

REQUEST FOR PROPOSALS
FINANCIAL AUDIT SERVICES
February 21, 2019



Proposals Due
Tuesday, March 26, 2019
4:00 p.m.

Office of the City Clerk
City of Albany
1000 San Pablo Avenue
Albany, CA 94706

**CITY OF ALBANY, CALIFORNIA
REQUEST FOR PROPOSALS (RFP) FINANCIAL AUDIT SERVICES**

I. GENERAL INFORMATION

The City of Albany, California invites qualified independent certified public accounting firms to submit a proposal to provide audit services for the City of Albany for the Fiscal Years ending 2019, 2020 and 2021, with option to renew the contract for two additional years, for a maximum potential five-year contract. The audit will be performed in accordance with generally accepted auditing standards and the standards set for financial audits contained in the Government Accountability Office's (GAO), Government Auditing Standards, the provisions of the Federal Single Audit Act as amended in 1996, and U.S. Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations. The financial statements are to be prepared in accordance with the latest Government Accounting Standard Board (GASB) pronouncements, as required.

Inquiries concerning this Request for Proposals should be directed by email to Heather Rowden, Finance Director at hrowden@albanyca.org. Such contact shall be for clarification purposes only.

Note: To view the City's Fiscal Year 2017-18 financial reports please visit the City's website at www.albanyca.org/departments/finance/financial-reports.

Seven (7) hard copies of the proposal must be received by **Tuesday, March 26, 2019 at 4:00 p.m., as well as electronic submittal via email** at the Office of the City Clerk. Cost proposal shall be submitted in a sealed envelope clearly marked Financial Audit Services and addressed to:

**Office of the City Clerk
City of Albany
1000 San Pablo Avenue
Albany CA 94706
Email for electronic submittal: cityclerk@albanyca.org**

Late proposals arriving after the specified date and time shall not be considered, nor shall late proposals be opened. Each consultant assumes responsibility for timely submission of its proposal. The City reserves the right to reject any and all proposals submitted, and to extend the proposal deadline.

II. INTRODUCTION

The City of Albany is a Charter City in Alameda County, organized in accordance with the Council-City Manager form of government. The City has a population of approximately 18,900 and offers a

full range of services for the community through its various departments, including the City Manager's Office, Recreation and Community Services, Community Development, City Clerk, Finance, City Treasurer, Police, and Fire and Emergency Medical Services. The Chief Executive Officer is the City Manager, who is appointed by the five (5) member City Council.

The accounting and financial reporting functions of the City are centralized in the Finance Department which consists of the Finance Director, one (1) Senior Accountant, one (1) Financial Analyst, three (3) Accounting Technicians and a half time (0.5) Office Assistant. All accounting functions are performed in-house. The City utilizes Tyler Technologies' Munis for general ledger, cash receipts, business licenses, accounts payable, and payroll.

The City's 2018-19 Operating Budget totals \$20.35 million. The Capital Improvement Plan for five years through June 30, 2022 totaled at approximately \$40 million. The City receives various grants from programs which may impose specific audit requirements. The City participates in the Community Development Block Grant Urban Counties program. Alameda County is the recipient agency and funds are pass-through to the City of Albany. The City receives Measure B, BB, VRF pass-through and grant funds administered by the Alameda County Transportation Commission.

The City has two pension plans. The first is the City of Albany Police and Fire Relief or Pension Fund. This is a closed plan for Police and Fire employees with 19 participants. The City is also a member of the California Public Employee Retirement System (CalPERS). All current eligible employees participate in CalPERS.

The City's last six (6) audits were conducted by Badawi & Associates, Inc. The work papers of the previous audits are the property of the previous auditor and may be reviewed by the successor auditor. While there were findings associated with the FY 2018 audit, the City has addressed those findings.

III. SCOPE OF WORK

The Auditor shall perform the following tasks for the City of Albany and the City of Albany Police and Fire Relief or Pension Fund.

- A. Examination of all funds.
- B. Preparation of a Management Letter which will include findings, statements, observations, opinions, comments, or recommendations with regards to:
 - 1. Systems of internal control.
 - 2. Accounting systems, functions, procedures, and processes aimed at automation.
 - 3. Compliance with laws, rules, and regulations.
- C. Preparation of independent auditor's report on the fair representation of the financial statements of the City in accordance with generally accepted auditing standards.
- D. Preparation of independent auditor's report and financial statements for the City of Albany Police and Fire Relief or Pension Fund.

- E. Preparation of auditor's report and financial statements for the Alameda County Transportation Commission Measure B, BB & VRF Funds.
- F. Preparation of the Single Audit Report (as required).
- G. Preparation of the Transportation Development Act Funds Report (as required).
- H. Preparation of the Appropriation Limit (Proposition 111) Review Report.
- I. Cities Financial Transaction Report to the State Controller's Office.
- J. Cities Transit Operators Financial Transaction and Compensation Report to the State Controller's Office.
- K. Attendance of a firm principal at a minimum of one meeting with the audit committee if requested, and a minimum of one City Council meeting each year, for the purpose of discussing the audit and the management letter and its conclusions.
- L. Auditor shall provide:
 - a. A complete CAFR as a pdf file, ready for duplication and posting to the City's website.
 - b. One (1) unbound reproducible master of each of the reports listed above.
 - c. Ten (10) bound copies of the following:
 - 1. Auditor's Management Letter.
 - 2. Auditor's Report
 - 3. City's Financial Statements
 - 4. Pension audit.
 - 5. ACTC Measure B, BB, VRF audit.
 - 6. Single audit (as required).
 - 7. TDA Funds audit (as required).
 - 8. Appropriation Limit Report.
- M. Due to the fluctuation in the receipt of special grant funds, the need for some reports will be based upon whether the City meets the audit threshold for specific program. Report on other audits or agreed-upon procedures may be agreed to in writing and as stated in a supplemental audit agreement. Prior to beginning work, the scope of the study and associate cost shall be approved by the City.
- N. Assistance in implementation of Governmental Accounting Standards Board statements as applicable.
- O. If the auditor finds indications of defalcation or other circumstances requiring an extension of procedures beyond the scope of the examination which would be sufficient under ordinary circumstances, the auditor will provide the City Manager with all readily ascertainable facts relative to such extraordinary circumstances together with an estimate for the additional cost of investigating same. Fees relating to such additional services are not contemplated as being within

the scope of services to be performed under the paragraphs above and will be subject to approval by the City Council.

IV. DUTIES OF THE CITY

The maximum annual fee for the requested audits contemplates that conditions satisfactory to normal progress and completion of the examination will be encountered and that City personnel will furnish the necessary financial records, minutes and legal rulings, and other documents to enable the auditor to prepare the financial report.

V. TERMS OF ENGAGEMENT

The audit contract period shall cover the three (3) fiscal years ending June 30, 2019, 2020 and 2021, with the option to extend the contract an additional two (2) fiscal years ending 2022 and 2023.

Fees shall include quotations for a five-year engagement. An itemized cost analysis shall be submitted for the amount of time anticipated for the Principal and his/her staff. The City requires that total cost be stated as a flat fee or on a “not to exceed” basis. However, a quote of hourly fees is also requested in the event that the auditors must perform routine bookkeeping not specifically associated with the audit. Prior written approval must be granted by the City Manager and the Finance Director for performance of any services to be billed as additional cost above the contracted amount. Attendance at two City Council meetings by a principal of the firm shall be considered part of the proposed flat fee. The flat or not-to-exceed fee shall be inclusive of labor, travel, report preparation, printing, and all other expense incurred by the auditor.

Fees for services may be billed as the work progresses, but not more often than once a month. A separate invoice is required for City of Albany, Police and Fire Pension or Relief Fund. Ten percent (10%) of the total fee will be withheld until all audit work is completed and accepted by the City Council.

VI. PROPOSAL EVALUATION CRITERIA FOR THE AUDITS AND CAFR.

The following evaluation criteria will be used to qualify all proposals submitted as being eligible for consideration:

- A. Experience. The firm and the performing auditor’s recent experience (within the last five years) in governmental auditing, with emphasis on audit of cities in the State of California.
- B. Peer Review. The firm is requested to submit a copy of its most recent peer review with a statement whether the review included an examination of specific government engagements.

The firm shall state whether it has been the subject of any disciplinary action within the last three years, or if any such action is pending by state regulatory bodies or professional organizations.

If such conditions exist, information is to be provided as to the circumstances and status of the disciplinary action.

- C. Education. The qualifications of personnel (including resumes) who will be actually working on and coordinating the audit, including the firm's on-going efforts to keep its staff current and knowledgeable in governmental accounting practices.
- D. References. The firm's general experience and reputation in the local government auditing/accounting field. Please include a minimum of three references.
- E. Personnel Policies. The firms demonstrated interest in maintaining continuity of auditing staff assigned to clients over time. Demonstrated achievement of non-discriminatory employment practices and objectives in accordance with the City's non-discrimination policy, as stated in this request.
- F. Price. Provide a price breakdown for each of the functions and reports the auditor proposes to perform, inclusive of the tasks previously listed in the section of Duties of the Auditor. The cost should be enclosed in a separate sealed envelope, which will be opened only after the proposals have been ranked in order of merit.
- G. Indemnification. Auditor has the professional skills necessary to perform the work agreed to be performed. Acceptance by the City of Albany of the work performed does not operate as a release of said Auditing Firm from such professional responsibility. The Auditor shall indemnify the City of Albany and its agents from any personal injury, property damage, violation of any law or ordinance or other cause in connection with the activities of Auditing Firm and/or its agents.
- H. Insurance. The Auditor shall provide the City of Albany with proof of Worker's Compensation Insurance and General Liability Insurance.

VII. NON-DISCRIMINATION CLAUSE

During the performance of this agreement, the recipient, Contractor, and its subcontractors shall not deny the agreement's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, sexual orientation, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sexual orientation, physical or mental disability, medical condition, marital status, age or sex. Contractor shall insure that evaluation and treatment of employees and applicants for employment are free of such discrimination.

VIII. ADDITIONAL PROVISIONS

The Contractor agrees that it is an independent contractor and that its officers and employees do not become employees of the City nor are they entitled to any employee benefits as a result of the execution of this agreement.

The Contractor shall indemnify the City, its officers and employees against liability for injury or damage caused by any negligent act or omission of any of its employees or volunteers or agents in the performance of this agreement and shall hold the City harmless for any loss occasioned as a result of the performance of this contract by Contractor.

The Contractor may not assign or transfer this agreement, any interest therein or claim thereunder without the prior written approval of the City.

The City, its federal cognizant agency, and the State audit agencies shall have access to the Contractor's work papers for purposes of review for a period of three years from the date of the audit report. The Contractor shall make available to their successors their work papers generated by these audits.

News releases pertaining to this RFP or to the award of this contract shall not be made without prior approval of the City. Likewise, all information concerning the Financial Reports and Management Letter must first be reviewed by the City of Albany.

The City shall not reimburse any potential auditor for costs associated with preparations of this proposal. The Contractor who is awarded the contract is required to purchase a City of Albany Business License as a contract auditor.

The City may terminate this agreement at any time by giving no less than thirty (30) days prior written notice of such termination.

The City reserves the right to reject any and all proposals submitted. Award of the contract will be made to the independent audit firm, who, based on evaluation of all responses and criteria, is determined to be the best qualified to provide the required services.

The firm awarded the contract will be required to obtain a City of Albany business license before commencing work in the City.

IX. PROPOSAL FORMAT

All firms shall submit seven (7) copies of their proposal and an electronic submittal via email in the following order:

- A. Title Page. Show the proposal subject, the name of the firm, local address, telephone number, name of the contact person, and date of the proposal.
- B. Introduction. Introduce your firm. Provide a short profile of the firm and staffing levels. Indicate the persons who will be authorized to make representations for and to bind the firm including their titles, mailing addresses, e-mail addresses and telephone numbers. Indicate your firm's representative clients and any other pertinent information.
- C. Proposal Evaluation Criteria. Explain fully your firm's ability to perform the work stated.

D. Responses to Questions. Include your responses to the following questions as part of the proposal.

1. What experiences have personnel to be assigned to this engagement had in the preparation of CAFR that have been awarded the GOFA Certificate of Achievement for Excellence in Financial Reporting?
2. What experiences have personnel to be assigned to this engagement had in performing single audits in compliance with Office of Management and Budget Circular A-133?
3. What experience have the personnel assigned to our engagement had in implementation of GASB 34 financial reporting requirements?

E. Employee Profiles. Provide a professional resume of all principals and supervisors assigned to the audit.

F. Price Quotation. To be placed in a separately sealed envelope that shall be opened after ranking has occurred. The cost of each engagement component should be listed separately. Also include the hourly rate for services not included in the engagement agreement.

Proposal Deadlines. Seven (7) hard copies of the proposal must be received by **Tuesday, March 26, 2019 at 4:00 p.m., as well as electronic submittal via email** at the Office of the City Clerk. Cost proposal shall be submitted in a sealed envelope clearly marked Financial Audit Services and addressed to:

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Email for electronic submittal: cityclerk@albanyca.org**

X. SELECTION OF CONTRACTOR

All technical proposals submitted in compliance with the conditions specified in this solicitation will be invited to make an oral presentation before a panel consisting of the Mayor, Vice-Mayor and a City Department Head.

The oral panel shall provide a ranking of and commentary on the firms interviewed to the City Manager that will be forwarded as a recommendation to the City Council for action.

Attachment:

City of Albany Standard Contract Template

CONTRACT #
AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
THE CITY OF ALBANY
AND
FOR PROJECT:

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 _____ [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 _____ 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 _____ 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: _____

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)

Date _____

Name:
Title:

By _____
(Authorized Officer)

Name:
Title:

APPROVED AS TO FORM:

City of Albany Business ID #:

BL _____

Craig Labadie, City Attorney

Expiration Date:

Date _____

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:** \$2,000,000 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.
4. **Professional Liability Insurance:** \$1,000,000 of Professional Liability Insurance (Errors and Omissions). The policy shall provide 30 days advance written notice to CITY for cancellation or reduction in coverage.

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 affecting 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.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE DATE (MM/DD/YYYY)
9/25/2014

PRODUCER CITY OF ALBANY OCT 14 2014	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.												
INSURED ADMINISTRATION DEPARTMENT	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">INSURERS AFFORDING COVERAGE</td> <td style="width: 20%;">NAIC #</td> </tr> <tr> <td>INSURER A: United Fire Ins. Co.</td> <td>19682</td> </tr> <tr> <td>INSURER B: Specialty Ins. Co.</td> <td></td> </tr> <tr> <td>INSURER C: Casualty Insurance Co.</td> <td>29424</td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table>	INSURERS AFFORDING COVERAGE	NAIC #	INSURER A: United Fire Ins. Co.	19682	INSURER B: Specialty Ins. Co.		INSURER C: Casualty Insurance Co.	29424	INSURER D:		INSURER E:	
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INSURER D:													
INSURER E:													

COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> BI/PD Ded:5,000 GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	57CESOF4492	09/30/14	09/30/15	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
C		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	57UUNIF1488	09/30/14	09/30/15	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	57WEGG5794	09/30/14	09/30/15	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
B		OTHER Professional Liability	CPV6710060915	09/30/14	09/30/15	\$2,000,000 per claim \$4,000,000 annl aggr.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

General Liability Excludes Claims Arising Out of the Performance of Professional Services.

Project Name/Number: **Albany County**. The City of Albany, its Officers, Officials, Employees, Consultants and Volunteers are additional insureds as respects to General & Automobile Liability per policy form wording. Such insurance is Primary & Non Contributory. See attachments

CERTIFICATE HOLDER City of Albany 1000 San Pablo Avenue Albany, CA 94706-0000	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Julie La Nelson</i>
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