

PROFESSIONAL SERVICES AGREEMENT

AGREEMENT

This Agreement is made and entered into this ____ day of August, 2019 by and between the CITY OF FORT BRAGG, a California Municipal Corporation, 416 N. Franklin Street, Fort Bragg, California, 95437 ("City"), and LACO ASSOCIATES, INC., a California corporation, 311 Main Street, Ukiah, California, 95482 ("Consultant").

RECITALS

WHEREAS, City has determined that it requires the following professional services from a consultant: to perform construction management services for the 2019 Streets Rehabilitation Project; and

WHEREAS, Consultant represents and warrants that it is fully qualified to perform such professional services by virtue of specialized experience and training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, the legislative body of the City on August 12, 2019, by Resolution No. ____ - 2019 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, City and Consultant, for the consideration hereinafter described, mutually agree as follows:

1. CONTRACT DOCUMENTS

This Agreement consists of the following documents, all of which are incorporated into and made a part of the Agreement:

- a. Professional Services Agreement;
- b. Consultant's Proposal (Exhibit 1)

2. DESCRIPTION OF SERVICES OR SCOPE OF WORK

The services to be performed under this Agreement ("Services") are as follows: Perform construction management, staking, materials testing, and Storm Water Pollution Prevention Plan management services as well as administration and document record keeping for the contract for the 2019 Streets Rehabilitation Project, City Project No. 2018-04. The Services are further described in Consultant's proposal (the "Proposal"), which is attached to and made a part of this Agreement as Exhibit 1. Changes in the scope, character, or complexity of the Services, if such changes become desirable or necessary as the work progresses, shall be agreed upon by both parties in a written change order.

For special cases where it is essential that the extra work be performed immediately, execution of a change order or amendment to the Agreement covering the changes shall be completed as soon as possible.

3. TERM

The Agreement term will commence on August 13, 2019, and expire on March 31, 2020, unless the Agreement term is amended or the Agreement is terminated in accordance with its terms.

4. PAYMENT TERMS

a. City agrees to pay Consultant for Services that are actually performed in accordance with this Agreement. To be eligible for payment, Consultant invoices must be submitted not more often than monthly to the City and list the Services performed and the amounts to be paid according to the cost categories and prices in the Proposal.

b. NOT TO EXCEED CONTRACT: In no event will the City's obligation to pay the Consultant under this Agreement exceed **Two Hundred Fifteen Thousand Nine Hundred Dollars (\$215,900.00)** (the "Not to Exceed Amount"), unless this Agreement is first modified in accordance with its terms. The Not to Exceed Amount includes salary, fringe benefits, overhead, profit, and all other expenses incurred by the Consultant in completing its Services under this Agreement.

c. [SECTION REMOVED.]

d. In accordance with California Government Code § 8546.7, if this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), this Agreement and the Consultant's books and records related to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of four (4) years after final payment under the Agreement.

e. COST PRINCIPLES. The Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., are the governing factors regarding allowable elements of cost. Also the administrative requirements set forth in 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments are also included in this Agreement. This also applies to all subcontracts in excess of \$25,000.

5. TIME OF COMPLETION

Consultant must commence performance of the Services upon receipt of written direction to proceed from City. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 9 below and to satisfy Consultant's obligations hereunder. Consultant will complete the Services in accordance with this Agreement by **December 24, 2019** (the "Time of Completion"). 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.

6. INDEPENDENT CONTRACTOR

Consultant and City agree that the Consultant will perform the Services as an independent contractor and not as an employee or agent of the City. Persons employed or utilized by Consultant in the performance of the Services will not be employees or agents of the City. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

7. SUBCONTRACTING

a. The Consultant shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this Agreement shall be subcontracted out without written authorization by the City's Contract Manager, except that, which is expressly identified in the approved Cost Proposal.

b. Any subcontract in excess of \$25,000 entered into by the Consultant relating to this Agreement shall incorporate by reference all of the provisions of this Agreement and make them applicable to said subcontractor.

c. Consultant will be solely responsible for payment of such subcontracted Services.

d. Any substitution of subcontractors must be approved in writing by the City's Contract Manager.

e. Subcontractors are bound to Consultant and City in the same manner and to the same extent as Consultant is bound to City under the Agreement. Subcontractor further must agree to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

f. If the Consultant uses subcontractors, it must comply with Civil Code § 8814 and all other California law relating to the prompt payment of subcontractors.

8. RECORD RETENTION

For the purpose of determining compliance with Public Contracts Code §§ 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, §§ 2500 *et seq.*, when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code § 8546.7, the Consultant, subcontractors, and the City shall maintain all books, documents, papers, accounting records, and other evidence

pertaining to the performance of this Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement. The State, the State Auditor, City, Federal Highway Administration ("FHWA"), or any duly authorized representative of the federal government shall have access to any books, records, and documents of the Consultant and its subcontractors that are pertinent to the Agreement for audit, examination, excerpts, and transactions, and copies thereof shall be furnished if requested.

9. STANDARD OF PERFORMANCE

a. Consultant will perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession and will prepare all work products required by this Agreement in accordance with such standards. Consultant will comply with federal, state, and local laws and regulations applicable to performance of the Services, including, but not limited to, the California Building Standards Code as in effect in the City, the Americans with Disabilities Act, any air pollution control laws and regulations applicable to Consultant, and any laws and regulations related to any copyright, patent, trademark, or other intellectual property right involved in performance of the services. Consultant's failure to comply with any law(s) or regulation(s) applicable to the performance of the services hereunder shall constitute a material breach of this agreement.

b. The Consultant should not substitute key personnel (Project Manager and others listed by name in the cost proposal) or subcontractors without prior written approval from the City. The Consultant must request and justify the need for the substitution and obtain approval from the City prior to use of a different subcontractor on the Agreement. The proposed substituted person or subcontractor must be as qualified as the original, and at the same or lower cost.

c. If this Agreement includes engineering services, the Consultant's Project Manager must be a registered Engineer in the State of California.

d. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

10. OTHER GOVERNMENTAL REGULATIONS

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.

11. USE OF RECYCLED PRODUCTS

Consultant shall endeavor to prepare and submit all reports, written studies, and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

12. INDEMNITY

To the maximum extent permitted by law, Consultant shall, at its own expense, indemnify, defend with counsel acceptable to the City (which acceptance will not be unreasonably withheld), and hold harmless City and its officers, officials, employees, agents, and volunteers ("Indemnitees") from and against any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorneys' fees and costs and litigation costs) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of or in connection with the Services, or Consultant's failure to comply with any of the terms of this Agreement, regardless of any fault or alleged fault of the Indemnitees but excepting the sole negligence or willful misconduct of the Indemnitees.

The Consultant's obligation to indemnify, defend, and hold harmless under this provision shall not be excused because of the Consultant's inability to evaluate Liability, or because the Consultant evaluates Liability and determines that the Consultant is not or may not be liable. The Consultant must respond within 30 calendar days to any tender for defense and indemnity by the City, unless the time for responding is extended by an authorized representative of the City in writing. If the Consultant fails to accept tender of defense and indemnity within 30 calendar days, in addition to any other remedies authorized by law, so much of the money due or that may become due the Consultant under this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the matter subject to tender, or until the Consultant accepts the tender, whichever occurs first.

The Consultant waives any and all rights to express or implied indemnity against the Indemnitees concerning any Liability of the Consultant arising out of or in connection with the Services or Consultant's failure to comply with any of the terms of this Agreement.

Notwithstanding the foregoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code § 2783, as may be amended from time to time, Consultant's duty to indemnify under this provision shall not apply when to do so would be prohibited by California Civil Code § 2782, as may be amended from time to time.

Notwithstanding the foregoing, to the extent that the Services include design professional services subject to Cal. Civil Code § 2782.8, as amended from time to

time, Consultant's duty to indemnify shall only be to the maximum extent permitted by Civil Code § 2782.8.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement 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 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.

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

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

13. INSURANCE

a. Before commencing performance of the Services, Consultant, at its own cost and expense, must: (1) procure "occurrence coverage" insurance of the kinds and in the amounts specified below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services hereunder by the Consultant or its agents, representatives, employees, or subcontractors; and (2) submit to the City certificates of insurance and endorsements evidencing insurance coverage that meets the requirements of this section. Consultant must maintain the insurance policies required by this section throughout the Agreement term. The cost of such insurance must be included in the Consultant's proposal.

Consultant agrees to include with all subcontractors in their subcontract the same requirements and provisions of this Agreement including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. The Consultant shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in this Agreement prior to commencement of any work and Consultant will provide proof of compliance to the City.

Consultant may not allow any subcontractor to commence work on the Services until Consultant and/or the subcontractor have obtained all insurance required by this Agreement for the subcontractor(s) and submitted certificates of insurance and endorsements evidencing such coverage to City.

b. Workers Compensation Insurance. Consultant must, at its sole cost and expense, maintain Workers' Compensation Insurance and Employer's Liability

Insurance for any and all persons employed directly or indirectly by Consultant. Workers' Compensation Insurance as required by the State of California, with coverage providing Statutory Limits, and Employer's Liability Insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence must be provided. The insurance must be endorsed to waive all rights of subrogation against City and its officials, officers, employees, and volunteers for loss arising from or related to the Services.

c. For the Term of this Agreement, Consultant, at its own cost and expense, must maintain: (1) commercial general liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, TWO MILLION DOLLARS (\$2,000,000.00) aggregate, combined single limit coverage for risks associated with Services; and (2) automobile liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit coverage. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Services or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include, but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

d. Except for Workers' Compensation insurance and Professional Liability insurance, all other insurance coverages required pursuant to this Agreement must include or be endorsed to include the following:

(1) City and its officials, officers, employees, agents, and volunteers ("Additional Insured") shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by Consultant. The coverage may contain no special limitations on the scope of protection afforded to City or its officials, officers, employees, agents, or volunteers.

(2) The Additional Insured coverage under the Consultant's policy shall be "primary and non-contributory" and Consultant's coverage will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

e. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.

f. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

g. Insurance coverage required pursuant to this Agreement must include or be endorsed to include the following:

(1) Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

(2) Required insurance coverage may not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

h. Consultant, at its own cost and expense, must maintain for the period covered by this Agreement professional liability insurance in an amount not less than TWO MILLION DOLLARS (\$2,000,000) covering errors and omissions. Any deductible or self-insured retention under the required professional liability insurance may not exceed \$150,000 per claim.

i. All insurance required under this Agreement must be placed with insurers with a Best's rating of no less than A:VII unless otherwise approved by the City.

j. The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.

k. All self-insured retentions (SIR) must be disclosed to City for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or by the City. City reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

l. To the extent this Agreement is a "construction contract" as defined by California Civil Code § 2783, as may be amended from time to time, Consultant shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following completion of the Services. In the event Consultant fails to obtain or maintain completed operations

coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Consultant.

14. NON DISCRIMINATION

During the performance of this Agreement, Consultant will not discriminate against any employee of the Consultant or applicant for employment because of race, religion, creed, color, national origin, gender, sexual orientation, or age. Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, creed, color, national origin, gender, sexual orientation, or age.

15. [SECTION REMOVED.]

16. [SECTION REMOVED.]

17. LICENSES & PERMITS

a. BUSINESS LICENSE

Before the City will issue a notice to proceed with the Services, Consultant and any subcontractors must acquire, at their expense, a business license from City in accordance with Chapter 5.04 of the Fort Bragg Municipal Code. Such licenses must be kept valid throughout the Agreement term.

b. OTHER LICENSES AND PERMITS

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

18. CONSULTANT REPORTS AND/OR MEETINGS

a. The Consultant shall submit progress reports at least once a month. The report should be sufficiently detailed for the Contract Manager to determine, if the Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.

b. The Consultant's Project Manager shall meet with the City's Contract Manager, as needed, to discuss progress on the contract.

19. DOCUMENTATION, OWNERSHIP OF WORK PRODUCTS, AND TREATMENT OF DOCUMENTS

a. Consultant shall document the results of the work to the satisfaction of the City, and if applicable, the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the agreement objectives.

b. The Consultant shall sign all plans, specifications, estimates, and engineering data furnished by him/her, and where appropriate, indicate his/her California registration number.

c. All plans, specifications, reports, designs and other documents prepared by Consultant pursuant to this Agreement shall be and remain the property of the City. Any modification or reuse of such documents by the City without Consultant's prior consultation will be at the City's sole risk. Except as may be otherwise required by law, Consultant will disclose no data, plans, specifications, reports or other documents pertaining to the Services without the prior written consent of City.

20. DISPUTES

a. Any dispute, other than an audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by a committee consisting of the City's Contract Manager and the City Manager, who may consider written or verbal information submitted by the Consultant.

b. Not later than thirty (30) days after completion of all work under the Agreement, the Consultant may request review by the City Council of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

c. Neither the pendency of a dispute, nor its consideration by the committee will excuse the Consultant from full and timely performance in accordance with the terms of this Agreement.

d. Should a dispute not be resolved by the procedures set forth above, then the parties must mediate the dispute before a mutually agreed upon neutral party within ninety (90) days of the completion of all Services under the Agreement. If mediation is not successful, the Consultant and City may pursue all rights and remedies available under California law.

21. TERMINATION AND REMEDIES

a. City or Consultant may terminate this Agreement for convenience by giving at least 30 days written notice to the other party specifying the termination effective date. Upon receipt of such notice from City, Consultant may continue performance of the Services through the date of termination. City shall pay Consultant for all Services actually performed in accordance with this Agreement through the termination effective date.

b. If Consultant materially breaches any term of this Agreement, in addition to any other remedies the City may have at law or equity, the City may:

(1) Terminate the Agreement by notice to the Consultant specifying the termination effective date;

(2) Retain, and/or recover from the Consultant at no additional cost to the City, the plans, specification, drawings, reports, and other design documents and work products prepared by Consultant, whether or not completed;

(3) Complete the unfinished Services itself or have the unfinished Services completed, and/or;

(4) Charge Consultant, or deduct from monies that may be due or become due the Consultant under this Agreement, the difference between the cost of completing the unfinished Services pursuant to this Agreement and the amount that would otherwise be due Consultant had Consultant completed the Services in accordance with this Agreement.

22. BINDING EFFECT AND ASSIGNMENT PROHIBITION

This Agreement is binding upon City, Consultant, and their successors. Except as otherwise provided herein, neither City nor Consultant may assign, sublet, or transfer their interest in this Agreement or any part thereof without the prior written consent of the other, and any purported assignment without such consent will be void.

23. REPRESENTATIVES

a. City Contract Manager for purposes of this Agreement will be Chantell O'Neal, Engineering Technician. Consultant's representative for purposes of this Agreement will be Holly Cinkutis, PE, Project Manager. The parties' designated representatives will be the primary contact persons regarding the performance of the Services. The parties intend that their designated representatives will cooperate in all matters regarding this Agreement and in such manner so as to achieve performance of the Services in a timely and expeditious fashion.

b. Notices:

Any written notice to Consultant shall be sent to:

Holly Cinkutis, PE
Project Manager
LACO Associates, Inc.
311 Main Street
Ukiah, CA 95482

Any written notice to City shall be sent to:

Chantell O'Neal
Engineering Technician
City of Fort Bragg
416 N. Franklin Street
Fort Bragg, CA 95437

24. INTEGRATION AND AMENDMENT

This Agreement represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements between the parties, whether written or oral. If a discrepancy, disagreement, ambiguity, inconsistency, or difference in interpretation of terms arises as to terms or provisions of this Agreement and any Exhibit(s) attached to this Agreement, this Agreement shall control and shall be deemed to reflect the intent of the parties with respect to the subject matter hereof. This Agreement may only be amended by a writing signed by a representative authorized to bind the Consultant and a representative authorized to bind the City.

25. COVENANT AGAINST CONTINGENT FEES, REBATES, KICKBACKS, OR OTHER UNLAWFUL CONSIDERATION

a. The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the consultant, to solicit or secure this agreement; and that it has not paid or agreed to pay any company or person other than a bona fide employee any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this agreement. For breach or violation of this covenant, the City shall have the right to annul this agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

b. The Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration, either promised or paid to any City employee. For breach or violation of this warranty, City shall have the right in its discretion, to terminate the Agreement without liability, to pay only for the value of the work actually performed, or to deduct from the Agreement price, or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

c. The Consultant warrants and represents that it has not participated in any lobbying activities.

26. CONFLICT OF INTEREST PROHIBITION

City and Consultant will comply with the requirements of the City's Conflict of Interest Code adopted pursuant to California Government Code § 87300 *et seq.*, the Political

Reform Act (California Government Code § 81000 *et seq.*), the regulations promulgated by the Fair Political Practices Commission (Title 2, § 18110 *et seq.* of the California Code of Regulations), California Government Code § 1090 *et seq.*, and any other ethics laws applicable to the performance of the Services and/or this Agreement. Consultant may be required to file with the City Clerk a completed Form 700 before commencing performance of the Services unless the City Clerk determines that completion of a Form 700 is not required, pursuant to City's Conflict of Interest Code. Form 700 forms are available from the City Clerk.

Consultant may not perform Services for any other person or entity that, pursuant to any applicable law or regulation, would result in a conflict of interest or would otherwise be prohibited with respect to Consultant's obligations pursuant to this Agreement. Consultant agrees to cooperate fully with City and to provide any necessary and appropriate information requested by City or any authorized representative concerning potential conflicts of interest or prohibitions concerning Consultant's obligations pursuant to this Agreement.

Consultant may not employ any City official, officer, or employee in the performance of the Services, nor may any official, officer, or employee of City have any financial interest in this Agreement that would violate California Government Code § 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of City. If Consultant was an employee, agent, appointee, or official of City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Consultant's performance of the Services, including reimbursement of expenses, and Consultant will be required to reimburse City for any sums paid to Consultant under this Agreement. Consultant understands that, in addition to the foregoing, penalties for violating Government Code § 1090 *et seq.* may include criminal prosecution and disqualification from holding public office in the State of California.

Any violation by Consultant of the requirements of this provision will constitute a material breach of this Agreement, and the City reserves all its rights and remedies at law and equity concerning any such violations.

27. APPLICABLE LAW AND VENUE

The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and the interpretation of this Agreement. Any action or proceeding that is initiated or undertaken to enforce or interpret any provision, performance, obligation or covenant set forth in this Agreement shall be brought in a state court in Mendocino County.

28. SEVERABILITY

If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged will remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

29. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the parties have caused their authorized representative to execute this Agreement on the date first written above.

CITY

CONSULTANT

By: _____

Tabatha Miller

Its: City Manager

By: _____

Rodney Wilburn, PE

Its: Vice President, Principal-in-Charge

[Attach Notary Acknowledgment Page]

ATTEST:

By: _____

June Lemos, CMC

City Clerk

APPROVED AS TO FORM:

By: _____

Keith F. Collins

City Attorney

Exhibit 1: Consultant's Proposal

5.0 SCOPE OF WORK

Our project understanding and scope of work is based upon a review of the Request for Proposals (RFP) and combined experience on past projects. We are providing additional information below to describe LACO's approach to specific tasks.

Task 1 – Construction Management and Administration & Reporting

Construction Management and Administration consists of receipt, review, processing, and tracking of construction documentation and activities. Specifically, Task 1 provides the City with the following services:

Construction Meetings

LACO will prepare meeting agendas and lead meetings between the Contractor, the City, the Engineer (Green Valley) and LACO. Following the meetings, LACO will prepare minutes documenting the topics

discussed. LACO assumes a total of two meetings during the course of construction; one pre-construction meeting, and one preliminary close-out meeting near construction completion. All meetings will be held at the City office. LACO will issue meeting minutes following each meeting and maintain copies in a Project Binder to be issued to the City upon project completion.

Deliverables

- Meeting Minutes, to be issued within one week of the meeting
- Compiled Meeting Minutes, to be issued with the Project Binder at the completion of construction

Progress Updates and Schedule Review

LACO will review and monitor the construction schedule provided by the contractor. LACO will provide the City with an update every week via email, advising the City of current activities, milestones, and two-week outlook on the work. The two-week outlook will be based on contractor's schedule updates and LACO's observations and inspections of the work. The updates will also provide contractor pay request and budget status, change order tracking, submittals, and Requests for Information (RFI's) received during the period.

Deliverables

- Update emails every week during active construction, describing construction activities and schedule.

Submittal Review and Processing

Product submittals will be reviewed by LACO for conformance with the contract documents, plans and specifications. LACO will return submittals with a cover sheet showing response comments. LACO will retain one copy for record and will maintain one copy to be included in the Project Binder issued upon project completion. LACO assumes that the City will not be performing independent review and comment on submittals. The estimated fee for this service assumes not more than 20 submittals, including initial and re-submittal of products in response to review comments.

Deliverables

- One copy of each submittal and LACO's response for the City Records. Submittals and submittal review comments will be maintained in a Project Binder, to be provided to the City upon project completion.

RFI Response

LACO will receive and respond to RFI's (with the support of the Design Engineer Green Valley) issued by the Contractor for clarifications on the intent of the plans and specifications. LACO will issue written responses to RFI's and maintain copies in a Project Binder issued to the City upon project completion. LACO's estimated fee assumes not more than ten RFI responses issued over the course of construction.

Deliverables

- One copy of each RFI response to be included in the Project Binder issued to the City upon completion of construction.

Change Order Review and Processing

Requests for change orders initiated by the contractor or the City will be received and reviewed by LACO with support as needed from the Design Engineer (Green Valley). LACO will evaluate the contractor's request to determine if the referenced work is beyond the scope of the contract, and if the proposed price and need for said work is justified. If LACO deems the work out-of-contract and necessary for project completion, LACO will solicit concurrence with the City and Engineer. LACO will maintain records of change orders and the adjusted contract price, and update the City in the emailed progress updates. All change orders will be compiled in the Project Binder issued to the City upon project completion. LACO's estimated fee assumes not more than five change orders issued over the course of construction.

Deliverables

- Change Order Approval Forms
- Change Order and Budget Tracking Spreadsheet (to be included in email updated every week during active construction)

Contractor Pay Request Review and Processing

LACO will receive pay requests from the Contractor and review them for consistency between the work billed and the actual work accomplished. When approved, LACO will provide the pay request to the City with a recommendation for payment. LACO will maintain copies for the Project Binder. LACO will monitor pay requests and contract budget over the course of construction and provide the City with project budget summaries in the monthly progress updates. LACO's fee assumes not more than eight contractor pay requests.

Deliverables

- Reviewed pay requests, to be issued within one week of receipt by LACO
- Budget summaries, to be included with the update emails every week during active construction
-

Contract Administration, Reporting and Prevailing Wage Compliance

LACO will receive and coordinate execution of the Contract Documents (Agreement, Notice of Award, Notice to Proceed, Bonds and Insurance). LACO will maintain copies for the Project Binder. LACO staff will review certified payroll and notify of any discrepancies.

Deliverables

- Contract Documents, Certified Payroll, to be included in the Project Binder

Construction Close-out

Construction close-out services provided by LACO will consist of issuing the Notice of Substantial Completion and punch list, Notice of Completion, receipt and review of contractor marked up construction drawings, issuance of Record Drawings showing the Contractor's information, design modifications made during construction (if applicable), and design changes noted by engineering field observations. Close-out also includes compilation and reproduction of submittal and Project Binders.

Deliverables (One each)

- Notice of Substantial Completion
- Punch List
- Notice of Completion
- Record Drawings
- Compiled Project Binder (one(1) bound copy and one (1) electronic copy)

Task 2 – Engineering Field Observation

LACO staff will visit the site(s) during construction to observe compliance with the construction drawings. An additional task during observation is verifying quantities for payment to the contractor. The observer and the contractor's representative will compare quantities and identify discrepancies during pay application review. LACO will rely on the City, Engineer, and Contractor to coordinate the total number of site visits needed to meet the quality assurance and testing requirements of the project. However, for the purposed of generating a proposal fee, it was assumed that daily construction observation will be needed from the third week of September to the second week of November 2019. It was assumed that an inspector will be needed on-site for approximately *40 days at 4 hours per day*. The Punch List and Final Completion will occur the first week of December 2019. Observation reports will be prepared following each day on-site and will be compiled in the Project Binder.

Deliverables

- Daily Field Observation Reports with photos (issued with the Project Binder upon project completion) and weekly RE Reports summarizing weekly activities

Task 3 – Survey Construction Staking

LACO will provide survey construction staking for the project. Survey Scope of Work Task Summary is as follows:

1. Project Setup
2. Survey Monument Preservation
 - Field Inspections and Measurements for Subgrade Repair
 - Field Inspections and Measurements for Reconstruction
 - Corner Record preparation and filing with County Surveyor
 - Survey Monument Replacement Survey
3. Plan setup for construction staking calculations
4. Construction Staking Scope includes the following construction items:
 - Survey Monument Preservation
 - Full Depth Reconstruction
 - AC Dike
 - Curb and Curb and Gutter
 - Sidewalk and Pathway
 - Driveway

Deliverables

- Survey Cut Sheets
- An AutoCAD drawing file will be provided and shall include all survey control established in the preparation of the plans.

Task 4 – Materials Testing and Inspection

Our Materials Testing and Special Inspection team has completed over 100 projects in the last 10 years. We frequently contract directly with public agencies, and some of our key clients include local governments, community service districts, and tribal entities.

LACO's materials laboratory maintains accreditation or approvals through DSA, AASHTO, and Caltrans. Our field testing and inspection personnel maintain certifications by ICC, AWS, ACI, and Caltrans. Our certifications include:

Organization	LACO Certifications
DSA/DGS - Division of the State Architect, California Department of General Services	Approved laboratory for performing special inspection, materials testing, and geotechnical services on California public school construction projects, a distinction not held by all firms in our profession.
AASHTO - American Association of State Highway and Transportation Officials	Laboratory accredited by the AASHTO Accreditation Program (AAP) based upon laboratory audits by CCRL (Cement and Concrete Reference Laboratory) and AMRL (AASHTO Materials Reference Laboratory).
ICC - International Code Conference	Multiple field personnel maintain Special Inspector Certifications issued by ICC that are required by many local building jurisdictions to perform special inspections per the California Building Code.
CALTRANS - California Department of Transportation	Multiple personnel certified to perform laboratory and field testing and batch plant inspection in accordance with Caltrans test procedures.
AWS - American Welding Society	Multiple field personnel maintain AWS certified welding inspector certification.
ASNT - American Society for Nondestructive Testing	Multiple personnel certified in conformance with ASNT standards to perform nondestructive testing of structural steel welding.
ACI - American Concrete Institute	Multiple field and laboratory personnel maintain ACI certification.
ASTM - American Society for Testing and Materials	Laboratory and field testing complies with ASTM procedures and standards.
Nuclear Gauge Safety Certification	Multiple personnel are Nuclear Gauge Safety Certified to perform density testing of engineered and structural fill.

Our laboratory materials testing services include:

- Soil testing and analysis
- Aggregate testing and analysis
- Concrete mix design review
- Compressive strength testing of concrete, grout, and mortar

Our Special Inspection services include:

- Reinforced concrete
- Structural steel welding
- Structural steel and high strength bolting
- Structural masonry
- DSA structural masonry
- Spray applied fireproofing
- Non-destructive testing (NDT) of structural steel welds
- Density testing of structural fills using Nuclear Density Gauges
- Post installed anchors (chemical or mechanical)

MATERIALS TESTING SCOPE OF SERVICES

During subgrade preparation and aggregate base placement and compaction operations, we will be present to observe soil compaction and perform density tests at representative locations following ASTM D6938 guidelines. In addition, we will perform field density testing during placement of hot-mix asphalt utilizing the most recent batch plant maximum density as a guideline for determining relative density. In-place densities can be confirmed with Rice Theoretical Maximum Densities. Representative samples of fill and aggregate materials will be tested in our laboratory in general accordance with ASTM D1557 test procedures as a basis for estimating relative compaction.

A California Registered Civil Engineer will review concrete mix design for conformance with project plans and specifications. Prior to placement of concrete in foundations and slabs, we will perform batch plant inspections to verify that materials and quantities conform to project specifications. During placement of concrete, we will observe procedures, perform temperature and slump tests, and prepare cylinders for laboratory compressive strength testing.

We will provide the services of qualified and certified technicians to perform the work described above on an as-requested basis. We should be notified at least 24 hours in advance to adequately schedule our services. Any workmanship or product discrepancies with construction elements that we are requested to observe and/or test will be brought to the immediate attention of the contractor(s). Field reports and laboratory test results will be forwarded to the owner and designated others.

INSPECTION AND LABORATORY TESTING COST EVALUATION

Deliverables

- Materials Testing Results and Field Reports will be included in the Project Binder and provided to the City upon project completion.

Task 5 – Storm Water Pollution Prevention Plan Monitoring (SWPPP)

LACO will perform stormwater monitoring and sampling compliant with the SWPPP. The 40 days of on-site observation under Task 2 includes up to 5 monitoring/sampling events. If weather conditions require additional monitoring and sampling beyond 5 events, the City will be invoiced on a time and materials basis in accordance with LACO's standard rates, in addition to the contracted fee presented herein.