

**COUNTY OF MENDOCINO PROFESIONAL SERVICES AGREEMENT WITH
SCHAAF & WHEELER CONSULTING CIVIL ENGINEERS, IN THE AMOUNT OF
\$124,918 FOR THE TERM BEGINNING UPON EXECUTION OF THE AGREEMENT
THROUGH JUNE 30, 2021, FOR CONSULTING AND ENGINEERING SERVICES
FOR THE STORMWATER TRASH CAPTURE FEASIBILITY STUDY**

This Agreement is by and between the COUNTY OF MENDOCINO, hereinafter referred to as the "COUNTY", and Schaaf & Wheeler Consulting Civil Engineers, hereinafter referred to as the "CONSULTANT".

WITNESSETH

WHEREAS, pursuant to Government Code Section 31000, COUNTY may retain independent contractors to perform special services to or for COUNTY or any department thereof; and,

WHEREAS, COUNTY desires to obtain CONSULTANT for its consulting and engineering services for the Stormwater Trash Capture Feasibility Study; and,

WHEREAS, CONSULTANT is willing to provide such services on the terms and conditions set forth in this AGREEMENT and is willing to provide same to COUNTY.

NOW, THEREFORE it is agreed that COUNTY does hereby retain CONSULTANT to provide the services described in Exhibit "A", and CONSULTANT accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

| | |
|---------------------------|--|
| Exhibit A | Definition of Services |
| Exhibit B | Payment Terms |
| Attachment 1 to Exhibit B | Schaaf & Wheeler Hourly Charge Rate Schedule |
| Exhibit C | Insurance Requirements |
| Exhibit D | Mendocino County ePayables Information |

The term of this Agreement shall be from the date this Agreement becomes fully executed by all parties (the "Effective Date"), and shall continue through June 30, 2021.

The compensation payable to CONSULTANT hereunder shall not exceed One Hundred Twenty Four Thousand Nine Hundred Eighteen Dollars (\$124,918) for the term of this Agreement.

IN WITNESS WHEREOF

DEPARTMENT FISCAL REVIEW: Transportation

By: Howard N. Dashiell 1/15/20
HOWARD N. DASHIELL, Director DATE

Budgeted: ☒ Yes ☐ No

Budget Unit: 1910

Line Item: 862189

Grant: ☐ Yes ☒ No

Grant No.: _____

CONSULTANT/COMPANY NAME

By: Ben Schick CG88813
Date: 2/3/20

NAME AND ADDRESS OF CONSULTANT:

Schaaf & Wheeler Consulting Civil Engineers

2200 Range Ave., Ste. 201

Santa Rosa, CA 95403

COUNTY OF MENDOCINO

By: John Haschak
JOHN HASCHAK, Chair
BOARD OF SUPERVISORS

Date: FEB 26 2020

ATTEST:

CARMEL J. ANGELO, Clerk of said Board

By: Amberly Dumb
Deputy FEB 26 2020

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

CARMEL J. ANGELO, Clerk of said Board

By: Amberly Dumb
Deputy FEB 26 2020

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

CHRISTIAN M. CURTIS,
Acting County Counsel

By: Ms. K.
Deputy

Date: 4/21/20

INSURANCE REVIEW:

By: Carmel J. Angelo
Risk Management

Date: 1/30/2020

EXECUTIVE OFFICE/FISCAL REVIEW:

By: Deputy CEO
Deputy CEO

Date: 1/30/20

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; \$50,001+ Board of Supervisors

Exception to Bid Process Required/Completed ☐

Mendocino County Business License: Valid ☐

Exempt Pursuant to MCC Section: _____

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that CONSULTANT is an Independent Contractor. CONSULTANT is not the agent or employee of the COUNTY in any capacity whatsoever, and COUNTY shall not be liable for any acts or omissions by CONSULTANT nor for any obligations or liabilities incurred by CONSULTANT.

CONSULTANT shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

CONSULTANT shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which COUNTY may incur because of CONSULTANT's failure to pay such amounts.

In carrying out the work contemplated herein, CONSULTANT shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as Independent Contractors and shall not be treated or considered in any way as officers, agents and/or employees of COUNTY.

CONSULTANT does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with all applicable federal, state and County laws, including but not limited to prevailing wage laws, ordinances, regulations, titles, departmental procedures and currently approved methods and practices in his/her field and that the sole interest of COUNTY is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

Notwithstanding the foregoing, if the COUNTY determines that pursuant to state and federal law CONSULTANT is an employee for purposes of income tax withholding, COUNTY may upon two (2) week's written notice to CONSULTANT, withhold from payments to CONSULTANT hereunder federal and state income taxes and pay said sums to the federal and state governments.

2. **INDEMNIFICATION:** To the furthest extent permitted by law (including without limitation California Civil Code sections 2782 and 2782.8, if applicable), Contractor shall assume the defense of, indemnify, and hold harmless the COUNTY, its officers, agents, and employees, from and against any and all claims, demands, damages, costs, liabilities, and losses whatsoever to the extent arising from the CONTRACTOR'S negligent performance or willful misconduct or its failure to meet its obligations under this AGREEMENT, unless arising out of the sole negligence or willful misconduct of COUNTY. "CONTRACTOR'S negligent performance or willful misconduct" includes CONTRACTOR'S action or inaction and the action or inaction of CONTRACTOR'S officers, employees, agents and subcontractors.
3. **INSURANCE AND BOND:** CONSULTANT shall at all times during the term of the Agreement with the COUNTY maintain in force those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein.
4. **WORKERS' COMPENSATION:** CONSULTANT shall provide Workers' Compensation insurance, as applicable, at CONSULTANT's own cost and expense and further, neither the CONSULTANT nor its carrier shall be entitled to recover from COUNTY any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

CONSULTANT affirms that s/he is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for the Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code and CONSULTANT further assures that s/he will comply with such provisions before commencing the performance of work under this Agreement. CONSULTANT shall furnish to COUNTY certificate(s) of insurance evidencing Worker's Compensation Insurance coverage to cover its employees, and CONSULTANT shall require all subcontractors similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of subcontractors' employees.

5. **CONFORMITY WITH LAW AND SAFETY:**
 - a. In performing services under this Agreement, CONSULTANT shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. CONSULTANT shall indemnify and hold COUNTY harmless from any and all liability, fines, penalties and consequences from

any of CONSULTANT's failures to comply with such laws, ordinances, codes and regulations.

- b. Accidents: If a death, serious personal injury or substantial property damage occurs in connection with CONSULTANT's performance of this Agreement, CONSULTANT shall immediately notify Mendocino County Risk Manager's Office by telephone. CONSULTANT shall promptly submit to COUNTY a written report, in such form as may be required by COUNTY of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of CONSULTANT's sub-contractor, if any; (3) name and address of CONSULTANT's liability insurance carrier; and (4) a detailed description of the accident and whether any of COUNTY's equipment, tools, material, or staff were involved.
 - c. CONSULTANT further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the COUNTY the opportunity to review and inspect such evidence, including the scene of the accident.
6. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to CONSULTANT as provided in Exhibit "B" hereto as funding permits.

If COUNTY over pays CONSULTANT for any reason, CONSULTANT agrees to return the amount of such overpayment to COUNTY, or at COUNTY's option, permit COUNTY to offset the amount of such overpayment against future payments owed to CONSULTANT under this Agreement or any other agreement.

In the event CONSULTANT claims or receives payment from COUNTY for a service, reimbursement for which is later disallowed by COUNTY, State of California or the United States Government, which disallowance is due to the actions or omissions of CONSULTANT, the CONSULTANT shall promptly refund the disallowance amount to COUNTY upon request, or at its option COUNTY may offset the amount disallowed from any payment due or that becomes due to CONSULTANT under this Agreement or any other agreement.

All invoices, receipts, or other requests for payment under this contract must be submitted by CONSULTANT to COUNTY in a timely manner and consistent with the terms specified in Exhibit B. In no event shall COUNTY be obligated to pay any request for payment for which a written request for payment and all required documentation was first received more than six (6) months after this Agreement has terminated, or beyond such other time limit as may be set forth in Exhibit B.

7. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the CONSULTANT.
8. OWNERSHIP OF DOCUMENTS: CONSULTANT hereby assigns the COUNTY and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the COUNTY, the CONSULTANT, the CONSULTANT's subcontractors or third parties at the request of the CONSULTANT (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

CONSULTANT shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. CONSULTANT agrees to take such further steps as may be reasonably requested by COUNTY to implement the aforesaid assignment. If for any reason said assignment is not effective, CONSULTANT hereby grants the COUNTY and any assignee of the COUNTY an express royalty – free license to retain and use said Documents and Materials. The COUNTY's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not CONSULTANT's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

The COUNTY's rights under this Paragraph 8 shall not extend to any computer software used to create such Documents and Materials.

9. CONFLICT OF INTEREST: The CONSULTANT covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement.
10. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges

prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Facsimile transmission: When sent by facsimile to the facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that, (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To COUNTY: Mendocino County Department of Transportation
340 Lake Mendocino Drive
Ukiah, CA 95482
Attn: Amber Munoz

To CONSULTANT: Schaaf & Wheeler Consulting Civil Engineers
2200 Range Avenue, Ste. 201
Santa Rosa, CA 95403
Attn: Benjamin Shick

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

11. USE OF COUNTY PROPERTY: CONSULTANT shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
12. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:
CONSULTANT certifies that it will comply with all Federal, State, and local laws, rules and regulations pertaining to nondiscrimination in employment.
 - a. CONSULTANT shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, pregnancy, disability, sex, sexual orientation, gender identity, ancestry, national origin, age, religion, Veteran's status, political affiliation, or any other factor prohibited by law.

- b. CONSULTANT shall, if requested to so do by the COUNTY, certify that it has not, in the performance of this Agreement, engaged in any unlawful discrimination.
 - c. If requested to do so by the COUNTY, CONSULTANT shall provide the COUNTY with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under State or Federal law.
 - d. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.
 - e. The CONSULTANT shall include the provisions set forth in this paragraph in each of its subcontracts.
13. DRUG-FREE WORKPLACE: CONSULTANT and CONSULTANT's employees shall comply with the COUNTY's policy of maintaining a drug-free workplace. Neither CONSULTANT nor CONSULTANT's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONSULTANT or any employee of CONSULTANT is convicted or pleads *nolo contendere* to a criminal drug statute violation occurring at a County facility or work site, the CONSULTANT, within five days thereafter, shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.
14. ENERGY CONSERVATION: CONSULTANT agrees to comply with the mandatory standards and policies relating to energy efficiency in the State of California Energy Conservation Plan, (Title 24, California Administrative Code).
15. COMPLIANCE WITH LICENSING REQUIREMENTS: CONSULTANT shall comply with all necessary licensing requirements and shall obtain appropriate licenses. To the extent required by law, CONSULTANT shall display licenses in a location that is reasonably conspicuous. Upon COUNTY's request, CONSULTANT shall file copies of same with the County Executive Office.

CONSULTANT represents and warrants to COUNTY that CONSULTANT and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.

16. AUDITS; ACCESS TO RECORDS: The CONSULTANT shall make available to the COUNTY, its authorized agents, officers, or employees, for examination any

and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the COUNTY, and shall furnish to the COUNTY, within sixty (60) days after examination, its authorized agents, officers or employees such other evidence or information as the COUNTY may require with regard to any such expenditure or disbursement charged by the CONSULTANT.

The CONSULTANT shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the CONSULTANT in the performance of this Agreement. If such books and records are not kept and maintained by CONSULTANT within the County of Mendocino, California, CONSULTANT shall, upon request of the COUNTY, make such books and records available to the COUNTY for inspection at a location within County or CONSULTANT shall pay to the COUNTY the reasonable, and necessary costs incurred by the COUNTY in inspecting CONSULTANT's books and records, including, but not limited to, travel, lodging and subsistence costs. CONSULTANT shall provide such assistance as may be reasonably required in the course of such inspection. The COUNTY further reserves the right to examine and reexamine said books, records and data during the four (4) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the COUNTY, and the CONSULTANT shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for four (4) years after the COUNTY makes the final or last payment or within four (4) years after any pending issues between the COUNTY and CONSULTANT with respect to this Agreement are closed, whichever is later.

17. **DOCUMENTS AND MATERIALS:** CONSULTANT shall maintain and make available to COUNTY for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 8 of this Agreement. CONSULTANT's obligations under the preceding sentence shall continue for four (4) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by COUNTY), and CONSULTANT shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for four (4) years following the COUNTY's last payment to CONSULTANT under this Agreement.
18. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
19. **TERMINATION:** The COUNTY has and reserves the right to suspend, terminate or abandon the execution of any work by the CONSULTANT without cause at any time upon giving to the CONSULTANT notice. Such notice shall be in writing and may be issued by any county officer authorized to execute or amend the contract, the County Chief Executive Officer, or any other person designated by

the County Board of Supervisors. In the event that the COUNTY should abandon, terminate or suspend the CONSULTANT's work, the CONSULTANT shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to CONSULTANT for its consulting and engineering services for the Stormwater Trash Capture Feasibility Study shall not exceed \$124,918 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment or lack of funding.

20. **NON APPROPRIATION:** If COUNTY should not appropriate or otherwise make available funds sufficient to purchase, lease, operate or maintain the products set forth in this Agreement, or other means of performing the same functions of such products, COUNTY may unilaterally terminate this Agreement only upon thirty (30) days written notice to CONSULTANT. Upon termination, COUNTY shall remit payment for all products and services delivered to COUNTY and all expenses incurred by CONSULTANT prior to CONSULTANT'S receipt of the termination notice.
21. **CHOICE OF LAW:** This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
22. **VENUE:** All lawsuits relating to this contract must be filed in Mendocino County Superior Court, Mendocino County, California.
23. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
24. **ADVERTISING OR PUBLICITY:** CONSULTANT shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of COUNTY in each instance.
25. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between COUNTY and CONSULTANT relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties

and sets forth the entire understanding of the parties regarding the subject matter thereof. This Agreement may not be modified except by a written document signed by both parties. In the event of a conflict between the body of this Agreement and any of the Exhibits, the provisions in the body of this Agreement shall control.

26. HEADINGS: Herein are for convenience of reference only and shall in no way affect interpretation of this Agreement.
27. MODIFICATION OF AGREEMENT: This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
28. ASSURANCE OF PERFORMANCE: If at any time the COUNTY has good objective cause to believe CONSULTANT may not be adequately performing its obligations under this Agreement or that CONSULTANT may fail to complete the Services as required by this Agreement, COUNTY may request from CONSULTANT prompt written assurances of performance and a written plan acceptable to COUNTY, to correct the observed deficiencies in CONSULTANT's performance. CONSULTANT shall provide such written assurances and written plan within thirty (30) calendar days of its receipt of COUNTY's request and shall thereafter diligently commence and fully perform such written plan. CONSULTANT acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
29. SUBCONTRACTING/ASSIGNMENT: CONSULTANT shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the COUNTY's prior written approval.
 - a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. Only the department head or his or her designee shall have the authority to approve subcontractor(s).
 - c. CONSULTANT shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between CONSULTANT and its subcontractors.
30. SURVIVAL: The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2),

Ownership of Documents (Paragraph 8), and Conflict of Interest (Paragraph 9), shall survive termination or expiration for two (2) years.

31. SEVERABILITY: If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
32. INTELLECTUAL PROPERTY WARRANTY: CONSULTANT warrants and represents that it has secured all rights and licenses necessary for any and all materials, services, processes, software, or hardware ("CONSULTANT PRODUCTS") to be provided by CONSULTANT in the performance of this AGREEMENT, including but not limited to any copyright, trademark, patent, trade secret, or right of publicity rights. CONSULTANT hereby grants to COUNTY, or represents that it has secured from third parties, an irrevocable license (or sublicense) to reproduce, distribute, perform, display, prepare derivative works, make, use, sell, import, use in commerce, or otherwise utilize CONSULTANT PRODUCTS to the extent reasonably necessary to use the CONSULTANT PRODUCTS in the manner contemplated by this agreement.

CONSULTANT further warrants and represents that it knows of no allegations, claims, or threatened claims that the CONSULTANT PRODUCTS provided to COUNTY under this Agreement infringe any patent, copyright, trademark or other proprietary right. In the event that any third party asserts a claim of infringement against the COUNTY relating to a CONSULTANT PRODUCT, CONSULTANT shall indemnify and defend the COUNTY pursuant to Paragraph 2 of this AGREEMENT.

In the case of any such claim of infringement, CONSULTANT shall either, at its option, (1) procure for COUNTY the right to continue using the CONSULTANT Products; or (2) replace or modify the CONSULTANT Products so that that they become non-infringing, but equivalent in functionality and performance.

33. ELECTRONIC COPIES:

The parties agree that an electronic copy, including facsimile copy, email, or scanned copy of the executed Agreement, shall be deemed, and shall have the same legal force and effect as, an original document.

34. COOPERATION WITH COUNTY

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

35. PERFORMANCE STANDARD

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable Federal, State, and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of paragraph 19 (Termination) or (d) pursue any and all other remedies at law or in equity.

36. ATTORNEYS' FEES

In any action to enforce or interpret the terms of this agreement, including but not limited to any action for declaratory relief, each party shall be solely responsible for and bear its own attorneys' fees, regardless of which party prevails.

[END OF GENERAL TERMS AND CONDITIONS]

EXHIBIT A

DEFINITION OF SERVICES

CONSULTANT shall conduct a comprehensive stormwater trash capture feasibility study by completing the following tasks:

1. Project Management

- 1.1. Prepare and maintain a schedule and budget for the project.
- 1.2. Participate in four (4) in-person meetings at key milestones during the project, including kickoff, missing data and proposed field plan, draft site locations and device options, and review of comments on draft plan. Throughout the duration of the project, Consultant shall maintain frequent and timely communication with County staff.
- 1.3. Provide quality assurance/quality control over work product prepared for the County.
- 1.4. Submit invoices and progress reports on a monthly basis.

2. Review Background Information

Review key information including but not limited to:

- 2.1. Regulatory requirements
 - 2.1.1. Phase II Small MS4 General Permit
 - 2.1.2. Trash Amendments and Water Code Section 13383 Order Track 1 requirements
- 2.2. Existing stormwater facilities and infrastructure
 - 2.2.1. Existing stormwater drainage system GIS data
 - 2.2.2. Existing trash priority areas and proposed device location maps
- 2.3. Future growth and development plans
 - 2.3.1. Use future growth and development plans to identify any additional or future locations for full trash capture devices.
 - 2.3.2. Present options to update County ordinances or codes to require future developments to install trash capture devices via their development plans.
- 2.4. County Road and Development Standards
 - 2.4.1. Review County Road and Development Standards to ensure they provide necessary standards for trash capture system installation.
 - 2.4.2. DELIVERABLE: Memorandum on recommended updates to County Road and Development Standards.

3. Identification of Site Locations and Device Selection

- 3.1. Existing stormwater drainage system data gap analysis
 - 3.1.1. Identify stormwater system data gaps, if any, within proposed drainage areas and complete system connectivity.
 - 3.1.2. DELIVERABLE: Updated stormwater drainage system shapefiles, if needed.
- 3.2. Evaluate proposed drainage areas and trash capture device locations to verify that drainage areas are accurately delineated and device locations are optimal for full trash capture (as defined in the Trash Provisions Glossary) from associated drainage areas. If needed, the Consultant shall identify and revise inaccurate drainage areas and/or propose alternative device locations that would result in a more effective and easily maintainable trash capture device network. All revisions shall be proposed by the Consultant for approval by the County.
 - 3.2.1. DELIVERABLE: Updated jurisdictional maps (hard copies, PDF, GIS Shapefiles), if needed.
- 3.3. Perform a site visit at each proposed trash capture device location to:
 - 3.3.1. Assess the condition of existing stormwater system infrastructure, measure dimensions for device sizing and appropriate device type/model selection, evaluate for trash capture device compatibility, evaluate the amount of trash present, and identify any potential restoration, upgrade, or retrofitting work necessary to install trash capture devices.
 - 3.3.2. Determine if there is adequate space in the County right of way to install a trash capture device at each location and confirm there is adequate space for routine maintenance activities (typically by hand and a trailer-mounted vacuum system).
 - 3.3.3. Identify any underground or overhead utility conflicts or constraints that could complicate trash capture device installation. This subtask does not include contacting utility companies, potholing or USA.
 - 3.3.4. DELIVERABLE: Field notes and field photos.
- 3.4. Hydrologic and Hydraulic Analyses
 - 3.4.1. Perform a hydrological analysis for the drainage area associated with each proposed trash capture device location to determine the peak flow rate at each location. Trash capture devices shall be appropriately sized to treat no less than the peak flow rate resulting from a region specific 1-year, 1-hour storm event or at least the same peak flow from the corresponding storm drain.
 - 3.4.2. Analyze each proposed trash capture location to ensure that the proposed device has a bypass to handle the 10-year or 25-year storm (depending on drainage area) and note the potential increased hydraulic grade due to the proposed device.

3.5. Trash Capture Device Options and Recommendations

3.5.1. Solicit information from prospective device vendors.

3.5.2. Identify up to 3 device models/options for each location with advantages and disadvantages of each option.

3.5.3. Recommend the most optimal device for each location in consideration of, but not limited to: drainage area size and hydrology, flow capacity, associated Priority Land Use areas, estimated trash/debris load, costs (unit price, installation, and maintenance), existing stormwater system infrastructure retrofitting/upgrades required, need for additional right of way acquisition, potential utility conflicts (overhead and underground), ease of device maintenance, longevity of service, and required specialized maintenance equipment.

All devices recommended shall be capable of full trash capture and flow capacity as defined in the Trash Amendments and shall be a State Water Board Certified Full Capture System. To minimize the number of different device models/types the County must maintain, preference should be given to device models/types that will perform effectively at a maximum number of proposed trash capture locations.

3.5.4. DELIVERABLE: Trash capture device matrix with pros and cons of devices.

4. Implementation Cost Analysis and Feasibility Study

4.1. Prepare a detailed cost analysis for the installation, operation, and maintenance of recommended trash capture devices for the unincorporated Ukiah MS4 trash capture area and for the unincorporated Fort Bragg MS4 trash capture area separately. Include any additional costs for existing infrastructure retrofitting necessary for device installation.

4.2. Provide a summary of the ranges of costs for different types and sizes of recommended devices based on the best available information which may include, but not be limited to, studies from other municipalities, vendor information, regional reports, and Consultant's previous experience with trash capture design and construction. The summary should list each recommended device type and size and include the unit cost per device, the estimated number of each device to be installed, installation cost, and operation and maintenance cost per year.

FINAL DELIVERABLES:

1. Draft Feasibility Study and Implementation Cost Analysis. Three (3) hard copies and one (1) electronic copy shall be submitted for County review.

2. Final Feasibility Study and Implementation Cost Analysis. Consultant shall revise the draft study based on County review comments and submit three (3) hard copies and one (1) electronic copy of the final study.

[END OF DEFINITION OF SERVICES]

EXHIBIT B

PAYMENT TERMS

1. CONSULTANT shall be compensated on a time-and-expense basis not-to-exceed One Hundred Twenty Four Thousand Nine Hundred Eighteen Dollars (\$124,918) for the term of this Agreement. This fee shall not be exceeded without the prior written authorization from the COUNTY.
2. COUNTY shall pay CONSULTANT for all work required in the satisfactory completion of this Agreement in accordance with the Schaaf & Wheeler Consulting Civil Engineers Hourly Charge Rate Schedule, included as Attachment 1 to this Exhibit.
3. Payment for satisfactory completion includes, without limitation, salary, fringe benefits, overhead, and profit.
4. CONSULTANT's statement of charges shall be submitted to the COUNTY on a monthly basis.
5. Payments for work completed by CONSULTANT will be made by COUNTY within 30 days of receipt of CONSULTANT's invoice, in a format acceptable to COUNTY.
6. CONSULTANT agrees that the cost principles and procedures of Title 48, Part 31, Code of Federal Regulations shall be used to determine the allowability of individual items of cost.

[END OF PAYMENT TERMS]

ATTACHMENT 1 TO EXHIBIT B

Schaaf & Wheeler

CONSULTING CIVIL ENGINEERS

Hourly Charge Rate Schedule

Personnel Charges

Charges for personnel engaged in professional and/or technical work are based on the actual hours directly chargeable to the project.

Current rates by classification are listed below:

| Classification | Rate/Hr | Classification | Rate/Hr |
|---------------------------|----------------|-----------------------------|----------------|
| Principal Project Manager | \$240 | Construction Manager | \$225 |
| Senior Project Manager | \$225 | Senior Resident Engineer | \$200 |
| Senior Engineer | \$210 | Senior Scientist | \$200 |
| Associate Engineer | \$190 | Associate Scientist | \$180 |
| Assistant Engineer | \$175 | Resident Engineer | \$180 |
| Junior Engineer | \$165 | Assistant Resident Engineer | \$165 |
| Designer | \$155 | | |
| GIS Analyst | \$150 | | |
| Technician | \$150 | | |
| Engineering Trainee | \$120 | | |

Litigation Charges

Work done in preparation for litigation and other very high level-of-expertise assignments is charged at \$350 per hour. Court or deposition time as an expert witness is charged at \$450 per hour.

Materials and Services

Subcontractors, special equipment, outside reproduction, data processing, computer services, etc., will be charged at 1.10 times cost.

Effective 1/1/20

EXHIBIT C

INSURANCE REQUIREMENTS

Insurance coverage in a minimum amount set forth herein shall not be construed to relieve CONSULTANT for liability in excess of such coverage, nor shall it preclude COUNTY from taking such other action as is available to it under any other provisions of this Agreement or otherwise in law. Insurance requirements shall be in addition to, and not in lieu of, Consultant's indemnity obligations under Paragraph 2 of this Agreement.

CONSULTANT shall obtain and maintain insurance coverage as follows:

- a. Combined single limit bodily injury liability and property damage liability - \$1,000,000 each occurrence.
- b. Vehicle / Bodily Injury combined single limit vehicle bodily injury and property damage liability - \$500,000 each occurrence.

CONSULTANT shall furnish to COUNTY certificates of insurance evidencing the minimum levels described above.

[END OF INSURANCE REQUIREMENTS]

EXHIBIT D

MENDOCINO COUNTY EPAYABLES INFORMATION

The County of Mendocino is currently making credit card payments to all of our vendors and suppliers who qualify. To qualify, vendors need to currently accept credit card payments. To achieve this more efficient form of payment, the County has partnered with Bank of America and their ePayables credit card program. This electronic initiative will yield many benefits to its participants:

- Expedited receipt of cash – electronic credit card payments provide cash flow benefits by eliminating mail and paper check float
- Elimination of check processing costs
- Remittance data transmitted with payment for more efficient back-end reconciliation
- No collection costs associated with lost or misplaced checks
- Reduced exposure to check fraud
- More efficient handling of exception items
- Fits with existing accounting software – requires no purchase of software, no modifications to existing accounts receivable system and no change to bank accounts.
- Going green with paperless electronic credit card payments help conserve the environment by eliminating printing and mailing of paper checks.

For information regarding the payment process, please contact Margaret Yates yatesm@mendocinocounty.org or 707-234-6869.

Additional information regarding the Bank of America Program is also available at:

http://corp.bankofamerica.com/business/ci/landing/epayables-vendors?cm_mmc=sb-general_-vanity_-sg01vn000r_epayablesvendors_-na