

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

Agenda date: July 20, 2020
Reviewed by: NA

Subject: CIP No. 21000 Washington Avenue Rehabilitation Project – Award of Construction Contract No. C20-48 and Construction Management Services Contract No. C20-71

Report By: Robert Gonzales, Capital Improvements Program Manager
Mark Hurley, Public Works Director/City Engineer

SUMMARY

The issue before Council is to award Construction Contract No. C20-48 – Washington Avenue Rehabilitation Project (Project) to MVC Enterprises in the amount of \$1,148,848.50, and an associated Construction Management Contract No. C20-71 to Zoon Engineering in the not-to-exceed amount of \$144,500.

STAFF RECOMMENDATION

That the Council adopt Resolution No. 2020-80, authorizing the City Manager to award Contract No. C20-48 to MVC Enterprises to construct the Washington Avenue Rehabilitation Project for the not-to-exceed amount of \$1,148,849.50 and execute Contract No. C20-71 with Zoon Engineering to provide construction management services for the not-to-exceed amount of \$144,500 from previously appropriated funds in CIP 21000 – Annual Street Rehabilitation.

BACKGROUND

The City of Albany currently maintains 29.6 centerline miles of roads representing 5,050,980 square feet of pavement. The Annual Street Rehabilitation Program (CIP No. 21000) was established as per the City’s Capital Improvement Plan in order to improve and maintain pavement conditions in the City. The 2019 Pavement Management Plan shows that the City’s overall average pavement condition is 60 and Washington Avenue’s pavement index in the project area is 31. The Active Transportation Plan identifies Washington Avenue as a Bike Boulevard and part of the City’s bike network.

On July 18, 2019, Council approved a contract amendment with NCE for design of the 2019 Washington Avenue Pavement Rehabilitation Project (Resolution No 2019-66). The design work is complete.

On May 18, 2020, the City Council authorized the City Manager to advertise the Notice Inviting Bids for the Washington Avenue Rehabilitation Project (Resolution No. 2020-31).

The Public Works Department issued a Notice Inviting Bids, which was twice advertised in the local newspaper, posted on the City website and distributed to several Bay Area builders' exchanges.

Noted in the report from May 18, 2020 are concerns regarding utility coordination, as EBMUD recently communicated to City staff that there are two sections of water main under Washington Avenue that have been identified for replacement, introducing scheduling conflicts to the project that have since been addressed.

DISCUSSION

On July 8, 2020, the City received and opened four (4) bids for the construction of the Washington Avenue Rehabilitation Project. The engineer's estimate for this work is \$1,051,499.

The range of the four bids is tabulated below.

BIDDER	BASE BID AMOUNT
MVC Enterprises	\$1,054,649.50
HM Construction	\$1,139,713.47
Bay Cities Paving & Grading	\$1,115,212.00
Grade Tech	\$1,150,627.00

The bids were reviewed, and all were found to be responsive and complete.

Additionally, staff requested and received a cost proposal from Zoon Engineering for construction management support for the Project. This proposal was reviewed by staff and was found to be appropriate for the work proposed.

Public Works Department staff recommends that the construction contract be awarded to the lowest responsible bidder, MVC Enterprises, with a base bid of \$1,054,649.50. In addition to the base bid, the Contract includes an additive bid item for the construction of a bioretention basin in the amount of \$94,199 for a total of \$1,148,848.50. Complete bid results are shown in Attachment 2.

The scope of the Project includes pavement reconstruction on Washington Avenue from San Pablo Avenue to Pomona Avenue, concrete curb and gutter improvements, curb ramp installation, striping and pavement markings. EBMUD intends to replace two sections of water main under Washington Avenue. Both segments introduce new scheduling conflicts to the Project. Staff is working with EBMUD to accelerate portions of their projects between Spokane Avenue and Key Route. This contract includes street segments between San Pablo Avenue to Cornell Avenue and Masonic Avenue to Pomona Avenue. Phase 2 would include the remaining areas between Cornell Avenue to Masonic Avenue. Phase 2 would be scheduled to follow EBMUD's water main replacement in 2021. The contractor is required to complete the Project within 60 working days from commencement date and construction is anticipated to start in August 2020.

Compliance with Alameda County Public Health Department Order while performing Essential Infrastructure work

On March 31, 2020, the Alameda County Public Health Department (County) issued Order 20-04, directing essential businesses, among other things, to implement social distancing protocols to control the spread of Covid-19 while performing work on essential infrastructures. These include public works construction projects necessary to repair and rehabilitate sewer utilities. In compliance with the Order, staff issued a project contract addendum requiring the contractor to prepare and submit to the City a project specific Social Distancing Protocol for implementation.

Following this order, the County issued Order 20-10 on April 29, 2020 extending the Shelter-In-Place order and allowing a limited number of additional essential businesses including construction projects that follow the Construction Project Safety Protocols included with the order. For construction of essential infrastructure, additional restrictions and requirements were specified in the order that must be in place at all construction job sites. This includes the preparation and implementation of a Site-Specific Health and Safety Plan to address COVID-19-related issues. The Safety Plan will be posted at the job site, a copy distributed to each employee working on the project; and the contractor must implement all applicable measures to protect employee health, the public and others involved in the project.

The City of Albany's Washington Avenue Pavement Rehabilitation Project is planned to start in August 2020. Staff will continuously review any additional requirements of succeeding orders and work with the contractor to ensure compliance.

ENVIRONMENTAL CLEARANCE

This project consists of rehabilitation of existing streets and is determined to be categorically exempt under CEQA.

SUSTAINABILITY

The proposed project supports Council's Strategic Plan in the areas of Transportation Safety and Implementation of the city's active Transportation Plan.

Additionally, this project includes installation of accessibility curb ramps and installation of a bioretention basin. Accessibility ramps provide greater mobility by disabled persons, strollers, and able-bodied persons in general. This promotes non-motorized travel, thereby reducing air emissions. The installation of a bioretention basin assists in onsite treatment of stormwater runoff, decreasing the distribution of pollutants to nearby water sources.

FINANCIAL SUMMARY

The budget for the City's Annual Street Rehabilitation Program (CIP No. 21000) was appropriated by Council as part of the City's Capital Improvement Plan, last updated on March

19, 2018 by Resolution No. 2018-36.

The Washington Avenue Pavement Rehabilitation Project is part of this program and utilizes budget approved within that program.

The following are the **proposed project costs**:

Construction:	\$1,148,848.50
Construction Management:	\$144,500
Materials Testing Services:	\$64,300
Contingency (10%):	<u>\$135,764.50</u>
Total Project Cost:	\$1,493,413

The following table details the approved **program budget**:

Program Budget	FY 17/18 & 18/19
Professional Services	\$570,000
Construction/Improvements	\$4,366,000
Contingency	\$462,000
Total Budget:	\$5,398,000

Approximately \$1.5M of the budget appropriated for the Annual Street Rehabilitation Program for FY17/18 and FY18/19 has been spent or encumbered to date.

As per the funding schedule appropriated in the Capital Improvement Plan (Resolution No. 2018-36), this project will leverage approximately \$300,000 in available SB1/RMRA funds (Resolution No. 2019-27), \$900,000 in Measure B funds, and \$700,000 in Measure BB funds.

The two contracts recommended for award in this staff report (Zoon for \$144,500 and MVC Enterprises for \$1,148,848.50) including contingency are within available program budget and no additional appropriations are needed at this time.

Attachments:

1. Resolution No. 2020-80
2. Bid Tabulation for Contract No. C20-48
3. Contract No. C20-48 MVC, Design
4. Contract No. C20-71 Zoon, Construction Management

1 construct the Washington Avenue Rehabilitation Project for the not-to-exceed amount of
2 \$1,148,849.50 and execute Contract No. C20-71 with Zoon Engineering to provide
3 construction management services for the not-to-exceed amount of \$144,500 from previously
4 appropriated funds for CIP Project No. 21000.

5
6

NICK PILCH, MAYOR

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Washington Avenue Rehabilitatio Project
C20-48

No.	Description	Quantity	Unit	MVC Enterprises		HMConstruction		GradeTech		Bay Cities	
				Bid Unit amount	Total Amount	Bid Unit amount	Total Amount	Bid Unit amount	Total Amount	Bid Unit amount	Total Amount
1	Mobilization	1		28,000.00	\$ 28,000.00	125	\$ 125,000.00	85000	\$ 85,000.00	112000	\$ 112,000.00
2	Clearing, Grubbing, Tree Protection & Root Pruning	1		16,500.00	\$ 16,500.00	25000	\$ 25,000.00	50000	\$ 50,000.00	12000	\$ 12,000.00
3	Traffic Control and Construction Area Signs	1		14,500.00	\$ 14,500.00	35000	\$ 35,000.00	155000	\$ 155,000.00	105402.6	\$ 105,402.60
4	Changeable Message Signs	2		9,000.00	\$ 18,000.00	3000	\$ 6,000.00	6000	\$ 12,000.00	2380	\$ 4,760.00
5	Water Pollution Control and SWPPP	1		12,500.00	\$ 12,500.00	2000	\$ 2,000.00	10000	\$ 10,000.00	10975	\$ 10,975.00
6	Potholing	65		250.00	\$ 16,250.00	100	\$ 6,500.00	400	\$ 26,000.00	326	\$ 21,190.00
7	Restore Survey Monuments	6		250.00	\$ 1,500.00	100	\$ 600.00	2500	\$ 15,000.00	800	\$ 4,800.00
8	Adjust Gas Valve Box to Finish Grade	6		150.00	\$ 900.00	100	\$ 600.00	880	\$ 5,280.00	800	\$ 4,800.00
9	Adjust Water Valve Box to Finish Grade	25		150.00	\$ 3,750.00	100	\$ 2,500.00	880	\$ 22,000.00	800	\$ 20,000.00
10	Adjust Sanitary Sewer MH Frame and cover to finish grade	17		750.00	\$ 12,750.00	100	\$ 1,700.00	880	\$ 14,960.00	1100	\$ 18,700.00
11	Adjust Electrical MH and cover to finish grade	1		1,250.00	\$ 1,250.00	1000	\$ 1,000.00	1200	\$ 1,200.00	1750	\$ 1,750.00
12	Adjust Telecom MH frame and cover to finish grade	2		1,250.00	\$ 2,500.00	600	\$ 1,200.00	1100	\$ 2,200.00	1750	\$ 3,500.00
13	Remove cross drain	135		100.00	\$ 13,500.00	100	\$ 13,500.00	2	\$ 270.00	47.6	\$ 6,426.00
14	Remove 8" CMP storm drain pipe and storm drain junction box	34		12.00	\$ 408.00	150	\$ 5,100.00	26	\$ 884.00	101.8	\$ 3,461.20
15	Remove storm drain manhole	1		400.00	\$ 400.00	1500	\$ 1,500.00	3100	\$ 3,100.00	2223.53	\$ 2,223.53
16	Storm Drain pipe spot repair	1		1,500.00	\$ 1,500.00	2500	\$ 2,500.00	5200	\$ 5,200.00	4843.12	\$ 4,843.12
17	CMP Band Coupling Repair	1		2,500.00	\$ 2,500.00	2500	\$ 2,500.00	3000	\$ 3,000.00	3490.92	\$ 3,490.92
18	Storm Drain pipe (12" RCP)	31		90.00	\$ 2,790.00	250	\$ 7,750.00	430	\$ 13,330.00	215.06	\$ 6,666.86
19	Storm Drain MH Type 1	1		7,500.00	\$ 7,500.00	15000	\$ 15,000.00	13000	\$ 13,000.00	4675.52	\$ 4,675.52
20	Concrete Valley Gutter	736		25.00	\$ 18,400.00	28	\$ 20,608.00	25	\$ 18,400.00	20	\$ 14,720.00
21	Remove Concrete curb and gutter	534		10.00	\$ 5,340.00	6.5	\$ 3,471.00	30	\$ 16,020.00	14	\$ 7,476.00
22	Concrete Curb and Gutter	467		50.00	\$ 23,350.00	66	\$ 30,822.00	104	\$ 48,568.00	46	\$ 21,482.00
23	Remove and Replace Wide Concrete Curb and Gutter	29		55.00	\$ 1,595.00	72	\$ 2,088.00	144	\$ 4,176.00	80	\$ 2,320.00
24	Remove Concrete sidewalk	3477		2.00	\$ 6,954.00	6.5	\$ 22,600.50	8	\$ 27,816.00	5	\$ 17,385.00
25	Concrete Sidewalk	3329		13.00	\$ 43,277.00	22	\$ 73,238.00	14	\$ 46,606.00	12	\$ 39,948.00
26	Concrete Curb Ramp	21		1,700.00	\$ 35,700.00	5000	\$ 105,000.00	2500	\$ 52,500.00	2575	\$ 54,075.00
27	Full Depth base repair 4 inches	2908		2.00	\$ 5,816.00	4.5	\$ 13,086.00	17	\$ 49,436.00	9	\$ 26,172.00
28	Base repair - overexcavation (Revocable item)	32		25.00	\$ 800.00	250	\$ 8,000.00	200	\$ 6,400.00	334	\$ 10,688.00
29	Cold milling asphalt pavement	1629		27.00	\$ 43,983.00	11.88	\$ 19,352.52	12	\$ 19,548.00	15	\$ 24,435.00
30	Remove surfacing and base	1386		80.00	\$ 110,880.00	30	\$ 41,580.00	60	\$ 83,160.00	94	\$ 130,284.00
31	subgrade preparation	5547		4.50	\$ 24,961.50	13.75	\$ 76,271.25	2	\$ 11,094.00	5.25	\$ 29,121.75
32	Subgrade Overexcavation (revocable item)	185		120.00	\$ 22,200.00	100	\$ 18,500.00	100	\$ 18,500.00	300	\$ 55,500.00
33	Hot Mix asphalt overlay 3 inches	302		195.00	\$ 58,890.00	156	\$ 47,112.00	110	\$ 33,220.00	110	\$ 33,220.00
34	Hot Mix asphalt overlay 6 inches	1191		177.00	\$ 210,807.00	156	\$ 185,796.00	110	\$ 131,010.00	115	\$ 136,965.00
35	Hot Mix asphalt overlay 8 inches	1157		177.00	\$ 204,789.00	156	\$ 180,492.00	110	\$ 127,270.00	120	\$ 138,840.00
36	Remove thermoplastic striping, Markings, & Markers	1		9,000.00	\$ 9,000.00	12960	\$ 12,960.00	750	\$ 750.00	5500	\$ 5,500.00
37	Thermoplastic Traffic stripe - Detail 21	570		10.00	\$ 5,700.00	2.2	\$ 1,254.00	2.5	\$ 1,425.00	2	\$ 1,140.00
38	Thermoplastic Limit Line	231		15.00	\$ 3,465.00	5.85	\$ 1,351.35	4	\$ 924.00	4	\$ 924.00
39	Thermoplastic 4" line (White)	40		5.00	\$ 200.00	1.5	\$ 60.00	2	\$ 80.00	1.5	\$ 60.00
40	Thermoplastic Triple four Crosswalk	347		53.00	\$ 18,391.00	21.55	\$ 7,477.85	20	\$ 6,940.00	12.5	\$ 4,337.50
41	Thermoplastic pavement markings (white)	1236		27.00	\$ 33,372.00	7.5	\$ 9,270.00	5	\$ 6,180.00	4.5	\$ 5,562.00
42	non-reflective White Markers	88		12.00	\$ 1,056.00	3.5	\$ 308.00	5	\$ 440.00	4	\$ 352.00
43	Stop Sign relocation	3		1,250.00	\$ 3,750.00	350	\$ 1,050.00	250	\$ 750.00	350	\$ 1,050.00
44	red curb paint	950		5.00	\$ 4,750.00	2.75	\$ 2,612.50	2	\$ 1,900.00	2	\$ 1,900.00
45	Blue Fire hydrant Pavment Marker	9		25.00	\$ 225.00	45	\$ 405.00	10	\$ 90.00	10	\$ 90.00
TOTAL items 1 -45					\$ 1,054,649.50		\$ 1,139,715.97		\$ 1,150,627.00		\$ 1,115,212.00

ADDITIVE ALTERNATE #1 BIORETENTION

A-1	Clearing and Grubbing	1		14825	14825	5000	5000	9000	9000	10000	10000	
A-2	Bioretention Excavation	58		71	4118	150	8700	200	11600	180	10440	
A-3	Grading	66		3432	52	2970	45	2970	49	3234	50	3300
A-4	Tree Removal	1		2850	2850	1000	1000	4000	4000	700	700	
A-5	Remove Concrete Curb and Gutter	22		42	924	20	440	72	1584	25	550	
A-6	Concrete Curb and Gutter	22		130	2860	160	3520	180	3960	70	1540	
A-7	Remove Concrete Sidewalk	115		15	1725	8	920	36	4140	30	3450	
A-8	Concrete Sidewalk	115		25	2875	26	2990	36	4140	45	5175	
A-9	Trench Drain	16		250	4000	100	1600	282	4512	1100	17600	
A-10	Bioretention Sidewalk	19		400	7600	600	11400	500	9500	230	4370	
A-11	Class 2 Permeable Material	14		210	2940	208	2912	434	6076	350	4900	
A-12	Bioretention Soils	20		75	1500	155	3100	267	5340	300	6000	
A-13	Streambed Cobbles	1		6075	6075	300	300	2500	2500	600	600	
A-14	Plantings	400		27	10800	13	5200	20	8000	20	8000	
A-15	Boulders	4		135	540	400	1600	800	3200	800	3200	
A-16	Plant Establishment	1		7425	7425	30000	30000	40000	40000	30000	30000	
A-17	Irrigation System	1		19710	19710	15000	15000	25000	25000	15000	15000	
TOTAL BID ITEMS A-1 TO A-17					\$ 94,199.00		\$ 96,652.00		\$ 145,786.00		\$ 124,825.00	

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Albany ("City") and MVC Enterprises Inc ("Contractor") for work on the Washington Avenue Rehabilitation Project ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform work on the Project, and on July 20, 2020, the City authorized award of this Contract to Contractor for the amount of Contractor's bid.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the following:
 - 2.1 Notice Inviting Bids;
 - 2.2 Instructions to Bidders;
 - 2.3 Addenda, if any;
 - 2.4 Bid Proposal and attachments thereto;
 - 2.5 Contract;
 - 2.6 Payment and Performance bonds;
 - 2.7 General Conditions;
 - 2.8 Special Conditions;
 - 2.9 Project Drawings and Specifications;
 - 2.10 Change Orders, if any;
 - 2.11 Notice of Award;
 - 2.12 Notice to Proceed;
 - 2.13 City of Albany Technical Provisions
 - 2.14 City of Albany Standard Details
 - 2.15 And the following: No Other Documents
3. **Contractor's Obligations.** Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.
4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, the City will pay Contractor One Million, one hundred forty-eight thousand, eight hundred and forty-nine Dollars (\$ 1,148,849) (the "Contract Price"), in accordance with the payment provisions in the General Conditions.
5. **Time for Completion.** Contractor will fully complete the Work for the Project within 60 working days from the commencement date given in the

Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.

6. Liquidated Damages. If Contractor fails to complete the Work within the Contract Time, the City may assess liquidated damages in the amount of \$3,200 for each day of unexcused delay in completion, and the Contract Price will be reduced accordingly.

7. Labor Code Compliance.

7.1 General. This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.

7.2 Prevailing Wages. This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.

7.3 Living Wage Ordinance. This Contract will also be subject to the City's Living Wage Ordinance, as stated in Section 18 of the Instructions for Bidders, unless the wage rates required under state law are higher than the rates required under Section 2-26.5 of the City's Living Wage Ordinance.

7.4 DIR Registration. City will not accept a Bid Proposal from or enter into the Contract with a bidder without proof that the bidder and its subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.

8. Workers' Compensation Certification. Under Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

9. Notice. Any notice, billing, or payment required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

	City of Albany	Contractor
Name	Anne Hsu, City Clerk	
Address	1000 San Pablo Avenue	
City/state/zip	Albany, CA 94706	

	City of Albany	Contractor
Phone	510-528-5710	
Fax	510-528-5797	
Copy to:	Robert Gonzales, CIP Manager	
Email	rgonzales@albanyca.org	

10. General Provisions.

- 10.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without the City's written consent. This Contract is binding on Contractor's successors and permitted assigns.
- 10.2 Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract except as expressly provided in the *General Conditions* or *Special Conditions*.
- 10.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court for Alameda County, and no other place.
- 10.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 10.5 Integration; Severability.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between the City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.
- 10.6 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporation Code Section 313.

[Signatures are on the following page.]

The parties agree to this Contract as witnessed by the signatures below:

CITY OF ALBANY:

Approved as to form:

s/ _____

s/ _____

Nicole Almaguer, City Manager

Mala Subramanian, City Attorney

Date: _____

Date: _____

CONTRACTOR:

MVC Enterprises

DIR Reg. No: 1000000015

s/ _____

s/ _____

Jay Zuppardo VP
Name/Title [print]

Name/Title [print]

Date: 7-13-20

Date: _____

City of Albany Business License Number

Business License Expiration Date

762066

Contractor's Calif. License Number(s)

Seal:

4/30/21
Expiration Date(s)

END OF CONTRACT

**CONTRACT # C20-71
AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
THE CITY OF ALBANY
AND
ZOOM ENGINEERING**

**FOR THE WASHINGTON AVENUE REHABILITATION PROJECT
CONSTRUCTION MANAGEMENT SERVICES**

This AGREEMENT FOR CONSULTANT SERVICES ("AGREEMENT"), is made and entered into this ___ day of July 2020 by and among the City of Albany a California charter city ("CITY") and Zoon Engineering__ 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 for services satisfactorily rendered under this AGREEMENT. The total compensation payable, including reimbursement for actual expenses, shall not exceed \$93,360 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:	Nabil Hissen Zoon Engineering 3960 Adeline Street #3, Emeryville CA 94608

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 _____

Name: Nabil Hissen
Title: CEO

By Doug Johnson
(Authorized Officer)

Name: Doug Johnson
Title: Senior Vice President

**APPROVED AS TO FORM:
(C20-71)**

Malathy Subramanian, City Attorney

Date _____

City of Albany Business License

BL # 4090
Expiration Date:

12-31-20

ATTEST:

Anne Hsu, City Clerk

Date _____