

City of Albany

AMENDMENT No.1

TO CONTRACT AGREEMENT No. C08-10

FOR PROFESSIONAL SERVICES BETWEEN

THE CITY OF ALBANY AND

FERN TIGER ASSOCIATES

FOR PROJECT:

WATERFRONT VISIONING PROCESS

FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT dated May 6, 2008 between the CITY OF ALBANY, a California Charter City, herein referred to as CITY, and FERN TIGER ASSOCIATES, a California corporation, partnership, LLC, LLP, or individual, herein referred to as CONSULTANT, is executed in duplicate this 3rd day of June, 2011.

Said AGREEMENT is hereby modified 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 extend until terminated by either party.

SECTION 3. ADDITIONAL SERVICES

CITY has requested additional services from CONSULTANT, to conduct community engagement, public education, consulting, graphic design, media, and other professional services relating to the proposal under development by the owner of the Golden Gate Fields property in Albany for a second campus for the Lawrence Berkeley National Laboratory. These services will be provided in the context of the waterfront visioning process conducted by the CONSULTANT and the recommended guidelines that CONSULTANT prepared that emerged from this process, otherwise known as Voices to Vision.

SECTION 4. COMPENSATION AND METHOD OF PAYMENT.

CONSULTANT will bill monthly for services rendered at the rate of \$250.00 per hour, plus administrative costs. Expenses shall be invoiced separately, as incurred, and paid in full plus administrative costs.

A retainer payment of \$35,000 will be paid to CONSULTANT within 15 (fifteen days) of execution of this amendment. This retainer amount shall be applied to the final invoice(s) from CONSULTANT.

Each month CONSULTANT shall furnish to CITY an original invoice for all work performed and expenses incurred during the preceding month. A written summary of the work performed shall accompany the invoice. If 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, within seven days of receipt of invoice.

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.

CONSULTANT understands and acknowledges that CITY will pay for the services contained in this agreement through payments received by the CITY from the Stronach Corporation, the owner of the Golden Gate Fields property, as identified in the attached Reimbursement Agreement (Exhibit "B"). City will move to execute reimbursement agreement with Stronach Corporation simultaneous with this agreement with the consultant. CONSULTANT understands and acknowledges that CITY will not be responsible for payment for services to CONSULTANT performed before execution of the Reimbursement Agreement or after termination of the Reimbursement Agreement, except upon written agreement by CITY. CITY agrees to notify CONSULTANT within two (2) business days of notification to CITY of termination of the Reimbursement Agreement or CITY termination of the Reimbursement Agreement.

SECTION 6. OWNERSHIP OF DOCUMENTS

Amended subsections 6(a) and 6(b):

- (a) CONSULTANT shall retain all original maps, drawings, studies, surveys, reports, transcripts, data, and notes related to this project, as well as all work other than completed publications.
- (b) CONSULTANT shall retain copyright of all photographs taken in conjunction with this project. Per standard professional photography practice and in recognition of the fact that CONSULTANT is neither being retained as "photographer for hire" nor being compensated at standard professional photography day rates, CONSULTANT will retain all negatives, digital files, and prints. For any future use of these images, CONSULTANT retains the right to operate in conjunction with standard professional photography practice and fees. CONSULTANT retains the right to charge "use fees" for use in publications created by CONSULTANT for the City of Albany related to materials included in this contract. Should City wish to use photographs apart from these publications, City will request permission from CONSULTANT prior to using them;

such permission shall not be unreasonably withheld. CONSULTANT will charge reproduction and associated research, refile charges, as appropriate at the discretion of the consultant, to cover costs.

SECTION 14. CONFIDENTIAL INFORMATION AND RELEASE OF INFORMATION

Amended subsection 14(a):

(a) All information gained or work product produced by CONSULTANT^{JK} in performance of this AGREEMENT shall be considered confidential, unless such information is in the public domain or already known to CONSULTANT.

SECTION 19. TERMINATION OF AGREEMENT.

New subsection (e):

(e) CONSULTANT understands and acknowledges that CITY authorization to continue the term of this amendment beyond June 20, 2011, may be contingent upon approval of the City Council of the City of Albany on June 20, 2011. CITY shall notify CONSULTANT on June 21, 2011 if immediate termination of the agreement is required.

IN WITNESS WHERE OF, the parties of the AGREEMENT have caused this AMENDMENT to be executed the day and year first above written.

CITY OF ALBANY

By: Beth Pollard
Beth Pollard, City Manager

Date: 6-28-11

CONSULTANT

By: [Signature]
(Authorized Officer)

Date: 6/28/11