

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

Agenda Date: April 20, 2020  
Reviewed by: NA

**SUBJECT:** Citywide Sidewalk Survey – Award of Sidewalk Survey Services  
Contract No. C20-51

**REPORT BY:** Emile Morales, Associate Engineer, Sidewalks Program Manager  
Mark Hurley, Public Works Director/City Engineer

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**SUMMARY**

The City of Albany recently settled two lawsuits requiring the City to ensure its sidewalks, curb ramps and crosswalks are in conformance with ADA standards. As part of the settlement, the City committed to performing a comprehensive survey of public right of way (PROW) elements to assess compliance with ADA standards and to determine the location and type of current accessibility issues.

The issue before the Council is to award a sole source contract to Beneficial Designs to perform a city-wide survey of sidewalks, curb ramps and crosswalks within the public right of way in the amount of \$85,740, and to approve the total project budget of \$95,000 from Measure B funding.

**STAFF RECOMMENDATION**

Staff recommends that the Council adopt Resolution No. 2020-34:

1. Authorizing the City Manager to execute Contract No. C20-51 with Beneficial Designs, Inc. in a not-to-exceed contract of \$85,740; and
2. Appropriating \$95,000 of Measure B: Local Streets & Roads funding to complete the pedestrian pathway assessment for all sidewalks, curb ramps and crosswalks within the City of Albany.

**BACKGROUND**

In December of 2019, the Albany City Council approved a settlement agreement to resolve injunctive relief claims made under the Americans with Disabilities Act (ADA) in two pending lawsuits.

The cases against the City (Galpern v. City of Albany and Saraswati v. City of Albany) both requested that the court issue an injunction ordering the City to upgrade its sidewalks, curb ramps and crosswalks to meet current ADA accessibility standards.

The case settlement included a commitment to perform an initial survey:

Defendant will commission a survey of the PROW Elements within the Geographic Scope for compliance with the Standards (“Survey”) from Beneficial Designs or other qualified third party acceptable to Plaintiff and will provide a copy of same to Plaintiff’s counsel by December 31, 2020.

Public Works has been working with Beneficial Designs to arrive at the proposed contract scope and fee.

Using a specialized process, Beneficial Designs proposes to survey and assess more than 60 miles of City sidewalk and associated curb ramps and crosswalks within the City limits. The assessment will evaluate factors such as cross and running slopes, width and offsets of PROW Elements. The results of the survey and assessment will be provided in a geographic information system (GIS) shape file so that it can be displayed geospatially and used as the foundation for identifying ADA compliance issues within the PROW for the next two decades and prioritizing critical areas in need of sidewalk repair.

## **DISCUSSION**

The settlement agreement escalated the need for a city-wide comprehensive sidewalk survey. Prior to the settlement, surveys were performed as needed by City staff and once by another contractor the City hired. These prior efforts were used in the first two phases of the Sidewalk Repair Program and in a sidewalk shaving effort along Solano Ave.

However, these prior surveys are not adequate for use in the required work detailed the settlement agreement. The prior surveys did not include the entire PROW, were limited in scope – primarily focusing on sidewalk uplift – and did not include accurate geospatial information.

The Beneficial Designs survey will be comprehensive both in geographic limits and range of factors surveyed and will be delivered in a much more usable format. The overall accuracy and quality of the survey as Beneficial Design’s core business is conducting surveys in support of ADA compliance.

Chapter 13 of the Albany Municipal Code details procedures for Public Works Projects and other contracts, including requirements for sole-source awards. Section 13-20 allows for sole-source awards when “strict compliance with competitive selection or bidding requirements would be unavailing, or would not produce an advantage, or would be undesirable, impractical, or impossible.”

The proposed contract with Beneficial Designs to perform a city-wide survey and analyze the results for compliance with ADA standards meets the sole-source requirements.

Firstly, Beneficial Designs was named during the settlement as a qualified third party acceptable to the Plaintiff to perform the work. Staff has analyzed Beneficial Designs' work quality and compatibility with the City of Albany GIS output and found it to be great quality. The vendor has worked with a number of municipalities around the United States, including the City of Sausalito here in the Bay Area. Public Works has confirmed that Beneficial Designs will be able to capture the information needed to provide accessible sidewalks, curb ramps and crosswalks within the City of Albany.

Unlike other vendors, Beneficial Designs' business focuses entirely on performing ADA related studies and analysis.

Furthermore, the City has long wanted to establish a robust, transparent GIS database that can be accessed by City staff and eventually, the greater public. Past survey methods have yielded lackluster results due to the lack of equipment and technical ability. The GIS database will be key for future sidewalk repair projects and be the foundation on which Albany's sidewalk program is established for the next 25 years.

Lastly, the deadline for the Initial Survey is December 31, 2020. By awarding a sole-source contract, we can condense the project schedule by approximately four months by eliminating bidding and award periods and time for contractor mobilization. Shortening the time needed to implement the project is key in meeting the requirements of the settlement agreement.

### **SUSTAINABILITY**

The Initial Survey provided by Beneficial Designs will be the foundation of future sidewalk projects, including the on-going Annual Sidewalk Rehabilitation Program, which will improve walkability in the City at large. Accessibility ramps provide greater mobility by disabled persons, strollers, and able-bodied person in general. This promotes non-motorized travel, thereby reducing air emissions. The project also supports goals adopted in the Active Transportation Plan.

### **FINANCIAL SUMMARY**

Staff is requesting a new funding appropriation as per the following table to support this expenditure, in compliance with the previously approved December 2019 settlement agreement.

Contract Amount	\$85,740
Contingency	\$9,260
Total Budget	\$95,000

Staff recommends a total budget of \$95,000 in order to accommodate a reasonable contingency for the project. Budget will be appropriated from Measure B: Local Streets &

Roads funding, in line with this funding source's provision for studies regarding capital improvements for pedestrian safety.

**Attachments**

1. Resolution No. 2020-34
2. Exhibit A to Resolution No. 2020-34 - Beneficial Design ADA Survey Proposal
3. Engineering Services Contract No. C20-51



1           **WHEREAS**, Staff has determined that the budget for this project, including a  
2 reasonable contingency, shall come from ACTC Measure B Local Streets & Roads  
3 funding in the total amount of \$95,000.

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5           **NOW, THEREFORE, BE IT RESOLVED**, that the Albany City Council hereby  
6 authorizes the City Manager to execute Contract No. C20-50 with Beneficial Designs,  
7 Inc. in a not-to-exceed contract amount of \$85,740 (Exhibit A); and

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9           **BE IT FURTHER RESOLVED**, that the Albany City Council hereby  
10 appropriates \$95,000 from Measure B: Local Streets & Roads funding to complete the  
11 pedestrian pathway assessment for all sidewalks, curb ramps and crosswalks within the  
12 City of Albany.

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28 Exhibit A: Fee Proposal  
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**1. Method of Payment, Rates, Reimbursable Charges**

Invoices for the work completed will be submitted monthly and payment shall be provided monthly reflecting the progress of work.

The following rates are effective as of October 1, 2017. Beneficial Designs, Inc. reserves the right to adjust these hourly rates.

Project Manager	\$ 150.00
Assessment Coordinator & Liaison	\$ 120.00
Lead Sidewalk Assessment Coordinator	\$ 120.00 (Including automated assessment equipment)
Assistant Sidewalk Assessment Coordinator	\$ 100.00 (Including automated assessment equipment)
Lead Trail Assessment Coordinator	\$ 100.00 (Including automated assessment equipment)
Assistant Trail Assessment Coordinator	\$ 80.00 (Including automated assessment equipment)
Project Staff	\$ 100.00
Travel Time & Administrative Support	\$ 50.00

If additional data analysis is requested due to legal settlement requirements, Beneficial Designs, Inc. reserves the right to charge for time and materials on additional data processing.

List of reimbursable expenses:

- Project travel expenses (mileage at 57.5 cents per mile, meals & misc at 85.80 dollars per day)
- Per Diem associated with overnight lodging 253.50 dollars per night
- Expense of printing, reproduction, AutoCAD plotting, scanning, photographs, postage, and delivery of documents
- Special delivery and messenger services

**2. Cost Breakdown**

The summary of fees below includes use of the PROWAP based on Minimum Access Requirements and projected reimbursable expenses for travel, reproduction and communication, which will be billed as accrued. Travel time at half the hourly rate is included in the proposal breakdown.

<b>TASK</b>	<b>TOTAL FEES</b>
Assessment of 62 miles of Public Right of Way in Albany, CA (Public Right of Way, Curb Ramps)	\$ 41,460.00
Project Management and Coordination of Data, Data Processing (setup, merge, export, ArcGIS import, spatial correction, quality review, verification across files), Meetings and Reporting	\$ 27,276.00
Estimate of Travel Time and Expenses to Albany, CA (3 trips, 2 staff)	\$ 12,692.00
NOTE: Travel expenses will need to be adjusted up or down based on actual costs at the time the project occurs.	
Contingency Travel and Shipping	\$ 4,313.00
<b>GRAND TOTAL:</b>	<b>\$ 85,740.00</b>

**CONTRACT # \_\_\_\_\_**  
**AGREEMENT FOR CONSULTANT SERVICES**  
**BETWEEN**  
**THE CITY OF ALBANY**  
**AND**  
**BENEFICIAL DESIGNS, INC**

**FOR PROJECT: CITYWIDE SIDEWALK SURVEY**

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 Beneficial Designs, Inc., a Nevada 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 12 months 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 for services satisfactorily rendered under this AGREEMENT. The total compensation payable, including reimbursement for actual expenses, shall not exceed Eighty Five Thousand, Seven Hundred Forty Dollars (\$85,740) 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) If CONSULTANT's obligation to defend, indemnify, and/or hold harmless arises out of CONSULTANT's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, CONSULTANT's indemnification obligation shall be limited to CLAIMS that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT, and, upon CONSULTANT obtaining a final adjudication by a court of competent jurisdiction, CONSULTANT's liability for such claim, including the cost to defend, shall not exceed the CONSULTANT's proportionate percentage of fault.

(d) 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: \_\_\_\_\_  
\_\_\_\_\_  
Beneficial Designs, Inc.  
\_\_\_\_\_  
\_\_\_\_\_

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:**

By \_\_\_\_\_  
Nicole Almaguer, City Manager

Date \_\_\_\_\_

**CONSULTANT:**

By \_\_\_\_\_  
(Authorized Officer)

Name:

Title:

By \_\_\_\_\_  
(Authorized Officer)

Name:

Title:

**APPROVED AS TO FORM:**

City of Albany Business License

\_\_\_\_\_  
Malathy Subramanian, City Attorney

Date \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Anne Hsu, City Clerk

Date \_\_\_\_\_

**BL #** \_\_\_\_\_  
Expiration Date:

\_\_\_\_\_