



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

Agenda Date: October 16, 2023
Reviewed by: NA

SUBJECT: Professional Services Contract with BKF Engineering for Jackson Street Bikeway Design

REPORT BY: Justin Fried, Transportation and Sustainability Manager
Jeff Bond, Community Development Director

SUMMARY

The action before the City Council is to authorize the City Manager to enter into a professional services contract BKF Engineering for time and materials not to exceed \$100,000 to prepare the design for the Jackson Street Bikeway in University Village.

STAFF RECOMMENDATION

That the Council adopt Resolution No. 2023-71, authorizing the City Manager to execute a contract with BKF Engineers for detailed design for the Jackson Street Bikeway in University Village.

BACKGROUND

On October 2, 2023, the City Council authorized the conceptual design for the Jackson Street Bikeway between Buchanan Street and Monroe Street and direct City staff to work with UC Berkeley on final design and implementation of the project.

DISCUSSION

The graduate student housing project currently under construction at UC Village is being developed pursuant to a public-private partnership between the University of California and American Campus Communities (ACC). The civil engineering aspects of the design of the housing project was prepared by BKF Engineering.

BKF is a full service civil engineering firm, with a history of designing projects in Albany, including several decades of work in University Village. Due to BKF's unique familiarity with the student housing project and site conditions, City seeks to utilize BKF to prepare the design of the adjacent bikeway.

ENVIRONMENTAL CLEARANCE

The proposed project is Categorically Exempt from California Environmental Quality Act (CEQA) pursuant to Section 15304 “Minor Alterations to Land” of the CEQA Guidelines, which exempts the minor public or private alterations in the condition of land, water, and/or vegetation including creation of bicycle lanes.

SUSTAINABILITY CONSIDERATIONS

Providing cycling facilities separated from vehicle traffic along the Slow Bikeways Network improves cyclist safety, helping to support cycling as a viable alternative to short motor vehicle trips.

SOCIAL EQUITY AND INCLUSIVITY CONSIDERATIONS

The project improves safety for vulnerable roadway users and improves access for those without motor vehicles.

CITY COUNCIL STRATEGIC PLAN INITIATIVES

Goal 3: Promote Streets That Support Safety & Transportation Mobility Options

This project implements cycling network improvements identified in the Active Transportation Plan.

FINANCIAL CONSIDERATIONS

To ensure timely completion of the design of the bikeway, the contract with BKF will initially be funded using existing funds appropriated for Community Development Department professional services. Ultimately the project is expected to be funded through an agreement with Alameda County Transportation Commission, to be brought for City Council consideration under separate action.

Attachment:

1. Resolution No. 2023-71

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NOW, THEREFORE, BE IT RESOLVED, that the Albany City Council hereby authorizes the City Manager to execute Contract No. C23-72 with BKF Engineers for the design of the Jackson Street Bikeway in a not-to-exceed amount of \$100,000.

AARON TIEDEMANN, MAYOR

**CONTRACT #C23-72
AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
THE CITY OF ALBANY
AND
BKF ENGINEERS
FOR PROJECT:
JACKSON BIKEWAY**

This AGREEMENT FOR CONSULTANT SERVICES ("AGREEMENT"), is made and entered into this _____ day of October, 2023 by and among the City of Albany a California charter city ("CITY") and BKF ENGINEERS ("CONSULTANT").

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

SECTION 1. TERM OF AGREEMENT.

Subject to the provisions of SECTION 19 "TERMINATION OF AGREEMENT" of this AGREEMENT, the term of this AGREEMENT shall be for a period of ONE YEAR from the date of execution of this AGREEMENT, as first shown above. Such term may be reduced or extended upon written agreement of both parties to this AGREEMENT.

SECTION 2. SCOPE OF SERVICES.

CONSULTANT agrees to perform the services set forth in EXHIBIT "A" "SCOPE OF SERVICES" and made a part of this AGREEMENT.

SECTION 3. ADDITIONAL SERVICES.

CONSULTANT shall not be compensated for any services rendered in connection with its performance of this AGREEMENT which are in addition to or outside of those set forth in this AGREEMENT or listed in EXHIBIT "A" "SCOPE OF SERVICES", unless such additional services are authorized in advance and in writing by the City Council or City Manager of CITY. CONSULTANT shall be compensated for any such additional services in the amounts and in the manner agreed to by the City Council or City Manager.

SECTION 4. COMPENSATION AND METHOD OF PAYMENT.

Subject to any limitations set forth in this AGREEMENT, CITY agrees to pay CONSULTANT the amounts specified in EXHIBIT "B" "COMPENSATION" and made a part of this AGREEMENT for services satisfactorily rendered under this AGREEMENT. The total compensation payable, including reimbursement for actual expenses, shall not exceed \$100,000 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. PAYMENT OF A LIVING WAGE; FAILURE TO COMPLY.

By its signature hereunder, CONSULTANT certifies that it is aware of the CITY ordinance requiring all consultants who meet certain eligibility guidelines to pay covered employees a living wage as enumerated in the ordinance, and agrees to comply with such provisions before commencing the performance of work and/or services covered by this AGREEMENT. CONSULTANT agrees to provide CITY with documents and information verifying compliance with the requirements of the ordinance upon a request by CITY for such verification. CONSULTANT understands that failure to comply with any or all of the requirements of CITY'S living wage ordinance may result in sanctions including termination of the contract and the CITY'S or covered employees' pursuit of any available legal remedies. CONSULTANT further agrees to notify each of its affected employees in writing, upon commencement of performance of work and/or services covered by this AGREEMENT, of CONSULTANT'S obligation to pay a living wage as set forth in the CITY ordinance. This provision shall not be construed to limit CONSULTANT'S discretion to provide greater wages or benefits to its employees. Notwithstanding anything to the contrary, this provision shall not apply to work or services subject to state prevailing wage law codified at Labor Code sections 1720 *et seq.* and 1770 *et seq.*

SECTION 14. 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 15. 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 16. INDEMNIFICATION.

(a) CITY and its elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "INDEMNITEES") shall have no liability to CONSULTANT or any other person for, and CONSULTANT shall indemnify, defend, protect and hold harmless INDEMNITEES from and against, any and all liabilities,

claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "CLAIMS"), which INDEMNITEES may suffer or incur or to which INDEMNITEES may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of or allegedly caused by the CONSULTANT's performance of or failure to perform any services under this AGREEMENT or by the negligent or *willful* acts or omissions of CONSULTANT, its agents, officers, directors, subcontractors or employees, committed in performing any of the services under this AGREEMENT.

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

(c) If CONSULTANT's obligation to defend, indemnify, and/or hold harmless arises out of CONSULTANT's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, CONSULTANT's indemnification obligation shall be limited to CLAIMS that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT, and, upon CONSULTANT obtaining a final adjudication by a court of competent jurisdiction, CONSULTANT's liability for such claim, including the cost to defend, shall not exceed the CONSULTANT's proportionate percentage of fault.

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

SECTION 17. 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 18. 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 19. 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 20. 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 21. 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 22. 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 23. 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 24. 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: BKF Engineers
Eric Swanson, Associate Principal
300 Frank Ogawa Plaza, Suite 380
Oakland, CA 94612

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 25. 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 26. BINDING EFFECT.

This AGREEMENT shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

SECTION 27. 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 28. 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 29. 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 30. 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 31. 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 32. 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 33. 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: (#C23-72)

CONSULTANT:

By _____

By _____

Nicole Almaguer, City Manager

(Authorized Officer)

Date _____

Name:

Title:

By _____

(Authorized Officer)

Name:

Title:

ATTEST:

City of Albany Business License

BL # 3471

Anne Hsu, City Clerk

Expiration Date: 12/31/2023

Date _____



Jackson Street Bikeway Work Plan

TASK 1: UPDATE CURRENT PLANS

The objective of this task is to develop the documents, including plans and specifications, to a level necessary for submittal that demonstrates the project is ready for construction.

1. **Pedestrian Circulation Refinement:** The team will prepare a 30% exhibit showing the pedestrian circulation refinement that is needed to integrate the University Village ingress and egress from the street into the development.
2. **Update Plans:** The team will update the existing drawings that cover the University Village Housing project frontage along Jackson Street. BKF will prepare a submittal that will include the landscape and lighting sheets from the University Village team consultants.

Each submittal is anticipated to contain the following plan elements:

- horizontal layout plan;
 - typical cross sections;
 - pavement repair plan;
 - utility relocation plan;
 - striping and street signage plan;
 - bike path lighting plan
 - landscape planting plan;
 - irrigation plan;
 - construction details;
 - Engineer's Opinion of Probable Cost /Bid Schedule
3. **Specifications:** Items that are not included in the University Village Project specifications will be added to the plans.
 4. **Drainage and Stormwater Management:** BKF will develop calculation for determining drainage improvements as well as for stormwater management to meet the Water Board requirements.
 5. Deliverables: 90% Final, AutoCAD drawings,
 - a. Due to scheduled constraints, is anticipated that the 60% snapshot will be an informal submittal for the City to review the overall scope while BKF proceeds with the 90% design.
 6. Meetings: Meetings with City at review 90%. Weekly team meetings throughout.

TASK 2: PROJECT APPROVAL

BKF will compile the drawings from the sub-consultants and submit to the City of Albany Public Works Department for review. We anticipate one round of comments from the City and two re-submittals.

SCHEDULE

The following schedule is based that notice to proceed (NTP) will be given by the City by **October 9th**:

Pedestrian Circulation Refinement Exhibit	10/16/23
90% PS&E Submittal (Formal Submittal for Plan Check)	11/10/23
City Review and Comments	11/20/23-12/8/23
BKF Re-Submittal	12/15/23
City Final Review/Approval	12/22/23

DESIGN ASSUMPTIONS AND SCOPE QUALIFICATIONS

BKF Engineers' services are limited to those expressly set forth in the scope. We understand that BKF will have no other obligations or responsibilities for the project except as provided in this proposal letter, or as otherwise agreed to in writing. BKF will provide the scope of services consistent with, and limited to, the standard of care applicable to such services. Any participation in non-adversarial procedures, or other right to repair items, is considered as additional services. For the scope of work identified, we have assumed the following:

1. City Provided Information: City will provide the following services:
 - a. City will make available any existing record drawings (as-built) of the existing and improved roadways and aerial mapping of the City.
 - b. Right of Way Maps/Title Reports: A current title report(S) or right of way maps for the roadway will be provided by the City.
2. Signal Modifications: We have assumed that no signal modifications will be required.
3. Specifications: We have assumed that technical specifications would be included with the plan set.
4. Enhanced Pedestrian Crossings: We have assumed that pedestrian crossings would be without signalization. If Rapid Flashing Beacons, Hawk Signals, or similar enhanced crossings are requested, we can prepare a scope for those improvements.
5. Electrical and Wifi/Fiber Design: We have allocated a budget for electrical design support only as the extent of lighting both for pedestrians and for signage/public amenities is currently unknown. We have not included wifi or fiber design.
6. Existing Utilities: Unless otherwise indicated or provided by others, any existing utilities identified on BKF's drawings/plans are based on information obtained by BKF, or provided to BKF, and may not be accurately documented in their horizontal location or vertical profile. Other utilities may be present that were not disclosed. Additionally, existing utilities have adequate capacity to serve the proposed improvements and that utility system capacity studies are not required.
7. CEQA: We have presumed that the project will be a Categorical Exemption based on the CEQA checklist (since the project limits will be within an existing disturbed roadway areas). We presume that the City will use internal staff to make the findings and file the paperwork with the compliance agency.

8. Postponements: If the execution of the scope of work is delayed more than one year BKF reserves the right to adjust our billing rates to be consistent with our normal schedule of charges in the year work actually commences. Rates to be evaluated yearly after notice to proceed.
9. CEQA/NEPA: We have assumed that the City will conduct all CEQA/NEPA analyses for the project.
10. Grant Funding Assistance: Grant design requirements and processing (scope currently undefined)
11. Private Improvements: we have not included scope for improvements outside of public right of way (e.g. shared parking, park improvements). Additionally, we have not included time for the redesign of the University Village private plazas and pedestrian egress/ingress with this scope of work. It is assumed that the bike lane will be a shared path allowing pedestrian connectivity to the University Village plazas.
12. Utility Upgrades/Replacement: We have not included time for new or reconstructing existing utilities with the corridor (except as needed to relocate associated with storm drainage piping conflicts). This included new service agreements with PG&E.
13. Boundary/Right of Way: Since it is currently unclear as to the need and level of effort, we have not included additional surveying that may be needed for:
 - a. Surveys of individual properties (topo/boundary)
 - b. Acquisition plat and legal descriptions
 - c. Right of entry plats
 - d. Temporary construction easement plats and legal descriptions
 - e. Record of survey to delineate right of way and monuments either prior to or post construction
 - f. Monument preservation survey
14. Permitting: We have assumed that the City will lead the efforts with permitting for any ancillary permits required.

BASE SCOPE OF WORK *[By Phase]:*

BKF proposes to provide the services on a time and materials basis.

Task	Description	Fee
1	Ped/Circulation Refinement	\$7,700
3	90% CD	\$53,300
4	Project Approval	\$12,700
Total BKF Fee		\$73,700

SUB-CONSULTANT

Task	Description	Fee
1	LANDSCAPE (SEE ATTACHMENT)	\$17,240
2	LIGHTING (ESTIMATE)	\$7,500
Total Subconsultant Fee		\$24,740

Total Fee: \$98,440

PROPOSAL

For

Jackson Street Bike Way Albany, CA

To

BKF Engineers

1646 N. California Blvd, Suite 400,
Walnut Creek, CA 94596

Revised:
October 9, 2023

CMG

Landscape Architecture

444 Bryant St San Francisco Ca 94107 415 495 3070 cmgsite.com

CONTENTS

- I. Project Understanding
 - a. Project Overview
 - b. Project Schedule
 - c. Cost of Work
- II. Scope of Work - Procedure
- III. Compensation

Attachments:

- A. Fee Schedule and Rates
- B. Insurance

1.0 PROJECT UNDERSTANDING

1.1 Project Overview

BKF is seeking a qualified landscape architect to provide landscape architecture services for the Jackson Street Bike Way at the UC Berkeley Albany Graduate Student Housing project to be redesigned to accommodate a class 1 bikeway.

Landscape Architecture services are for planting and irrigation areas associated with this work.

1.2 Project Schedule and Delivery

The scope and schedule provided in the 9.26.2023 BKF Work Plan is the basis of this proposal.

1.3 Landscape Sub-Consultants

CMG will lead and manage the services of the following landscape sub-consultants as required to provide the scope of services.

- Irrigation Consultant – RMA Irrigation

1.4 Cost of Work

Not determined at this time.

2.0 SCOPE OF SERVICES

2.1 Project Areas: (refer to scope and schedule provided in the 9.26.2023 BKF Work Plan)

1. Street and ROW Improvements

2.2 The scope of services shall include the following:

1. Planting
2. Irrigation

2.2.1 Exclusions to Scope of Services

The Engineer or Client shall provide the following information or services as required for performance of the work based on the scope and exclusions presented in the 9.26.2023 BKF Work Plan. CMG assumes no responsibility for the accuracy of such information or services and shall not be liable for error or omissions therein. Should CMG be required to provide services in obtaining or coordinating compilation of this information, such services shall be charged as Additional Services.

1. Owner-furnished documents and materials, including legal, topographic, utility surveys, geotechnical reports.
2. Engineer/Owner furnished site design in AutoCAD.
3. Civil Engineering:
 - a. Vehicular and pedestrian paving design, except layout and design of shared access and parking areas based on Civil and Geotechnical parameters.

- b. Subsurface storm drainage systems and site utilities.
4. Site Utilities and Joint Trench Engineering. CMG will coordinate the planting design with the site utilities.

2.2.2 Scope and Project Delivery Assumptions

This proposal includes the following scope and project delivery assumptions.

1. Complete landscape layout and site design will be provided by BKF in AutoCAD.

2.3 Procedure

The landscape design process shall include the following tasks:

PHASE 1 – Construction Documents

This phase of work includes initial landscape improvements Concept Plan, and Construction Document drawings. The documents shall establish the conceptual planting approach to the project and document the plant layout, installation details and irrigation. Tasks include:

1. Consultant team Kick-off meeting.
2. Work with the Civil Engineer and other consultants to establish the planting design concept for the project.
3. Prepare construction documents and specifications for permit and competitive bidding. The Construction Documents will address details and layout for site items as required. The Consultant is expected to provide all CAD work required to document the design.
1. Refine planting design.
2. Provide irrigation plan with final: locations, materials and sizes. Coordinate with Civil and Engineer for irrigation connections.
3. Review Civil Engineer designs to identify the impact on the landscape documentation.
4. Attend and participate in meetings, video conferencing, work sessions and presentations with the design team as directed by the Civil Engineer, as described below.
5. Develop information to allow the Owner's Cost Estimator to perform a preliminary cost estimate at the midpoint of the Construction Documents phase. The Consultant will assist in the reconciliation process resulting from these estimates.
6. Review Costs and participate in Value Engineering as required to maintain the Owner's budget. Revise documentation as directed by the Civil Engineer.
7. Prepare and submit documentation as required by the authorities having jurisdiction and provide 2-rounds of client and agency comment review and document revision.

Deliverables:

Submittals: electronic submittals as follows:

- Planting Concept Plan
- 60% and 90% Construction Documents – Drawings and Specifications
- Final Submittal for Permit – Drawings and Specifications

Meetings:

- (1) City Review Meetings
- (6) Bi-weekly Design Team Meetings

III. COMPENSATION

The Landscape Architect's services as described in the scope of services shall be provided on a fixed fee basis according to the fee schedule below. The landscape architect shall notify the Architect and request authorization to proceed with additional services for work that is not included in the scope of services or exceeds the estimated budget.

Landscape and Sub-Consultant Fee Schedule		FEE TOTAL	
Phase 1	Construction Documents	\$	17,240

Reimbursable Expenses

Reimbursable expenses such as travel, printing, photography, delivery, fax, telephone, and other direct expenses shall be billed at direct cost over-and-above the Basic Service Fee.

Additional Services

It is understood that the prime agreement will define the terms and conditions associated with additional services. If any of the circumstances outlined in this proposal affect the Landscape Architect's services for the Project, the Landscape Architect shall be entitled to an appropriate adjustment in the Landscape Architect's schedule and compensation in accordance with the Prime Agreement. Such adjustment shall be determined on an Hourly (time and materials basis) or a lump sum based on the Rate Schedule in Attachment A.

Invoices

Invoices shall be prepared monthly for progress payments on the percent complete for each phase as indicated in the fee schedule.

Service Agreement

It is assumed that the scope of work and compensation outlined in this proposal will be incorporated in an agreement between Conger Moss Guillard Landscape Architecture and BKF Engineers. To proceed with services CMG will require a written Notice to Proceed that includes provisions for monthly invoicing and payment.

BKF ENGINEERS PROFESSIONAL SERVICES RATE SCHEDULE

EFFECTIVE JANUARY 1, 2023

<u>CLASSIFICATION</u>	<u>HOURLY</u>
<u>RATE</u>	
PROJECT MANAGEMENT	
Principal	\$288.00
Senior Associate Principal	\$268.00
Associate Principal	\$260.00
Senior Project Manager Senior Technical Manager	\$253.00
Project Manager Technical Manager	\$247.00
Engineering Manager Surveying Manager Planning Manager	\$228.00
TECHNICAL STAFF	
Senior Project Engineer Senior Project Surveyor Senior Project Planner	\$212.00
Project Engineer Project Surveyor Project Planner	\$186.00
Design Engineer Staff Surveyor Staff Planner	\$162.00
BIM Specialist I, II, III	\$162.00 - \$186.00 - \$212.00
Technician I, II, III, IV	\$154.00 - \$164.00 - \$180.00 - \$194.00
Drafter I, II, III, IV	\$121.00 - \$133.00 - \$143.00 - \$159.00
Engineering Assistant Surveying Assistant Planning Assistant	\$101.00
FIELD SURVEYING	
Survey Party Chief	\$212.00
Instrument Person	\$182.00
Survey Chainperson	\$136.00
Utility Locator I, II, III, IV	\$110.00 - \$156.00 - \$187.00 - \$213.00
Apprentice I, II, III, IV	\$83.00 - \$112.00 - \$124.00 - \$132.00
CONSTRUCTION ADMINISTRATION	
Senior Consultant	\$277.00
Senior Construction Administrator	\$241.00
Resident Engineer	\$179.00
Field Engineer I, II, III	\$162.00 - \$186.00 - \$212.00
FUNDING & GRANT MANAGEMENT	
Director of Funding Strategies	\$198.00
Funding Strategies Manager	\$181.00
Funding/Research Analyst I, II, III, IV	\$124.00 - \$144.00 - \$153.00 - \$168.00
PROJECT ADMINISTRATION	
Project Coordinator	\$135.00
Senior Project Assistant	\$117.00
Project Assistant	\$103.00
Clerical Administrative Assistant	\$87.00