



CITY OF ALBANY, CALIFORNIA

REQUEST FOR PROPOSALS (RFP)

**ASSESSMENT DISTRICT ENGINEERING / FINANCE & ADMINISTRATION SERVICES
FOR PROPERTY ASSESSMENTS, FEES, TAXES COLLECTED ON PROPERTY TAX**

(Landscaping and Lighting Districts, Sewer Service Charges, Emergency Medical Services Taxes, Paramedic & Advanced Life Support Taxes, Library Taxes, Storm Water Management & Discharge Control Fees, and Street & Storm Drain Taxes)

CITY BACKGROUND

The City of Albany was incorporated in 1908 and has been a charter city in Alameda County since 1927. The City has a permanent staffing level of approximately 84 City employees and serves an estimated 18,430 residents. The City is 1.7 square miles. The City provides a full range of services including police and fire protection, paramedic service, street and sewer maintenance, recreational activities and cultural events. A public library is operated by the County of Alameda in facilities provided by the City. Assessments, fees, and taxes related to this RFP are not covered under the Alameda County Teeter Plan; therefore property charges are only received by the City as they are paid by taxpayers.

RFP PROJECT OVERVIEW

The City of Albany is requesting proposals from qualified firms to provide Assessment District Engineering and Finance & Property Fee Administration Services to assist with the preparation of tax roll data to be submitted to the Alameda County Tax Collector for collection as part of individual property tax billings. An automated process to provide preliminary budget estimates in advance of preparing the tax roll is necessary. In addition to preliminary budget estimates, firms should be capable of providing City Staff with preliminary information related to parcel changes including owner information.

The preferred firm shall be familiar with the laws and regulations associated with property related fees and charges. For Assessments levied under the requirement for an Engineer's Report, the Consultant shall sign the required report. The Consultant shall be capable of delivering the final tax rolls in a format and within the timelines dictated by the County of Alameda. The required services and performance requirements are more fully described in the Scope of Work/Services.

Consultant Registration/Contact Information

In order to be assured that all Proposers receive any updates or clarifications issued, Proposers are requested to register with the City, by providing the information below:

Firm Name

Contact Person Name & Title

Mailing Address

Email Address for Contact Person

Telephone Number

Fax Number

You may forward the information above by email to:

PRankin@albanyca.org

NOTE: If you have not received a registration confirmation email response to your email registration within two business days, then please contact Paul Rankin at (510) 528-5733 to confirm the receipt of your registration.

Proposal Submission Deadline

Proposals shall be submitted in 2 parts on or before Tuesday, March 18, 2014, at 1:00 p. m. as follows:

**Electronic Proposal* (preferred) without
Proposer Fee Information (Part 1) to:**

**Paul Rankin, Interim Finance Director
City of Albany
PRankin@albanyca.org**

AND

**Hard Copy of
Paul Rankin, Interim Finance Director
Proposed Fees Only (Part 2) to:**

**PLEASE LABEL SEALED ENVELOPE:
"FEE PROPOSAL ASSESSMENT ENGINEER /
ADMINISTRATION" ATTENTION: P. RANKIN
City of Albany Finance Department
1000 San Pablo Avenue
San Pablo, CA 94706
(Hours: 8:30 a. m. to 5:00 p. m.)**

* The City is supportive of Green Business practices. Although responders may choose to present a hard copy of Part 1 in addition to the electronic copy. The City would request that any attachments, brochures, etc are specifically related to the material requested.

The City will not pay for any costs incurred in preparation and submission of proposals or in anticipation of a contact. The format of submittals is required to be as follows:

- Proposals **(without proposed fees)** shall be in electronic form as an uncompressed Adobe Acrobat attachment to an email addressed to PRankin@albanyca.org. Total e-mail size cannot exceed 15 MB.
Proposed fees shall be separately delivered by hard copy, as described above.

During the evaluation process, the City reserves the right to request additional information or clarifications from Proposers, waive informalities and irregularities, or allow corrections of errors or omissions. At the discretion of the City, forms submitting proposals may be requested to make oral presentations as part of the evaluation process. The City is under no obligation to return proposals. A Proposer may withdraw its proposal any time before the expiration of the time for submission of proposals as provided in the RFP by delivering a written request for withdrawal signed by, or on behalf of, the Proposer.

Subcontracting

The Consultant selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, the primary Consultant assumes all responsibility for services required of a subcontractor. The proposal shall disclose and briefly describe the use of subcontractors, including their specific scope of work.

Agreement Form

It is anticipated the agreement resulting from this solicitation, if awarded, will be a fixed fee for the basic scope of work. The total fee shall be broken down and allocated by each Proposer to each of the different assessments/fees/taxes being levied (i. e. a fee associated with Sewer Service Charges, a separate fee for Emergency Medical Service tax, etc.).

TERM: The initial term of the agreement will be for approximately 3 years with an option to extend for an additional 2 years.

A sample of the City's standard Agreement for Consulting Services (Agreement) is provided in PDF format as Attachment 3. If a Proposer desires to take exception to any portions of the Agreement, Proposer shall clearly identify proposed changes to the Agreement and furnish the reasons for these requested changes. The exceptions will be taken into account in evaluating proposals.

Contact Information

All requests, questions, or other communications ***(other than the submittal of Proposed Fees)*** regarding this RFP shall be made in writing to the City via e-mail. Address all communications to the person listed below. During the pre-proposal inquiry period (described below), answers will be summarized and distributed by City staff to all Proposers without identifying the original source of the question. Firms should rely only on written statements issued by the person named below:

Paul Rankin, Interim Finance Director
City of Albany
E-mail: PRankin@albanyca.org

Pre-Proposal Inquiry Period

Consultants are encouraged to review the complete RFP and submit in writing any clarifying questions. In order to allow adequate time, Consultants are encouraged to submit any questions or clarifications by Wednesday, March 12, 2014.

Right of Rejection by City

The City reserves the right to reject any or all proposals. The City reserves the right to award this contract to the firm that best meets the requirements of the RFP, and not necessarily to the lowest bidder. The City reserves the right to reject any or all proposals prior to execution of the contract, with no penalty to the City.

Project Dates

RFP Issued:	Wednesday, February 26, 2014
Deadline for Submitting Written Questions:	Wednesday, March 12, 2014
Deadline for Receipt of Proposals:	<u>1:00 PM on Tuesday, March 18, 2014</u>
Finalist Interviews:	Week of March 24, 2014
City Council Approval/Contract Award	Tentatively April 7, 2014

Time is of the essence. The successful Proposer should be ready to begin work immediately following the award of contract.

Attachments

The attachments below are included with this Request for Proposals (RFP) for your review:

- 1) Scope of Services (Attachment 1)
- 2) Background related to current Assessment/Fee/Tax Data (Attachment 2)
- 3) Sample Agreement for Consulting Services Agreement (Separate PDF – Attachment 3)

Proposer Information

The proposal shall be concise and to the point. Examples of previous work may be submitted, but will not necessarily influence the evaluation process. The Proposer is required to include the following information in the proposal:

- 1) The names and resumes of staff as well as sub-consultants expected to work on this project, including roles they would serve in this engagement, their related experience, etc. Key personnel will be an important factor considered in selecting a consultant.
- 2) A written description of the methods, including a well-conceived work plan and schedule. It should include a full description of major tasks and subtasks that will be included to address the Scope of Services (Attachment 1). It shall also establish that the Proposer understands the City objectives, **statutory deadlines for submittal of the tax roll** and work requirements.
- 3) Costs – **All fees shall be submitted separately from the rest of the proposal, as described previously under the “Proposal Submission Deadline” section of this RFP.** It is appropriate to include any cost breakdown of major components or milestones. If there are any reimbursable billable expenses, an estimated “Not to Exceed Amount” shall be provided, and it shall be clearly identified as to how these expenses will be billed.

Consultants shall provide the full cost associated with each of the separate nine fees/assessments/taxes. For the Sewer Service Charge, Proposer shall identify the estimated cost of the public notice. It is the City’s intent to award an agreement for all nine fees to a single Proposer.

Provide estimates of all other expenses and/or one-time fees that will be invoiced to the City. The pricing should identify the cost of services each year for the three year period. If there are escalators which may affect future year pricing, please indicate the factors and how they will be applied (i. e. CPI, number of units assessed, etc.).

- 4) Optional Costs – **All fees shall be submitted separately from the rest of the proposal, as described previously under the “Proposal Submission Deadline” section of this RFP.** Firms may have additional services that they offer that were not requested by the City. As part of the response, firms may identify these as optional and submit a separate cost.
- 5) References – Contact names and phone numbers for at least three public agency or special district references for which you have performed similar engagements. Please include a brief description of the level of administration services provided; the agency contact name and phone number; key consultant personnel involved; number of years providing the service; and the number of parcels and amount of fees collected.
- 6) Requested exceptions, changes, revisions, or comments to any element of the standard agreement or insurance requirements.
- 7) Proposed project schedule indicating timelines for deliverables, critical meetings, and the completion of each task.
- 8) All proposals must state the period for which the proposal shall remain in effect. Such period shall not be less than 90 days from the proposal date. By submitting the proposal it is expected that the firm has carefully read and fully understands the information that was provided by the City to serve as the basis for submission of the proposal.

9) Acknowledgment of receipt of the Revised RFP dated February 27, 2014.

Review and Selection Process

The City reserves the right to make the selection based on its sole discretion. A subcommittee of City Staff will evaluate the proposals provided in response to this RFP, which will be rated based on the current needs of the City, including the following criteria:

- i) Quality and completeness of the proposal.
- ii) Proposer’s experience with engagements of similar scope and complexity, including the experience of staff to be assigned to the project.
- iii) Proposer’s ability to schedule and efficiently perform the work.
- iv) Proposer’s prior record of performance with the City or others.

Based upon this review, finalist Proposers may be invited to participate in an interview process to be scheduled. At the election of the City, the interview may be via telephone or in-person. The purpose of the

interview is to allow the **finalist** Proposers to further explain their proposals. **The subcommittee will recommend a Proposer based upon the above listed criteria, and will then review the cost effectiveness of the proposal compared to the scope of work to ensure that the services would be performed at a reasonable price.** Based upon input from this review process, a recommendation will be made to the City Manager. The City Manager will make a recommendation to the City Council, if necessary.

ATTACHMENT 1

SCOPE OF SERVICES

**ASSESSMENT DISTRICT ENGINEERING AND FINANCE & ADMINISTRATION SERVICES FOR
PROPERTY ASSESSMENTS, FEES, AND TAXES
COLLECTED ON PROPERTY TAX BILLS**

(Landscaping and Lighting Districts, Sewer Service Charges, Emergency Medical Services Taxes, Paramedic & Advanced Life Support Taxes, Library Taxes, Storm Water Management & Discharge Control Fees, and Street & Storm Drain Taxes)

The City of Albany is seeking Assessment District Engineering and Finance & Property Fee Administration Services to assist with the preparation of, management of, and submittal to Alameda County of property related fee data. The Consultant shall serve as the official "Assessment District Engineer" and shall be responsible for the preparation of the required Engineering Work associated with the Assessment Districts. The Proposer must be sufficiently familiar with laws and regulations related to the collection of property related fees and the format required for submittal of the tax roll to Alameda County. The following is a more detailed scope of work outlining the work to be performed:

- 1) Preliminary Data Collection: Create a database with preliminary parcel information to calculate the gross collections expected and to spread assessments for each of the Assessment Districts, fees, or taxes identified in Attachment 2. The goal is to have a preliminary model that can be used to prepare Budget estimates prior to the public hearings and fee adoption by the City Council.

Systems must contain the ability to: calculate reduced assessments for vacant parcels; calculate assessments based on Assessor Use Codes, calculate assessments that are determined by multipliers and lot acreage; and provide for overrides where unique circumstances require modifications. Examples of some of the types of calculations required include: a) commercial properties that are assessed multiples of the single family residential lot; b) assessments based partly upon acreage; and c) assessments based upon Alameda County land use codes. Please see Attachment 2 for brief summaries of the details on the methodology that may be required.

- 2) Changes from Prior Year: Consultant will need to obtain the new tax roll from the Alameda County Assessor or other sources.

As part of the budget planning process, determine changes that occur from one year to the next in terms of increases or decreases in the number or size of parcels and adjust figures accordingly. Please note that the consultant may set up times to utilize a conference room at City Hall to review Assessor's Maps and other documents. City Staff can assist with mapping information as long as advance notice is provided.

ATTACHMENT 1 - SCOPE OF SERVICES CONTINUED

- 3) Review of City Staff Prepared Budget Expenditure Estimates: Assist by providing professional review of the components included in the preliminary budget expenditure estimates prepared by City Staff. Provide input on any discrepancies based upon typical components of a property related fee program.
- 4) Assist City Staff in Preparing Budget Revenue Estimates: Based on the data collected in earlier steps, provide City Staff with an automated means to calculate scenarios comparing expenditures to projected revenue. Please describe whether this will be provided in the form of a computer model that can be manipulated by City staff or if the City will only receive summary reports. The desire is to identify options for the levy of the fees and charges to match the establishment of the expenditure budget and revenue estimates for the upcoming Fiscal Year (Tax Year). The methodology should allow for the City to supplement the fee revenue with other sources and/or to recognize the application of prior year fund balance in calculating the spread. Consultant shall become familiar with City fee philosophy and assessment district history and other issues related to the continued successful operation of the assessment district.
- 5) Assistance in Mailed Notices: To the extent that the City is required to complete mailed and published legal notices, Consultant is requested to prepare the format and content. Consultant shall coordinate and send out mailed notices for the Sewer Service Charges. Consultant shall assist with the preparation of preliminary report information that may be included in any notice or Staff Report. If requested by the City, Consultant shall provide parcel owner data in a format that can be readily used to produce mailing labels in the event notices are required to individual owners. The label data shall be in a form that includes only the parcels subject to a specific fee. The data shall have a means to identify ownership of multiple parcels that can be sent a single notice applicable to all parcels.
- 6) Scheduling of Tasks: Consultant shall meet with Staff in the initial stages of the project to jointly establish preliminary dates for any scheduled public meetings and/or required public hearings. Consultant and City Staff shall verify that the schedule will meet required steps necessary to complete the process within the timelines required by law. Consultant shall have available preliminary assessment roll information as of the date of public hearings.
- 7) Attendance at Public Hearings: Consultant shall attend public hearings to answer questions related to the administration of the Assessment Districts.
- 8) Preparation of Annual Levy Report: Prepare Engineer's Annual Levy Reports in accordance with legal requirements. Reports shall include justification of levies, method of apportionment, district budget, and specific levies for parcels. Consultant shall serve as the "Assessment District Engineer" and shall sign the Final Engineer's Reports once they have been approved by the City.

ATTACHMENT 1 - SCOPE OF SERVICES CONTINUED

- 9) Notice & Ballots: If determined to be required by City Staff, assist with the data necessary to allow the City to distribute legal notices and ballots to be mailed due to increased assessments in accordance with legal requirements.
- 10) Tax Roll Levy Submittal: The selected firm shall submit the final levy for each fee/assessment/tax to the Alameda County Auditor Controller in the required format, prior to the date specified by the Auditor Controller's Office, for each assessment district, fee, or tax specified. Assessments rejected by the County Auditor Controller will be researched and resubmitted for collection on the County Tax Roll. Identified corrections shall also be submitted on an "as needed" basis in consultation with City Staff. The firm selected shall also provide a CD or other electronic format file for use by the City in archiving a record of the parcels and amounts levied. Information shall be easily accessible with standard personal computers and/or in a network environment. All data shall be capable of being exported to a standard file format (i. e. MS Excel or Access).
- 11) Provide Customer Service for Taxpayer Inquiries: Act as the primary point of contact for any questions regarding Assessment Districts, fees, and tax bills.
- 12) Final Written Reports: Firm selected shall also provide the City with a summary report of the total units and dollars assessed by levy designation each year.

ATTACHMENT 2: SUMMARY CURRENT ASSESSMENTS/FEES/TAXES

Assessments/Fees/Taxes Collected on Property Tax Roll

The City of Albany has used a private firm to assist with Assessment District Engineering and Finance & Property Administration Services and wishes to exercise due diligence in obtaining the best services through the RFP process.

A typical calendar used by the City assumes the following completion dates: a) potential parcel changes for revenue estimates to be available in February of each year; b) City staff development of maintenance budget cost estimates to be available in March; c) preliminary spread of assessment revenue to be available by May 1st; and d) City budget to be approved by the City Council in mid-June. The timeline proposed must meet the statutory requirements for the surrender of the levy as well as accommodating the necessary time for review and preparation of City Council materials. Proposers should indicate any recommended adjustments.

The services sought through this RFP will address a total of nine (9) separate levies comprised of two (2) Landscaping and Lighting Assessment Districts; one (1) Sewer Service Charge; one (1) Emergency Medical Services Tax; one (1) Paramedic & Advanced Life Support Tax; two (2) Library Taxes; one (1) Storm Water Management and Discharge Control Fee; and one (1) Street & Storm Drain Tax.

Citywide Open Space, Recreational Playfield & Creek Restoration Assmt. District No. 1996-1

FY 13/14 Approximate Gross Levy	<u>\$503,935.76</u> (Single Family Residential Assmt. was \$69.00/year)
Approximate Number of Parcels	<u>5,503</u>
Purpose	Acquisition & improvement of open space, recreational playfields, and creek restoration projects.
Methodology	Equivalent Residential Units (ERU's), based upon County land use codes, calculated for parcels and assessments are spread on this basis
Provision for Rate Adjustment	There is no escalation clause. Maximum levy of \$69.00 per ERU charged in FY 13/14

1) Citywide Assessment District No. 1988-1

FY 13/14 Approximate Gross Levy	<u>\$526,632</u> (Single Family Residential Assmt. was \$75.54/year)
Approximate Number of Parcels	<u>5,503</u>
Purpose	Operation and Maintenance Activities for Community Center, Playfields, Lighting, Parks, Sidewalks, Street Trees, Urban Forestry, and Graffiti Abatement, along with improvement projects.
Methodology	Equivalent Residential Units (ERU's), based upon County land use codes, calculated for parcels and assessments are spread on this basis
Provision for Rate Adjustment	There is no escalation clause. Maximum levy of \$75.54 per ERU charged in FY 13/14

ATTACHMENT 2: SUMMARY CURRENT ASSESSMENTS/FEES/TAXES (Continued)

2) Sewer Service Charges

FY 13/14 Gross Levy **\$3,041,358.84** (Single Family Residential Fee was \$426.00/year)
Approximate Number of Parcels **5,436**
Purpose Sewer maintenance and capital improvement projects
Methodology Equivalent Residential Units (ERU's), based upon County land use codes, calculated for parcels and assessments are spread on this basis
Provision for Rate Adjustment City Council approved a \$24 per year increase per ERU for FY 14/15, along with an annual increase equal to the increase in the Consumer Price Index, all urban, San Francisco-Oakland-San Jose region for the previous calendar year. Levy of \$426 per ERU charged in FY 13/14

3) Emergency Medical Services (EMS) Tax

FY 2013/14 Gross Levy \$572,467.32 (Single Family Residential Tax of \$70.52/year)
Approximate Number of Parcels **5,446**
Purpose: Continued operation of paramedic and ambulance transport services
Methodology Equivalent Residential Units (ERU's), based upon County land use codes, calculated for parcels and assessments are spread on this basis
Provision for Rate Adjustment Annual increase equal to the increase in the Consumer Price Index, all urban, San Francisco-Oakland-San Jose region allowed, but no more than 5% more than tax charged in previous year

4) Paramedic & Advanced Life Support Tax

FY 13/14 Gross Levy \$156,186.36 (Single Family Residential tax of \$19.24/year)
Approximate Number of Parcels **5,446**
Purpose Continued and expanded operation of paramedic and ambulance transport services
Methodology Equivalent Residential Units (ERU's), based upon County land use codes, calculated for parcels and assessments are spread on this basis
Provision for Rate Adjustment Annual increase equal to the increase in the Consumer Price Index, all urban, San Francisco Bay Area allowed, but no more than 4% more than tax charged in previous year. Also, City Council may reduce or eliminate tax prior to July 1st if sufficient revenues are on hand.

ATTACHMENT 2: SUMMARY CURRENT ASSESSMENTS/FEES/TAXES (Continued)

5) Library Services Tax

FY 13/14 Gross Levy	<u>\$528,914.04</u> (Single Family Residential Tax \$69.22/year)
Approximate Number of Parcels	<u>5,474</u>
Purpose	Public library services in the City of Albany
Methodology	Equivalent Residential Units (ERU's), based upon County land use codes, calculated for parcels and assessments are spread on this basis, exempting low-income homeowners, schools, hospitals, churches, and agricultural properties
Provision for Rate Adjustment	Annual increase equal to the increase in the Consumer Price Index, all urban, San Francisco Bay Area allowed, but no more than 5% more than tax charged in previous year. Also, City Council may reduce or eliminate tax prior to July 1 st if sufficient revenues are on hand.

6) Library Services Tax

FY 13/14 Gross Levy	<u>\$216,700.04</u> (Single Family Residential Tax \$28.36/year)
Approximate Number of Parcels	<u>5,474</u>
Purpose	Public library services in the City of Albany
Methodology	Equivalent Residential Units (ERU's), based upon County land use codes, calculated for parcels and assessments are spread on this basis, exempting low-income homeowners, schools, hospitals, churches, and agricultural properties
Provision for Rate Adjustment	Annual increase equal to the increase in the Consumer Price Index, all urban, San Francisco Bay Area allowed, but no more than 5% more than tax charged in previous year. Also, City Council may reduce or eliminate tax prior to July 1 st if sufficient revenues are on hand.

7) Storm Water Management and Discharge Control Fees

FY 13/14 Gross Levy	\$295,317.62 (Single Family Residential Tax \$41.62)
Approximate Number of Parcels	<u>5,504</u>
Purpose	Eliminating non-storm water discharges to the municipal storm sewer; controlling the discharge to municipal sewers from spills, dumping or disposal of materials other than storm water; and reducing pollutants in storm water discharges to the maximum extent practicable
Methodology	Fees based upon amount of storm water generated on sites and adjusted in accordance with specific uses and General Industrial Storm Water permit requirements as provided by the State Water Resources Control Board.
Provision for Rate Adjustment	Annual increase equal to the increase in the Consumer Price Index, all urban, San Francisco Bay Area allowed

ATTACHMENT 2: SUMMARY CURRENT ASSESSMENTS/FEES/TAXES (Continued)

8) Street Paving and Storm Drain Facility Improvement Tax

FY 13/14 Gross Levy	\$948,279.50 (Single Family Residential \$113.54/year)
Approximate Number of Parcels	<u>5,464</u>
Purpose	Repair, rehabilitation, and other capital improvements needed for street and storm drains
Methodology	Equivalent Residential Units (ERU's), based upon County land use codes, calculated for parcels and assessments are spread on this basis, exempting low-income homeowners
Provision for Rate Adjustment	Annual increase equal to the increase in the Consumer Price Index, all urban, San Francisco Bay Area allowed, but no more than 5% more than tax charged in previous year

ATTACHMENT 3 – STANDARD CONSULTING AGREEMENT

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 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: _____
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:

By _____

City Manager

CONSULTANT:

By _____

(Authorized Officer)

Name:

Title:

By _____

(Authorized Officer)

Name:

Title:

APPROVED AS TO FORM:

Craig Labadie, City Attorney

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.
3. Workers Compensation and Employers Liability: Workers Compensation limits as required by the Labor Code of the State of California.

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.