



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

Agenda Date: July 17, 2023  
Reviewed by: NA

**SUBJECT:** Lower Codornices Creek Restoration Phase IV Project (CIP No. 43001) – Award of Construction Contract No. C23-26 and Construction Management Services Contract No. C23-46

**REPORT BY:** James Cirelli, Associate Engineer  
Allison Carrillo, CIP Manager  
Devora Zauderer, Public Works Program Manager  
Mark Hurley, Public Works Director

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**SUMMARY**

The Lower Codornices Creek Restoration Project is an ongoing project to restore Codornices Creek from San Pablo Avenue to the western edge of UC Village. Phase IV of the Lower Codornices Creek Restoration Project (Phase IV Project, CIP No. 43001) includes a multiuse path along Codornices Creek between 8<sup>th</sup> Street and 10<sup>th</sup> Street.

The item before Council is to award Construction Contract No. C23-26 to Bay Construction Co. (Bay Co.) in the amount of \$1,360,000 and an associated Construction Management Construction Contract No. C23-46 to Zoon Engineering (“Zoon”) in the amount of \$155,000.

Staff also recommends an additional appropriation of funds from Alameda County Transportation Commission (ACTC) pass-through revenues, specifically Measure B & BB Bicycle & Pedestrian funds, to close the funding gap for construction of the project.

**STAFF RECOMMENDATION**

That Council adopt Resolution No. 2023-54:

1. Authorizing the City Manager to award Contract No. C23-26 to Bay Co. to construct the Phase IV Project (CIP No. 43001) for the not-to-exceed amount of \$1,360,000;
2. Authorize the City Manager to execute Contract No. C23-46 with Zoon Engineering to provide construction management services for the not-to-exceed amount of \$155,000; and
3. Appropriating funds in the amounts of \$90,000 from Measure B Bicycle & Pedestrian Funds (1102) and \$182,000 in Measure BB Bicycle and Pedestrian Funds (1202), and increasing the project budget for Phase IV of the Lower Codornices Creek Restoration Project (CIP No. 43001) accordingly.

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The project is Categorically Exempt from CEQA pursuant to Section 15301 “Existing Facilities” of the CEQA Guidelines, which exempts the minor alteration of storm drains, walkways, bicycle facilities, pedestrian crossings, and existing landscaping that will result in a negligible expansion of use. In addition, Section 15304 “Minor Alterations to Land” of the CEQA Guidelines, exempts the minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees, and is in an area with a slope of less than 10%, and if new landscaping will be water efficient. Upon Council award of Construction Contract C23-26, a Notice of Exemption will be filed with the Alameda County Clerk-Recorder’s Office.

## **BACKGROUND**

The planning and implementation of the restoration of Codornices Creek between Kains Avenue to Interstate 80 has been ongoing since the late 1990s and involves the City of Albany, the City of Berkeley, and the University of California. Lower Codornices Creek forms the boundary between the cities of Berkeley and Albany and the primary owner within Albany is the University of California (UC Village). The Phase IV Project (CIP No. 43001) includes construction of a multi-use path from 8<sup>th</sup> Street to 10<sup>th</sup> Street to fill a gap in the multi-use path paralleling the creek. Additional background information regarding previous phases and planning for the Phase IV Project is available in the April 17, 2023 *Authorize Call for Bids for Phase IV Construction* staff report.

In October 2019, the City Council accepted the Phase IV Project design and authorized staff to identify funding for construction (Resolution No. 2019-86). In November 2020, the City Council adopted Resolution No. 2020-108 authorizing the adoption of Albany’s updated FY2019/20-2023/24 Capital Improvement Plan (CIP), and appropriated budget for the first three fiscal years. This included \$620,000 in funds from remaining Measure R Landscape and Lighting Assessment District (LLAD) 1996-1 fund balances for the Lower Codornices Creek Restoration Project – Phase IV.

In Summer 2021, staff received notification that funding had been awarded to the Project in the sum of \$826,000 in combined regional Measure B and State Transportation Fund for Clean Air (TFCA) transportation dollars. The City Council accepted this award and authorized staff to administer the grant, bringing the total project budget up to \$1,446,000 (Resolution No. 2021-97). The grant period began in July 2022.

With construction funding secured for the Phase IV Project, staff reviewed the project site in August 2022 to review potential changes as the current design was completed in October 2019. Staff observed repaving projects by UC Berkeley, habitat restoration, and tree and fence changes within the Project site since the 2019 design. Staff concluded that existing conditions had changed significantly enough to warrant an updated survey and revised plan set to reflect current conditions.

In early 2023, RDG began updating the plan set to reflect changes in project specifications, materials, and best practices. In addition, due to the environmental complexity with construction adjacent to a forested creek and the involvement of multiple, actively engaged stakeholders, staff worked with Zoon to provide a pre-construction review, evaluating the biddability and constructability of the Phase IV Project plan set and specifications. In April 2023, RDG completed revisions to the Phase IV Project plan set and specifications based on the updated survey of the project area and incorporated Zoon's constructability comments.

On April 17, 2023, the City Council authorized the City Manager to advertise the Notice Inviting Bids for the Project (Resolution No. 2023-19). The Public Works Department subsequently 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.

**DISCUSSION**

On June 14, 2023, the City received and opened three bids for the construction of the Phase IV Project. The engineer's estimate for this construction work is \$1,150,000.

The range of the three bids is tabulated below.

| <b>BIDDER</b>                  | <b>BASE BID AMOUNT</b> |
|--------------------------------|------------------------|
| Bay Construction Co.           | \$1,360,000            |
| Giron Construction             | \$1,381,950            |
| Robert A. Bothman Construction | \$1,453,000            |

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

As per the process described in Albany Municipal Code §13-16, Public Works Department staff recommends that the construction contract be awarded to the lowest responsible bidder, Bay Co., with a base bid of \$1,360,000. Complete bid results are shown in Attachment 2.

Additionally, staff requested a proposal from Zoon for construction management services. Staff reviewed the proposal and determined that it was competitive with expected management costs. Furthermore, Zoon has a strong understanding of the Phase IV Project, having provided the pre-constructability review and projected construction timeline in March 2023. Zoon is on the City's on-call list of construction management firms and previously provided construction management support for City projects, such as the 2021 Sanitary Sewer Rehabilitation, Adams Street Pavement Rehabilitation, the Washington Avenue Pavement Rehabilitation (Phase 1 and 2), and the 2022 Pavement Rehabilitation.

The scope of the Phase IV Project generally consists of the following project elements:

- Conversion of the existing informal dirt path along the Codornices Creek corridor between 8<sup>th</sup> Street and 10<sup>th</sup> Street to an accessible asphalt and concrete mixed-use trail;

- Installation of a speed table on 8<sup>th</sup> Street and widening the adjacent sidewalks to connect the existing Codornices Creek trail to the Phase IV Project trail improvements;
- Relocation of existing bleachers at 10<sup>th</sup> Street to provide additional trail width;
- Installation of bicycle parking along the trail and at 10<sup>th</sup> Street;
- Fencing and guardrail improvements between 8<sup>th</sup> Street and 10<sup>th</sup> Street;
- Removal of invasive vegetation and planting/establishment of appropriate vegetation;
- Installation of a bioretention basin on 8<sup>th</sup> Street;
- As-needed asphalt concrete paving on 8<sup>th</sup> Street.

The contractor is required to complete the Phase IV Project within 90 calendar days from the Notice to Proceed.

### **ENVIRONMENTAL CLEARANCE**

The project is Categorical Exempt from CEQA pursuant to Section 15301 “Existing Facilities” of the CEQA Guidelines, which exempts the minor alteration of storm drains, walkways, bicycle facilities, pedestrian crossings, and existing landscaping that will result in a negligible expansion of use. In addition, Section 15304 “Minor Alterations to Land” of the CEQA Guidelines, exempts the minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees, and is in an area with a slope of less than 10%, and if new landscaping will be water efficient. Upon Council award of Construction Contract C23-26, a Notice of Exemption will be filed with the Alameda County Clerk-Recorder’s Office.

### **SUSTAINABILITY**

The Phase IV Project will progress the City’s climate action and adaptation by advancing active transportation and accelerating climate resilience, as summarized in the following section (i.e. Goal 1 of the City Council Strategic Plan).

### **CITY COUNCIL STRATEGIC PLAN**

The Phase IV Project supports Goal 1 and Goal 3 of the Council’s Strategic Plan.

#### **Goal 1: Advance Climate Action & Adaptation**

The City’s Climate Action & Adaptation Plan serves as an instructional plan that identifies programs and projects that are intended to reduce greenhouse gas emissions, as well as measures to adapt to climate change impacts:

*Advance Active, Shared, and Electric Transportation.* Transportation is identified as the highest source of greenhouse gas emissions in Albany and increasing active transportation, such as walking and bicycling, is a priority. A major element to the Phase IV Project is a multi-use trail (Class I path), which links two existing Class I paths: the Codornices Creek trail between 6<sup>th</sup> Street and 8<sup>th</sup> Street and the Class I path between 10<sup>th</sup> Street and San Pablo Avenue. Additionally, bicycle parking will be installed along the trail and at 10<sup>th</sup> Street. Ultimately, the Phase IV Project will enhance accessibility, bikeability, and walkability within the City.

*Accelerate Resilience.* Expanding and improving natural systems is identified to promote resilience and carbon storage; actions outlined include expanding green infrastructure and fostering resilient natural landscapes. The Phase IV Project will install a bioretention basin at 8<sup>th</sup> Street, filtering debris and contaminants before entering Codornices Creek. In addition, wildlife habitat will be protected by removing non-native vegetation, encouraging existing native vegetation to grow within the project area. Native vegetation maintains a local ecosystem and increases biodiversity. Furthermore, native vegetation is adapted to the local climate, requiring less maintenance and can often withstand environmental stressors (e.g. extended periods of dry weather) more effectively.<sup>1,2</sup>

### **Goal 3: Promote Streets that Support Safety & Transportation Mobility Options**

The City's Local Roadway Safety Plan in connectivity with the Active Transportation Plan (ATP) help guide transportation and mobility enhancement projects within the City. The ATP identifies upgrading sidewalks and curb ramps to meet ADA standards, as is being performed under this project. In addition, both the trail and sidewalk improvements afford greater mobility by disabled persons, strollers, and able-bodied persons in general, promoting active transportation (i.e. non-motorized travel).

## **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 project budget for Phase IV of the Lower Codornices Creek Restoration Project (CIP No. 43001) was approved by Council as part of the City's Capital Improvement Plan in November 2020 (Resolution No. 2020-108).

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<sup>1</sup> Christopher J. Duerksen & Cara Snyder, *Nature-Friendly Communities: Habitat Protection and Land Use Planning*

<sup>2</sup> United States Environmental Protection Agency, *Landscaping with Native Plants: Quantification of the Benefits of Native Landscaping Current Knowledge*

The following table details the estimated project costs for construction of the Phase IV Project:

| <b>Project Expenditures</b>                              | <b>Cost</b>        |
|--|--------------------|
| Professional Services – Design Update (C23-07)           | \$ 35,977          |
| Professional Services – Constructability Review (C23-10) | \$ 14,800          |
| Construction/Improvements (C23-26)                       | \$1,360,000        |
| Construction Management (C23-46)                         | \$155,000          |
| Contingency (10%)  | \$151,500          |
| <b>Total Expenditures (estimated)</b>                    | <b>\$1,717,277</b> |

As noted in the project background above, the Phase IV Project is currently funded by a combination of local Creeks capital funds and grant funds administered by ACTC. The budget for the Phase IV Project was appropriated as part of the CIP, with amendment via Resolution No. 2021-97 to appropriate the awarded grant funding.

Staff recommends a new appropriation from ACTC Measure B and BB Bike & Pedestrian funding to address the current gap in project funding, as noted below.

| <b>Funding Sources</b>                    | <b>Amount</b>       |
|---|---------------------|
| Measure R LLAD 1996-1 Creeks (2304)       | \$ 620,000          |
| ACTC Grant – Measure B (1204)             | \$ 741,000          |
| ACTC Grant – TFCA (1106)                  | \$ 85,000           |
| Measure B Bike & Ped (1102) – <b>NEW</b>  | \$ 90,000           |
| Measure BB Bike & Ped (1202) – <b>NEW</b> | \$ 182,000          |
| <b>Total</b>                              | <b>\$ 1,718,000</b> |

Staff recommends authorization of this funding and increase to the project budget accordingly.

**Attachments**

1. Resolution No. 2023-54
2. Bid Results & Tabulation for Contract No. C23-26
3. Contract No. C23-26 Bay Construction Co.
4. Contract No. C23-46 Zoon Engineering

1 **RESOLUTION NO. 2023-54**

2 **A RESOLUTION OF THE ALBANY CITY COUNCIL AUTHORIZING**  
3 **THE CITY MANGER TO AWARD CONSTRUCT NO. C23-26 IN A**  
4 **NOT-TO-EXCEED AMOUNT OF \$1,360,000 TO BAY CONSTRUCTION CO.**  
5 **FOR THE CONSTRUCTION OF PHASE IV OF THE LOWER CODORNICES**  
6 **CREEK RESTORATION PROJECT, EXECUTE CONTRACT NO. C23-46 IN A**  
7 **NOT-TO-EXCEED AMOUNT OF \$155,000 TO ZOON ENGINEERING FOR**  
8 **CONSTRUCTION MANAGEMENT SERVICES, AND APPROPRIATE**  
9 **ADDITIONAL FUNDS FOR THE PROJECT**

10 **WHEREAS**, the City of Albany has partnered with the City of Berkeley and the  
11 University of California since the late 1990s to restore the portion of lower Codornices Creek  
12 between San Pablo Avenue and the train tracks as a vital riparian habitat and a resource to the  
13 community; and

14 **WHEREAS**, in November 2020, the City Council approved Resolution No. 2020-108,  
15 adopting the FY2019/20 – 2023/24 Capital Improvement Plan and appropriating funds for the  
16 first three fiscal years of the Plan, including \$620,000 in Measure R Landscape and Lighting  
17 Assessment District (LLAD) 1996-1 funding for the Lower Codornices Creek Restoration  
18 Project (CIP No. 22000); and

19  
20 **WHEREAS**, in December 2020, the City Council approved Resolution No. 2020-123,  
21 authorizing submission of the Phase IV project for consideration for funding as part of the  
22 Alameda County Transportation Commission’s 2022 Comprehensive Investment Plan; and

23  
24 **WHEREAS**; in 2021, City staff received notification that funding had been awarded to  
25 the Phase IV Project in the sum of \$826,000 in combined Alameda County Measure B and  
26 State Transportation Fund for Clean Air (TFCA) transportation dollars; and

27  
28 **WHEREAS**, in October 2021, the City Council approved Resolution No. 2021-97,  
29 accepting the \$826,000 award and authorizing City staff to administer the grant; and

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2           **WHEREAS**, in August 2022, City staff reviewed the Phase IV project site and concluded  
3 that an updated survey and revised plan set for Phase IV is necessary to reflect current  
4 conditions; and

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6           **WHEREAS**, in April 2023, Restoration Design Group updated the plans and  
7 specifications for Phase IV to reflect current conditions; and

8  
9           **WHEREAS**, on April 17, 2023, the City Council authorized staff to advertise Phase IV  
10 of the Lower Codornices Creek Restoration Project (Resolution No. 2023-19); and

11  
12           **WHEREAS**, on June 14, 2023, the City received and opened three bids for the above-  
13 mentioned project; and

14  
15           **WHEREAS**, Bay Construction Co. is the lowest responsible and responsive bidder for  
16 the construction of Phase IV of the Lower Codornices Creek Restoration Project.

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18           **NOW, THEREFORE, BE IT RESOLVED**, that the City Council hereby authorizes  
19 the City Manager to award Contract No. C23-26 to Bay Construction Co. to construct Phase  
20 IV of the Lower Codornices Creek Restoration Project in the not-to-exceed amount of  
21 \$1,360,000; and

22  
23           **BE IT FURTHER RESOLVED**, that the City Council hereby authorizes the City  
24 Manager to execute Contract No. C23-46 with Zoon Engineering to provide construction  
25 management services for the not-to-exceed amount of \$155,000; and

26  
27           **BE IT FURTHER RESOLVED**, that the City Council hereby appropriates \$90,000  
28 from Measure B Bicycle & Pedestrian Funds (1102) and \$182,000 in Measure BB Bicycle and  
29



1 Pedestrian Funds (1202), and increases the project budget for Phase IV of the Lower  
2 Codornices Creek Restoration Project (CIP No. 43001) accordingly.

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AARON TIEDEMANN, MAYOR

## **BID RESULTS**

Project: **Lower Codornices Creek Restoration Project Phase IV (Contract No. C23-26)**

Bid Opening: **Wednesday, June 14, 2023 at 2:00 PM**

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

Staff called for bids and the following were received:

**Bay Construction Co.**

\$1,360,000.00

**Robert A. Bothman Construction**

\$1,453,000.00

**Giron Construction**

\$1,381,950.00

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

City of Albany  
Lower Codornices Creek Restoration Project Phase IV  
Contract No.: C23-26

## Bid Summary

| <b>Bidder</b>                  | <b>Total</b>   |
|--------------------------------|----------------|
| Bay Construction Co. *         | \$1,360,000.00 |
| Giron Construction             | \$1,381,950.00 |
| Robert A. Bothman Construction | \$1,453,000.00 |

\* Apparent Low Bidder

Engineer's Estimate \$1,150,000.00

| No.                          | Description                             | Est. Qty. | Unit | Engineer's Estimate        | Bay Construction Co. *        |                        | Giron Construction        |                        | Robert A. Bothman Construction        |                        |
|------------------------------|---|-----------|------|----------------------------|-------------------------------|------------------------|---------------------------|------------------------|---------------------------------------|------------------------|
|                              |   |           |      |                            | Bid Unit amount               | Total Amount           | Bid Unit amount           | Total Amount           | Bid Unit amount                       | Total Amount           |
| 100                          | Mobilization                            | 1         | LS   | ---                        | \$ 112,500.00                 | \$ 112,500.00          | \$ 30,000.00              | \$ 30,000.00           | \$ 25,000.00                          | \$ 25,000.00           |
| 101                          | SWPPP Preparation and Implementation    | 1         | LS   | ---                        | \$ 17,500.00                  | \$ 17,500.00           | \$ 10,000.00              | \$ 10,000.00           | \$ 65,000.00                          | \$ 65,000.00           |
| 102                          | General Conditions                      | 1         | LS   | ---                        | \$ 37,500.00                  | \$ 37,500.00           | \$ 205,000.00             | \$ 205,000.00          | \$ 175,920.00                         | \$ 175,920.00          |
| 103                          | Traffic Control Plan                    | 1         | LS   | ---                        | \$ 17,500.00                  | \$ 17,500.00           | \$ 10,000.00              | \$ 10,000.00           | \$ 25,000.00                          | \$ 25,000.00           |
| 104                          | Public Access & Pedestrian Traffic Plan | 1         | LS   | ---                        | \$ 17,500.00                  | \$ 17,500.00           | \$ 5,000.00               | \$ 5,000.00            | \$ 550.00                             | \$ 550.00              |
| 200                          | Clearing and Grubbing                   | 1         | LS   | ---                        | \$ 75,000.00                  | \$ 75,000.00           | \$ 68,000.00              | \$ 68,000.00           | \$ 42,000.00                          | \$ 42,000.00           |
| 201                          | Demolition                              | 1         | LS   | ---                        | \$ 87,500.00                  | \$ 87,500.00           | \$ 78,000.00              | \$ 78,000.00           | \$ 136,000.00                         | \$ 136,000.00          |
| 300                          | Earthwork and Drainage                  | 1         | LS   | ---                        | \$ 87,500.00                  | \$ 87,500.00           | \$ 155,000.00             | \$ 155,000.00          | \$ 275,000.00                         | \$ 275,000.00          |
| 301                          | AC Paving - Vehicular                   | 3,880     | SF   | ---                        | \$ 12.50                      | \$ 48,500.00           | \$ 15.00                  | \$ 58,200.00           | \$ 10.00                              | \$ 38,800.00           |
| 302                          | AC Paving - Pedestrian                  | 3,900     | SF   | ---                        | \$ 10.00                      | \$ 39,000.00           | \$ 20.00                  | \$ 78,000.00           | \$ 9.00                               | \$ 35,100.00           |
| 303                          | Concrete                                | 1         | LS   | ---                        | \$ 150,000.00                 | \$ 150,000.00          | \$ 205,000.00             | \$ 205,000.00          | \$ 250,000.00                         | \$ 250,000.00          |
| 304                          | Bioretention Soil Matrix                | 1         | LS   | ---                        | \$ 62,500.00                  | \$ 62,500.00           | \$ 38,000.00              | \$ 38,000.00           | \$ 11,000.00                          | \$ 11,000.00           |
| 305                          | Boulders                                | 1         | LS   | ---                        | \$ 17,500.00                  | \$ 17,500.00           | \$ 35,000.00              | \$ 35,000.00           | \$ 50,000.00                          | \$ 50,000.00           |
| 306                          | Signage - regulatory, MUTCD             | 4         | EA   | ---                        | \$ 7,500.00                   | \$ 30,000.00           | \$ 2,500.00               | \$ 10,000.00           | \$ 520.00                             | \$ 2,080.00            |
| 307                          | Metal Guardrail                         | 1         | EA   | ---                        | \$ 81,250.00                  | \$ 81,250.00           | \$ 22,500.00              | \$ 22,500.00           | \$ 28,000.00                          | \$ 28,000.00           |
| 308                          | Wood Railing and Fences                 | 310       | LF   | ---                        | \$ 250.00                     | \$ 77,500.00           | \$ 150.00                 | \$ 46,500.00           | \$ 125.00                             | \$ 38,750.00           |
| 309                          | Site Furnishings                        | 1         | LS   | ---                        | \$ 50,000.00                  | \$ 50,000.00           | \$ 70,000.00              | \$ 70,000.00           | \$ 27,000.00                          | \$ 27,000.00           |
| 310                          | Chain-link Fences & Gates               | 160       | LF   | ---                        | \$ 375.00                     | \$ 60,000.00           | \$ 150.00                 | \$ 24,000.00           | \$ 340.00                             | \$ 54,400.00           |
| 311                          | Aggregate Paving                        | 2,950     | SF   | ---                        | \$ 25.00                      | \$ 73,750.00           | \$ 25.00                  | \$ 73,750.00           | \$ 12.00                              | \$ 35,400.00           |
| 400                          | Revegetation                            | 1         | LS   | ---                        | \$ 75,000.00                  | \$ 75,000.00           | \$ 61,000.00              | \$ 61,000.00           | \$ 41,000.00                          | \$ 41,000.00           |
| 401                          | Irrigation                              | 1         | LS   | ---                        | \$ 112,500.00                 | \$ 112,500.00          | \$ 69,000.00              | \$ 69,000.00           | \$ 67,000.00                          | \$ 67,000.00           |
| 500                          | Supplemental Work (allowance)           | 1         | AL   | \$ 30,000.00               | ---                           | \$ 30,000.00           | ---                       | \$ 30,000.00           | ---                                   | \$ 30,000.00           |
| <b>TOTAL items 100 - 500</b> |   |           |      |                            | <b>\$ 1,150,000.00</b>        | <b>\$ 1,360,000.00</b> |                           | <b>\$ 1,381,950.00</b> |                                       | <b>\$ 1,453,000.00</b> |
|                              |   |           |      | <b>Engineer's Estimate</b> | <b>Bay Construction Co. *</b> |                        | <b>Giron Construction</b> |                        | <b>Robert A. Bothman Construction</b> |                        |

\* APPARENT LOW BIDDER (based on lowest total of base bid)

Abbreviations: AL = Allowance  
 EA = Each  
 LF = Linear Foot  
 LS = Lump Sum  
 SF = Square Feet

## Contract

This public works contract ("Contract") is entered into by and between City of Albany ("City") and **Bay Construction Co.** ("Contractor"), for work on the Lower Codornices Creek Restoration Project – Phase IV ("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 \_\_\_\_\_, 2023, 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
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 **\$1,360,000.00** ("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 **90 calendar 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 \$4,200 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](mailto:AHsu@albanyca.org)  
Copy to: Mark Hurley, Director of Public Works ([MHurley@albanyca.org](mailto:MHurley@albanyca.org))

**Contractor:**

Name: MARK LEE AND YONG KAY, INC. , DBA BAY CONSTRUCTION CO.  
Address: 4026 MARTIN LUTHER KING JR WAY,  
City/State/Zip: OAKLAND, CA 94609  
Phone: 5106587225  
Attn: YONG KAY  
Email: YONGKAY@YAHOO.COM  
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:

Approved as to form:

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

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

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

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

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

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

Attest:

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

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

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

**CONTRACTOR:** MARK LEE AND YONG KAY, INC. , DBA BAY CONSTRUCTION CO.  
Business Name

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

Seal:

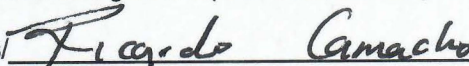
YONG KAY      PRESIDENT

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

Date: 06/27/2023



Second Signature (See Section 12.7):

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

RICARDO CAMACHO      TREASURER

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

Date: 06/27/2023

cslb 593411      05/31/2024  
Contractor's California License Number(s) and Expiration Date(s)

END OF CONTRACT



**CONTRACT #C23-46  
AGREEMENT FOR CONSULTANT SERVICES  
BETWEEN  
THE CITY OF ALBANY  
AND ZOON ENGINEERING**

**FOR PROJECT:  
Construction Management Services for Codornices Creek Phase IV**

This AGREEMENT FOR CONSULTANT SERVICES ("AGREEMENT"), is made and entered into this \_\_\_ day of \_\_\_\_\_ 2023 by and among the City of Albany a California charter city ("CITY") and **Zoon Engineering** [California corporation, partnership, LLC or LLP, or individual] ("CONSULTANT").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**SECTION 1. TERM OF AGREEMENT.**

Subject to the provisions of SECTION 19 "TERMINATION OF AGREEMENT" of this AGREEMENT, the term of this AGREEMENT shall be for a period of **180 calendar days** 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 **\$155,000.00** 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) To the fullest extent permitted by law, 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 except CLAIMS caused by the sole negligence or willful misconduct of INDEMNITEES.

(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 as a "design professional" (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.

#### **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:                         \_\_\_\_\_  
   **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 Saeed Shahmirzai  
(Authorized Officer)

Name: Saeed Shahmirzai  
Title: COO

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

Name: Nabil Hissen  
Title: CEO

City of Albany Business License

**BL #** 4701  
Expiration Date: 12-31-2023

**ATTEST:**

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

Date \_\_\_\_\_



CM | claims | project controls

June 28, 2023

James Cirelli, P.E.  
Associate Engineer  
City of Albany, Public Works  
540 Cleveland Avenue | Albany, CA 94710

**RE: Construction Management Services Codornices Creek Phase IV**

Dear Mr. Cirelli:

Attached please find our cost proposal to provide Construction Management services for Codornices Creek Phase IV.

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 (650) 450-3507 or email [sshahmirzai@zoon-eng.com](mailto:sshahmirzai@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 "Saeed Shahmirzai".

Saeed Shahmirzai, PE  
Senior Construction Manager

Cc:  
Nabil Hissen – Zoon Engineering  
Doug Johnson – Zoon Engineering  
Brian MacRae – Zoon Engineering

Cost Proposal for  
 City of Albany  
 Construction Management Services for  
 Codornices Creek Phase IV  
 6/28/2023



**Projected Labor Hours By Person**

| Name                 | Title                       | Construction Inspection & Management | Total Hours | Billing Rate | TOTAL         |
|----------------------|-----------------------------|--------------------------------------|-------------|--------------|---------------|
| Saeed Shahmirzai, PE | Resident Engineer           | 100                                  | 100         | \$ 200.00    | \$ 20,000.00  |
| Brian MacRae         | Assistant Resident Engineer | 200                                  | 200         | \$ 175.00    | \$ 35,000.00  |
| Mirza Baig           | Construction Inspector      | 800                                  | 800         | \$ 125.00    | \$ 100,000.00 |
|                      |                             | 1,100                                | 1,100       |              |               |

Total Labor Costs: \$ 155,000.00  
 TOTAL: \$ 155,000.00

**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 August and completion by December 2023
5. Escalation for work beyond February 2024, if necessary is not accounted for.
6. Services to be provided from Zoon offices in Emeryville. Field office costs if required to be billed as other direct costs with no markup.
7. Estimate based on a 90 working day construction duration and 10 days for pre and post construction activities



| Hours and Cost by Task and Subtask | Saeed<br>Shahmirzai, PE<br>\$ 200.00 | Brian MacRae<br>\$ 175.00 | Mirza Baig<br>\$ 125.00 | Hours By Task | Cost By Task |
|------------------------------------|--------------------------------------|---------------------------|-------------------------|---------------|--------------|
|------------------------------------|--------------------------------------|---------------------------|-------------------------|---------------|--------------|

**Task 1 - Construction Contract Administration**

|  |           |           |            |            |                     |
|--|-----------|-----------|------------|------------|---------------------|
| Provide Monthly Report                                     | 5         | 5         | 5          | 15         | \$ 2,500.00         |
| Set up construction project files                          | 3         | 3         | 10         | 16         | \$ 2,375.00         |
| Convene pre-construction meeting                           | 2         | 2         | 5          | 9          | \$ 1,375.00         |
| Track progress payment estimates                           | 5         | 15        | 30         | 50         | \$ 7,375.00         |
| Evaluate, negotiate and recommend Contract Change Orders   | 10        | 12        | 10         | 32         | \$ 5,350.00         |
| Weekly statement of working days                           | 5         | 0         | 10         | 15         | \$ 2,250.00         |
| Maintain construction project files                        | 5         | 10        | 40         | 55         | \$ 7,750.00         |
| <b>Total Task 1 - Construction Contract Administration</b> | <b>35</b> | <b>47</b> | <b>110</b> | <b>192</b> | <b>\$ 28,975.00</b> |

**Task 2 - Construction Engineering**

|  |           |           |           |            |                     |
|--|-----------|-----------|-----------|------------|---------------------|
| Resident Engineer's (RE) file review                           | 3         | 0         | 0         | 3          | \$ 600.00           |
| Perform Resident Engineer functions                            | 20        | 0         | 0         | 20         | \$ 4,000.00         |
| Review Contract Documents                                      | 5         | 10        | 20        | 35         | \$ 5,250.00         |
| Determine contract pay quantities                              | 10        | 10        | 40        | 60         | \$ 8,750.00         |
| Lines and grades control                                       | 2         | 5         | 5         | 12         | \$ 1,900.00         |
| Construction contractor's trenching and shoring submittals rev | 3         | 5         | 5         | 13         | \$ 2,100.00         |
| SWPPP Review and Approval                                      | 2         | 5         | 10        | 17         | \$ 2,525.00         |
| Coordinate lane closures                                       |           | 5         | 0         | 5          | \$ 875.00           |
| Schedule Support   | 5         | 15        | 0         | 20         | \$ 3,625.00         |
| <b>Total Task 2 - Construction Engineering</b>                 | <b>50</b> | <b>55</b> | <b>80</b> | <b>185</b> | <b>\$ 29,625.00</b> |

**Task 3 - Contract Item Work Inspection**

|   |          |           |            |            |                     |
|---|----------|-----------|------------|------------|---------------------|
| Photographs   |          | 5         | 10         | 15         | \$ 2,125.00         |
| Inspection of contractors' work                     |          | 50        | 500        | 550        | \$ 71,250.00        |
| Report and document contractors' operations         |          | 18        | 60         | 78         | \$ 10,650.00        |
| Prepare punch list completion                       |          | 5         | 10         | 15         | \$ 2,125.00         |
| Perform safety and maintenance review               |          | 5         | 10         | 15         | \$ 2,125.00         |
| <b>Total Task 3 - Contract Item Work Inspection</b> | <b>-</b> | <b>83</b> | <b>590</b> | <b>673</b> | <b>\$ 88,275.00</b> |

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

|   |           |           |           |           |                    |
|---|-----------|-----------|-----------|-----------|--------------------|
| Perform final inspection                                | 5         | 5         | 10        | 20        | \$ 3,125.00        |
| Review as-built drawings                                | 5         | 5         | 10        | 20        | \$ 3,125.00        |
| Deliver final project files for contract administration | 5         | 5         | 0         | 10        | \$ 1,875.00        |
| <b>Total Task 4 - Project Close Out and Acceptance</b>  | <b>15</b> | <b>15</b> | <b>20</b> | <b>50</b> | <b>\$ 8,125.00</b> |

|                     |            |            |            |              |                      |
|---------------------|------------|------------|------------|--------------|----------------------|
| <b>GRAND TOTALS</b> | <b>100</b> | <b>200</b> | <b>800</b> | <b>1,100</b> | <b>\$ 155,000.00</b> |
|---------------------|------------|------------|------------|--------------|----------------------|