SUBJECT: Contract No. C19-22 for Consulting Services with Restoration Design Group for Lower Codornices Creek Monitoring and Maintenance Permit Assistance

REPORT BY: Claire Griffing, Sustainability & Resilience Manager
Jeff Bond, Community Development Director

SUMMARY

The action before the Council is to authorize the City Manager to enter into an agreement with Restoration Design Group to provide monitoring and maintenance permit assistance for lower Codornices Creek.

STAFF RECOMMENDATION

That the Council adopt Resolution No. 2018-121, authorizing the City Manager to enter into an agreement with Restoration Design Group in the amount not to exceed $50,000 to provide monitoring and maintenance permit assistance for lower Codornices Creek.

BACKGROUND

Lower Codornices Creek forms the boundary between the cities of Berkeley and Albany, and on the Albany side, the primary owner is the University of California (University Village). The planning and implementation of the restoration of Codornices Creek between Kains Avenue to Interstate 80 has been ongoing since the late 1990’s, and involves the City of Albany, the City of Berkeley, and the University of California. The project runs from the Railroad tracks on the west to San Pablo Avenue on the east. The City entered into a three-way Memorandum of Understanding with the University of California and the City of Berkeley in 2004.

Three phases of the project, from 8th Street downstream to the railroad tracks, have been completed to date. Among the many adjacent uses in this area, the creek project has restored a native riparian habitat in the midst of an urban setting. The trail connects to local and regional bicycle trail networks, and provides recreational, educational and stewardship
opportunities, as well as restoring habitat to native Steelhead Trout, and improving water conveyance capacity next to UC Berkeley student housing.

Grants for these projects require the City of Albany to monitor Codornices Creek Restoration annually for five years after each restoration phase with follow up monitoring in year 8 and final monitoring in all areas and a final report in year 10 of each restoration phase. To date, RDG has completed years 1-7 (2011-2017) and is in the process of completing year 8 (2018).

Following a hiatus for a number of years, Planning and Public Works staff at the cities of Albany and Berkeley, along with UC Berkeley, have been meeting monthly to discuss creek improvements and maintenance activities along Codornices Creek. The group has been reviewing the Memorandum of Understanding (MOU) for lower Codornices Creek to ensure creek maintenance is consistent and appropriate. The three agencies conducted a walk of the entire project area on August 22nd, and Restoration Design Group (RDG) is helping to determine appropriate maintenance activities before applying for necessary maintenance permits from regulatory agencies.

**DISCUSSION**

The attached Scope of Services continues the previous RDG contract for required creek monitoring for the final two years of creek monitoring (2019-2020). The scope also includes assistance with obtaining necessary maintenance permits. The first phase of this assistance is outlined in the attached Scope of Services, which includes assistance in developing a maintenance plan for Codornices Creek from San Pablo Avenue to the Union Pacific Railroad that will document the expected maintenance activities for submittal and approval by the relevant permitting agencies. Once the maintenance plan is complete, the three agencies will work with RDG to determine the next appropriate step. This will likely include a biological assessment and permit applications. Phase 2 of the contract with RDG will include assistance with permit applications and negotiations with regulatory agencies. The cost of these services is dependent on the conclusions in the maintenance plan, but is estimated at $10,000-$15,000.

RDG has been involved in the design and construction of Phases 1, 2, and 3 of the Codornices Creek restorations, as well as providing monitoring services since 2011. They have also prepared annual reporting for project stakeholders. The City of Berkeley and University of California have also reviewed the attached proposal and are in acceptance of continuing hiring RDG for these services.
Per the MOU, there is $452,000 currently held by an escrow company set aside for monitoring, trail and landscape maintenance, culverts, and bridge maintenance in Berkeley and Albany. A transfer of maintenance funds from the escrow account to Albany is currently being processed by UC Berkeley and the City of Berkeley. This funding will cover the cost of the RDG contract and the subsequent maintenance activities. UC Berkeley and the City of Berkeley will invoice the City of Albany for maintenance performed in line with the agreement, to be paid with these funds.

**SUSTAINABILITY IMPACT**
Codornices Creek is a perennial stream that flows from the hills east of San Francisco Bay. The approximately 1.5 square mile watershed extends from the headwaters in the Berkeley Hills and drains ultimately to the San Francisco Bay crossing City of Albany. It is one of the most open creeks in this area of San Francisco Bay and represents an important fish run along the Bay. Maintenance activities are necessary to protect the creek and its fish habitat.

**FINANCIAL IMPACT**
This contract with RDG is for the amount not to exceed $50,000. Funds for this contract will be sourced from the Codornices Creek Maintenance Fund escrow account, which is a joint account between the City of Albany, Berkeley and UC and is administered by the City of Albany as laid out on the original Memorandum of Understanding (MOU) between the three agencies.

**Attachments**
1. Resolution No. 2018-121 Authorizing the City Manager to Enter into an Agreement with Restoration Design Group
3. Contract Exhibit A: Scope of Work, Budget, and Project Schedule
RESOLUTION NO. 2018-121

A RESOLUTION OF THE ALBANY CITY COUNCIL AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH RESTORATION DESIGN GROUP FOR MONITORING AND MAINTENANCE PERMIT ASSISTANCE FOR LOWER CODORNICES CREEK

WHEREAS, the City of Albany has partnered with the City of Berkeley and the University of California since the late 1990s to restore the portion of lower Codornices Creek between San Pablo Avenue and the train tracks as a vital riparian habitat and a resource to the community; and

WHEREAS, the first few phases of the project have been completed successfully, and the City is obligated to continue monitoring activities through 2020; and

WHEREAS, the City of Albany has been working with Restoration Design Group staff since the beginning of the Codornices Creek Project for creek monitoring; and

WHEREAS, the City must obtain necessary permits before moving forward with required maintenance activities along the creek.

NOW, THEREFORE, BE IT RESOLVED, that the Albany City Council hereby authorizes the City Manager to enter into an agreement (Contract C19-22) with Restoration Design Group in an amount not to exceed $50,000 to provide assistance with creek monitoring and maintenance permits for lower Codornices Creek.

PEGGY MCQUAID, MAYOR
CONTRACT #C19-22  
AGREEMENT FOR CONSULTANT SERVICES  
BETWEEN  
THE CITY OF ALBANY  
AND  
RESTORATION DESIGN GROUP  
FOR PROJECT:  
LOWER CODORNICES CREEK MONITORING AND MAINTENANCE PERMIT ASSISTANCE  

This AGREEMENT FOR CONSULTANT SERVICES ("AGREEMENT"), is made and entered into this ___ day of ___________ 2018 by and among the City of Albany a California charter city ("CITY") and Restoration Design Group, Inc. ("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 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 $50,000 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. Provide City of Albany Business License number and Expiration Date on Page 11 of this contract.
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 M., 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 of 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: Claire Griffing
Sustainability & Resilience Manager
City of Albany
1000 San Pablo Avenue
Albany, CA 94706

To CONSULTANT: RICH WALKLING
CFO
RESTORATION DESIGN GROUP
2332 5TH ST, SUITE C
BERKELEY, CA 94702

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:

By ________________________________
Nicole Almaguer, City Manager

Date ________________________________

CONSULTANT:

By ________________________________
(Authorized Officer)
Name: DREW GOETTING
Title: CEO

By ________________________________
(Authorized Officer)
Name: RICH WALKLING
Title: CFO

APPROVED AS TO FORM:

Craig Labadie, City Attorney

Date ________________________________

City of Albany Business ID #:

BL 2002 (ACCT# 3062)

Expiration Date:

12/31/18
SCOPE OF SERVICES
Amendment
Lower Codornices Creek Monitoring and Maintenance Plan Assistance

Project Understanding
As part of the Lower Codornices Creek restoration projects (Phases I-III), the City of Albany has contracted with the Restoration Design Group to complete the post-project monitoring required by the various state and federal permitting agencies. To date, RDG has completed years 1-7 (2011-2017) and is in the process of completing year 8 (2018). This scope amendment covers the final two years of creek monitoring (2019-2020) and is focused on Phase III only. A full monitoring schedule is shown on page 4.

The City of Albany and its partners are also interested in developing a maintenance plan for Codornices Creek from San Pablo Avenue to the Union Pacific Railroad that will document the expected maintenance activities for submittal and approval by the relevant permitting agencies. RDG has been asked to assist in this effort as described in tasks 5 and 6. Initial tasks focus on the development of the plan and not the permitting.

The existing contract for Codornices Creek Monitoring (#C13-19) will be amended to include these new tasks as described below.

Task 1. 2019 Creek Monitoring
RDG will perform creek morphology and stability monitoring of Phase III in 2019, related data reduction and analysis, and photo-monitoring. Monitoring activities will include:

- Longitudinal Profile
- Cross Sections; resurvey existing cross sections
- Visual inspections of creek

Task deliverable: All field work, data entry, reduction, analysis, and photo-monitoring to be included in the annual supplement (Task 2).

Task 2. 2019 Annual Monitoring Supplement
RDG will compile and prepare the annual monitoring supplement for submission to the Regional Water Quality Control Board and Army Corps of Engineers. The supplement will update the previous report with the results of the recent monitoring efforts.

Task deliverable: 2018 Monitoring Supplement

Task 3. 2020 Creek Monitoring
RDG will perform creek morphology and stability monitoring, related data reduction and analysis, and photo-monitoring. Monitoring activities will include:
• Longitudinal Profile
• Cross Sections; resurvey existing cross sections
• Visual inspections of creek

RDG will conduct the vegetation portion of the annual monitoring as detailed in the Monitoring Plan. The goal of monitoring restoration vegetation is to assess the success of riparian habitat and to determine if the performance criteria outlined in the Monitoring Plan are met. This monitoring will fulfill permit conditions for the Regional Water Quality Control Board.

The California Stream Bioassessment Procedure (CSBP, CDFG 1999) will be used to collect and analyze benthic macroinvertebrates in Codornices Creek. Taxonomic richness and the EPT index, in particular, will be used to assess conditions at the reaches of Codornices Creek.

The project fisheries biologist Jeff Hagar of Hagar Environmental Science (HES) will conduct a qualitative assessment of the creek aquatic habitat to assess the following questions:

• Estimate the frequency and relative extent of pool and riffle habitat types in the study reach and measure pool depths;
• Evaluate the extent of cover in the study reach and characterize the habitat in terms of ability to support steelhead in comparison to other Central Coast streams;
• Note the presence of any fish migration passage obstacles;
• Provide a qualitative assessment of macro-invertebrate populations that are visible at the time of the survey; and
• Record any observations of trout or steelhead (Oncorhynchus mykiss), California red-legged frog (CRLF), or other aquatic life visible during the time of the survey.

*Task deliverable:* All field work, data entry, reduction, analysis, and photo-monitoring to be included in the annual report (Task 4).

**Task 4. 2020 Annual Monitoring Report**
RDG will compile and prepare the annual monitoring report for submission to the Regional Water Quality Control Board and Army Corps of Engineers. The complete reports will provide a comprehensive summary of the monitoring performed to date.

*Task deliverable:* 2020 Monitoring Report

**Task 5. Creek Map with Property Lines - $2,800**
RDG will develop a creek map with property lines and approximate channel boundaries overlaid on a faded aerial photograph. The creek map will extend from San Pablo Avenue to the UPRR. The client will review a draft with
interested parties and return written comments to RDG. Based on these comments, RDG will develop a final version of the creek map.

Deliverables:
- Draft creek map (PDF)
- Final creek map (PDF)

**Task 6. Maintenance Plan Development Support - $6,500**
RDG (two staff members) will attend a site walk scheduled by the City of Albany with any partners the City would like to include. The site walk will focus on identifying a laundry list of maintenance activities and locations that will be developed into a “plan”. RDG will draft the list along with a brief memo describing the actions that will serve as the foundation of the maintenance plan. The client will review a draft with interested parties and return written comments to RDG. Based on these comments, RDG will develop a final version of the list and memo. Once complete, the City, its partners, and RDG will determine the next appropriate step.

Deliverables:
- Draft maintenance list and memo (PDF)
- Final maintenance list and memo (PDF)

### F E E

<table>
<thead>
<tr>
<th>Task</th>
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<td>1. 2019 Creek Monitoring</td>
<td>$3,200</td>
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<td>2. 2019 Annual Monitoring Supplement</td>
<td>$1,800</td>
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<td>3. 2020 Creek Monitoring</td>
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<td>4. 2020 Annual Monitoring Report</td>
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<td>5. Creek Map with Property Lines</td>
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<td>6. Maintenance Plan Development Support - $6,500</td>
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<td><strong>TOTAL</strong></td>
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# Project Schedule

## Completed Items

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<tr>
<th>Calendar Year</th>
<th>Phase</th>
<th>Geomorphic Survey</th>
<th>Vegetation Survey</th>
<th>BMI Survey</th>
<th>Fish Survey</th>
<th>Report</th>
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## Current Scope Items

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<th>Calendar Year</th>
<th>Phase</th>
<th>Geomorphic Survey</th>
<th>Vegetation Survey</th>
<th>BMI Survey</th>
<th>Fish Survey</th>
<th>Report</th>
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## Certificate of Liability Insurance

**Date (MM/DD/YYYY):** 09/16/2018

**Certificate Number:** 17-18 WC 18-19 GL UM EQ

**Revision Number:**

### Coverages

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<td>MED EXP (Any one person): $10,000</td>
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<td>BODILY INJURY (Per accident): $</td>
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**Description of Operations / Locations / Vehicles (ACORD 101, Additional Remarks Schedule, may be attached if more space is required):**

Re: Codornices Creek Monitoring. City of Albany, its officers, officials, employees, consultants and volunteers are included as additional insured on General Liability policy.

### Certificate Holder

City of Albany
Attr: Anne Hsu
1000 San Pablo Avenue
Albany, CA 94706

### Cancellation

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

Authorized Representative

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