

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

Agenda date: October 17, 2022  
Reviewed by: NA

**Subject:** Annual Street Rehabilitation Program (CIP No. 21000) – 2022 Pavement Rehabilitation Project – Award of Construction Contract No. C22-30 and Construction Management Services Contract No. C22-64

**Report By:** David Lam, Associate Engineer  
Allison Carrillo, CIP Program Manager  
Mark Hurley, Public Works Director/City Engineer

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**SUMMARY**

The 2022 Pavement Rehabilitation Project (Project) is ready to proceed to construction. The item before Council is to award Construction Contract No. C22-30 to Bay Cities Paving & Grading Inc. in the amount of \$1,998,381.00 and an associated Construction Management Contract No. C22-64 to Zoon Engineering in the not-to-exceed amount of \$200,000. The Project is part of the City’s Annual Street Rehabilitation Program (CIP No. 21000).

**STAFF RECOMMENDATION**

That the Council adopt Resolution No. 2022-105, authorizing the City Manager to:

1. Award Contract No. C22-30 to Bay Cities Paving & Grading, Inc. to construct the 2022 Pavement Rehabilitation Project for the not-to-exceed amount of \$1,998,381 from previously appropriated funds for the Annual Street Rehabilitation Program (CIP No. 21000), and
2. Execute Contract No. C22-64 with Zoon Engineering to provide construction management services for the not-to-exceed amount of \$200,000 from previously appropriated funds for the Annual Street Rehabilitation Program (CIP No. 21000).

**BACKGROUND**

The City of Albany currently maintains approximately 30 centerline miles of roads representing over five million square feet of pavement. The Annual Street Rehabilitation Program (CIP No. 21000) was established as part of the City’s Capital Improvement Plan (CIP) in order to formalize the City’s annual investment into improving and maintaining pavement conditions throughout the City. In November 2020, Council approved the five-year Capital Improvement Plan (Resolution No. 2020-108), which included \$8.85 million of paving maintenance and rehabilitation appropriated for the first three years of the plan.

On November 2, 2020, Council awarded a contract to CSG Consultants, Inc. (CSG) for

pavement and curb ramp rehabilitation design services for a two-year design cycle for the Annual Street Rehabilitation Program (Resolution No. 2020-105). Locations included in the project were selected based on prioritizations in the 2019 Pavement Management Plan, in conjunction with other planned projects. The design work for the 2022 Pavement Rehabilitation Project is complete.

On July 18, 2022, Council authorized the City Manager to advertise the Notice Inviting Bids for the Project (Resolution No. 2022-84). The Notice Inviting Bids was twice advertised in the local newspaper, posted on the City website, and distributed to several Bay Area builder’s exchanges. The Project was advertised for bid beginning on September 6, 2022.

**DISCUSSION**

On October 4, 2022, the City received and opened thirteen (13) bids for the construction of the 2022 Pavement Rehabilitation Project. The engineer’s estimate for this work is \$2,100,000.

The range of the thirteen bids is tabulated below.

<b>BIDDER</b>	<b>BASE BID AMOUNT</b>
Bay Cities Paving & Grading, Inc.	\$1,998,381.00
J.V. Lucas Paving, Inc.	\$2,020,957.00
Radius Earthwork Inc.	\$2,037,132.34
Ghilotti Construction Company, Inc.	\$2,115,551.50
Gallagher & Burk, Inc.	\$2,131,131.00
Interstate Grading & Paving Inc.	\$2,138,555.55
Ghilotti Bros., Inc.	\$2,147,856.50
Redgwick Construction Co.	\$2,175,704.95
Maggiora & Ghilotti, Inc.	\$2,211,000.00
McGuire and Hester	\$2,289,787.00
Roadway Construction Inc.	\$2,294,944.00
Teichert Construction	\$2,380,701.00
QA Constructors Inc.	\$2,548,400.00

The bids were reviewed and the lowest apparent bidder was found to be responsive and complete.

Per the process described in AMC §13-16, Public Works Department staff recommends that the construction contract be awarded to the lowest responsible bidder, Bay Cities Paving & Grading, Inc., with a base bid of \$1,998,381. Complete bid results are included in Attachment 2.

Additionally, staff requested proposals from eight firms for construction management services and received three proposals. Staff reviewed the proposals and found that Zoon demonstrated a strong understanding of the project and the proposal was found to be appropriate for the work proposed and competitive with other firms offering this service. Zoon Engineering is on the City’s on-call list of construction management firms and previously provided construction

management support for similar projects such as the Adams Street Pavement Rehabilitation and the Washington Avenue Pavement Rehabilitation Projects – Phase 1 and Phase 2.

The scope of the 2022 Pavement Rehabilitation Project generally consists of the following project elements:

- Pavement rehabilitation, including grinding and paving of asphalt
- Full depth roadway reconstruction as appropriate
- Curb ramp installations and upgrades to meet ADA standards
- Storm drain repairs and rehabilitation as necessary
- Striping and pavement markings

The Project scope also includes pavement restoration at the proposed location of a future rainbow crosswalk, the intersection of Solano Avenue and Cornell Avenue, where EBMUD (East Bay Municipal Utility District) recently replaced a water line. The Project location map is included as Attachment 5 to this report.

The contractor is required to complete the Project within 60 working days from the commencement date.

### **ENVIRONMENTAL CLEARANCE**

This project consists of rehabilitation of existing streets and is determined to be categorically exempt under CEQA (California Environmental Quality Act).

### **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. Accessibility ramps provide greater mobility by disabled persons, strollers, and able-bodied persons in general. This promotes non-motorized travel, thereby reducing air emissions.

### **EQUAL OPPORTUNITY AND NON-DISCRIMINATION**

The City of Albany promotes equal opportunity and non-discrimination on the basis of race, religion, creed, color, national origin, ancestry, sex, age, physical handicap, medical condition, marital status or other interests protected by state and federal law. The City strongly values contract participation by minority owned and women owned businesses. However, the City is unfortunately restricted in its ability to implement any form of preference program associated with those groups on City contracts based on limitations imposed under the California Constitution, which do not permit any public agency in the state to grant preferential treatment to any entity “on the basis of race, sex, color, ethnicity or national origin” in public contracting. (Cal. Const., art. I, § 31.) This constitutional restriction, which is commonly referred to as Proposition 209, was approved by voters in 1996. An effort to overturn this restriction placed on the November 2020 ballot (Proposition 16) was not approved by voters. The only exception

to the bar under Proposition 209 is for federally funded projects where the City has historically and will continue to fully and actively promote participation by minority owned and women owned businesses.

**FINANCIAL SUMMARY**

The budget for the first three years of the City’s Annual Street Rehabilitation Program (CIP No. 21000) was appropriated by Council as part of the City’s Capital Improvement Plan as adopted on November 16, 2020 (Resolution No. 2020-108). This budget reflects the City’s commitment to investing annually in maintaining and improving the City’s public right-of-way. An additional budget appropriation was made on June 6, 2022, for the City’s FY 2022-23 annual allocation of State SB-1 funding (Resolution No. 2022-54). A third budget appropriation was made on July 18, 2022, to incorporate the City’s FY2022-23 annual allocation of Federal Community Development Block Grant (CDBG) funding (Resolution No. 2022-83).

The following table details the total current appropriated budget and funding sources for the Annual Street Rehabilitation Program, Fiscal Years 2019/20 through 2021/22, including the recent additional FY2022/23 appropriations made for State SB-1 and federal CDBG funding:

<b><u>Funding Sources</u></b>	<b><u>FY19/20-21/22</u></b>
1101 – Meas B LSR	\$1,270,000
1104 – VRF	\$140,000
1201 – Meas BB LSR (ACTC)	\$1,940,000
2006 – Meas F Street & Storm	\$4,600,000
2009 – State SB-1/RMRA	\$1,399,215
1405 – CDBG	\$57,298
<b>Appropriations:</b>	<b>\$9,406,613</b>

The following are the estimated 2022 Pavement Rehabilitation Project costs:

Construction (C22-30)	\$1,998,381
Contingency (10%)	\$199,838
Construction Management (C22-64)	\$200,000
<u>Other Construction (Testing, Permits, etc.)</u>	<u>\$30,000</u>
<b>Total Estimated Expenditures</b>	<b>\$2,428,219</b>

As of October 7, 2022 the City has either spent or encumbered approximately \$6.43 million of the total appropriated program budget for the noted fiscal years. This includes the recently awarded contract for construction of the Marin Paving – Phase 1 project (\$1.8M, Resolution No. 2022-57).

The two contracts recommended for award in this staff report (Bay Cities for \$1,998,381 and Zoon for \$200,000), as well as the project contingency and other estimated construction costs, are within available program budget and no additional appropriations are needed at this time.

**Attachments:**

1. Resolution No. 2022-105
2. Bid Results and Tabulation for Contract No. C22-30
3. Contract No. C22-30 Bay Cities Paving & Grading Inc.
4. Contract No. C22-64 Zoon, Construction Management
5. 2022 Pavement Rehabilitation Project – Location Map

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**RESOLUTION NO. 2022-105**

**A RESOLUTION OF THE ALBANY CITY COUNCIL AUTHORIZING THE CITY MANAGER TO AWARD CONTRACT NO. C22-30 IN A NOT-TO-EXCEED AMOUNT OF \$1,988,381 TO BAY CITIES PAVING & GRADING FOR THE CONSTRUCTION OF THE 2022 PAVEMENT REHABILITATION PROJECT AND EXECUTE CONTRACT NO. C22-64 IN A NOT-TO-EXCEED AMOUNT OF \$200,000 TO ZOON ENGINEERING FOR CONSTRUCTION MANAGEMENT SERVICES**

**WHEREAS**, the City of Albany maintains 30 miles of public streets and roadways, with an overall pavement condition index (PCI) of 56 as calculated by the Metropolitan Transportation Commission (MTC); and

**WHEREAS**, on November 16, 2020, the City Council adopted Resolution No. 2020-108 for the FY19/20-23/24 Capital Improvement Plan (CIP) and appropriated budget for the first three fiscal years of the program; and

**WHEREAS**, the Annual Street Rehabilitation Program (CIP No. 21000) is included in the CIP, and reflects the City’s commitment to ongoing investment into improving and maintaining City street conditions, including the Citywide PCI, on an annual basis; and

**WHEREAS**, the design of the 2022 Pavement Rehabilitation Project has been completed and the project is ready for construction; and

**WHEREAS**, on July 18, 2022, the City Council authorized staff to advertise the Notice Inviting Bids for the 2022 Pavement Rehabilitation Project; and

**WHEREAS**, on October 4, 2022, the City received and opened thirteen (13) bids for the above-mentioned project; and

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**WHEREAS**, Bay Cities Paving and Grading, Inc. is the lowest responsible and responsive bidder for the construction of the 2022 Pavement Rehabilitation Project.

**NOW, THEREFORE, BE IT RESOLVED**, that that the Albany City Council authorize the City Manager to award Contract No. C22-30 to Bay Cities Paving & Grading, Inc. to construct the 2022 Pavement Rehabilitation Project for the not-to-exceed amount of \$1,998,381.00 and execute Contract No. C22-64 with Zoon Engineering to provide construction management services for the not-to-exceed amount of \$200,000 from funds previously appropriated under the Annual Street Rehabilitation Program (CIP No. 21000).

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PRESTON JORDAN, MAYOR

**BID RESULTS**

Project: **2022 Pavement Rehabilitation Project (~~#C22-43~~) (#C22-30)**

Bid Opening: **Tuesday, October 4, 2022 at 10:00 AM**

Location: **City Hall, 1000 San Pablo Avenue, Albany, CA 94706**

Staff called for bids and the following were received:

**Roadway Construction Inc.**

\$2,294,944.00

**Radius Earthwork Inc.**

\$2,037,132.34

**Ghilotti Bros., Inc.**

\$2,147,856.50

**Interstate Grading and Paving Inc.**

\$2,138,555.55

**QA Constructors Inc.**

\$2,548,400.00

**Maggiora & Ghilotti, Inc.**

\$2,211,000.00

**Teichert Construction**

\$2,380,701.00

**Bay Cities Paving & Grading, Inc.**

\$1,998,381.00

**Ghilotti Construction Company, Inc.**

\$2,115,551.50

**J.V. Lucas Paving, Inc.**

\$2,020,957.00

**Redwick Construction Co.**

\$2,175,704.95



**McGuire and Hester**

\$2,289,787.00

**Gallagher & Burk, Inc.**

\$2,131,131.00

The above results may include errors and/or omissions by the bidder. Bids are referred to staff for review.

City of Albany  
 2022 Pavement Rehabilitation  
 Project Contract No.: ~~C22-43~~ C22-30

## Bid Summary

Bidder	Total
*Bay Cities Paving & Grading, Inc.	\$1,998,381.00
J.V. Lucas Paving, Inc.	\$2,020,957.00
Radius Earthwork Inc.	\$2,037,132.34
Ghilotti Construction Company, Inc.	\$2,115,551.50
Gallagher & Burk, Inc.	\$2,131,131.00
Interstate Grading & Paving Inc.	\$2,138,555.55
Ghilotti Bros., Inc.	\$2,147,856.50
Redgwick Construction Co.	\$2,175,704.95
Maggiora & Ghilotti, Inc.	\$2,211,000.00
McGuire and Hester	\$2,289,787.00
Roadway Construction Inc.	\$2,294,944.00
Teichert Construction	\$2,380,701.00
QA Constructors Inc.	\$2,548,400.00

\* Apparent Low Bidder

Engineer's Estimate	\$2,100,000.00
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## Contract

This public works contract ("Contract") is entered into by and between City of Albany ("City") and Bay Cities Paving & Grading, Inc. ("Contractor"), for work on the 2022 Pavement Rehabilitation ("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 the Work to construct the Project. On \_\_\_\_\_, 20\_\_\_\_, City authorized award of this Contract to Contractor for the amount set forth in Section 4, below.
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, Performance and Warranty 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; and
  - 2.13 City of Albany Standard Specifications
  - 2.14 City of Albany Standard Details
  - 2.15 The following: No additional documents
3. **Contractor's Obligations.** Contractor will 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, supplies, tools, 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, City will pay Contractor \$ 1,998,381.00 ("Contract Price") for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, 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, City will assess liquidated damages in the amount of \$1,000 per day for each day of

unexcused delay in completion, and such liquidated damages may be deducted from City's payments due or to become due to Contractor under this Contract.

**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 DIR Registration.** City may not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations 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. Conflicts of Interest.** Contractor, its employees, Subcontractors and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or policy or in violation of any California law, including under Government Code section 1090 et seq. and under the Political Reform Act as set forth in Government Code section 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.

**10. Independent Contractor.** Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.

**11. Notice.** Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, 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:**

Dept: Albany City Hall  
Address: 1000 San Pablo Avenue  
City/State/Zip: Albany, CA 94706  
Phone: (510) 528-5710  
Attn: Anne Hsu, City Clerk  
Email: AHsu@albanyca.org  
Copy to: Mark Hurley, Director of Public Works ([MHurley@albanyca.org](mailto:MHurley@albanyca.org))

**Contractor:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_  
Copy to: \_\_\_\_\_

**12. General Provisions.**

- 12.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's and City's lawful heirs, successors and permitted assigns.
- 12.2 Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.
- 12.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court of < Alameda > County, and no other place.
- 12.4 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.
- 12.5 Integration.** 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 City and Contractor.
- 12.6 Severability.** If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in whole or in part, the remaining provisions of the Contract Documents will remain in full force and effect.
- 12.7 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:**

s/ \_\_\_\_\_

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

Date: \_\_\_\_\_

Attest:

s/ \_\_\_\_\_

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

Date: \_\_\_\_\_

**CONTRACTOR:** \_\_\_\_\_  
Business Name

s/ \_\_\_\_\_

Seal:

\_\_\_\_\_  
Name/Title

Date: \_\_\_\_\_

Second Signature (See Section 12.7):

s/ \_\_\_\_\_

\_\_\_\_\_  
Name/Title

Date: \_\_\_\_\_

\_\_\_\_\_  
Contractor's California License Number(s) and Expiration Date(s)

END OF CONTRACT



**CONTRACT #22-64  
AGREEMENT FOR CONSULTANT SERVICES  
BETWEEN  
THE CITY OF ALBANY  
AND  
ZOON ENGINEERING**

**FOR PROJECT:  
CONSTRUCTION MANAGEMENT SERVICES FOR THE 2022 ANNUAL  
PAVEMENT REHABILITATION PROJECT**

This AGREEMENT FOR CONSULTANT SERVICES ("AGREEMENT"), is made and entered into this \_\_\_ day of \_\_\_\_\_ 2022 by and among the City of Albany a California charter city ("CITY") and Zoon Engineering ("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 6 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. The total compensation, including reimbursement for actual expenses, shall not exceed \$200,000.00 unless additional compensation is approved in writing by the City Council or City Manager.

Each month CONSULTANT shall furnish to CITY an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by sub-category), travel, materials, equipment, supplies, sub-consultant contracts and miscellaneous expenses. CITY shall independently review each invoice submitted by the CONSULTANT to determine whether the work performed and expenses incurred are in compliance with the provisions of this AGREEMENT. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth below. In the event any charges or expenses are disputed by CITY, the original invoice shall be returned by CITY to CONSULTANT for correction and resubmission.

Except as to any charges for work performed or expenses incurred by CONSULTANT which are disputed by CITY, CITY will use its best efforts to cause CONSULTANT to be paid within thirty (30) days of receipt of CONSULTANT's invoice.

Payment to CONSULTANT for work performed pursuant to this AGREEMENT shall not be deemed to waive any defects in work performed by CONSULTANT.

#### **SECTION 5. INSPECTION AND FINAL ACCEPTANCE.**

CITY may inspect and accept or reject any of CONSULTANT's work under this AGREEMENT, either during performance or when completed. CITY shall reject or finally accept CONSULTANT's work within sixty (60) days after submitted to CITY. CITY shall reject work by a timely written explanation, otherwise CONSULTANT's work shall be deemed to have been accepted. CITY's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of CONSULTANT's work by CITY shall not constitute a waiver of any of the provisions of this AGREEMENT including, but not limited to, SECTIONS 15 and 16, pertaining to indemnification and insurance, respectively.

#### **SECTION 6. OWNERSHIP OF DOCUMENTS.**

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by CONSULTANT in the course of providing any services pursuant to this

AGREEMENT shall become the sole property of CITY and may be used, reused or otherwise disposed of by CITY without the permission of the CONSULTANT. Upon completion, expiration or termination of this AGREEMENT, CONSULTANT shall turn over to CITY all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

#### **SECTION 7. CONSULTANT'S BOOKS AND RECORDS.**

CONSULTANT shall maintain any and all documents and records demonstrating or relating to CONSULTANT's performance of services pursuant to this AGREEMENT. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to CITY pursuant to this AGREEMENT. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by CONSULTANT pursuant to this AGREEMENT. Any and all such documents or records shall be maintained for three years from the date of execution of this AGREEMENT and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon written request by CITY or its designated representative. Copies of such documents or records shall be provided directly to the CITY for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.

(c) Where CITY has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of CONSULTANT's business, CITY may, by written request, require that custody of such documents or records be given to the requesting party and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to CITY, as well as to its successors-in-interest and authorized representatives.

#### **SECTION 8. STATUS OF CONSULTANT.**

(a) CONSULTANT is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of CITY. CONSULTANT shall have no authority to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against CITY, whether by contract or otherwise, unless such authority is expressly conferred under this AGREEMENT or is otherwise expressly conferred in writing by CITY.

(b) The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that CONSULTANT or any of CONSULTANT's officers, employees or agents are in any manner officials, officers, employees or agents of CITY.

(c) Neither CONSULTANT, nor any of CONSULTANT's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to CITY'S employees. CONSULTANT expressly waives any claim CONSULTANT may have to any such rights.

#### **SECTION 9. STANDARD OF PERFORMANCE.**

CONSULTANT represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this AGREEMENT in a thorough, competent and professional manner. CONSULTANT shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this AGREEMENT, CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of CONSULTANT under this AGREEMENT.

#### **SECTION 10. COMPLIANCE WITH APPLICABLE LAWS, PERMITS, AND LICENSES.**

CONSULTANT shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this AGREEMENT. CONSULTANT shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this AGREEMENT. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.

CONSULTANT shall obtain and maintain in full force and effect during the term of this AGREEMENT a Business License from the CITY's Finance Department. Provide City of Albany Business License number and Expiration Date on Page 11 of this contract.

**SECTION 11. NONDISCRIMINATION.**

CONSULTANT shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with or related to the performance of this AGREEMENT.

**SECTION 12. UNAUTHORIZED ALIENS.**

CONSULTANT hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et M., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should CONSULTANT so employ such unauthorized aliens for the performance of work and/or services covered by this AGREEMENT, and should any liability or sanctions be imposed against CITY for such use of unauthorized aliens, CONSULTANT hereby agrees to and shall reimburse CITY for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by CITY.

**SECTION 13. CONFLICTS OF INTEREST.**

(a) CONSULTANT covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of CITY or which would in any way hinder CONSULTANT's performance of services under this AGREEMENT. CONSULTANT further covenants that in the performance of this AGREEMENT, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. CONSULTANT agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY in the performance of this AGREEMENT.

(b) CITY understands and acknowledges that CONSULTANT is, or may be, as of the date of execution of this AGREEMENT, independently involved in the performance of non-related services for other governmental agencies and private parties. CONSULTANT is unaware of any stated position of CITY relative to such projects. Any future position of CITY on such projects shall not be considered a conflict of interest for purposes of this section.

**SECTION 14. CONFIDENTIAL INFORMATION AND RELEASE OF INFORMATION.**

(a) All information gained or work product produced by CONSULTANT in performance of this AGREEMENT shall be considered confidential, unless such information is in the public domain or already known to CONSULTANT. CONSULTANT shall not release or disclose any such information or work product to

persons or entities other than CITY without prior written authorization from the City Administrator, except as may be required by law.

(b) CONSULTANT, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of CITY, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this AGREEMENT. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives CITY notice of such court order or subpoena.

(c) If CONSULTANT, or any officer, employee, agent or subcontractor of CONSULTANT, provides any information or work product in violation of this AGREEMENT, then CITY shall have the right to reimbursement and indemnity from CONSULTANT for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of CONSULTANT's conduct.

(d) CONSULTANT shall promptly notify CITY should CONSULTANT, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this AGREEMENT and the work performed thereunder. CITY retains the right, but has no obligation, to represent CONSULTANT or be present at any deposition, hearing or similar proceeding. CONSULTANT agrees to cooperate fully with CITY and to provide CITY with the opportunity to review any response to discovery requests provided by CONSULTANT. However, this right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response.

## **SECTION 15. INDEMNIFICATION.**

(a) CITY and its elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "INDEMNITEES") shall have no liability to CONSULTANT or any other person for, and CONSULTANT shall indemnify, defend, protect and hold harmless INDEMNITEES from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "CLAIMS"), which INDEMNITEES may suffer or incur or to which INDEMNITEES may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of or allegedly caused by the CONSULTANT's performance of or failure to perform any services under this AGREEMENT or by the negligent or *willful* acts or omissions of CONSULTANT, its agents, officers, directors, subcontractors or employees, committed in performing any of the services under this AGREEMENT.

(b) If any action or proceeding is brought against INDEMNITEES by reason of any of the matters against which CONSULTANT has agreed to indemnify INDEMNITEES as provided above, CONSULTANT, upon notice from CITY, shall defend INDEMNITEES at CONSULTANT's expense by counsel acceptable to CITY, such acceptance not to be unreasonably withheld. INDEMNITEES need not have first paid for any of the matters to which INDEMNITEES are entitled to indemnification in order to be so indemnified. The insurance required to be maintained by CONSULTANT under SECTION 16 shall ensure CONSULTANT's obligations under this section, but the limits of such insurance shall not limit the liability of CONSULTANT hereunder. The provisions of this section shall survive the expiration or earlier termination of this AGREEMENT.

(c) The provisions of this section do not apply to CLAIMS occurring as a result of the CITY's sole negligence or *willful* acts or omissions.

#### **SECTION 16. INSURANCE.**

CONSULTANT agrees to obtain and maintain in full force and effect during the term of this AGREEMENT the insurance policies set forth in EXHIBIT "C" "INSURANCE" and made a part of this AGREEMENT. All insurance policies shall be subject to approval by CITY as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Administrator. CONSULTANT agrees to provide CITY with copies of required policies upon request.

#### **SECTION 17. ASSIGNMENT.**

The expertise and experience of CONSULTANT are material considerations for this AGREEMENT. CITY has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon CONSULTANT under this AGREEMENT. In recognition of that interest, CONSULTANT shall not assign or transfer this AGREEMENT or any portion of this AGREEMENT or the performance of any of CONSULTANT's duties or obligations under this AGREEMENT without the prior written consent of the CITY. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this AGREEMENT entitling CITY to any and all remedies at law or in equity, including summary termination of this AGREEMENT. CITY acknowledges, however, that CONSULTANT, in the performance of its duties pursuant to this AGREEMENT, may utilize subcontractors.

#### **SECTION 18. CONTINUITY OF PERSONNEL.**

CONSULTANT shall make every reasonable effort to maintain the stability and continuity of CONSULTANT's staff assigned to perform the services required under this AGREEMENT. CONSULTANT shall notify CITY of any changes in CONSULTANT's

staff assigned to perform the services required under this AGREEMENT, prior to any such performance.

#### **SECTION 19. TERMINATION OF AGREEMENT.**

(a) CITY may terminate this AGREEMENT, with or without cause, at any time by giving thirty (30) days written notice of termination to CONSULTANT. In the event such notice is given, CONSULTANT shall cease immediately all work in progress.

(b) CONSULTANT may terminate this AGREEMENT at any time upon thirty (30) days written notice of termination to CITY. In the event such notice is given, CONSULTANT shall cease immediately all work in progress.

(c) If either CONSULTANT or CITY fail to perform any material obligation under this AGREEMENT, then, in addition to any other remedies, either CONSULTANT, or CITY may terminate this AGREEMENT immediately upon written notice.

(d) Upon termination of this AGREEMENT by either CONSULTANT or CITY, all property belonging exclusively to CITY which is in CONSULTANT's possession shall be returned to CITY. CONSULTANT shall furnish to CITY a final invoice for work performed and expenses incurred by CONSULTANT, prepared as set forth in SECTION 4 of this AGREEMENT. This final invoice shall be reviewed and paid in the same manner as set forth in SECTION 4 of this AGREEMENT.

#### **SECTION 20. DEFAULT.**

In the event that CONSULTANT is in default under the terms of this AGREEMENT, the CITY shall not have any obligation or duty to continue compensating CONSULTANT for any work performed after the date of default and may terminate this AGREEMENT immediately by written notice to the CONSULTANT.

#### **SECTION 21. EXCUSABLE DELAYS.**

CONSULTANT shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of CONSULTANT. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of CITY, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this AGREEMENT shall be equitably adjusted for any delays due to such causes.



**SECTION 22. COOPERATION BY CITY.**

All public information, data, reports, records, and maps as are existing and available to CITY as public records, and which are necessary for carrying out the work as outlined in the EXHIBIT "A" "SCOPE OF SERVICES", shall be furnished to CONSULTANT in every reasonable way to facilitate, without undue delay, the work to be performed under this AGREEMENT.

**SECTION 23. NOTICES.**

All notices required or permitted to be given under this AGREEMENT shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To CITY: Nicole Almaguer  
City Manager  
City of Albany  
1000 San Pablo Avenue  
Albany, CA 94706

To CONSULTANT: 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.

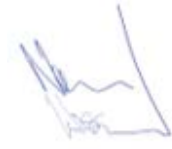
**SECTION 32. SEVERABILITY.**

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:** (C22-64)

**CONSULTANT:**



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

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

Name: Nabil Hissen  
Title: CEO

Date \_\_\_\_\_

By Brian MacRae  
(Authorized Officer)

Name: Brian MacRae  
Title: Vice President

**ATTEST:**

City of Albany Business License

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

**BL #** 4701  
Expiration Date: 12-31-2022

Date \_\_\_\_\_

\_\_\_\_\_



CM | claims | project controls

June 13, 2022

Allison Carrillo, PE  
CIP Program Manager  
City of Albany, Public Works  
1000 San Pablo Avenue  
Albany, CA 94706

**RE: Construction Management Services for 2022 Pavement Rehabilitation Project**

Dear Ms. Carrillo:

Attached please find our cost proposal to provide Construction Management services for the City's 2022 Pavement Rehabilitation Project. Please note that although the proposal is based on assumed levels of effort, as always the Zoon Engineering Team we will do everything we can to preserve your budget, minimize costs, and optimize our resources to provide the City with the best value without compromising on quality.

Please feel free to contact me at (925) 451-1585 or email [nhissen@zoon-eng.com](mailto:nhissen@zoon-eng.com) should you have any questions or require further information.

Thank you for your faith and confidence in our company.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nabil Hissen".

Nabil Hissen, PE  
CEO



Exhibit "A"

Material Estimate  
 Hours and Cost by Task and Subtask

	Saeed Shahmirzai, PE \$	Brian MacRae \$	Mirza Baig \$	Hours By Task	Cost By Task
<b>Task 1 - Construction Contract Administration</b>					
Provide Monthly Report	5	10	10	25	\$ 4,000.00
Set up construction project files	5	10	10	25	\$ 4,000.00
Convene pre-construction meeting	5	10	10	25	\$ 4,000.00
Track progress payment estimates	5	10	10	25	\$ 4,000.00
Evaluate, negotiate and recommend Contract Change Orders	5	10	10	25	\$ 4,000.00
Weekly statement of working days	5	10	10	25	\$ 4,000.00
Maintain construction project files	5	10	10	25	\$ 4,000.00
<b>Total Task 1 - Construction Contract Administration</b>	<b>35</b>	<b>70</b>	<b>70</b>	<b>175</b>	<b>\$ 28,000.00</b>

**Task 2 - Construction Engineering**

Resident Engineer's (RE) file review	5	10	10	25	\$ 4,000.00
Perform Resident Engineer functions	35	10	10	55	\$ 10,000.00
Review Contract Documents	10	10	10	30	\$ 5,000.00
Determine contract pay quantities	10	10	10	30	\$ 5,000.00
Lines and grades control	10	10	10	30	\$ 5,000.00
Construction contractor's trenching and shoring submittals rev	10	10	10	30	\$ 5,000.00
SWPPP Review and Approval	5	10	10	25	\$ 4,000.00
Coordinate lane closures		10	10	20	\$ 3,000.00
Schedule Support	20	10	10	40	\$ 7,000.00
<b>Total Task 2 - Construction Engineering</b>	<b>105</b>	<b>90</b>	<b>90</b>	<b>285</b>	<b>\$ 48,000.00</b>

**Task 3 - Contract Item Work Inspection**

Photographs		10	10	20	\$ 3,000.00
Inspection of contractors' work		200	200	400	\$ 60,000.00
Report and document contractors' operations		140	140	280	\$ 42,000.00
Prepare punch list completion		10	10	20	\$ 3,000.00
Perform safety and maintenance review		10	10	20	\$ 3,000.00
<b>Total Task 3 - Contract Item Work Inspection</b>	<b>-</b>	<b>370</b>	<b>370</b>	<b>740</b>	<b>\$ 111,000.00</b>

**Task 4 - Project Close Out and Acceptance**

Perform final inspection		10	10	20	\$ 3,000.00
Review as-built drawings	10	10	10	30	\$ 5,000.00
Deliver final project files for contract administration	10	10	10	30	\$ 5,000.00
<b>Total Task 4 - Project Close Out and Acceptance</b>	<b>20</b>	<b>30</b>	<b>30</b>	<b>80</b>	<b>\$ 13,000.00</b>
<b>GRAND TOTALS</b>	<b>160</b>	<b>560</b>	<b>560</b>	<b>1,280</b>	<b>\$ 200,000.00</b>

Cost Proposal for  
 City of Albany  
 Construction Management Services for  
 2022 Pavement Rehabilitation Project  
 6/13/2022



Exhibit "B"

**Projected Labor Hours By Person**

Name	Title	Construction Management	Total Hours	Billing Rate	TOTAL
Saeed Shahmirzai, PE	Resident Engineer	160	160	\$ 200.00	\$ 32,000.00
Brian MacRae	Assistant Resident Engineer	560	560	\$ 175.00	\$ 98,000.00
Mirza Baig	Construction Inspector	560	560	\$ 125.00	\$ 70,000.00
		1,280	1,280		

Total Labor Costs: \$ 200,000.00  
 TOTAL: \$ 200,000.00

**Notes:**

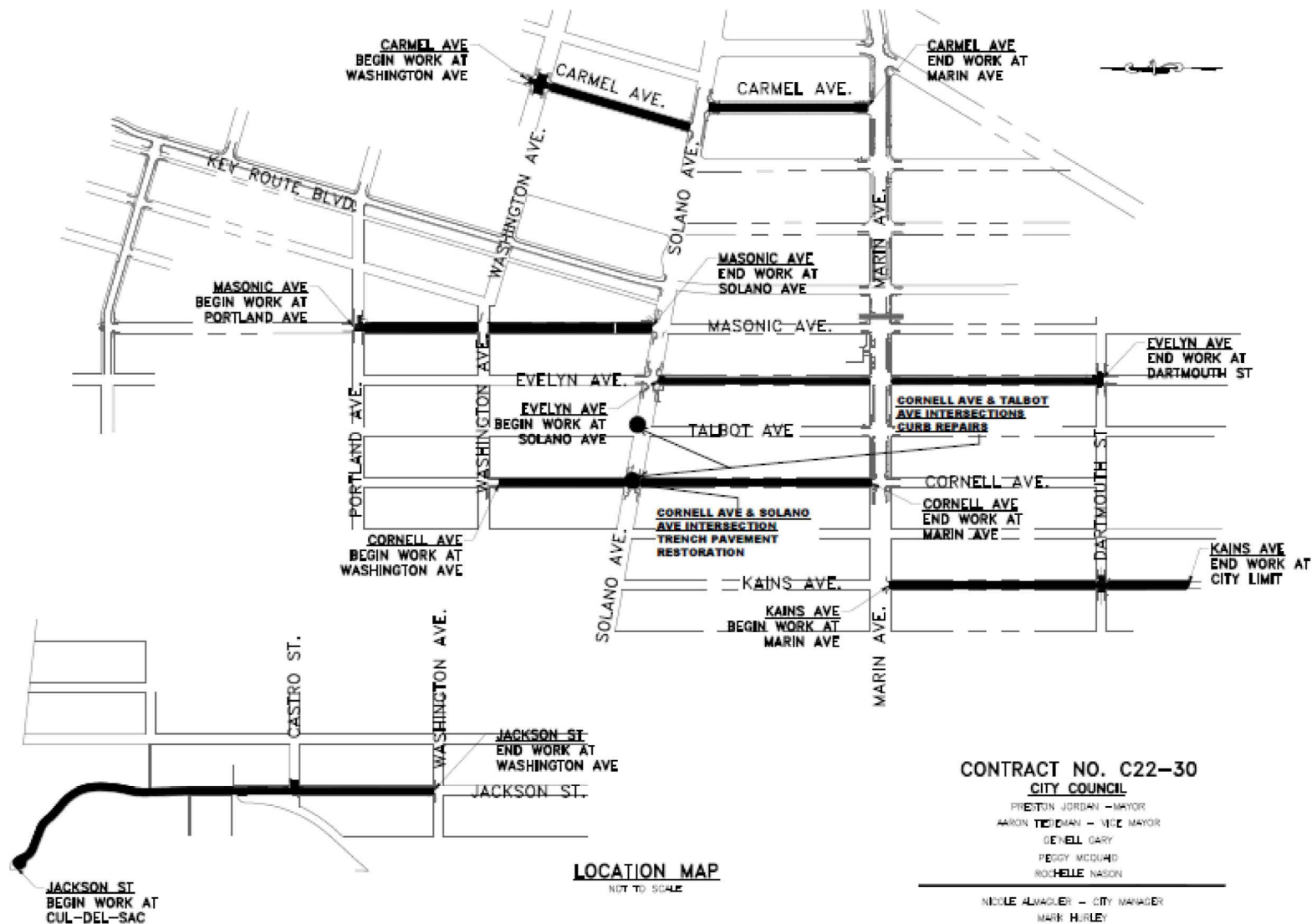
1. Above hourly rates include all overhead, fringe, and profit unless otherwise noted.
2. No allowance for overtime or double shifts has been made. Overtime hours and additional shifts, if necessary, to be determined.
3. Equipment, supplies, and incidental costs included in labor rates unless otherwise noted.
4. Proposal assumes contract start in September/October 2022 and completion by December 2022
5. Escalation for work beyond February 2023, if necessary is not accounted for.
6. Services to be provided from Zoon offices in Emeryville. Field office costs if required to billed as other direct costs with no markup.
7. Estimate based on a 70 working day construction duration

# CITY OF ALBANY

## PUBLIC WORKS DEPARTMENT

### PLANS FOR 2022 PAVEMENT REHABILITATION PROJECT

(AT CARMEL AVE, MASONIC AVE, EVELYN AVE, CORNELL AVE, KAINS AVE AND JACKSON ST)  
ALAMEDA COUNTY, CALIFORNIA



CONTRACT NO. C22-30

CITY COUNCIL

PRESTON JORDAN - MAYOR

AARON TEBELMAN - VICE MAYOR

GENELL GARY

PERRY MCDONALD

ROCHELLE NASON

NICOLE ALVAREZ - CITY MANAGER

MARK HURLEY

PUBLIC WORKS DIRECTOR & CITY ENGINEER

ALLISON GARRILLO

CAPITAL IMPROVEMENT PROJECTS PROGRAM MANAGER