down provision providing coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a “pay on behalf of” basis, with defense costs payable in addition to policy limits. Such insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City’s insurance or self-insurance shall be called upon to protect it as a named insured. There shall be no cross-liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Consultant, sub-contractors or others involved in performing Services under this Agreement. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein.
- E. *Professional Liability or Errors and Omissions Insurance, As Appropriate*: written on a policy form coverage specifically designed to protect against acts, errors or omissions of Consultant and “Covered Professional Services” as designated in the policy and must specifically include work performed under this Agreement. The policy limit shall be no less than \$2,000,000 per claim and in the aggregate. The policy must “pay on behalf of” the insured and must include a provision establishing the insurer’s duty to defend. The policy retroactive date shall be on or before the effective date of this Agreement.
- F. *General Conditions Pertaining to Insurance*: The insurance policies are to contain, or be endorsed to contain, the following provisions:
 - 1) The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations.

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- a. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance at least as broad as one of the following ISO ongoing operations Forms: CG 20 10 or CG 20 26 or CG 20 33 (not allowed from subcontractors), or CG 20 38; and one of the following ISO completed operations Forms: CG 20 37, 2039 (not allowed from subcontractors), or CG 20 40.
- 2) It is a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage and/or limits required in this Section 7 shall be available to the City as an additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.
- 3) For any claims related to this contract, the Consultant's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
- 4) All self-insured retentions (SIR) must be disclosed to the City for approval and shall not reduce the limits of liability. Policies containing any SIR shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.
- 5) The City reserves the right to obtain a full certified copy of any insurance policy and any endorsement. Failure to exercise this right shall not constitute a waiver of the City's right.
- 6) 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; (3) or 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.
- 7) Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. However, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents and subcontractors. Consultant agrees to require that all subcontractors and sub-subcontractors do likewise.
- 8) Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all required coverages and an additional insured endorsement to Consultant's general liability policy, shall be delivered to the City at or prior to the execution of the Agreement.
- 9) All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect the City's protection without the City's prior written consent.
- 10) The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City will negotiate additional compensation proportional to the increased benefit to the City.

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- 11) In the event Consultant fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Consultant.
 - 12) Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.
8. Subcontracting: No services covered by the Agreement shall be subcontracted without the prior written consent of the City. In the event subcontracting is approved, the following shall apply:
- A. Consultant shall include in all subcontracts and require of all subcontractors all insurance and indemnity requirements and provisions of the Agreement that are applicable to any subcontractor's scope of work. Subcontractor's responsibility for defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.
 - B. Each subcontractor shall be obligated to Consultant and the City in the same manner and to the same extent as Consultant is obligated to the City under this Agreement. If hiring a sub-subcontractor to perform any Services, the subcontractor shall include in the sub-subcontract all provisions of this Agreement including all insurance and indemnity provisions that are applicable to said sub-subcontractor's scope of work.
 - C. Consultant shall furnish a copy of the Agreement's insurance and indemnity provisions to any subcontractor upon request. Upon request from the City, Consultant shall provide insurance certificates and endorsements of its subcontractors.
9. Ownership of Work Product: Any and all work, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, designs, specifications, drawings, diagrams, surveys, source codes, professional or technical information or data, photographs, notes, letters, emails or any original works of authorship created by Consultant or its subcontractors or subcontractors in connection with Services performed under this Agreement ("Products") shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of City. In the event it is ever determined that any Product created by Consultant or its subcontractors, or subcontractors under this Agreement, are not works for hire under U.S. law, Consultant hereby assigns all copyrights to such Products to City. With the prior written approval of City's point of contact for the Project, Consultant may retain and use copies of such Products for reference and as documentation of its experience and capabilities. All Products shall become the property of City irrespective of where located or stored, and Consultant agrees to deliver all such documents and information to City, without charge and in whatever form it exists, on the completion of the Consultant's Services hereunder. Consultant shall have no ownership interest in such Products. All work product of Consultant under this Agreement, including written information which City will cause to be distributed for either internal or public circulation, including both preliminary and final drafts, shall be delivered to City in both printed and electronic form, or as may be specified in Exhibit A. All work product of Consultant under this Agreement, including written information which City will cause to be distributed for either internal or public circulation, including both preliminary and final drafts, shall be delivered to City in both printed and electronic form, or as may be specified in Exhibit A.
10. Permits and Licenses: Prior to execution of the Agreement the Consultant shall obtain and maintain throughout the Agreement period all licenses required by law including but not limited to a valid City of Arcata business license.
11. Conformity with Law and Safety: Consultant shall observe and comply with all applicable laws, ordinances, codes, regulations, and permits of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the scope of Services, including all provisions of the

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Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, the California Building Code, the Americans with Disabilities Act, any copyright, patent, or trademark law, and all other applicable federal, state, municipal and local safety regulations, appropriate trade association safety standards, and appropriate equipment manufacturer instructions. All Services performed by Consultant must be in accordance with these laws, ordinances, codes, and regulations, including the administrative policies and guidelines of City pertaining to the work. Consultant's failure to comply with any laws, ordinances, codes, or regulations applicable to the performance of the Services hereunder shall constitute a breach of contract. In cases where standards conflict, the standard providing the highest degree of protection shall prevail.

If a death, serious personal injury, or substantial property damage occurs in connection with the performance of this Agreement, Consultant shall immediately notify City Manager by telephone. If any accident occurs in connection with this Agreement, Consultant shall promptly submit a written report to City, in such form as City may require. This report shall include the following information: (a) Name and address of the injured or deceased person(s); (b) Name and address of Consultant's subcontractor, if any; (c) Name and address of Consultant's liability insurance carrier; and (d) A detailed description of the accident, including whether any of City's equipment, tools or materials were involved.

If a release of a hazardous material, substance, or waste occurs in connection with the performance of this Agreement, Consultant shall immediately notify City Manager.

12. Confidentiality: Consultant understands and agrees that, in the performance of Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City ("Confidential Information").

Consultant shall not, either during or after the Term, disclose to any third party any Confidential Information without the prior written consent of City. If City gives Consultant written authorization to make any such disclosure, Consultant shall do so only within the limits and to the extent of that authorization. Consultant may be directed or advised by the City's General Counsel on various matters relating to the performance of the Services on the Project or on other matters pertaining to the Project and, in such event, Consultant agrees that it will treat all communications between itself, its employees and its subcontractors as being communications which are within the attorney-client privilege.

Notwithstanding the foregoing, Consultant may disclose Confidential Information required to be disclosed under law, provided that, prior to disclosure, Consultant shall first give notice to City and make a reasonable effort to obtain a protective order requiring that City's Confidential Information not be disclosed. This exception is limited to the extent disclosure is required under law.

13. Modification, Amendment: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
14. Assignment. This Agreement is not assignable by the Consultant, either in whole or in part.
15. Audit of Records. Consultant shall maintain complete and accurate records of all payrolls, expenditures, disbursements and other cost items charged to the City or establishing the basis for an invoice, for a minimum of four years from the date of final payment to Consultant. All such records shall be clearly identifiable. Consultant shall allow City representatives to inspect, examine, copy and audit such records during regular business hours upon 24 hours' notice.
16. Designated Representatives. Consultant and City designate the following specific individuals to act as

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Consultant’s and City’s representatives and primary contact persons with respect to the services to be performed or furnished by Consultant and responsibilities of City under this Agreement (“Designated Representative”). Such individuals shall have authority to transmit instructions, receive information, and implement the contract on behalf of each respective party. The Designated Representative is not authorized to receive notices required under this Agreement unless identified under Section 17 below. Either party may change the individual name of the Designated Representative by written notice to the other party.

City Designated Representative:

Name: _____
Title: _____
Phone: _____
Email: _____

Consultant Designated Representative:

Name: _____
Title: _____
Phone: _____
Email: _____

17. **Notices.** Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt, excepting that notice sent by mail shall be deemed given and received three (3) business days after the date deposited in the United States mail. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at the addresses in this paragraph set forth below:

Notice to City:

Name: Merritt Perry
Title: City Manager
Address: Arcata City Hall
736 F Street
Arcata, CA 95521
Email: citymgr@cityofarcata.org
Fax: (707) 822-8018

Notice to Consultant:

Name: _____
Title: _____
Address: _____

Email: _____
Fax: _____

18. **Governing Law:** This Agreement and performance hereunder and all suits and special proceedings shall be construed in accordance with the laws of the State of California. In any action or proceeding that may be brought from or connected in anyway to this Agreement, the laws of the State of California shall be applicable and shall govern to the exclusion of the law any other forum. Venue shall be fixed in Humboldt County.

19. **Disputes.** City and Consultant agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking any procedures of this Agreement or exercising their rights under law. Prior to court action, the parties agree to pursue mediation as a means to settle any dispute.

20. **Entire Agreement.** This Agreement together with the exhibits identified below constitutes the entire Agreement between City and Consultant for the Services and supersedes all prior written or oral understandings.

21. **Nondiscrimination.** During the performance of this Agreement, Consultant and its subcontractors shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of sex, race, religion, color, national origin, ancestry, disability, sexual orientation, medical condition, marital status, age (over 40), or denial of family-care leave, medical-care leave, or pregnancy-disability leave. Consultant and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment.

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22. Severability. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
23. Survival. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
24. Timeliness. Time is of the essence in this Agreement. Consultant shall proceed with and complete the Services in an expeditious manner.
25. Waiver. Neither the acceptance of Consultant's work nor the payment thereof shall constitute a waiver of any provisions of this Agreement. A waiver of any breach shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
26. Exhibits Included. The following Exhibits are attached hereto and incorporated into this Agreement:
- Exhibit A: Scope of Work, Compensation
 - Exhibit B: Special Conditions
 - Exhibit C: Special Insurance Conditions
- With the exception of Exhibit C, in the event of conflict between the terms and conditions of this Agreement and those within any Exhibit hereto, the terms and conditions of this Agreement shall prevail over any Exhibit hereto. In the event of conflict between the provisions contained in Section 7 of this Agreement and those in Exhibit C, if any, the Exhibit C Special Insurance Conditions shall control.
27. Attorney's Fees. Should any litigation or arbitration be commenced between the parties hereto concerning this Agreement, or the rights and duties of any party in relation thereto, the party prevailing in such litigation or arbitration shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for attorney's fees in such litigation or arbitration.
28. Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which will constitute one and the same agreement. Facsimile, portable document format (pdf), and verified electronic signatures shall be binding and considered as if an original.

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IN WITNESS WHEREOF, the person executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

CITY:

CONSULTANT:

By: _____
Merritt Perry
City Manager

By: _____
Print Name: _____
Title: _____

Date: _____

Date: _____

Insurance and procurement approved:

Employer ID#: _____

By: _____
Danielle Allred,
Contracts and Special Projects Manager