

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

THIS AGREEMENT is made and entered into this ___ day of April, 2020 (“Effective Date”), by and between the CITY OF FORT BRAGG, a municipal corporation, 416 N. Franklin Street, Fort Bragg, California 95437 (“City”), and LACO ASSOCIATES, a California corporation, 776 S. State Street, Ukiah, California 95482 (“Consultant”).

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to design and prepare construction documents for the Pudding Creek Water Main Relocation Project, Project No. WTR-00014, 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

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 April 20, 2020 by Resolution No. -2020 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;

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 AND BILLING

2.1. Compensation. Consultant's total compensation shall not exceed **One Hundred Fourteen Thousand Dollars (\$ 114,000.00)**.

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.

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 **December 31, 2021**. 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 March 31, 2022 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 Holly Cinkutis, PE. 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 Diane O'Connor, Engineering Technician, 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:
Rodney Wilburn, PE
LACO Associates
776 S. State Street
Ukiah, CA 95482
Tel: 707-462-0222
Fax: 707-462-0223

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 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 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.

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: _____
Tabatha Miller
Its: City Manager

By:  _____
Rodney Wilburn, PE
Its: Vice President of Engineering

ATTEST:

[Attach Notary Acknowledgment Page]

By: _____
June Lemos, CMC
City Clerk

APPROVED AS TO FORM:

By: _____
Keith F. Collins
City Attorney

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.

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CITY

CONSULTANT

By: _____
Tabatha Miller
Its: City Manager

By: _____
Rodney Wilburn, PE
Its: Vice President of Engineering

[Attach Notary Acknowledgment Page]

ATTEST:

By: _____
June Lemos, CMC
City Clerk

APPROVED AS TO FORM:

By: Keith Collins
Keith F. Collins
City Attorney

SCOPE OF WORK

SECTION 5.0

LACO's scope of work is based upon a review of the Request for Proposals (RFP), our correspondence with Caltrans regarding the design elements for their Pudding Creek Bridge Project, our knowledge from previous survey work on the GP Pudding Creek Dam in 2016-17, and combined experience on past projects related to underground, municipal utilities. We are providing the following information to describe our approach to specific tasks.

5.1 Project Management and Administration

Project management and administration captures costs associated with client meetings, correspondence, scheduling, budget tracking, invoice processing, claims processing, and related administrative duties critical to successful project implementation.

LACO will provide a single point of contact (Holly Cinkutis, PE) who will coordinate with City staff during all phases of the work. Specifically, Task 1 provides the City with the following services:

Meetings

LACO will prepare meeting agendas and lead meetings between Caltrans, the City, Georgia Pacific, and LACO. Following the meetings, LACO will prepare minutes documenting the topics discussed. LACO assumes a total of three (3) meetings with City Staff during the project design along with attendance at the pre-bid meeting. All meetings will be held at the City office. LACO will issue meeting minutes following each meeting.

Deliverables

Meeting Agendas, to be issued prior to each meeting
Meeting Minutes, to be issued within one week of the meeting

Progress Updates and Schedule Review

LACO will review and monitor the schedule. LACO will provide the City with an update via email, advising the City of current activities, milestones, and two-week outlook.

Deliverables

Update emails every week or as requested by the City, describing activities and schedule.

5.2 Survey

LACO will perform a Boundary and Topographic Survey of the proposed alignment of the new water main. The survey task will consist of the following activities:

5.2.1 Research and Survey Preparations

LACO will assemble, review, and incorporate existing plans and documents from Caltrans, City of Fort Bragg, County of Mendocino, and other official records pertaining to road improvements, utilities, and boundaries. LACO will also review previous survey work conducted in the vicinity, including the Pudding Creek Dam.

SCOPE OF WORK

SECTION 5.0

5.2 Survey (continued)

5.2.2 Topographic Survey

LACO will perform a topographic survey utilizing electronic data collection with GPS receivers and total station instrumentation. The survey will include ground surface measurements, road improvements, signage, and drainage features. Surveying of utilities will be based on visual evidence, Underground Services Alert (USA) markings, and potholing by others. A LACO representative will be present during potholing to catalog results for inclusion in the survey.

Survey extents will commence at the proposed point of connection in East Manzanita Street, follow the east side of Highway 1 northerly to the point of connection at 100 Pudding Creek Road. The survey area along Highway 1, before and after the bridge, will be a minimum of fifty feet wide, the westerly limits being the easterly edge of Highway 1 and will extend down to the edges of the water of Pudding Creek.

The survey will include the beginning and ending of the Highway 1 Bridge. LACO assumes Caltrans bridge plans are adequate for design purposes and a survey of the deck and 3D scan of the east side of the Highway 1 Bridge is not necessary.

In addition to the proposed water line alignment survey, LACO will survey the above ground portion of the water line to be abandoned and removed.

5.2.3 Topographic Map

LACO will prepare a topographic map for further use during the project design phase. Post processing of the survey data will be performed including quality control analysis and preparing the data for use with 3D CAD software. The mapping will be suitable for plotting to a scale of one inch equal to twenty feet and will have a contour interval of one foot. Horizontal coordinates will be referenced to Caltrans, NAD83, California State Plane Zone 2 with vertical elevations referenced to NAVD88. Dimensions will be in US feet and decimals thereof. LACO will also obtain a Right of Entry from Georgia Pacific for topographic survey of the area around the dam, if necessary.

5.2.4 Boundary Lines

A highway and street boundary line survey will be conducted, and boundary lines will be delineated on the mapping. The survey will include the easterly ROW of Highway 1 and the boundaries of East Manzanita Street.

NOTE: The preparation and filing of a Record of Survey Map is required when there is discovery of material discrepancy with official records, when establishment of a boundary line requires the rendering of a professional opinion, and/or when establishing a boundary line not shown on a map of record. We do not anticipate the need to prepare a Record of Survey Map. If a Record of Survey Map is needed, a contract amendment will be necessary.

SCOPE OF WORK

SECTION 5.0

5.2 Survey (continued)

5.2.5 Easements, Existing

A Title Report or Condition of Title will disclose existing matters such as easements encumbering and appurtenant to a property. If provided, those matters will be incorporated into the work product.

5.2.6 Easements, Proposed

Easement grant deeds will be prepared as required per the Pudding Creek Water Main Relocation Project Construction Drawings. The easement grant deed documents will be processed to an approval and we will assist with document recording at the Mendocino County Recorder's Office.

Deliverables

The topographic map will be prepared as an AutoCAD Civil 3D Drawing File for use in the design of the Pudding Creek Water Main Relocation Project Construction Drawings. A PDF of the topographic base map, signed and stamped by a Licensed Land Surveyor, will be prepared and transmitted as a finished work product deliverable. A Survey Report will be compiled containing a QA/QC statement, field notes, exhibits, point data, survey datum identifications, and copies of documents referenced in the preparation of the mapping.

5.3 Engineering Design

LACO will prepare a complete set of improvement plans, technical specifications, and engineer's estimate of probable construction costs. A set of plans, technical specifications and cost estimates shall be submitted to the City at 50% completion and 90% completion, with review and discussion of comments with staff and other interested parties (Caltrans) at each stage to facilitate a timely completion of the final construction documents. The plans will include a plan and profile of the new water main alignment with the existing and proposed improvements and utilities as well as interconnection details and construction details. It is critically important that the brackets on the new bridge are installed at the proper intervals to ensure that the pipe can be anchored at the joints. Based on our experience, if that interval is not correct and the pipes are anchored incorrectly, the pipe can deflect at the joints. This can lead to an expensive maintenance project that is hard to bring to the City Manager and even harder to present to City Council.

We have thoroughly reviewed the City Standard Specifications for construction materials and installation methods, and those standards will be utilized wherever appropriate. In the absence of relevant City standards, LACO will look to Caltrans Standards for any necessary details related to road improvements and the American Water Works Association (AWWA) most recently revised standards for items related to the water system. LACO will also cross-reference City standards with the most recent AWWA standards for installation, disinfection, and abandonment procedures to ensure there is consistency between the two publications. Per Chapter 3 of the Caltrans Construction Manual Section 3-604, Buy America provisions apply to Caltrans projects regardless of funding source. Submittals with steel or iron content such as the specified Ductile Iron Pipe and fittings for the proposed water main will need to be accompanied by certificates of compliance from the manufacturer showing compliance with Buy America requirements.

SCOPE OF WORK

SECTION 5.0

5.3 Engineering Design (continued)

Additionally, LACO will evaluate the proposed alignment against the existing to see how the change will affect the system hydraulically. LACO will prepare a Technical Memorandum delivering the hydraulic analysis findings and review them with City Staff. The hydraulic analysis will include calculating pressures and flows at the downstream point of connection of the new water main. If modeling is preferred, LACO has the ability to use EPANET or WaterCAD to model the new water main. EPANET is a free water distribution modeling software developed and offered by the USEPA which uses visual interfaces to model pressurized water distribution systems. EPANET can be used to calculate hydraulic head, pressure, flow rate, velocity, and head loss in a system.

The design will be coordinated closely with Caltrans and utilize industry standards to design the main connection to the new Pudding Creek bridge to ensure seismic adequacy. LACO will conduct an analysis of the pipe assembly including an evaluation of pipe protection strategies, recommendations for FLEX-TEND couplings or other motion mitigation products, and structural calculations for the pipe attachments considering static and seismic loading. The results of this analysis will be presented to the Client in a technical memorandum.

The Engineering Design task will also include coordination and submission of the encroachment permit application and associated documentation (Traffic Control Plan) to Caltrans for approval for work within the Highway 1 ROW. LACO will work with Georgia Pacific and determine the necessary Right of Entry or Temporary Construction Easement agreements for removal and abandonment of the existing water main.

This phase of the design project also includes support in filing for and receiving both a Regional Water Board 401 Certification and a US Army Corps of Engineering 404 Certification. This task is dependent on the construction schedule for the Caltrans bridge project.

Finally, LACO will prepare an Operation and Maintenance Manual for the new water main which will consist of a binder with all approved water system submittal information received from the winning Contractor on the Pudding Creek Bridge project.

Deliverables

- **50% design, 90% design, and 100% final plans with technical specifications, and Engineer's estimate of probable construction costs (included with the 50%, 90% and 100% plans).** The 100% deliverable shall include: one (1) original set of plans (22"x34") and technical specifications and engineer's opinion of cost sealed and signed by California Registered Civil Engineer and one complete electronic package.
- **Technical memorandum of hydraulic analysis results;** one (1) original copy and one (1) electronic copy.
- **Technical memorandum of seismic design analysis results;** one (1) original copy and one (1) electronic copy.
- **Encroachment Permit (EP) deliverables to Caltrans as requested for EP approval;** one (1) original copy of each and one (1) electronic copy of the application.
- **Water Main O&M Manual;** one (1) copy bound.

SCOPE OF WORK

SECTION 5.0

5.4 Bid Support Services

Assuming a Professional Services Award date of April 13, 2020, we anticipate completion of all aspects of this contract by December 2020. This schedule allows for twelve (12) weeks for preliminary (50% completion) bid documents; Plans, Specifications, and Engineer's Cost Estimate. We anticipate another six (6) weeks to bring the deliverables to 90% completion and another two (2) weeks to bring them to 100% completion with City Staff review time included. The largest variable that could affect our schedule is the responsiveness of the Caltrans design team when coordinating project design components, and any unforeseen necessary environmental planning or permitting. While LACO has no control over the timeline for receiving comments from Caltrans, this schedule assumes one (1) week to receive a response for each phased set (50, 90, 100%). Any variation in this timeline will impact the overall project timeline accordingly.

Preliminary discussions with Caltrans initiated by LACO during proposal preparation reveal that Caltrans will refer to this project's design bid documents in their bridge plans and specifications.

Caltrans has also provided a preliminary project schedule (see Appendix C) that includes advertising the project in June 2021, opening bids in August 2021 and awarding the Contract in October 2021 with a Construction commencement of June 2022. LACO's schedule, as presented below, aligns with the proposed Caltrans schedule to the maximum extent possible.

BUDGET & SCHEDULE OF CHARGES

SECTION 6.0

Our estimated time and expense fee for the project services are shown in Table 1, below, for each phase listed in the previous section. LACO's total billing will not exceed the total estimated fee without prior authorization from the City. Billings will be made monthly on a time and expense basis in accordance with LACO's standard schedule of rates, as enclosed in Appendix A.

Table 1. Estimated Fees

Phase	Description	Estimated Fee
1000	Project Management	\$18,000
2000	Survey	\$22,000
3000	Engineering Design	\$64,000
4000	Bid Phase Services	\$10,000
	Total	\$114,000

ANTICIPATED SCHEDULE

SECTION 7.0

Assuming a Professional Services Award date of April 13, 2020, we anticipate completion of all aspects of this contract by December 2020. This schedule allows for twelve (12) weeks for preliminary (50% completion) bid documents; Plans, Specifications, and Engineer's Cost Estimate. We anticipate another six (6) weeks to bring the deliverables to 90% completion and another two (2) weeks to bring them to 100% completion with City Staff review time included. The largest variable that could affect our schedule is the responsiveness of the Caltrans design team when coordinating project design components, and any unforeseen necessary environmental planning or permitting. While LACO has no control over the timeline for receiving comments from Caltrans, this schedule assumes one (1) week to receive a response for each phased set (50, 90, 100%). Any variation in this timeline will impact the overall project timeline accordingly.

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City of Fort Bragg Public Works Department
 Pudding Creek Water Main Relocation Project
 Anticipated Project Schedule
 LACO Project No. 8135.13

Prepared 03/17/20

	2020							2021				2022	
	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Jun	July	Aug	Sep	Jun
City Council Meetings (2nd and 4th Mondays)	■	■	■	■	■	■	■	■	■	■	■	■	■
Professional Services Contract Award	■												
Survey		■											
Design (50% Submission for review)			■	■	■	■	■						
Design (90% Submission for review)						■	■	■					
Design (100% Submission for review)								■					
Ongoing Coordination with Caltrans Design		■	■	■	■	■	■	■	■	■			
Bid Phase Services: June-August 2021									■	■	■		
Construction Bid Opening: August 2021											■		
Notice of Award: October 2021												■	
Construction Begins June 2022													■



EXHIBIT B
CERTIFICATES OF INSURANCE AND ENDORSEMENTS