

**CITY OF FORT BRAGG  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
GHD INC.**

THIS AGREEMENT is made and entered into this 13<sup>th</sup> day of April, 2021 (“Effective Date”), by and between the CITY OF FORT BRAGG, a municipal corporation, 416 N. Franklin Street, Fort Bragg, California 95437 (“City”), and GHD INC., a California corporation, 2235 Mercury Way, Suite 150, PO Box 7967, Santa Rosa, California 95407 (“Consultant”).

**WITNESSETH:**

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to perform construction management, staking, materials testing, and Storm Water Pollution Prevention Plan (SWPPP) management services for the Maple Street Storm Drain and Alley Rehabilitation Project as more fully described herein; and

B. 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

C. 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.

D. WHEREAS, the legislative body of the City on April 12, 2021 by Resolution No.            authorized execution of this Agreement on behalf of the City in accordance with Chapter 3.20 of the City Municipal Code and/or other applicable law;

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 Seventy-eight Thousand Two Hundred Seventeen Dollars (\$178,217.00)**.

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 **July 23, 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 **October 23, 2021** 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. 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 Chantell O'Neal, Assistant Director – Engineering Division. 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 Jane Rozga, PE, Project Construction Manager 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:  
Jane Rozga, PE  
GHD Inc.  
PO Box 7967  
Santa Rosa, CA 95407  
Tel: 707-480-1531  
Fax: 707-527-8679

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.

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

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

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

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

6.12. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, preliminary notes, working documents, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees

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

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

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

6.15. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

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

6.17. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and

conditions of this Agreement and those of any such provision or provisions so incorporated by reference, the conflict shall be resolved by giving precedence in the following order, if applicable: This Agreement, the City's Request for Proposals, the Consultant's Proposal.

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

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

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

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

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

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

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

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

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

6.27. Limitation of Liability. For any damage caused by negligence, including errors,

omissions or other acts, any damages based in contract, or in connection with any indemnity obligations of the parties under this Agreement, or for any other cause of action, irrespective of any insurance requirements under this Agreement, neither party's liability, including that of their employees, agents, directors, officers and subcontractors, shall exceed \$500,000, or the value of the services rendered under the work order giving rise to the liability, whichever is greater, except as to damage resulting from the gross negligence or willful misconduct of that party. Moreover, neither party to this Agreement shall be liable to the other for any consequential, special, indirect, incidental or punitive damages arising from this Agreement including but not limited to loss of use, revenue, profits and goodwill. The foregoing disclaimer shall apply regardless of whether such liability is based on breach of contract, tort, negligence, strict liability, breach of a fundamental term, fundamental breach, or otherwise.

**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

DocuSigned by:  
Jane Rozga, PE  
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By: \_\_\_\_\_  
Jane Rozga, PE  
Its: Project Construction Manager

ATTEST:

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

APPROVED AS TO FORM:

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

## EXHIBIT A

We have not identified specific materials testing or staking providers in our proposal. We have worked with several providers and, if our proposed approach to the work is acceptable to the City, would like to discuss recent past performance for the City prior to making a selection.

### →Construction Management Software

We propose to use Procore as a project management tool and documentation system for this project. Procore provides anywhere access to all project documentation for the City, the construction manager, the design engineer, and the contractor, through access from any web-based internet connection. Our clients have found Procore to be simple, easy to use, and cost-effective.

Procore will be integral to daily management tasks; as the job progresses, the program will be leveraged to keep the job organized and on track. The program provides real-time project updates, which makes for quick turnaround times for requests for information, submittals, pay requests, and other communications.

This web-based program will give our team the ability to effortlessly exchange project documents.

All of our project information will be tracked in a single place, allowing for greater accountability, controls, and reporting. Major benefits of Procore for the City include:

- 24/7 web access
- Ability to store and track all project communication and documents automatically
- Customizable security levels
- Ability to conduct global- and document-level keyword searches
- Cost savings by eliminating the need to manually track project information
- Reduced turnaround time for submittals and RFIs
- Significant reduction of shipping and document transportation costs
- Client-friendly user interface

Any documentation system is only as good as the data collected. Construction Management Team members are fastidious record keepers from pre-construction photo logs to the final as-built drawings. Consistency in data entry will facilitate information retrieval long after the project is over.

Our Construction Management Team knows how, when, and what to document. We know that accurate and detailed field records provide lasting value to our clients. It is these records that resolve construction disputes and support for long-term maintenance and management of critical District facilities.

### →Scope

GHD will perform the following tasks:

#### **Task 1 Project Management**

**1.1 Management of GHD Services.** GHD project management will include preparation and maintenance of budgets and schedules for GHD services, instructions to the GHD Team, preparation of field safety instructions, and routine progress reporting.

#### **Task 2 Contract Administration**

**2.1 Project Coordination.** Meet with City staff to discuss and coordinate issues with the project. This will be accomplished by site visits, project meetings, phone conversations, and email updates of the activities that occurred. Coordination for public outreach efforts is anticipated for this project.

**2.2 Pre-Construction Meeting.** GHD Construction Manager and Inspector will coordinate and run the pre-construction meeting with City staff, Contractor, and other stakeholders.

**2.3 Project Meetings.** Prepare and run meetings with City staff, Contractor, and other stakeholders.

- 2.4 Schedule Management.** Review the Contractor's as-planned schedule for conformance with the specifications and for reasonableness of activity durations and sequence. Review the schedule with the City and monitor the Contractor's progress against the schedule.
- 2.5 Maintain Project Records.** Maintain GHD project records, including daily logs, and photos. Prepare progress pay estimates, PCO's and change orders, issues, RFIs and other correspondence. Project records will be maintained in an organized manner for quick reference and are accessible to City staff as requested.
- 2.6 Monthly Progress Payments.** Evaluate the monthly progress payment requests from the Contractor and recommend payment.
- 2.7 Prepare Monthly Progress Report.** A brief report of monthly activities will be prepared and transmitted to the City.
- 2.8 Requests for Information (RFI's) and Requests for Clarifications (RFC's).** Facilitate the review and response to RFI and RFC requests by the Contractor.
- 2.9 Potential Change Orders (PCO's) and Change Orders.** Facilitate the review of PCO's and Change Orders, assist with determination of changed conditions and scope definition as needed.
- 2.10 Coordinate Submittal and Shop Drawing Review Process.** Coordinate the submittal and shop drawing review process, including logging submittals from the Contractor, transmitting to Design Engineer for response, coordinating with Design Engineer on field status, tracking progress, reviewing responses, and transmitting responses to the Contractor.
- 2.11 Permits Compliance.** Monitor contractors operation with respect to the permit requirements.
- 2.12 Monitor Construction Record Drawings.** Coordinate with the Contractor and maintain our own as-built drawings. Provide redlines to the City when complete.
- 2.13 Claims Management (optional service).** GHD will assist with Claims Management at the request of the City.

### **Task 3 Site Work**

- 3.1 Field Inspection/Observation.** Provide full-time and part-time as needed, on-site construction inspector/observer to monitor the Contractor's work for compliance with the contract documents, submittals, RFI's, change orders, and coordination with businesses and residences along the route.
- 3.2 Photograph or Video Documentation.** Provide photographs or videos of the pre-construction conditions, as well as during construction to document the work.
- 3.3 Field Changes.** Coordinate with City and Contractor and write field directives for change conditions.
- 3.4 Daily Reports.** Prepare Daily Observation Reports. The daily reports will include photographs and material tags. An example of a standard daily report is attached.
- 3.5 Materials Testing.** Contract and coordinate with an approved materials testing firm to perform the required Quality Assurance concrete and HMA testing as required by the City of Fort Bragg QAP.
- 3.6 Construction Staking.** GHD recommends that staking be delegated to the Contractor. If the Contractor's proposal to provide this service is unreasonable, GHD will either self-perform or contract with a licensed provider. An allowance is included in our estimate.
- 3.7 SWPPP Monitoring and Reporting.** Monitor Contractor's implementation of storm water protection and dust control measures. Provide stormwater reporting in accordance with the Construction General Permit Order 2009-0009-DWQ.
- 3.8 Project Completion and Punch List.** Schedule a site review to be attended by the City, GHD, and other required stakeholders to conduct final completion inspections prior to issuing a punch list.

**PROJECT FEE ESTIMATING SHEET**

PROJECT NAME: Maple Street Storm Drain and Alley Rehab Project  
 PREPARED BY: Tim Dillenburg

PROJECT # \_\_\_\_\_  
 Date: 3/18/2021  
 CLIENT: City of Fort Bragg

SHT # 1 of 1  
 On-Site Inspector Wood  
 Construction Manager Dillenburg  
 Principal In Charge Rozga

Final Opinion of Probable Construction Cost  
 \$ 1,400,000

LABOR CATEGORY> RATE>	FEE COMPUTATION							Subconsultant Services	Other Direct Costs \$6.5/hr office \$28/hr field	TOTAL FEE	50 Working Days 3.0 month Construction period 10 week Inspection period
	Principal In Charge \$250 /HR	PM \$250 /HR	CM \$205 /HR	Proj Coord \$135 /HR	Lead & Asst Inspectors \$175 /HR	TOTAL HOURS/ GHD fee	TOTAL				
<b>Task 1 Project Management</b>											
Task 1.0 Monthly Progress	4					4					4 months, including final 1 Hr for P-I-C
<b>Sub-Total</b>	\$ 1,000	\$ -	\$ -	\$ -	\$ -	\$ 1,000	\$ -	\$ 26	\$ 1,026		
<b>Task 2 Contract Management</b>											
Task 2.1 Provide Project Coordination		5	20			25		163	5,513		10 weekly 2 hrs ACM, 50% PM/CM 1 pre-construction meeting
Task 2.2 Prepare and Conduct Preconstruction Meeting	4	8	8	8	4	24		156	4,576		
Task 2.3 Conduct and Document Project Meetings	5	20	20	20		45		293	8,343		10 weekly contractor & other meetings 2 hrs each
Task 2.4 Review Contractors Construction Schedule		6	1,230			1,230		39	1,269		3.0 monthly update 2 hrs each
Task 2.5 Maintain Project Records		20	4,100	2,700		40		260	7,060		10 weekly 2 hrs
Task 2.6 Review and Evaluate Monthly Progress Payments		12	2,460			12		78	2,538		4 pay requests, including final 3 hrs each
Task 2.7 Prepare Monthly Progress Reports	4	4	820			8		52	1,872		4 months including final 1 hrs for writing each CM & Asst
Task 2.8 Respond to RFI's		8	1,640	540		12		78	2,258		4 Assumed Number of RFI's/RFC's 2 hrs each CM, 50% PM & coord
Task 2.9 Prepare PCO's and Change Orders		3	6	2		11		68	2,251		3.0 Assumed Number of PCO's 2 hrs each CM, 50% PM & 25% coord
Task 2.10 Coordinate Submittal and Shop Drawing Review		12	2,460	810		18		117	3,387		12 Assumed Number of shop drawings/submittals 1 hrs each CM & coord
Task 2.11 Monitor Permit Compliance											Included in Task 3.1
Task 2.12 Monitor Construction Record Drawings											Included in Task 3.1
Task 2.13 Monitor Labor Compliance				10		10		65	2,115		1 hour per week
Task 2.14 Perform Claims Management		4	8			12		78	2,718		Assumes no formal claims. Time is for meetings & communication to resolve field issues
<b>Sub-Total</b>	\$ -	\$ 6,250	\$ 25,420	\$ 10,083	\$ 700	\$ 42,453	\$ -	\$ 1,446	\$ 43,899		
<b>Task 3: Field Inspection/Observation</b>											
Task 3.1 Provide Field Inspection/Observation					450	450		12,600	95,725		9.0 avg hrs per day inspection 50 working days
Task 3.2 Prepare Photograph and Video Documentation					8	8		224	1,624		Prior to Pre-construction
Task 3.3 Field Changes											Included in Task 3.1
Task 3.4 Prepare Daily Observation Reports											Hours are included in Task 3.1
Task 3.5 Materials Testing							13,000	1,950	14,950		Materials Testing Coord time included in Task 3.1
Task 3.6 Develop Punchlists		4	820		4	8		224	1,744		
Task 3.7 Compile Final Documents		8	1,640	540	2	14		392	2,922		
Task 3.8 Prepare Final Pay Estimate		6	1,230	270	2	10		280	2,130		Final pay request, coordinate retention release Notice of Completion
Task 3.9 Construction Staking		4	820			4	8,000	112	8,932		Provide staking for SD and Ped Ramps
<b>Sub-Total</b>	\$ -	\$ -	\$ 4,510	\$ 810	\$ 85,925	\$ 91,245	\$ 21,000	\$ 15,782	\$ 128,027		
<b>Task 4: Public Outreach</b>											
Task 4.1 Public Outreach Plan											Not Applicable
Task 4.2 Public Information and Contact Points		5	1,025	675		10		65	1,765		10 wks coordination 0.5 hrs each
Task 4.3 Attend Public Meetings											Not Applicable
<b>Sub-Total</b>	\$ -	\$ -	\$ 1,025	\$ 675	\$ -	\$ 1,700	\$ -	\$ 65	\$ 1,765		
<b>Contingency</b>		2%							\$ 3,500		
<b>Project Totals</b>	\$ 1,000	\$ 6,250	\$ 30,955	\$ 11,568	\$ 86,625	\$ 136,398	\$ 21,000	\$ 17,325	\$ 178,217		

\* OTHER DIRECT COSTS include: Telephone, Vehicles, Lodging, Printing, Photo-copies and other misc. direct expenses.

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