Request for Proposal
City of Albany Design Specifications for the Public Works Service Center

The City of Albany is requesting proposals from qualified firms or individuals interested in preparing specifications for the proposed Public Works Service Center. The specifications will be used as the basis for negotiating a design build contract with a developer/contractor for a Guaranteed Maximum Price construction agreement. This document outlines the scope of work for consulting services. Three copies of the proposal shall be submitted in writing by 12 p.m. Monday December 2, 2013 to:

Nicole Almaguer, City Clerk
City of Albany
1000 San Pablo Avenue
Albany, CA 94706
Attention: RFP Public Works Service Center Design Specifications

I. INTRODUCTION & PURPOSE OF THE REQUEST

The City of Albany is located at the northwestern corner of Alameda County, California, bordered by the cities of El Cerrito and Richmond on the north, the City of Berkeley on the east and south side, and by unincorporated Kensington in Contra Costa County on the north and east. The City of Albany was incorporated in 1908. The current population is 18,500 residents (2010 census). Albany is known for the excellent quality of its K-12 school district, highly educated populace, and small town ambience in an urban setting.

The existing Public Works Maintenance center at 548 Cleveland is located in a leased facility that is inadequately sized for the public works operations (see attached photos). The lease will expire in January 2015, and the City desires to own the replacement property for housing this critical facility. The City has entered into a Purchase Agreement for the acquisition of an industrial property at 540 Cleveland Avenue to construct a new service center. The existing building has been demolished and the site is now vacant. The City desires to use a design/build method of constructing the new building improvements instead of the city design/bid process.
The City has prepared a concept plan for the new center (see attached Option 2 Modified Plan) which will form the basis of the design. The City seeks a design consultant to prepare a set of specifications to allow a design build developer/contractor to prepare design development through construction drawings that will respond to the City’s space requirements. The City Council has approved the concept plan with a reduction of space that contains the following development program:

- 8,300 square feet of office space that will house the entire Public Works Department function including 11 full time employees, two part time/contract employees, small conference room, training room, file storage for infrastructure maps, plans and records, larger area for storage of city-wide records, crew lockers and larger lunch break room, room for back up computer server for city-wide computing, and a first floor public area for an employee and a public counter for the issuance of permits and review of construction plans affecting the right of way; (the concept plan shows 10,300 sq. ft. for this function but has been modified to reduce to 8,300 sq. ft.)
- 6,500 s.f. of shop space for indoor storage of equipment, tools, and work areas for repair and assembly;
- Paved area providing 21 spaces for 17 maintenance vehicles, staff and visitor parking and circulation;
- Approximately 10,100 s.f. of open yard storage area for materials, trash and mulching areas including plant material for the tree program and parks maintenance.

The parcel that the City is in contract to acquire has soil and groundwater contamination resulting from the prior industrial use as a forge. The seller is in the process of cleaning the soil under the direction of the Alameda County Health Department. The concept plan avoids constructing a building over the majority of the contamination area (See attached combination clean up and building footprint plan). Groundwater monitoring will be required for one year during the construction period.

The City has adopted a Climate Action Plan to reduce the emissions that result from City operations. The City is interested in obtaining an estimate of the cost of solar panel installation to create power for a portion of the facility’s energy needs, and for the energy needs of an electronic advertising sign that will be located on the western edge of the parcel.
II. Scope of Services

The information being sought by the City will require the following:

A. Preparation of an assessment of the existing maintenance facility for space requirements, recommendations for more efficient space utilization, and spaces that are needed but currently missing.

B. Preparation of specifications that will be used by the design/build developer to prepare plans and a construction contract with a Guaranteed Maximum Price. The specifications should include the following (In responding please organize the elements of the specifications in the appropriate order for the preparation of plans and include any design elements that have been omitted that you feel should be included to have a complete facility):

1. Space Program based on the above information
2. Building type (metal/wood frame, etc.)
3. Foundation requirements (see City geotechnical report)
4. Building Code occupancy standards
5. Fire code requirements
6. Seismic requirements
7. Exterior building finishes
8. Interior building finishes
9. Exterior storage and parking area improvements and materials
10. Electrical requirements for shop space, office space, and yard functions
11. Lighting requirements – interior & exterior
12. HVAC requirements
13. Plumbing requirements
14. Computer cabling/wiring
15. Insulation & Sound baffling standards
16. Soil contamination barriers or venting (if required)
17. Standards for preventing damage to the ground water monitoring wells during construction.
18. Security system requirements
19. Shop space work surfaces & storage facilities
20. Shop space crew lunch room and locker facilities requirements
21. Solar Panel requirements for building and advertising sign
22. Office space and conference room requirements for office building
23. Emergency power generation requirements
24. Vehicle equipment/wash bay requirements
25. Landscaping requirements
26. Equipment list & layout
27. LEED recommendations

C. Analysis of the cost and benefits of solar panel installation for a portion of the
   facility energy requirements.

D. Preliminary Construction budget based on specifications.

III. MEETINGS

It is anticipated that the following meetings will be required; additional meetings
may be recommended as part of the proposal:

- Meeting with the entire Public Works staff to discuss existing space
deficiencies and operational needs.
- Meeting with Fire Chief and Community Development Director to discuss
code requirements
- Meeting with City Manager and Public Works Director to discuss
preliminary specifications
- Presentation to City Council of final specifications and preliminary cost
  estimate.

IV. DELIVERABLES

1. Existing Space Assessment
2. Specifications for new space
3. Feasibility Assessment for solar panels
4. Estimate of consultant time & cost required for construction contract
   negotiations.
5. Preliminary construction budget

Any documentation prepared by the Consultant shall be provided to the City in
both hard copies and electronic format. The consultant may recommend
combining the above deliverables into one or more documents as part of the
proposal.

V. TIMELINE

Preparation and delivery of the Deliverables in Section IV above should be
completed within 45 days of contract award by City Council.
VI. SELECTION CRITERIA

The successful applicant must have experience with the preparation of similar specifications. It is anticipated that the specifications may require a team consisting of an architect and civil engineer (although other disciplines may be needed and proposed). The proposal should include an identification of assignments of work tasks to consultant team members, and who will be the project manager/team leader.

Other criteria include:

- Completeness of response to the RFP
- Experience with similar projects and reference feedback
- Creativity
- Cost
- Oral communication skills
- Writing and formatting skills

VII. PROPOSAL SUBMISSION REQUIREMENTS

The following materials should be submitted with the proposal.

- **Cover Letter**
  The cover letter should briefly state the consultant’s understanding of the work to be performed, the commitment to perform the work in the required timelines, and why the consultant believes it is best qualified to perform the duties and tasks outlined and described in scope of work contained in this request.

- **Qualifications**
  The proposal should include the following information and materials:
  
  o Qualifications and Related Experience of Personnel Who Will Perform Work. Résumés of all personnel who are proposed to provide professional services to the City of Albany within the Scope of Work outlined and described in this request should be included. Résumés should include all relevant experience, education, and other qualifications over the past 3 years.
- Prior Relevant Experience. A description of prior work experience and projects relevant to the Scope of Work outlined and described in this request should be included.

- References of Local Government Clients. Please include a list of at least three (3) current and/or previous local government clients located in California for which the consultant has rendered professional services relevant to the scope of work outlined and described in this request.

- **Approach, Scope, and Timelines**

  Provide a proposed approach and projected timeline to conduct and complete the elements described in the above Scope of Work.

- **Cost/Budget**

  - Not to Exceed Cost Estimate for consultant services.
  - Budget of hours and costs (including hourly rates) by task (for evaluation of submittals and to be attached to a contract).
  - Proposal should include options for reducing or adding services as appropriate.

VIII. **General Information**

- The City of Albany reserves the exclusive right to determine the most qualified consultant for selection.
- All proposals submitted will be subject to public records laws.
- The City reserves the right to cancel or reissue the RFP or revise the timeline at any time.
- The City reserves the right to reject any and all proposals and to waive minor irregularities in the proposal process. The City may accept any proposal if such action is believed to be in the best interest of the City.
- The City is not liable for any cost incurred by the proposer prior to execution of a contract.
- The City reserves the right to negotiate scope and cost with the consultant.
- The project team shall be approved by the City of Albany. The City must approve any changes in the project team.
- The consultant must be willing to enter into the attached standard form of contract and provide insurance and indemnities required.
IX. QUESTIONS DURING PROPOSAL PERIOD

All questions should be directed to: Patrick O’Keeffe, Interim City Manager, pokeeffe@albanyca.org

X. PROPOSAL TIME LINE

Deadline for proposals is 12 p.m. Monday December 2, 2013.

Deliver proposals to:

Nicole Almaguer, City Clerk
City of Albany
1000 San Pablo Avenue
Albany, CA 94706
Attention: RFP Public Works Service Center Design Specifications

Attachments:
1. Photos of Existing Maintenance Center
2. Modified Option 2 Concept Plan
3. Combined Cleanup & Building Footprint Plan
4. City Standard Contract Form
EXISTING PUBLIC WORKS MAINTENANCE CENTER

EXISTING PUBLIC WORKS SHOP & YARD STORAGE
& VEHICLE PARKING AREA

548 CLEVELAND AVE.
ALBANY PUBLIC WORKS CENTER
OPTION 2 *

Concept Plan Approved by Albany City Council 10/21/13
540 CLEVELAND PUBLIC WORKS SERVICE CENTER SITE
PLAN OF SOIL REMEDIATION AREAS & PROPOSED BUILDING FOOTPRINT

EXCAVATION AREAS
EXCAVATION AREA UNDER FOOTPRINT
BUILDING FOOTPRINT
This AGREEMENT FOR CONSULTANT SERVICES ("AGREEMENT"), is made and entered into this____day of______________20__ by and among the City of Albany a California charter city ("CITY") and__________________________ a [California corporation, partnership, LLC or LLP, or individual] ("CONSULTANT").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

SECTION 1. TERM OF AGREEMENT.

Subject to the provisions of SECTION 19 "TERMINATION OF AGREEMENT" of this AGREEMENT, the term of this AGREEMENT shall be for a period of one (1) year from the date of execution of this AGREEMENT, as first shown above. Such term may be reduced or extended upon written agreement of both parties to this AGREEMENT.

SECTION 2. SCOPE OF SERVICES.

CONSULTANT agrees to perform the services set forth in EXHIBIT "A" "SCOPE OF SERVICES" and made a part of this AGREEMENT.

SECTION 3. ADDITIONAL SERVICES.

CONSULTANT shall not be compensated for any services rendered in connection with its performance of this AGREEMENT which are in addition to or outside of those set forth in this AGREEMENT or listed in EXHIBIT "A" "SCOPE OF SERVICES", unless such additional services are authorized in advance and in writing by the City Council or City Manager of CITY. CONSULTANT shall be compensated for any such additional services in the amounts and in the manner agreed to by the City Council or City Manager.
SECTION 4. COMPENSATION AND METHOD OF PAYMENT.

Subject to any limitations set forth in this AGREEMENT, CITY agrees to pay CONSULTANT the amounts specified in EXHIBIT "B" "COMPENSATION" and made a part of this AGREEMENT. The total compensation, including reimbursement for actual expenses, shall not exceed_________________dollars ($________________), unless additional compensation is approved in writing by the City Council or City Manager.

Each month CONSULTANT shall furnish to CITY an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by sub-category), travel, materials, equipment, supplies, sub-consultant contracts and miscellaneous expenses. CITY shall independently review each invoice submitted by the CONSULTANT to determine whether the work performed and expenses incurred are in compliance with the provisions of this AGREEMENT. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth below. In the event any charges or expenses are disputed by CITY, the original invoice shall be returned by CITY to CONSULTANT for correction and resubmission.

Except as to any charges for work performed or expenses incurred by CONSULTANT which are disputed by CITY, CITY will use its best efforts to cause CONSULTANT to be paid within thirty (30) days of receipt of CONSULTANT's invoice.

Payment to CONSULTANT for work performed pursuant to this AGREEMENT shall not be deemed to waive any defects in work performed by CONSULTANT.

SECTION 5. INSPECTION AND FINAL ACCEPTANCE.

CITY may inspect and accept or reject any of CONSULTANT's work under this AGREEMENT, either during performance or when completed. CITY shall reject or finally accept CONSULTANT's work within sixty (60) days after submitted to CITY. CITY shall reject work by a timely written explanation, otherwise CONSULTANT's work shall be deemed to have been accepted. CITY's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of CONSULTANT's work by CITY shall not constitute a waiver of any of the provisions of this AGREEMENT including, but not limited to, SECTIONS 15 and 16, pertaining to indemnification and insurance, respectively.
SECTION 6. OWNERSHIP OF DOCUMENTS.

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by CONSULTANT in the course of providing any services pursuant to this AGREEMENT shall become the sole property of CITY and may be used, reused or otherwise disposed of by CITY without the permission of the CONSULTANT. Upon completion, expiration or termination of this AGREEMENT, CONSULTANT shall turn over to CITY all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

SECTION 7. CONSULTANT'S BOOKS AND RECORDS.

CONSULTANT shall maintain any and all documents and records demonstrating or relating to CONSULTANT's performance of services pursuant to this AGREEMENT. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to CITY pursuant to this AGREEMENT. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by CONSULTANT pursuant to this AGREEMENT. Any and all such documents or records shall be maintained for three years from the date of execution of this AGREEMENT and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon written request by CITY or its designated representative. Copies of such documents or records shall be provided directly to the CITY for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.

(c) Where CITY has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of CONSULTANT's business, CITY may, by written request, require that custody of such documents or records be given
to the requesting party and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to CITY, as well as to its successors-in-interest and authorized representatives.

SECTION 8. STATUS OF CONSULTANT.

(a) CONSULTANT is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of CITY. CONSULTANT shall have no authority to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against CITY, whether by contract or otherwise, unless such authority is expressly conferred under this AGREEMENT or is otherwise expressly conferred in writing by CITY.

(b) The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times be under CONSULTANT’s exclusive direction and control. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall have control over the conduct of CONSULTANT or any of CONSULTANT’s officers, employees or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that CONSULTANT or any of CONSULTANT’s officers, employees or agents are in any manner officials, officers, employees or agents of CITY.

(c) Neither CONSULTANT, nor any of CONSULTANT’s officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to CITY’S employees. CONSULTANT expressly waives any claim CONSULTANT may have to any such rights.

SECTION 9. STANDARD OF PERFORMANCE.

CONSULTANT represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this AGREEMENT in a thorough, competent and professional manner. CONSULTANT shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this AGREEMENT, CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of CONSULTANT under this AGREEMENT.
SECTION 10. COMPLIANCE WITH APPLICABLE LAWS, PERMITS, AND LICENSES.

CONSULTANT shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this AGREEMENT. CONSULTANT shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this AGREEMENT. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.

CONSULTANT shall obtain and maintain in full force and effect during the term of this AGREEMENT a Business License from the CITY’s Finance Department.

SECTION 11. NONDISCRIMINATION.

CONSULTANT shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with or related to the performance of this AGREEMENT.

SECTION 12. UNAUTHORIZED ALIENS.

CONSULTANT hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should CONSULTANT so employ such unauthorized aliens for the performance of work and/or services covered by this AGREEMENT, and should any liability or sanctions be imposed against CITY for such use of unauthorized aliens, CONSULTANT hereby agrees to and shall reimburse CITY for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys’ fees, incurred by CITY.

SECTION 13. CONFLICTS OF INTEREST.

(a) CONSULTANT covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of CITY or which would in any way hinder CONSULTANT’s performance of services under this AGREEMENT. CONSULTANT further covenants that in the performance of this AGREEMENT, no
person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. CONSULTANT agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY in the performance of this AGREEMENT.

(b) CITY understands and acknowledges that CONSULTANT is, or may be, as of the date of execution of this AGREEMENT, independently involved in the performance of non-related services for other governmental agencies and private parties. CONSULTANT is unaware of any stated position of CITY relative to such projects. Any future position of CITY on such projects shall not be considered a conflict of interest for purposes of this section.

SECTION 14. CONFIDENTIAL INFORMATION AND RELEASE OF INFORMATION.

(a) All information gained or work product produced by CONSULTANT in performance of this AGREEMENT shall be considered confidential, unless such information is in the public domain or already known to CONSULTANT. CONSULTANT shall not release or disclose any such information or work product to persons or entities other than CITY without prior written authorization from the City Administrator, except as may be required by law.

(b) CONSULTANT, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of CITY, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this AGREEMENT. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives CITY notice of such court order or subpoena.

(c) If CONSULTANT, or any officer, employee, agent or subcontractor of CONSULTANT, provides any information or work product in violation of this AGREEMENT, then CITY shall have the right to reimbursement and indemnity from CONSULTANT for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of CONSULTANT's conduct.

(d) CONSULTANT shall promptly notify CITY should CONSULTANT, its
officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this AGREEMENT and the work performed thereunder. CITY retains the right, but has no obligation, to represent CONSULTANT or be present at any deposition, hearing or similar proceeding. CONSULTANT agrees to cooperate fully with CITY and to provide CITY with the opportunity to review any response to discovery requests provided by CONSULTANT. However, this right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response.

SECTION 15. INDEMNIFICATION.

(a) CITY and its elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "INDEMNITEES") shall have no liability to CONSULTANT or any other person for, and CONSULTANT shall indemnify, defend, protect and hold harmless INDEMNITEES from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "CLAIMS"), which INDEMNITEES may suffer or incur or to which INDEMNITEES may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of or allegedly caused by the CONSULTANT's performance of or failure to perform any services under this AGREEMENT or by the negligent or willful acts or omissions of CONSULTANT, its agents, officers, directors, subcontractors or employees, committed in performing any of the services under this AGREEMENT.

(b) If any action or proceeding is brought against INDEMNITEES by reason of any of the matters against which CONSULTANT has agreed to indemnify INDEMNITEES as provided above, CONSULTANT, upon notice from CITY, shall defend INDEMNITEES at CONSULTANT's expense by counsel acceptable to CITY, such acceptance not to be unreasonably withheld. INDEMNITEES need not have first paid for any of the matters to which INDEMNITEES are entitled to indemnification in order to be so indemnified. The insurance required to be maintained by CONSULTANT under SECTION 16 shall ensure CONSULTANT's obligations under this section, but the limits of such insurance shall not limit the liability of CONSULTANT hereunder. The provisions of this section shall survive the expiration or earlier termination of this AGREEMENT.

(c) The provisions of this section do not apply to CLAIMS occurring as a result of the CITY's sole negligence or willful acts or omissions.
SECTION 16. INSURANCE.

CONSULTANT agrees to obtain and maintain in full force and effect during the term of this AGREEMENT the insurance policies set forth in EXHIBIT "C" "INSURANCE" and made a part of this AGREEMENT. All insurance policies shall be subject to approval by CITY as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Administrator. CONSULTANT agrees to provide CITY with copies of required policies upon request.

SECTION 17. ASSIGNMENT.

The expertise and experience of CONSULTANT are material considerations for this AGREEMENT. CITY has an interest in the qualifications and capability of the persons and entities who will fulfill the duties and obligations imposed upon CONSULTANT under this AGREEMENT. In recognition of that interest, CONSULTANT shall not assign or transfer this AGREEMENT or any portion of this AGREEMENT or the performance of any of CONSULTANT's duties or obligations under this AGREEMENT without the prior written consent of the CITY. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this AGREEMENT entitling CITY to any and all remedies at law or in equity, including summary termination of this AGREEMENT. CITY acknowledges, however, that CONSULTANT, in the performance of its duties pursuant to this AGREEMENT, may utilize subcontractors.

SECTION 18. CONTINUITY OF PERSONNEL.

CONSULTANT shall make every reasonable effort to maintain the stability and continuity of CONSULTANT's staff assigned to perform the services required under this AGREEMENT. CONSULTANT shall notify CITY of any changes in CONSULTANT's staff assigned to perform the services required under this AGREEMENT, prior to any such performance.
SECTION 19. TERMINATION OF AGREEMENT.

(a) CITY may terminate this AGREEMENT, with or without cause, at any time by giving thirty (30) days written notice of termination to CONSULTANT. In the event such notice is given, CONSULTANT shall cease immediately all work in progress.

(b) CONSULTANT may terminate this AGREEMENT at any time upon thirty (30) days written notice of termination to CITY. In the event such notice is given, CONSULTANT shall cease immediately all work in progress.

(c) If either CONSULTANT or CITY fail to perform any material obligation under this AGREEMENT, then, in addition to any other remedies, either CONSULTANT, or CITY may terminate this AGREEMENT immediately upon written notice.

(d) Upon termination of this AGREEMENT by either CONSULTANT or CITY, all property belonging exclusively to CITY which is in CONSULTANT's possession shall be returned to CITY. CONSULTANT shall furnish to CITY a final invoice for work performed and expenses incurred by CONSULTANT, prepared as set forth in SECTION 4 of this AGREEMENT. This final invoice shall be reviewed and paid in the same manner as set forth in SECTION 4 of this AGREEMENT.

SECTION 20. DEFAULT.

In the event that CONSULTANT is in default under the terms of this AGREEMENT, the CITY shall not have any obligation or duty to continue compensating CONSULTANT for any work performed after the date of default and may terminate this AGREEMENT immediately by written notice to the CONSULTANT.

SECTION 21. EXCUSABLE DELAYS.

CONSULTANT shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of CONSULTANT. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of CITY, court orders, fires, floods, epidemics, strikes,
embargoes, and unusually severe weather. The term and price of this AGREEMENT shall be equitably adjusted for any delays due to such causes.

SECTION 22. COOPERATION BY CITY.

All public information, data, reports, records, and maps as are existing and available to CITY as public records, and which are necessary for carrying out the work as outlined in the EXHIBIT "A" "SCOPE OF SERVICES", shall be furnished to CONSULTANT in every reasonable way to facilitate, without undue delay, the work to be performed under this AGREEMENT.

SECTION 23. NOTICES.

All notices required or permitted to be given under this AGREEMENT shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To CITY:

____________________
City Manager
____________________
____________________
____________________
____________________
____________________

To CONSULTANT:

____________________
____________________
____________________
____________________
____________________

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

SECTION 24. AUTHORITY TO EXECUTE.

The person or persons executing this AGREEMENT on behalf of CONSULTANT represents and warrants that he/she/they has/have the authority
to so execute this AGREEMENT and to bind CONSULTANT to the performance of its obligations hereunder.

SECTION 25. BINDING EFFECT.

This AGREEMENT shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

SECTION 26. MODIFICATION OF AGREEMENT.

No amendment to or modification of this AGREEMENT shall be valid unless made in writing and approved by the CONSULTANT and by the CITY. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

SECTION 27. WAIVER

Waiver by any party to this AGREEMENT of any term, condition, or covenant of this AGREEMENT shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this AGREEMENT shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this AGREEMENT. Acceptance by CITY of any work or services by CONSULTANT shall not constitute a waiver of any of the provisions of this AGREEMENT.

SECTION 28. LAW TO GOVERN; VENUE.

This AGREEMENT shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in Alameda County. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Northern District of California, in San Francisco.

SECTION 29. CLAIMS.

All claims arising out of or related to this agreement must be presented not later than six (6) months after the accrual of the cause of action. Such claims shall be governed by the provisions of the Albany Municipal Code and such claims shall further be governed by the provisions of section 930.4 of the Government Code for the purposes of filing leave to present a later claim. It is further provided that subdivision (b) of section 911.4 sections 911.6 to 912.2, inclusive and section 946.6 are applicable to all such claims, and the time specified in this agreement shall be deemed the “time specified” in section 911.2 within the meaning of sections 911.6 and 946.6.
SECTION 30. ENTIRE AGREEMENT.

This AGREEMENT, including the attached EXHIBITS "A" through "C", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between CONSULTANT and CITY prior to the execution of this AGREEMENT. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding. No amendment to this AGREEMENT shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 31. SEVERABILITY.

If any term, condition or covenant of this AGREEMENT is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this AGREEMENT shall not be affected thereby and the AGREEMENT shall be read and construed without the invalid, void or unenforceable provision(s).

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

CITY OF ALBANY: CONSULTANT:

By________________________________  By___________________________
   City Manager                                         (Authorized Officer)

APPROVED AS TO FORM:

By___________________________
   (Authorized Officer)

Craig Labadie, City Attorney

Name: _____________________
Title: _____________________
EXHIBIT C  INSURANCE

CONSULTANT shall procure and maintain for the duration of the contract such insurance, in the forms and amounts specified by CITY, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, his/her agents, representatives, employees or subcontractors.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE.  CONSULTANT shall maintain minimum limits of insurance as follows:

1. General Liability: $1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage.


B. DEDUCTIBLES AND SELF-INSURED RETENTIONS.  Any deductibles or self-insured retentions must be declared to and approved by the CITY.  At the option of the CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, consultants and volunteers; or the CONSULTANT shall provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.

C. OTHER INSURANCE PROVISIONS.  The general liability and automobile policies are to contain, or be endorsed to contain, the following provisions:

1. The CITY, its officers, officials, employees, consultants, and volunteers are to be covered as insured with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONSULTANT; and
with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts or equipment furnished in connection with such work or operation. General liability coverage can be proved in the form of an endorsement to the CONSULTANT'S insurance or as a separate owners policy.

2. For any claims related to this project, the contractor's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested has been given to the CITY.

D. ACCEPTABILITY OF INSURERS. Insurance is to be placed with a current A.M. Best's rating of no less than A:II.

E. VERIFICATION OF COVERAGE. CONSULTANT shall furnish the CITY with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the CITY or on other than the entity's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the CITY before work commences. The CITY reserves the right to require complete, certified copies of all required insurance policies including endorsements effecting the coverage required by these specifications at any time.

F. SUBCONTRACTORS. CONSULTANT shall include all subcontractors as insureds under its policies or each subcontractor shall furnish separate certificates and endorsements. All coverages for subcontractors shall be subject to all of the requirements stated herein.