

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: November 5, 2018
Reviewed by: NA

SUBJECT: Allocation of funds to conduct a Play Field Improvement Study for Peggy Thomsen Pierce Street Park and Contract Approval

REPORT BY: Mark Hurley, Public Works Director/City Engineer

SUMMARY

Construction of Peggy Thomsen Pierce Street. Park was completed in June 2018. The construction consisted of the primary park features including two play structures, a restroom facility, drinking fountain, grading of the lower play field and drought tolerant landscaping along the slopes and the lower play field. This report requests Council authorization to allocate funds from Measure R, Landscape Lighting Assessment District 1996-1 (LLAD 96-1), to conduct a comparison study of installing natural and synthetic turf on the lower play field and to approve a consultant contract with Verde Design to conduct the study.

STAFF RECOMMENDATION

That the Council adopt Resolution No. 2018-131 authorizing:

1. The allocation of \$22,250 of Measure R (LLAD 96-1) funds to conduct a comparison study of installing natural and synthetic turf on the lower play field at Peggy Thomsen Pierce Street Park, and
2. The City Manager to execute Contract C19-30 with Verde Design, Inc in the amount of \$19,230 to conduct the comparison study.

BACKGROUND

In June 2011, the City purchased a 4.5 acre parcel on Pierce Street from Caltrans for the purpose of developing a park and pedestrian/bike trail. Staff subsequently worked with consultants, the community, as well as several of the City's Commission and Committees to develop a master plan concept for the area. Project updates were presented to Council at meetings held on October 15, 2012, April 1, 2013, November 4, 2013, and April 21, 2014.

On September 15, 2014, Council adopted Resolution No. 2014-85 adopting the Initial Study – Mitigated Negative Declaration (IS/MND) for the development of Pierce Street Park, and adopted Resolution No. 2014-86 approving the 100% Plans, authorizing the Call for Bids, and allocating up to \$1,144,000 for the construction of Phase 1 of Pierce Street Park.

In January 2015, the project went out to bid. During this month, the U.S. Army Corps of Engineers requested that the site be assessed for the presence of wetlands. In response to this request, the City hired a consultant to perform a Wetland Delineation study to investigate the site and responded to the Army Corps. The initial bid solicitation was also canceled. The study concluded that, “none of the areas investigated meet jurisdictional wetland criteria.”

In June 2016, Public Works engaged with the design consultant to update the PS&E for the project and rebid the project in November 2016. Redwick Construction was the lowest responsive bidder and was awarded the construction contract in December 2016 (Resolution No. 2016-91).

Construction began in April 2016 and included a bike/pedestrian path, improved crosswalks on Pierce Street, a large play field, separate play areas designated for tot and youth play, landscaping, and a restroom facility. The addition of this new park supports Council’s Strategic Plan: Maximize Parks and Open Space. The project was completed and the City issued a Notice of Completion in June 2018 (Resolution No. 2018-76).

DISCUSSION

As part of the plan for the park, the lower field area was designed to be an unprogrammed play field with dimensions large enough to support a U8 soccer field (ages 8 and under). The project did not include irrigation due to concerns about water usage; rather, the play field was hydroseeded with a drought tolerant native grass mix. The field was intended to go dormant in the summer dry months and rejuvenate once rain starts in the fall.

The construction contractor hydroseeded the field at the beginning of the rainy season in October 2017. Unfortunately, the conditions were not ideal for establishing the grass. We received intense rains early in the season which washed away the seed in some areas. This was followed by periods of no rain which made it difficult for the grass sprouts to take root. Additionally, the underlying soil at the play field is rocky which further complicates establishing the seed.

The proposed design did not work as planned. The grass seed did not take root as hoped and the grass that did take root turned brown over the summer making the field unusable as a play field. Public Works intends to rake and reseed the field once rain begins. However, the success of this approach is highly dependent on the rainy season.

Staff is now seeking to engage with Verde Design, Inc, a firm specializing the design of community parks and play fields, to conduct a study comparing replacement of the play field with either natural grass or synthetic turf to increase the playability of the field to the level originally planned for the park. As part of the study, Verde will develop a conceptual design (grading, drainage and materials plans), 20-year lifecycle cost analysis, and pros and cons of each option.

The results of the study will be summarized in presentations to the Parks & Recreation Commission and City Council and will include next steps regarding the possible

improvements to the lower play field. The study, including presentation of findings, is expected to be complete within three months of a notice to proceed.

FINANCIAL IMPACT

Allocation of Measure R, LLAD 1996-1 funds in the amount of \$22,250

Attachments

1. Resolution 2018-131
2. Contract C19-30

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2. The City Manager to execute Contract C19-30 with Verde Design, Inc in the amount of \$19,230 to conduct the comparison study.

PEGGY MCQUAID, MAYOR

**CONTRACT #C19-30
AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
THE CITY OF ALBANY
AND
VERDE DESIGN, INC**

FOR PROJECT:

PEGGY THOMSEN PIERCE STREET PARK – PLAY FIELD STUDY

This AGREEMENT FOR CONSULTANT SERVICES ("AGREEMENT"), is made and entered into this ___ day of November 2018 by and among the City of Albany a California charter city ("CITY") and Verde Design, Inc a California corporation ("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 \$19,230.00 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: Nicole Almaguer
 City Manager
 City of Albany
 1000 San Pablo Avenue
 Albany, CA 94706

To CONSULTANT: Mark S. Baginski
 Principal
 Verde Design
 2455 The Alameda, Suite 200
 Santa Clara, CA 95050

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. W-9 FORM

Complete the attached EXHIBIT "D W-9 FORM" that will be removed from this contract and forwarded to our Finance Department for use during invoice processing.

SECTION 31. ENTIRE AGREEMENT.

This AGREEMENT, including the attached EXHIBITS "A" through "D", 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 32. SEVERABILITY.

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

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

CITY OF ALBANY:

CONSULTANT:

By _____
Nicole Almaguer, City Manager

By _____
(Authorized Officer)
Name: Mark S. Baginski
Title: Principal

Date _____

By _____
(Authorized Officer)
Name:
Title:

APPROVED AS TO FORM:

City of Albany Business ID #:

Craig Labadie, City Attorney

BL_____

Date _____

Expiration Date: _____

EXHIBIT A – SCOPE OF SERVICES

The scope of services for this project are as detailed in the attached proposal letter from Verde Design dated October 29, 2018.

EXHIBIT B – COMPENSATION

The total compensation for this project is a lump sum amount of \$19,230.

Exhibit A - Scope of Services

October 29, 2018

Mr. Mark Hurley
Public Works Director/City Engineer
City of Albany
1000 San Pablo Ave
Albany, Ca 94706



VERDE DESIGN

2455 The Alameda, Suite 200
Santa Clara, CA 95050
t 408.985.7200 f 408.985.7260
www.verdedesigninc.com

RE: Peggy Thomsen Pierce Street Park – Conceptual Field Study Proposal
Verde Design Project Number 1817700M

Dear Brett:

Verde Design Inc., herein referred to as the (Consultant), is please to present out proposal to provide conceptual field solutions for the Peggy Thomsen Pierce Street Park in Albany, CA, herein referred to as the (Project Site), in response to a request by The City of Albany, herein referred to as the (Client). This proposal is reflective of our understanding per our phone conversation on October 11, 2018 and previous email correspondence. This proposal is valid for 30 days.

Project Understanding

We understand from our recent conversation the city wishes to undertake a study comparing options to improve the unprogrammed field area for the park as both a natural grass and a synthetic turf option. The study will provide summary of the pros and cons of each solution as well as cost information to include capital costs and anticipated maintenance costs over a 20 year life cycle of the field collaboration with City staff.

We will prepare a conceptual play depicting the area of improvement for review and approval. Upon approval we will prepare two alternative solutions, natural grass and synthetic turf. We will identify for the natural solution the type of grass, recommended improvements such drainage, irrigation, soil structure, and maintenance considerations. We will prepare a similar document for the synthetic turf including an overview of synthetic turf options, infill types, drainage, need for a drainage and shock pad and maintenance considerations.

Specific Scope of Services:

Verde Design proposes to provide the following services in accordance with our above stated understanding of the project:

A. Project Start-up and Pre-planning

1. Project start-up administrative tasks will include the following:
 - a) Establish files and administrative procedures.
2. Establish the base plan in AutoCAD and set up project sheets.
3. Conduct a site visit to understand the site and existing features
4. Conduct meeting with Public Works and Parks Community Services staff
5. Deliverables:
 - a. Project program

B. Conceptual Design

1. Prepare alternative solutions for both natural grass and synthetic turf options in the form of site plans.
 - a. Grading
 - b. Drainage
 - c. Materials
2. Identify materials and costs for each option
3. Provide a summary pros and cons for each option
4. Provide a 20 year life cycle cost
5. Prepare a presentation of synthetic turf options for the city to consider
6. Prepare a presentation to PRC and City Council, review with City and revise.
7. Presentation to PRC in December 2018/January 2019
8. Presentation to City Council in January/February 2019

Schedule

- | | | |
|-----------|-----------------------------------|-----------|
| A. | Project Start-up and Pre-planning | 1 week |
| B. | Conceptual Design | 3-4 weeks |

Client Responsibilities: In order to complete the items described in Scope of Services above, we request that Client provide the following information.

A. Government Requirements

1. City codes, ordinances, and policies that pertain to this project.

B. Project and Site Information

1. As-built drawings of project area.
2. CAD topographic and existing conditions survey.
3. CAD site plan with proposed improvements.
4. Civil engineering plan to include grading and drainage, existing and proposed utilities.

Special Provisions:

- A.** Without attempting to be all-inclusive and for purposes of clarity, the following items are specifically not included in the Scope of Services:
1. Meetings and conference calls other than those listed above.
 2. Presentations to Public Bodies other than those listed above
 3. CEQA process studies.
 4. Civil, mechanical, structural, electrical engineering
 5. Architectural Design
 6. Irrigation design or audit
 7. 3D Graphic renderings
 8. Permit fees
 9. Inspection Testing
 10. Site Topographic Survey
 11. Geotechnical Report
 12. Arborist Report
 13. Soils Testing
 14. Design Development and Construction Documents

15. QSD/QSP Services

- B.** On January of each calendar year (beginning in 2020), the unbilled portion of this agreement will be subject to an approved increase to cover annual wage adjustments for office personnel.
- C.** Services will be diligently pursued and every reasonable effort will be made to meet the mutually agreed upon schedule. If the completion of the services is delayed at any time in the progress of the work undertaken in this Agreement by conditions beyond the control of the Consultant; including but not limited to: strikes, lockouts, labor disputes, or the inability of Client, his Consultants, utility companies, or jurisdictional agencies to provide required information, processing or direction; the time of completion shall be extended during such period and Consultant shall be held harmless from any and all claims arising out of such delay.

Professional Compensation

We propose a lump sum not to exceed fee of \$19,230 for the work described in the specific scope of services section of the proposal.

Additional services will be charged on a time and material basis as noted on the attached Charge Rate Schedule and with prior approval from Client. Charges for additional services will be billed separately.

Should the project be delayed beyond the agreed upon project schedule by the Client to a level that puts the project on hold, a re-start fee will apply. This fee will be determined at that point based on the amount of downtime and additional work required to bring the project on line.

Change in Services

Client may order changes in scope or character of service, either decreasing or increasing the amount of Consultant's services, and if necessary, changing the character of services. In the event that such changes are ordered, Consultant is entitled to full compensation for all services performed and expenses incurred prior to receipt of notice of change.

Termination of Agreement

In the event the project is terminated or indefinitely suspended in the manner herein provided, the Landscape Architect shall turn over copies of any and all documents completed to that date. The Landscape Architect shall be entitled to compensation up to and including said termination date. Copyright of all work shall remain the property of Verde Design.

Billings and Payments

Invoices will be sent by the 10th of the month for work completed through the 25th of the previous month. Any additional services will be billed separate from contracted services. Payment is due and payable within 30 days of the statement date.

Mark, if this proposal meets with your approval please sign one copy and return it to our office.

Sincerely,



Mark S. Baginski, RLA, LEED AP
Principal
California Lic. No. 4089

Date

Verde Design, Inc.

Charge Rate Schedule

Effective until December 31, 2018

The following chart outlines the current charge rate for professional and office costs. Reimbursable rates and expenses are shown at the bottom.

Legal Expert \$335.00 per hour

Project Rates

Principal	\$215.00 per hour
Project Manager/Construction Manager	
Level Four	\$200.00 per hour
Level Three	\$180.00 per hour
Level Two	\$160.00 per hour
Level One	\$145.00 per hour
IT Manager	\$160.00 per hour
CAD Manager	\$155.00 per hour
Project Designer	\$135.00 per hour
Job Captain/Staff Engineer/Construction Administrator	\$130.00 per hour
Draftsperson Level II	\$115.00 per hour
Draftsperson Level I	\$110.00 per hour
Project Administrator	\$80.00 per hour
Intern	\$70.00 per hour

Reimbursable Rates

Blueprints, Printing and Reproductions	Cost plus 10%
Sub Consultant Services	Cost plus 10%

Reimbursable Expenses

Blueprints and Reproductions	Travel Expenses
Photography	Parking and Toll Expenses
Models and Renderings	Permit Fees
Postage/Overnight Mail Service	Courier Delivery Service

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

The City of Albany, its Officers, Officials, Employees, Consultants and
Volunteers

(If no entry appears above, information required to complete this endorsement will be shown in
the Declarations as applicable to this endorsement.)

Who Is An Insured is amended to include as an additional insured the person(s) or
organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or
"property damage" caused, in whole or in part, by "your work" at the location designated and
described in the schedule of this endorsement performed for that additional insured and included
in the "products-completed operations hazard".

It is agreed that this insurance is primary, and that any insurance issued to the additional insured
applicable to a loss, other than that provided by this endorsement, shall be excess over this
insurance, to the extent any insured, other than the additional insured, is solely negligent for any
liabilities, losses, claims, suits, judgments, injuries, costs and/or otherwise demands.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/12/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


PRODUCER Dealey, Renton & Associates P. O. Box 12675 Attn: Ted Kiyama Oakland CA 94604-2675	CONTACT NAME: Doris A Chambers PHONE (A/C, No, Ext): 510-465-3090 FAX (A/C, No): 510-452-2193 E-MAIL ADDRESS: dchambers@dealeyrenton.com	
	INSURER(S) AFFORDING COVERAGE NAIC #	
INSURED Verde Design, Inc. 2455 The Alameda, Suite 200 Santa Clara CA 95050	INSURER A: Berkley Insurance Company 32603	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
INSURER F:		

COVERAGES **CERTIFICATE NUMBER:** 1216912002 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y / <input type="checkbox"/> N / A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Professional Liability	Y	AEC902295900	6/13/2018	6/13/2019	\$2,000,000 per Claim \$4,000,000 Annl Aggr.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
REF: ALL OPERATIONS OF THE NAMED INSURED.

CERTIFICATE HOLDER City of Albany 1000 San Pablo Avenue Albany CA 94706-0000	CANCELLATION 30 Day NOC/10 Day for NonPay of Prem 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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