

**CALL AND NOTICE OF
SPECIAL MEETING
AT 6:00 PM
OF THE VALLEJO CITY COUNCIL
VIA TELECONFERENCE**

REVISED AGENDA

(The staff report for Action Item 6A was been revised to correct the math in the Fiscal Impact Section)

PUBLIC COMMENT: Members of the Public may provide public comments during the City Council Meeting via ZOOM (<https://ZoomRegular.Cityofvallejo.net>), or via phone, by dialing (669) 900-6833.

For additional instructions on how to speak during public comment, please visit, www.cityofvallejo.net/publiccomment

VIEW THE MEETING:

There are three different ways you can view this public meeting:

- Watch Vallejo local channel 28
- Stream from the City website: www.cityofvallejo.net/Streaming
- Join the Zoom webinar: <https://ZoomRegular.Cityofvallejo.net>

JULY 1, 2021

TO THE MEMBERS OF THE VALLEJO CITY COUNCIL:

You are hereby notified that I do hereby call the Vallejo City Council in special session to consider only the matters stated on the agenda listed below.

NOTICE: Due to the current Shelter at Home Order and in conformance with the Governor's Executive Order N-29-30, the City of Vallejo has opted to hold City Council meetings via teleconference. Members of the public may provide public comments during the City Council Meeting via ZOOM:

Due to the Coronavirus emergency, all Special City Council meetings will be held via teleconference. Members of the public may provide public comments during the City Council Meeting via ZOOM:

<https://ZoomRegular.CityofVallejo.net>

Option to join by Phone

Dial (669) 900-6833

Enter Meeting ID: 914 0075 0676#

Press *9 to digitally raise your hand from your phone.

For additional instructions on how to speak during public comment, please visit, www.cityofvallejo.net/publiccomment

<https://ZoomRegular.CityofVallejo.net>

Option to join by phone:

Dial (669) 900-6833

Enter Meeting ID: 914 0075 0676#

Press *9 to digitally raise your hand from the phone

For additional instructions on how to speak during public comment, please visit, www.cityofvallejo.net/publiccomment

No other items may be discussed during this special meeting. There will be no public access to City Hall for any City Council meetings until further notice.

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL**
- 4. PUBLIC COMMENT REGARDING CONSENT CALENDAR ITEMS**

*Due to the current Shelter at Home Order and in conformance with the Governor's Executive Order N-29-30, the City of Vallejo has opted to hold City Council meetings via teleconference. Any interested members of the public desiring to communicate with the City Council as part of the Public Comment Regarding Consent Calendar Items may do so via ZOOM (<https://ZoomRegular.Cityofvallejo.net>), or via phone, by dialing (669) 900-6833. Enter Meeting ID: 914 0075 0676#. Press *9 to diigitally raise your hand from the phone. For additional instructions on how to speak during public comment, please visit, www.cityofvallejo.net/publiccomment.*

Each speaker is limited to three minutes pursuant to Vallejo Municipal Code Section 2.02.310. Requests for removal of Consent Items received from the public are subject to approval by a majority vote of the Council. Items removed from the Consent Calendar will be heard immediately after approval of the Consent Calendar and Agenda.

- 5. CONSENT CALENDAR AND APPROVAL OF AGENDA**
 - A. APPROVE FOURTH AMENDMENT TO REMEDY ENGINEERING CONSULTANT AGREEMENT**

Recommendation: Authorize City Manager to execute Fourth Amendment to the Consultant Agreement with Remedy Engineering, Inc. for Land Use Covenant Inspection and reporting services, extending the term to July 31, 2022.

Contact: Erin Hanford, Mare Island Project Manager (707) 648-5406

Erin.Hanford@cityofvallejo.net

6. ACTION CALENDAR

*NOTICE: Members of the public wishing to address the Council on Action Calendar Items may do so via ZOOM (<https://ZoomRegular.Cityofvallejo.net>), or via phone, by dialing (669) 900-6833. Enter Meeting ID: 914 0075 0676#. Press *9 to digitally raise your hand from the phone.*

For additional instructions on how to speak during public comment, please visit, www.cityofvallejo.net/publiccomment. Each speaker is limited to five minutes pursuant to Vallejo Municipal Code Section 2.02.420.

A. CONSIDERATION AND APPROVAL OF A RESIGNATION AND SEPARATION AGREEMENT BETWEEN THE CITY OF VALLEJO AND CITY MANAGER GREG NYHOFF

Recommendation: Approve a Resignation and Separation Agreement between the City of Vallejo and City Manager Greg Nyhoff.

Contact: Veronica A.F. Nebb, City Attorney (707) 648-4545
veronica.nebb@cityofvallejo.net

7. ADJOURNMENT

Dated: Wednesday, June 30, 2021



Robert H. McConnell, Mayor

I, Dawn Abrahamson, City Clerk, do hereby certify that I have caused a true copy of the above notice and agenda to be delivered to each of the members of the Vallejo City Council, at the time and in the manner prescribed by law and that this agenda was posted at City Hall, 555 Santa Clara Street, CA at 7:15 p.m., Wednesday, June 30, 2021.



Dated: Wednesday, June 30, 2021

Dawn G. Abrahamson, City Clerk



DATE: July 1, 2021
TO: Mayor and Members of the City Council
FROM: Paul Kelley, Economic Development Director
SUBJECT: **APPROVE FOURTH AMENDMENT TO REMEDY ENGINEERING CONSULTANT AGREEMENT**

RECOMMENDATION

Authorize City Manager to execute Fourth Amendment to the Consultant Agreement with Remedy Engineering, Inc. for Land Use Covenant Inspection and reporting services, extending the term to July 31, 2022.

REASONS FOR RECOMMENDATION

The Remedy Consultant Agreement ensures the City will remain in compliance with the regulatory agencies reporting requirements in the Chapel Park and Alden Park Land Use Covenant. The term extension is needed to complete the negotiations with the regulatory agencies on the 2021 Five-Year Review draft and the development of a more streamlined Five-Year Review template that will greatly decrease the City's ongoing costs to prepare this review.

BACKGROUND AND DISCUSSION

Two of the City-owned Mare Island parks, Alden and Chapel Park, have a Land Use Covenant (LUC) recorded against the property. This LUC imposes restrictions on the parks and requires the City to submit (1) an Annual Report to the Department of Toxic Substance Control (DTSC) documenting that the existing property uses and activities are in compliance with the provisions of the LUC, and (2) a Five-Year Review report to DTSC every five years that reports on the effectiveness of the selected remedy of the LUCs and ensures the LUCs are effectively protecting human health and the environment.

The City contracts this reporting requirement with Remedy Engineering. Summary of original Contract and Amendments:

Remedy Engineering's original one-year contract, dated August 1, 2015, was for \$1,700. The First Amendment, dated July 27, 2016, extended the term to July 31, 2017 and increased the cost of service by \$14,092 to cover the 2016 Five Year Review. The Second Amendment, dated February 5, 2018, extended the contract to July 31, 2018 and increased the cost of service an additional \$1,700 for the 2018 Annual Report. The Third Amendment, dated December 27, 2018, extended the term three years to July 31, 2021 and increased the cost of services an additional \$18,500 to conduct the 2019 and 2020 Annual Report, and the 2021 Five-Year Review.

The Fourth Amendment, that would extend the term to July 31, 2022, does not include increases in the cost of services. Remedy's total contract amount, \$35,992, will not change via the Fourth Amendment as the

remaining funds in Remedy's Purchase Order are anticipated to cover the remaining work.

The proposed 4th Amendment includes an additional scope of work. In addition to performing the LUC reporting requirements, Remedy will work with the City to develop a more streamlined Five-Year Review template the City can use for all Mare Island public lands with LUCs. Most of the remaining lands anticipated to be transferred from the Navy to the City will have an LUC with annual and Five-year review reporting requirements that go into perpetuity. As the Five-year review costs are approximately \$20,000, the streamline template, if approved by DTSC, will dramatically reduce these costs.

FISCAL IMPACT

There is no fiscal impact to the General Fund associated with amending the agreement. The Mare Island Environmental Fund 106, funded by Navy grant funding, is anticipated to cover these costs.

ENVIRONMENTAL REVIEW

This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

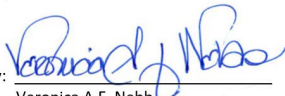
ATTACHMENTS

1.	Remedy Agreement Amendment 4 CAO STAMP
2.	Remedy Engineering Consultant Agreement and Amendments

CONTACT

Erin Hanford, Mare Island Project Manager (707) 648-5406

Erin.Hanford@cityofvallejo.net

By: 
Veronica A.F. Nebb
City Attorney

**FOURTH AMENDMENT TO
CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT
BETWEEN CITY OF VALLEJO AND
REMEDY ENGINEERING, INC.**

This Fourth Amendment to the Consultant and Professional Services Agreement by and between Remedy Engineering, Inc., a California corporation ("Consultant"), and the City of Vallejo, a municipal corporation, ("City") is made and entered into on this _____ day of July, 2021.

RECITALS

- A. On August 1, 2015 City and Consultant entered into a Consultant and Professional Services Agreement ("Original Agreement"), whereby Consultant was to perform certain professional services relating to annual inspections and reporting relating to Land Use Covenants for certain City owned properties at Mare Island. Section 16 of said Original Agreement provided for a Term of one year to expire on July 31, 2016 unless extended by City.
- B. On July 27, 2016, the parties entered into the First Amendment to the Original Agreement, amending the scope of services (Exhibit A) and payment schedule and extending the Term of the Original Agreement to July 31, 2017 ("First Amendment").
- C. Thereafter, the Parties agreed to extend the Original Agreement Term for an additional year in accordance with Section 16 of the Original Agreement and on February 5, 2018, the parties entered into the Second Amendment to the Original Agreement, amending the scope of services (Exhibit A) and payment schedule and extending the Term of the Original Agreement to July 31, 2018 ("Second Amendment").
- D. Thereafter, the Parties agreed to extend the Original Agreement Term for an additional three-year period and on December 27th, 2018, the parties entered into the Third Amendment to the Original Agreement, amending the scope of services (Exhibit A) and payment schedule and extending the Term of the Original Agreement to July 31, 2021 ("Third Amendment").
- E. The Parties now wish to further amend the Original Agreement to amend the scope of services (Exhibit A) and payment schedule and extending the Term of the Original Agreement to July 31, 2022.

Now Therefore, Consultant and City do mutually agree as follows:

- 1. Revision of Term of the Agreement.** Paragraph 16, Term of the Original Agreement is hereby amended to read as follows:

16. Term

"The Term of this Agreement shall commence on August 1, 2015, and shall continue in full force and effect until July 31, 2022".

2. Additional Services. The scope of services (Exhibit A) of the Original Agreement as amended by the First Amendment, Second Amendment, and Third Amendment shall be amended to include streamlining the Five-Year Review report template and working with City staff to obtain regulatory agency approval of said template.

3. Inconsistencies. In the event of any conflict or inconsistency between the provisions of this Fourth Amendment and the Agreement, and any prior amendment, the provisions of this Fourth Amendment shall control in all respects.

4. Ambiguities. The parties have each carefully reviewed this Fourth Amendment and have agreed to each term of this Fourth Amendment. No ambiguity shall be presumed to be construed against either party.

5. Counterparts. This Fourth Amendment may be executed by the parties in one or more counterparts all of which collectively shall constitute one document and agreement.

6. Authority. The person signing this Fourth Amendment for Consultant hereby represents and warrants that he or she is fully authorized to sign this Fourth Amendment on behalf of Consultant.

Except as set forth in this Fourth Amendment, the Terms and Conditions of the Agreement as previously amended by the First Amendment, Second Amendment and Third Amendment remain in full force and effect.

IN WITNESS WHEREOF, the parties have entered into this Fourth Amendment on the day and year first hereinabove appearing.

REMEDY ENGINEERING, INC.
a California corporation

By: _____
Jeffery Morris
Principal

DATE: _____

18-00003396
Vallejo Business License No.

(City Seal)

CITY OF VALLEJO,
a municipal corporation

By: _____
Anne Cardwell
Acting City Manager

DATE: _____

ATTEST:

By: _____
Dawn G. Abrahamson
City Clerk

APPROVED AS TO
FORM:

Veronica A. F. Nebb
City Attorney

APPROVED AS TO INSURANCE:

Armond Sarkis
Risk Manager

CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT

This Consultant and Professional Services Agreement ("Agreement") is made at Vallejo, California, dated for reference this first day of August, 2015, by and between the City of Vallejo, a municipal corporation ("City"), and Remedy Engineering, Inc., a California Corporation, hereinafter referred to as "Consultant", who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide the City professional services as specified in Exhibit A, entitled "Scope of Work."
2. **Payment.** City shall pay Consultant for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B, entitled "Compensation." The payments specified in Exhibit B shall be the only payments to be made to Consultant for services rendered pursuant to this Agreement.
3. **Facilities and Equipment.** Consultant shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.
4. **Indemnification.** Consultant shall indemnify, hold harmless, and defend City, its officers, officials, directors, employees, agents, volunteers and affiliates and each of them from any and all claims, demands, causes of action, damages, costs, expenses, actual attorney's fees, consultant's fees, expert fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of or in connection with Consultant's operations, or any subcontractor's operations, to be performed under this agreement for Consultant's or subcontractor's tort negligence including active or passive, or strict negligence, including but not limited to personal injury including, but not limited to bodily injury, emotional injury, sickness or disease, or death to persons and/or damage to property of anyone, including loss of use thereof, caused or alleged to be caused by any act or omission of Consultant, or any subcontractor, or anyone directly or indirectly employed by any of them or anyone for the full period of time allowed by the law, regardless to any limitation by insurance, with the exception of the sole negligence or willful misconduct of the City.

The provisions of this section shall survive the expiration or termination of this Agreement.

5. **Insurance Requirements.** Consultant agrees to comply with all of the Insurance Requirements set forth in Exhibit C, entitled "Insurance Requirements for Consultant." Failure to maintain required insurance at all times shall constitute a default and material breach.

6. Accident Reports. Consultant shall immediately report (as soon as feasible, but not more than 24 hours) to the City Risk Manager any accident or other occurrence causing injury to persons or property during the performance of this Agreement. The report shall be made in writing and shall include, at a minimum: (a) the names, addresses, and telephone numbers of the persons involved, (b) the names, addresses and telephone numbers of any known witnesses, (c) the date, time and description of the accident or other occurrence.

7. Conflict of Interest. Consultant warrants and represents that to the best of its knowledge, there exists no actual or potential conflict between Consultant's family, business, real property or financial interests and the services to be provided under this Agreement. Consultant shall comply with the City of Vallejo Conflict of Interest Code and not enter into any contract or agreement during the performance of this Agreement which will create a conflict of interest with its duties to City under this Agreement. In the event of a change in Consultant's family, business, real property or financial interests occurs during the term of this Agreement that creates an actual or potential conflict of interest, then Consultant shall disclose such conflict in writing to City. Every individual who performs services on behalf of Consultant pursuant to this Agreement must file a full Statement of Economic Interests (also known as Form 700) with the City Clerk if the work of the individual involves making a governmental decision whether to issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement; authorizes the City to enter into, modify, or renew a contract; grants City approval of specifications for a contract; adopts or approves for the City any policy, standard or guideline; lobbies on behalf of the City, or performs the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a position specified in the City's Conflict of Interest Code.

8. Independent Contractor. Consultant is an independent contractor. Neither Consultant nor any of Consultant's officers, employees, agents or subcontractors, if any, is an employee of City by virtue of this Agreement or performance of any services pursuant to this Agreement. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement; however, City shall not have the right to control the means by which Consultant accomplishes services pursuant to this Agreement.

9. Licenses, Permits, Etc. Consultant represents and warrants to City that all consultant services shall be provided by a person or persons duly licensed by the State of California to provide the type of services to be performed under this Agreement and that Consultant has all the permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant represents and warrants to City that it shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Consultant to practice its profession.

10. Business License. Consultant, and its subcontractors, has obtained or agrees to apply prior to performing any services under this Agreement to City's Finance Department for a business license, pay the applicable business license tax and maintain said business license during the term of this Agreement. The failure to obtain such license shall be a material breach of this Agreement and grounds for termination by City. No payments shall be made to Consultant until such business license(s) has been obtained.

11. Standard of Performance. Consultant shall provide products and perform all services required pursuant to this Agreement in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised under similar conditions by a member of Consultant's profession currently practicing in California.

Consultant is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work, including without limitation applicable federal, state, and local laws and regulations, and all other contingencies or considerations.

Consultant's responsibilities under this section shall not be delegated. Consultant shall be responsible to City for acts, errors, or omissions of Consultant's subcontractors.

Consultant is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work and shall prepare plans, reports, and/or other work products in such a way that additional costs will not be incurred beyond a project budget approved or amended by the City Manager or his or her designee.

Whenever the scope of work requires or permits review, approval, conditional approval or disapproval by City, it is understood that such review, approval, conditional approval or disapproval is solely for the purposes of administering this Agreement and determining whether the Consultant is entitled to payment for such work, and not be construed as a waiver of any breach or acceptance by the City of any responsibility, professional or otherwise, for the work, and shall not relieve the Consultant of responsibility for complying with the standard of performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Consultant.

12. Force Majeure. Neither party shall be considered in default of this Agreement to the extent performances are prevented or delayed by causes or circumstances beyond either party's reasonable control, such as war, riots, strikes, lockouts, work slow down or stoppage, acts of God, such as floods or earthquakes, and electrical blackouts or brownouts.

In the event that the Consultant is unable to meet the completion date or schedule of

services, Consultant shall immediately inform the City Representative of this in writing. If additional time is required to perform the work, the City Representative may adjust the schedule.

13. Time is of the Essence. Time is of the essence in this Agreement. Any reference to days means calendar days, unless otherwise specifically stated.

14. Personnel. Consultant agrees to assign only competent personnel according to the reasonable and customary standards of training and experience in the relevant field to perform services under this Agreement. Failure to assign such competent personnel shall constitute grounds for termination of this Agreement.

The payment made to Consultant pursuant to this Agreement shall be the full and complete compensation to which Consultant and Consultant's officers, employees, agents, and subcontractors are entitled for performance of any work under this Agreement. Neither Consultant nor Consultant's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the City. The City will not make any federal or state tax withholdings on behalf of Consultant. The City shall not be required to pay any workers' compensation insurance on behalf of Consultant.

Consultant shall pay, when and as due, any and all taxes incurred as a result of Consultant's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

15. Consultant Not Agent. Except as authorized under this Agreement or as City may authorize in a letter of authorization signed by the City Manager or his or her designee, Consultant shall have no authority, express or implied to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, under this Agreement, to bind City to any obligation whatsoever.

16. Term. The term of this Agreement shall commence on August 1, 2015, and shall continue in full force and effect until July 31, 2016.

City shall, at its discretion, have the right to extend the term of this Agreement, in intervals of one year by written notice to Consultant. The total duration of this Agreement, including the exercise of any options under this section, shall not exceed three (3) years.

17. Termination or Abandonment by City. The City has the right, at any time and in its sole discretion, to immediately terminate or abandon any portion or all of the services to be provided under this Agreement by giving notice to Consultant. Upon receipt of a notice of termination, Consultant shall perform no further work except as specified in the notice. Before the date of termination, Consultant shall deliver to City all City records and documents, all work product, whether completed or not, as of the date of termination and not otherwise previously delivered.

The City shall pay Consultant for services performed in accordance with this Agreement before the date of termination. If this contract provides for payment of a lump sum for all services or by task and termination occurs before completion of the work or any defined task which according to the performance schedule was commenced before the notice of termination, the fee for services performed shall be based on an amount mutually agreed to by City and Consultant for the portion of work completed in conformance with this Agreement before the date of termination. In addition, the City will reimburse Consultant for authorized expenses incurred and not previously reimbursed. The City shall not be liable for any fees or costs associated for the termination or abandonment except for the fees, and reimbursement of authorized expenses, payable pursuant to this section.

18. Products of Consulting Services. The work product, including without limitation, all writings, work sheets, reports, recordings, drawings, files, detailed calculations and other work products, whether complete or incomplete, of Consultant resulting from services rendered pursuant to this Agreement, shall become the property of City. Consultant agrees that all copyrights which arise from creation of the work under this Agreement shall be vested in the City and waives and relinquishes all claims to copyright or other intellectual property rights in favor of the City. City acknowledges that its use of the work product is limited to the purposes contemplated by the scope of work and that the Consultant makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

Documents submitted to the City in electronic format shall be formatted according to specifications provided by the City, or if not otherwise specified, in Microsoft Word, Excel, PowerPoint or other Microsoft Office Suite (2002) format as appropriate for the particular work product or, if directed by the City Representative in Adobe Acrobat PDF format.

19. Cooperation by City. City shall, to the extent reasonable and practicable, assist and cooperate with Consultant in the performance of Consultant's services hereunder.

20. Assignment and Subcontracting. Consultant shall not subcontract, assign or transfer voluntarily or involuntarily any of its rights, duties or obligation under this Agreement without the express written consent of the City Manager or his or her designee in each instance. Any attempted or purported assignment of any right, duty or obligation under this Agreement without said consent shall be void and of no effect.

If subcontracting of work is permitted, Consultant shall pay its subcontractor within ten (10) days of receipt of payment by City for work performed by a subcontractor and billed by the Consultant. Use of the term subcontractor in any other provision of this contract shall not be construed to imply authorization for Consultant to use

subcontractors for performance of any service under this Agreement.

The City is an intended beneficiary of any work performed by Consultant's subcontractor for purposes of establishing a duty of care between the subcontractor and City.

Any subcontractor or assignee consented to by City shall be bound by all terms and conditions of this agreement and the same shall be incorporated into and made a part of any assignment or subcontractor agreement.

21. Successors and Assigns. All terms, conditions, and provisions of this Agreement shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties. Nothing in this section is intended to affect the limitation on assignment.

22. Non-Discrimination/Fair Employment Practices.

(a) Consultant shall not, because of race, religious creed, color, sex, national origin, ancestry, disability, medical condition, age, marital status or sexual orientation of any person, refuse to hire or employ, or to bar or discharge from employment, or to discriminate in compensation, or in terms, conditions or privileges any person, and every employee will receive equal opportunity for employment and shall be granted equal treatment with respect to compensation, terms, conditions or other privileges of employment, without regard to his race, religious creed, color, sex, national origin, ancestry, or disability, medical condition, age, marital status or sexual orientation.

Consultant warrants and represents it is an equal opportunity employer and agrees it shall not discriminate on the basis of race, religious creed, color, sex, national origin, ancestry, disability, medical condition, age, marital status or sexual orientation in the selection and retention of employees, subcontractors or procurement of materials or equipment.

In all solicitations either by competitive bidding or negotiations made by Consultant for work to be performed under any subcontract, including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by Consultant of Consultant's obligation under this Agreement relative to nondiscrimination and fair employment practices.

Consultant shall include the above provisions of this section in every subcontract, including procurement of materials or equipment.

(b) Consultant agrees to comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, the Americans with Disabilities Act of 1990, any other applicable federal and state laws and regulations and City ordinances and regulations hereinafter enacted.

23. Notices. All notices or instruments required to be given or delivered by law or this Agreement shall be in writing and shall be effective upon receipt thereof and shall be by personal service or delivered by depositing the same in any United States Post Office, registered or certified mail, postage prepaid, addressed to:

If to City: Erin Hanford
Economic Development Project Manager
Economic Development Department
555 Santa Clara Street
Vallejo, CA 94590

If to Consultant: Jeffery Morris
Principal
Remedy Engineering, Inc.
2510 Old Eureka Way
Redding, CA 96001

Any party may change its address for receiving notices by giving written notice of such change to the other party in accordance with this section.

Routine administrative communications shall be made pursuant to section 1 of Exhibit A.

24. Integration Clause. This Agreement, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. This Agreement shall not be amended or modified except by a written agreement executed by each of the parties hereto.

25. Severability Clause. Should any provision of this Agreement ever be deemed to be legally void or unenforceable, all remaining provisions shall survive and be enforceable.

26. Law Governing. This Agreement shall in all respects be governed by the law of the State of California without regard to its conflicts of law rules. Litigation arising out of or connected with this Agreement shall be instituted and maintained in the courts of Solano County in the State of California or in the United States District Court, Eastern District of California, Sacramento, California, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

27. Waiver. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.

28. Ambiguity. The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

29. Gender. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identifications of the person or persons, firm or firms, corporation or corporations may require.

30. Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

31. Compliance with Laws. Consultant will comply with all statutes, regulations and ordinances in the performance of all services under this Agreement.

32. Confidentiality of City Information. During the performance of services under this Agreement, Consultant may gain access to and use City information regarding, but not limited to, procedures, policies, training, operational practices, and other vital information (hereafter collectively referred to as "City Information") which are valuable, special and unique assets of the City. Consultant agrees that it will not use any information obtained as a consequence of the performance of services under this Agreement for any purpose other than fulfillment of Consultant's scope of work, to protect all City Information and treat it as strictly confidential and proprietary to City, and that it will not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party, other than its own employees, agents or subcontractors who have a need for the City Information for the performance of services under this Agreement, without the prior written consent of City, or as required by law.

Consultant shall treat all records and work product prepared or maintained by Consultant in the performance of this Agreement as confidential.

A violation by Consultant of this section shall be a material violation of this Agreement and will justify legal and/or equitable relief.

Consultant's obligations under this section shall survive the completion of services, expiration or termination of this Agreement.

33. News and Information Release. Consultant agrees that it will not issue any news releases in connection with either the award of this Agreement, or any subsequent amendment of or efforts under this Agreement, without first obtaining review and approval of said news releases from City through the City Representative.

34. City Representative. The City Representative specified in Exhibit A, or the representative's designee, shall administer this Agreement for the City.

35. Counterparts. The parties may execute this Agreement in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument.

36. Facsimile Signature; Electronic Signature. This Agreement shall be binding upon the receipt of facsimile signatures or e-mailed by PDF or otherwise. Any person transmitting his or her signature by facsimile or electronically shall promptly send an original signature to the other party pursuant to the notice provision of this Agreement. The failure to send an original shall not affect the binding nature of this Agreement.

37. Authority. The person signing this Agreement for Consultant hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of Consultant.

38. Exhibits. The following exhibits are attached hereto and incorporated herein by reference:

Exhibit A, entitled "Scope of Work," including any attachments.

Exhibit B, entitled "Compensation," including any attachments.

Exhibit C, entitled "Insurance Requirements," including any attachments.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year shown below the name of each of the parties.

REMEDY ENGINEERING, INC.
A California corporation

By: Jeffery Morris
Jeffery Morris
Principal

CITY OF VALLEJO,
a municipal corporation

By: Daniel E. Keen
Daniel E. Keen
City Manager

DATE: 8-4-15

DATE: 9-3-15

16-00003396
Vallejo Business License No.



(City Seal)

ATTEST:

By: Dawn Abrahamson
Dawn Abrahamson, City Clerk

APPROVED AS TO CONTENT:

Andrea Ouse
Andrea Ouse
Director of Community and Economic
Development

APPROVED AS TO FORM
AND INSURANCE:

Claudia Quintana
Claudia Quintana
City Attorney

EXHIBIT A
SCOPE OF WORK

1. Representatives.

The City Representative for this Agreement is:

Erin Hanford
Economic Development Project Manager
Economic Development Department
555 Santa Clara Street
Vallejo, CA 94590
707.648.5406
707.648.4499

The Consultant's Representative for this Agreement is:

Jeffery Morris
Principal
Remedy Engineering, Inc.
2510 Old Eureka Way
Redding, CA 96001
530.241.7658
530.241.7659

All routine administrative communications between the parties will be between the above named representatives and may be by personal delivery, mail, facsimile transmission or electronic mail as agreed between the Consultant Representative and City's Representative.

2. Services to be Provided.

The services provided shall be as set forth in Attachment 1 of Exhibit A, attached hereto and incorporated herein by this reference.

3. Time for Performance. Consultant will perform the services in a timely manner and/or diligently pursue work to completion. Failure to do so may be ground for termination of this Agreement.

June 3, 2015

Ms. Erin Hanford
Economic Development Project Manager
City of Vallejo / Economic Development Department
555 Santa Clara Street
Vallejo, California 69590

Subject: Proposal to Conduct Annual Land Use Covenant Inspections for Alden and Chapel Parks
in Investigation Area D1.2, Mare Island, Vallejo, California

Dear Ms. Hanford:

Remedy Engineering, Inc. is pleased to submit this proposed scope of work and cost estimate to conduct an annual land use covenant (LUC) inspection of Alden and Chapel Parks located in the general commercial/industrial area of Investigation Area (IA) D1.2 on Mare Island. This proposal is organized into the following sections.

- Scope of Work
- Proposed Schedule
- Cost Estimate and Assumptions
- Current Labor Rate and Expense Schedules

Scope of Work

Remedy Engineering will work with the City of Vallejo to conduct an annual LUC inspection for Alden and Chapel Parks located on Mare Island. Upon transfer of the properties from Lennar Mare Island, LLC (LMI) to the City of Vallejo in June and September 2010, the continued maintenance and reporting requirements of the LUCs for Alden and Chapel Parks became the responsibility of the City of Vallejo. The purpose of the annual inspection is to document the existing property uses and verify that any recent activities conducted at Alden and Chapel Parks over the reporting period are in compliance with the provisions of the LUC.

Remedy Engineering will review the requirements defined by the LUC, and obtain and review any checklists or other input provided by the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC). The City of Vallejo will provide available records or documentation of any soil disturbance activities. Remedy Engineering will coordinate the LUC inspection with the City of Vallejo and DTSC, if necessary. Following the LUC inspection, Remedy Engineering will complete a site inspection form and prepare a letter report documenting the inspection for submittal to DTSC.

Proposed Schedule

Remedy Engineering is prepared to review the relevant documents and conduct the LUC inspection within 2 weeks of receiving a notice to proceed from the City of Vallejo. Remedy Engineering will provide a draft letter report to the City of Vallejo for review within 10 working days of completing the inspection. The annual inspection report will be delivered to DTSC within 5 working days of receiving comments from the City of Vallejo.

Cost Estimate

The cost estimate to perform the proposed scope of work described above and the associated assumptions are presented in Attachment 1. Remedy Engineering proposes to conduct the work on a time and materials basis for an amount not to exceed \$1,700.

Current Labor Rate and Expense Schedules

A 2015 Rate Schedule for Remedy Engineering, Inc. is included in Attachment 2. The rate schedule includes labor rates by category. All reimbursable expenses will be billed at cost. Subcontractor and outside services (if utilized) are billed at cost plus 10 percent. No subcontractors are anticipated for this project. Company vehicles are billed at \$90 per day.

Remedy Engineering appreciates the opportunity to submit this proposal to the City of Vallejo, and we look forward to helping you with the annual LUC inspection. Please contact me at 530-241-7658 if you have any questions about this proposal.

Sincerely,

Remedy Engineering, Inc.



Jeffery C. Morris, P.E.
Principal

Attachments

Attachment 1 Cost Estimate



REMEDY
ENGINEERING, INC.
GEO. AND ENVIRONMENTAL SOLUTIONS

TABLE 1. COST ESTIMATE

Task	Activity Description and Assumptions	Category	Hourly Rate or Charge	Hours or Unit Estimate	Subtotal
1	Conduct Annual LUC Inspection at Alden and Chapel Parks - Obtain records, activity logs, other relevant information from City of Vallejo - Coordinate schedule with City of Vallejo - Conduct inspection and complete checklist/site inspection form - Prepare Annual Inspection Letter for City of Vallejo review - Report will summarize the activities and identify existing land use, condition of surfaces, fences, signage or other specific items as required by the LUC. The reports will include the completed and signed inspection forms, a legal description of the restricted property, and photographs Assumptions: - Inspection to be conducted on a day when Remedy Engineering staff at Mare Island (no travel time from Redding office is included) - Letter Report outline and content will follow the 2015 Annual Inspection Reports produced for other locations within the Eastern Early Transfer Parcel. - An electronic version of the draft LUC report will be submitted to City of Vallejo for review. - A maximum of five hard copies of the annual report will be submitted. - Legal description of the restricted property to be provided by the City of Vallejo.	Principal Engineer Project Manager Project Engr/Geol Assoc. Engr/Geol Staff Engr/Geol Senior Technician Drafting Clerical Labor Postage/report production Company Vehicle Per diem/hotel Expenses Subcontractors/Suppliers	\$155.00 \$139.00 \$125.00 \$102.00 \$88.00 \$82.00 \$67.00 \$57.00 \$109 \$90 \$150 \$0 10% markup on subcontractors \$0	0 1 0 10 0 0 0 6 1 1 0 1 1	\$0 \$139 \$0 \$1,020 \$0 \$0 \$0 \$342 \$1,501 \$109 \$90 \$0 \$199 \$0 \$0 \$0 \$0
Task 1 Subtotal					\$1,700

Summary of Basic Tasks		PROJECT TOTAL
Task 1	Conduct Annual LUC Inspection at Alden and Chapel Parks	\$1,700
Subtotal		\$1,700

Attachment 2
2015 Rate Schedule



2510 Old Eureka Way
Redding, CA 96001

2015 Time and Materials Billing Rate Schedule
Prepared for City of Vallejo

Labor Category	2015 Hourly Rate
Principal	\$155.00
Project Manager	\$139.00
Project Engineer	\$125.00
Associate Engineer	\$102.00
Staff Engineer	\$88.00
Senior Technician	\$82.00
Junior Technician	\$72.00
Graphics	\$67.00
Office/Clerical/Accounting	\$57.00

Vehicle: \$0.56/mile or \$90/day
Expenses: Cost
Subcontractors: Cost + 10%

EXHIBIT B

COMPENSATION

1. Consultant's Compensation.

A. Services: City agrees to pay Consultant, at the rate(s) specified below, for those services set forth in Exhibit A of this Agreement and for all authorized reimbursable expenses, for a total not to exceed One Thousand Seven Hundred Dollars and 00 Cents (\$1,700).

If City extends the term of this agreement Consultant agrees to provide services set forth in Exhibit A at the same cost, not to exceed One Thousand Seven Hundred Dollars and 00 Cents (\$1,700) each year.

Consultant shall notify City in writing no later than thirty (30) days prior to the estimated date when Consultant will have billed City the maximum payment amount permitted under this Agreement, and Consultant shall provide City with an estimate of the additional compensation required to complete the project.

B. Additional Services:

1. Additional Services are those services related to the scope of Services of Consultant as set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement authorizing such Additional Services is approved by the City Manager, or his or her designee. City reserves the right to perform any Additional Services with its own staff or to retain other Consultants to perform said Additional Services.

2. Consultant's compensation for Additional Services shall be based on the total number of hours spent on Additional Services multiplied by the employees' appropriate billable hourly rate as established below. City, at its option, may negotiate a fixed fee for some or all Additional Services as the need arises. Where a fixed fee for Additional Services is established by mutual Agreement between City and Consultant, compensation to Consultant shall not exceed the fixed fee amount.

2. Appropriate Billable Hourly Rates for Services and Additional Services.

Consultant's billable hourly rates shall be as listed in Attachment 1 of Exhibit B, attached hereto and incorporated herein by this reference.

3. Consultant's Reimbursable Expenses.

Reimbursable Expenses shall be limited to actual reasonable expenditures of Consultant for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by City.

4. Payments to Consultant.

A. Payments to Consultant shall be made within a reasonable time after receipt of Consultant's invoice, said payments to be made in proportion to services performed. Consultant may request payment on a monthly basis. Consultant shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of City.

B. All invoices submitted by Consultant shall contain the following information:

1. Description of services billed under this invoice
2. Date of Invoice Issuance
3. Sequential Invoice Number
4. City's Purchase Order Number (if issued)
5. Social Security Number or Taxpayer Identification Number
6. Amount of this Invoice (Itemize all Reimbursable Expenses")
7. Total Billed to Date

C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to Consultant for correction. City shall not be responsible for delays in payment to Consultant resulting from Consultant's failure to comply with the invoice format described above.

D. Request for payment shall be sent to:

Erin Hanford
Economic Development Project Manager
Economic Development Department
555 Santa Clara Street
Vallejo, CA 94590

5. Accounting Records of Consultant.

Consultant shall maintain for three (3) years after completion of all services hereunder, all records under this Agreement, including, but not limited to, records of Consultant's direct salary costs for all Services and Additional

Services performed under this Agreement and records of Consultant's Reimbursable Expenses, in accordance with generally accepted accounting practices. Consultant shall keep such records available for audit, inspection and copying by representatives of the City's Finance Department or other government agencies during regular business hours upon twenty four (24) hours notice.

The obligations of Consultant under this section shall survive this Agreement.

6. Taxes.

Consultant shall pay, when and as due, any and all taxes incurred as a result of Consultant's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

7. Taxpayer Identification Number. Consultant shall provide City with Consultant's complete Request for Taxpayer Identification Number and Certification, Form W-9, as issued by the Internal Revenue Service, and any other State or local tax identification number requested by City.

EXHIBIT C

INSURANCE REQUIREMENTS

Consultant shall procure and maintain for the duration of this Agreement, including any extensions thereto, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of services hereunder by the Consultant, their agents, representatives, or employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office form number GL 0002 covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 any auto and endorsement CA 0025.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability insurance appropriate to the Consultant's profession (Errors and Omission).

B. Minimum Limits of Insurance

Consultant shall maintain limits no less than:

1. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability: \$1,000,000 per accident for bodily injury or disease. If Consultant is not subject to California Workers' Compensation requirements, Consultant shall file

a completed certificate of exemption form which may be obtained from the City prior to commencing any activity authorized hereunder.

4. Professional Liability (Errors and Omission): \$1,000,000 combined single limit per occurrence, and annual aggregate.

C. Deductible and Self-Insured Retention

Any deductibles or self-insured retention must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City of Vallejo, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions

The general liability and automobile liability policies, as can be provided, are to contain, or be endorsed to contain, the following provisions:

1. The City of Vallejo, its officers, officials, employees, agents and volunteers are to be covered as additional insureds as respects; liability, including defense costs, arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City of Vallejo, its officers, officials, employees, agents or volunteers. The insurance is to be issued by companies licensed to do business in the State of California.
2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City of Vallejo, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City of Vallejo, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.
4. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to

state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

The workers' compensation and employer's liability policy required hereunder shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against City, its officers, officials, employees, agents and volunteers, which might arise by reason of payment under such policy in connection with Consultant's performance under this Agreement.

E. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

F. Verification of Coverage

Consultant shall furnish the City with certificates of insurance and original endorsements effecting general and automobile liability insurance coverage required by this clause. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before work commences.

G. Subcontractors

Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

H. Payment Withhold

City will withhold payments to Consultant if the certificates of insurance and endorsements required in Paragraph F, above, are canceled or Consultant otherwise ceases to be insured as required herein.

**FIRST AMENDMENT TO
AGREEMENT BETWEEN
CITY OF VALLEJO
AND
REMEDY ENGINEERING, INC.**

This First Amendment to the Consultant Agreement made and entered into on the first day of August, 2015, hereafter referred to as Agreement, between Remedy Engineering Inc., a California corporation, therein referred to as Consultant, and the City of Vallejo, a municipal corporation, therein referred to as City, is made and entered into on this twenty-seventh day of July, 2016.

Consultant and City do mutually agree as follows:

- 1. Replacement of Exhibit A.** Exhibit A to the Agreement (Scope of Work) is hereby amended and replaced in its entirety with Exhibit A attached hereto.
- 2. Revision of Payment Schedule.** The Payment Schedule of the Agreement shall be modified to read as shown in Exhibit A of this First Amendment.
- 3. Revised Term of the Agreement.** The Agreement term is currently scheduled to expire on July 31, 2016. As of the date of this First Amendment, the term of the Agreement is extended to and shall expire on July 31, 2017.
- 4. Additional Services.** The scope of services to be provided as specified in Exhibit A of the Agreement is amended to include the services described in Exhibit A of this First Amendment ("Additional Services").
- 5. Payment for Additional Services.** In consideration of Consultant providing the Additional Services, Consultant shall be paid an amount not to exceed Fourteen thousand ninety-two Dollars and 00 Cents (\$14,092). The maximum not to exceed amount specified in Exhibit B of the Agreement (Compensation) is increased by said amount and the new not to exceed amount is Fifteen thousand seven hundred ninety-two Dollars and 00 Cents (\$15,792).

Consultant agrees that the amount of increase in the not to exceed amount specified above shall constitute full compensation for the Additional Services, and shall fully compensate Consultant for any and all direct and indirect costs that may be incurred by Consultant in connection with the Additional Services, including costs associated with any changes and/or delays in work schedules or in the performance of other services or work by Consultant.

- 6. Revised Billable Hourly Rates.** Consultant's billable hourly rates shall be modified to read as shown in Exhibit A of this First Amendment.

7. Integration. This First Amendment contains the entire agreement between the parties with respect to its subject matter and supersedes whatever oral or written understanding they may have had prior to the execution of this First Amendment. This First Amendment shall not be amended or modified except by a written agreement executed by each of the parties. Except as specifically revised herein, all terms and conditions of the Agreement, and all prior amendments, if any, shall remain in full force and effect, and Consultant shall perform all duties, obligations and conditions required under the Agreement.

8. Inconsistencies. In the event of any conflict or inconsistency between the provisions of this First Amendment and the Agreement, and any prior amendment, if any, the provisions of this First Amendment shall control in all respects.

9. Ambiguities. The parties have each carefully reviewed this First Amendment and have agreed to each term of this First Amendment. No ambiguity shall be presumed to be construed against either party.

10. Counterparts. This First Amendment may be executed by the parties in one or more counterparts all of which collectively shall constitute one document and agreement.

11. Authority. The person signing this First Amendment for Consultant hereby represents and warrants that he or she is fully authorized to sign this First Amendment on behalf of Consultant.

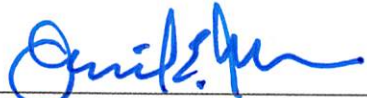
(SIGNATURES ARE ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties have entered into this First Amendment on the day and year first hereinabove appearing.

REMEDY ENGINEERING, INC.
a California corporation

CITY OF VALLEJO
a municipal corporation

By: 
Jeffery Morris
Principal

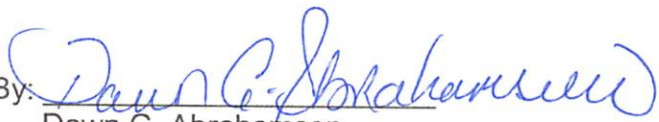
By: 
Daniel E. Keen
City Manager

DATE: 8-12-16

DATE: 8-18-16

17-00003396
Vallejo Business License No.

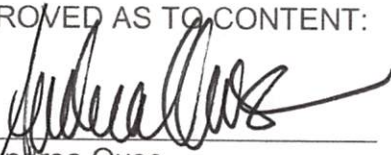
ATTEST:

By: 
Dawn G. Abrahamson
City Clerk



(City Seal)

APPROVED AS TO CONTENT:

By: 
Andrea Ouse
Community & Economic Development
Director

APPROVED AS TO FORM AND
INSURANCE:

By: 
Claudia Quintana
City Attorney

entirely the same as the one which was used in the case of the other two.

THE COURT OF APPEALS
IN THE CITY OF NEW YORK

IN SENATE CHAMBERS
JANUARY 10, 1900

[Signature]
Counsel for the Appellant

[Signature]
Counsel for the Respondent

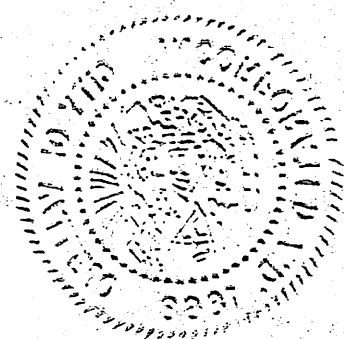
THE COURT OF APPEALS
IN SENATE CHAMBERS

IN SENATE CHAMBERS
JANUARY 10, 1900

[Signature]
Counsel for the Appellant

THE COURT OF APPEALS
IN SENATE CHAMBERS

[Signature]
Counsel for the Appellant



THE COURT OF APPEALS
IN SENATE CHAMBERS

THE COURT OF APPEALS
IN SENATE CHAMBERS

[Signature]
Counsel for the Appellant

EXHIBIT A
SCOPE OF WORK

1. Representatives.

The City Representative for this Agreement is:

Erin Hanford
Economic Development Project Manager
Economic Development Department
555 Santa Clara Street
Vallejo, CA 94590
707.648.5406
707.648.4499

The Consultant's Representative for this Agreement is:

Jeffery Morris
Principal
Remedy Engineering, Inc.
2510 Old Eureka Way
Redding, CA 96001
530.241.7658
530.241.7659

All routine administrative communications between the parties will be between the above named representatives and may be by personal delivery, mail, facsimile transmission or electronic mail as agreed between the Consultant Representative and City's Representative.

2. Services to be Provided. The services provided shall be as set forth in Attachment 1 of Exhibit A, attached hereto and incorporated herein by this reference.

3. Time for Performance. Consultant will perform the services in a timely manner and/or diligently pursue work to completion. Failure to do so may be ground for termination of this Agreement.

ATTACHMENT 1 TO EXHIBIT A



July 12, 2016

Ms. Erin Hanford
Economic Development Project Manager
City of Vallejo / Economic Development Department
555 Santa Clara Street
Vallejo, California 94590

Subject: Proposal to Conduct the Second Five-Year Review for Alden and Chapel Parks in
Investigation Area D1.2, Mare Island, Vallejo, California

Dear Ms. Hanford:

Remedy Engineering, Inc. is pleased to submit this proposed scope of work and cost estimate for the second five-year review (FYR) to be conducted for Alden and Chapel Parks located in the general commercial/industrial area of Investigation Area (IA) D1.2 on Mare Island. This proposal is organized into the following sections.

- Scope of Work
 - Project Management
 - Public Notification of the Start of the FYR Process
 - Review Existing Data and Reports
 - Conduct Site Inspections
 - Prepare FYR Report
 - Public Notification of the Completion of the FYR Process
- Proposed Schedule
- Cost Estimate and Assumptions
- Current Labor Rate and Expense Schedules

Scope of Work

Remedy Engineering will work with the City of Vallejo to conduct the second FYR review of the selected remedy of land use covenants (LUCs) for Alden and Chapel Parks located on Mare Island. Upon transfer of the properties from Lennar Mare Island, LLC (LMI) to the City of Vallejo in June and September 2010, the continued maintenance and reporting requirements of the LUCs for Alden and Chapel Parks became the responsibility of the City of Vallejo. The purpose of the FYR is to ensure that the LUCs established for Alden and Chapel Parks are effectively protecting human health and the environment. The Second FYR will be performed in general accordance with the USEPA guidance document (Comprehensive Five-Year Review Guidance, EPA-540-R-01-007 [USEPA, 2001]) and will be

presented in a format that is consistent with the new Five Year Review Recommended Template, OLEM Directive 9200.0-89, January 2016. In addition, Remedy Engineering will review the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) comments and edits to the 2011 FYR for Alden and Chapel Parks to ensure that requirements of the State of California are also met.

Task 1 – Project Management

Remedy Engineering will coordinate all activities and reporting requirements with the City of Vallejo and the DTSC, including the required public notifications, site inspections, and review and submittal of reports.

Task 2 – Public Notification of the Start of the Five-Year Review Process

Remedy Engineering will submit the public notification to the City of Vallejo and DTSC for review and comment prior to being run in a Sunday edition of the Vallejo Times Herald. Specific notification details will include:

- Site name, location, and web address
- Lead agency overseeing the review
- Description of the selected remedy
- Summary of contamination addressed by selected remedy
- How the community can contribute
- Contact name and phone number for additional information
- Scheduled completion date of the five-year review

City of Vallejo and DTSC comments will be incorporated into the notice prior to submitting to the Vallejo Times Herald for publication.

Task 3 – Review of Existing Data and Reports

Remedy Engineering will review relevant documents relating to the Alden and Chapel Parks, as recommended by the five-year review process. In addition, Remedy Engineering will also evaluate the record keeping processes and the location of pertinent information. Relevant documents will be reviewed to obtain information and data concerning the effectiveness of the selected remedy of LUCs for Alden and Chapel Parks. Remedy Engineering will focus the review on the following pertinent documents:

- Remedial Action Plan for IA D1, Implementation Report for IA D1.2, and the EETP Wide Operations and Maintenance (O&M) Plan.
- Available Annual Inspection Reports from 2011 through 2016.
- The LUCs for Alden and Chapel Parks.
- Property transfer documents for the transfer of property to City of Vallejo from LMI.

- First Five Year Review Report for Alden and Chapel Parks and the DTSC comments/markup received July 5, 2016.

Task 4 – Site Inspection

Remedy Engineering will coordinate and conduct site inspections of Alden and Chapel Parks on Mare Island. Remedy Engineering will complete the five-year site inspection checklist developed with DTSC's input during June 2016. This inspection and checklist will also serve as documentation of the annual site inspection for 2016. Remedy Engineering will coordinate the site inspections with representatives of the City of Vallejo and DTSC.

Task 5 – Prepare Combined Annual (2016) and Second Five-Year Review Report

Remedy Engineering will prepare a combined Annual Inspection Report (2016) and Second FYR review report for submittal to DTSC. The report will include the results of the review of relevant documents and the site inspections. Based on DTSC requirements and input on the 2011 FYR report, the contents of the report will, at a minimum include the following:

- Introduction – includes the purpose of the review, who conducted the review, initiation and completion of the review.
- Remedial Actions/Response Action Summary – includes the basis for taking action, response actions, status of implementation, and a systems operation and maintenance overview.
- Progress Since the Last Review – includes details of any activities that have taken place since the previous review, corrective actions, etc.
- Five-Year Review Process – includes public notification activities, schedule of the five-year review, review of relevant documents, and site inspections.
- Technical Assessment – includes an assessment as to whether the remedy is functioning as intended; an assessment that the exposure assumptions, toxicity data, cleanup levels, and remedial action objectives (RAOs) that were used at the time of remedy selection are still valid; and an assessment of any other information that has become available that may call into question the protectiveness of the remedy.
- Issues – includes issues that may have been found during the five-year review process or the technical assessment and whether those issues affect the current or future protectiveness of the remedy, and a discussion of any unresolved concerns or issues raised by stakeholders or the community.
- Recommendations and Follow-up Actions – includes recommendation and follow-up actions and the parties responsible for implementation, agencies with oversight authority, and a schedule for completion.

- Protectiveness Statement – includes a statement that discusses the protectiveness of the remedy for the site.
- Next Review – includes a statement as to when the next five-year review will be completed.

A draft of the report will be submitted to the City of Vallejo for review. Remedy Engineering will incorporate comments from the City of Vallejo and the report will be submitted to DTSC for review and comment. Remedy Engineering will incorporate comments from DTSC to prepare a final report to be submitted to DTSC and the City of Vallejo. It is assumed that three hard copies each of the draft and final reports will be produced, including a compact disc (cd) with each report.

Task 6 – Public Notification of the Completion of the Five-Year Review Process

Remedy Engineering will prepare a public notification of the completion of the five-year review process. The public notification will be submitted to the City of Vallejo and DTSC for review and comment prior to being run in a Sunday edition of the Vallejo Times Herald. The notification will at a minimum include the following details:

- Site name, location, and web address
- Lead agency overseeing the review
- Description of the selected remedy
- Summary of contamination addressed by selected remedy
- Summary of the results of the five-year review
- Summary of the data and information that provided the basis for determining protectiveness, issues, recommendations, and follow-up actions related to the protectiveness of the remedy
- Contact name and phone number for additional information
- Date of the next five-year review

Proposed Schedule

The public notification of the start of the five-year review will be completed and submitted to DTSC for review within two weeks of notice to proceed from the City of Vallejo. The review of relevant documents will be completed within two weeks of the notice to proceed, assuming all documents are available from the City of Vallejo. The site inspections will be coordinated with City of Vallejo and DTSC so that appropriate personnel are available for the site inspections, as necessary. The site inspection is expected to take place during August 2016. Following review of the relevant documents and site inspections, Remedy Engineering will prepare a draft of the combined annual (2016) and second FYR report to be submitted to the City of Vallejo within 3 weeks of completing the site inspections. The revised draft report will be submitted to DTSC within a week of receiving City of Vallejo comments. Within two

weeks following receipt of comments from DTSC, Remedy Engineering will prepare the final five-year review report for submittal to DTSC and the City of Vallejo. Assuming prompt response from DTSC, Remedy Engineering will complete the five-year review in October 2016.

Cost Estimate

The cost estimate to perform the proposed scope of work described above and the associated assumptions are presented by task in Attachment 1. Remedy Engineering proposes to conduct the work on a time and materials basis. The estimated cost to complete the five year review process is \$14,092.

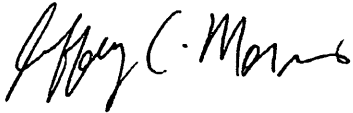
Current Labor Rate and Expense Schedules

A 2016 Rate Schedule for Remedy Engineering, Inc. is included in Attachment 2. The rate schedule includes labor rates by category and the proposed subcontractor markup. All reimbursable expenses will be billed at cost. Subcontractor and outside services, if used are billed at cost plus 10 percent. Company vehicles are billed at \$90 per day.

Remedy Engineering appreciates the opportunity to submit this proposal to the City of Vallejo, and we look forward to helping you with this project. Please contact me at 530-241-7658 if you have any questions about this proposal.

Sincerely,

Remedy Engineering, Inc.

A handwritten signature in black ink, appearing to read "Jeffery C. Morris".

Jeffery C. Morris, P.E.
Principal
Attachments

Attachment 1
Cost Estimate

Proposed Cost Estimate
Second Five Year Review for Alden and Chapel Parks, Mare Island

Task 1 -- Project Management	Hours	Rate	Cost	Notes and Assumptions
Labor				
Coordinate with DTSC	6	\$102	\$612	
Coordinate public notification & site inspections	2	\$102	\$204	
Labor Task 1	8		\$816	
Total Task 1			\$816	
Task 2 -- Public Notification for Start of 5YR Review	Units	Rate	Cost	Notes and Assumptions
Labor				
Prepare Public Notice for Start of 5yr Review	6	\$102	\$612	prepare and revise based on comments from City & DTSC
Administrative Assistant	2	\$57	\$114	review and format
Labor Task 2	8		\$726	
Public Notice for Start of 5yr Review	1	\$250	\$250	Sunday run in Vallejo newspaper
Total Task 2			\$976	
Task 3 -- Review of Existing Data & Reports	Units	Rate	Cost	Notes and Assumptions
Labor				
Review IA D1 RAP, IA D1.2 Implementation Report, and O&M Report	1	\$102	\$102	
Obtain and Review Annual Inspection Reports	2	\$102	\$204	
Review LUCs	1	\$102	\$102	
Obtain and review IA D1.2 property transfer docs	1	\$102	\$102	
Review 2011 5-yr review and DTSC comments	2	\$102	\$204	
Labor Task 3	7		\$714	
Total Task 3			\$714	

Proposed Cost Estimate
Second Five Year Review for Alden and Chapel Parks, Mare Island

Task 4 -- Site Inspections	Hours	Rate	Cost	Notes and Assumptions
Labor				
Update IA D1.2 specific site inspection checklist	3	\$102	\$306	
Conduct site inspections and complete site inspection checklists for each site	4	\$102	\$408	includes Alden and Chapel parks
Labor Subtotal Task 4	7		\$714	
Expenses			\$150	travel related expenses
Total Task 4			\$864	
Task 5 -- 5 Year Review Report	Hours	Rate	Cost	Notes and Assumptions
Labor				
Prepare Draft Report	50	\$102	\$5,100	including incorporation of comments from City
Prepare Final Report	15	\$102	\$1,530	including incorporation of comments from DTSC
Drafting of draft and final figures	8	\$67	\$536	
QC Review of Documents	8	\$139	\$1,112	
Administrative Assistant	10	\$57	\$570	review, format, repro, and distribute draft and final
Labor Subtotal Task 5	91		\$8,848	
Expenses			\$1,000	Copy, binders, postage (includes 4 draft hard copies, 4 draft cds, 4 final hard copies and 4 final cds)
Total Task 5			\$9,848	
Task 6 -- Public Notification for Completion of 5YR Review	Units	Rate	Cost	Notes and Assumptions
Labor				
Prepare Public Notice for Completion of 5yr Review	5	\$102	\$510	prepare and revise based on comments from City & DTSC (if needed)
Administrative Assistant	2	\$57	\$114	review and format
Labor Task 6	7		\$624	
Public Notice for Completion of 5yr Review	1	\$250	\$250	Sunday run in Vallejo newspaper
Total Task 6			\$874	
Five-Year Review			\$14,092	

Attachment 2
2016 Rate Schedule



2510 Old Eureka Way
Redding, CA 96001

2016 Time and Materials Billing Rate Schedule
Prepared for City of Vallejo

Labor Category	2016 Hourly Rate
Principal	\$155.00
Project Manager	\$139.00
Project Engineer	\$102.00
Associate Engineer	\$88.00
Staff Engineer	\$70.00
Senior Technician	\$82.00
Junior Technician	\$72.00
Graphics	\$67.00
Office/Clerical/Accounting	\$57.00

Vehicle: \$0.54/mile or \$90/day
Expenses: Cost
Subcontracts: Cost + 10%

**SECOND AMENDMENT TO
AGREEMENT BETWEEN
CITY OF VALLEJO
AND
REMEDY ENGINEERING, INC.**

This Second Amendment to the Consultant Agreement made and entered into on the first day of August, 2015, hereafter referred to as Agreement, between Remedy Engineering Inc., a California corporation, therein referred to as Consultant, and the City of Vallejo, a municipal corporation, therein referred to as City, is made and entered into on this 5th day of February, 2018.

Consultant and City do mutually agree as follows:

1. **Replacement of Exhibit A.** Exhibit A to the Agreement (Scope of Work) is hereby amended and replaced in its entirety with Exhibit A attached hereto.
2. **Revision of Payment Schedule.** The Payment Schedule of the Agreement shall be modified to read as shown in Exhibit A of this Second Amendment.
3. **Revision of Term of the Agreement.** The First Amended Agreement term expired on July 31, 2017. As of the date of this Second Amendment, the term of the Agreement is extended to and shall expire on July 31, 2018.
4. **Integration.** This Second Amendment contains the entire agreement between the parties with respect to its subject matter and supersedes whatever oral or written understanding they may have had prior to the execution of this Second Amendment. This Second Amendment shall not be amended or modified except by a written agreement executed by each of the parties. Except as specifically revised herein, all terms and conditions of the Agreement, and all prior amendments, if any, shall remain in full force and effect, and Consultant shall perform all duties, obligations and conditions required under the Agreement.
5. **Inconsistencies.** In the event of any conflict or inconsistency between the provisions of this Second Amendment and the Agreement, and any prior amendment, if any, the provisions of this Second Amendment shall control in all respects.
6. **Ambiguities.** The parties have each carefully reviewed this Second Amendment and have agreed to each term of this Second Amendment. No ambiguity shall be presumed to be construed against either party.

Approved as to form:

By: Shamaila Edueyer for
Claudia Quintana
City Attorney

7. **Counterparts.** This Second Amendment may be executed by the parties in one or more counterparts all of which collectively shall constitute one document and agreement.

8. **Authority.** The person signing this Second Amendment for Consultant hereby represents and warrants that he or she is fully authorized to sign this Second Amendment on behalf of Consultant.

(SIGNATURES ARE ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties have entered into this Second Amendment on the day and year first hereinabove appearing.

REMEDY ENGINEERING, INC.
a California corporation

By: 
Jeffery Morris
Principal

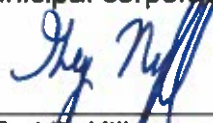
DATE: 1-17-18

18-00003396
Vallejo Business License No.

(City Seal)



CITY OF VALLEJO,
a municipal corporation

By: 
Teri F. Killgore
Interim City Manager

DATE: 2/5/18

ATTEST:

By: 
Dawn G. Abrahamson
City Clerk

APPROVED AS TO CONTENT:

By: 
Ron Gerber
Economic Development Manager

APPROVED AS TO FORM AND
INSURANCE:

By: 
Claudia Quintana
City Attorney

EXHIBIT A

SCOPE OF WORK

1. Representatives.

The City Representative for this Agreement is:

Erin Hanford
Economic Development Project Manager
Economic Development Department
555 Santa Clara Street
Vallejo, CA 94590
707.648.5406
707.648.4499

The Consultant's Representative for this Agreement is:

Jeffery Morris
Principal
Remedy Engineering, Inc.
2510 Old Eureka Way Redding, CA 96001
530.241.7658
530.241.7659

All routine administrative communications between the parties will be between the above named representatives and may be by personal delivery, mail, facsimile transmission or electronic mail as agreed between the Consultant Representative and City's Representative.

2. Services to be Provided. The services provided shall be as set forth in Attachment 1 of Exhibit A, attached hereto and incorporated herein by this reference.

3. Time for Performance. Consultant will perform the services in a timely manner and/or diligently pursue work to completion. Failure to do so may be ground for termination of this Agreement.

Attachment 1 of Exhibit A

January 8, 2018

Ms. Erin Hanford
Economic Development Project Manager
City of Vallejo / Economic Development Department
555 Santa Clara Street
Vallejo, California 94590

Subject: Proposal to Conduct Annual Land Use Covenant Inspections for Alden and Chapel Parks
in Investigation Area D1.2, Mare Island, Vallejo, California

Dear Ms. Hanford:

Remedy Engineering, Inc. is pleased to submit this proposed scope of work and cost estimate to conduct an annual land use covenant (LUC) inspection of Alden and Chapel Parks located in the general commercial/industrial area of Investigation Area (IA) D1.2 on Mare Island. This proposal is organized into the following sections.

- Scope of Work
- Proposed Schedule
- Cost Estimate and Assumptions
- Current Labor Rate and Expense Schedules

Scope of Work

Remedy Engineering will work with the City of Vallejo to conduct an annual LUC inspection for Alden and Chapel Parks located on Mare Island. Upon transfer of the properties from Lennar Mare Island, LLC (LMI) to the City of Vallejo in June and September 2010, the continued maintenance and reporting requirements of the LUCs for Alden and Chapel Parks became the responsibility of the City of Vallejo. The purpose of the annual inspection is to document the existing property uses and verify that any recent activities conducted at Alden and Chapel Parks over the reporting period are in compliance with the provisions of the LUC.

Remedy Engineering will review the requirements defined by the LUC, and obtain and review any checklists or other input provided by the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC). The City of Vallejo will provide available records or documentation of any soil disturbance activities. Remedy Engineering will coordinate the LUC inspection with the City of Vallejo and DTSC, if necessary. Following the LUC inspection, Remedy Engineering will complete a site inspection form and prepare a letter report documenting the inspection for submittal to DTSC.

Proposed Schedule

Remedy Engineering is prepared to review the relevant documents and conduct the LUC inspection within 2 weeks of receiving a notice to proceed from the City of Vallejo. Remedy Engineering will provide a draft letter report to the City of Vallejo for review within 10 working days of completing the inspection. The annual inspection report will be delivered to DTSC by March 31.

Cost Estimate

The cost estimate to perform the proposed scope of work described above and the associated assumptions are presented in Attachment 1. Remedy Engineering proposes to conduct the work on a time and materials basis for an amount not to exceed \$1,700.

Current Labor Rate and Expense Schedules

A 2018 Rate Schedule for Remedy Engineering, Inc. is included in Attachment 2. The rate schedule includes labor rates by category. All reimbursable expenses will be billed at cost. Subcontractor and outside services (if utilized) are billed at cost plus 10 percent. No subcontractors are anticipated for this project. Company vehicles are billed at \$90 per day.

Remedy Engineering appreciates the opportunity to submit this proposal to the City of Vallejo, and we look forward to helping you with the annual LUC inspection. Please contact me at 530-241-7658 if you have any questions about this proposal.

Sincerely,

Remedy Engineering, Inc.



Jeffery C. Morris, P.E.
Principal

Attachments

Attachment 1 Cost Estimate



REMEDY
ENGINEERING INC.
2075, JACO STREET, SUITE 100, VALLEJO, CA 94591

TABLE 1. COST ESTIMATE

Task	Activity Description and Assumptions	Category	Hourly Rate or Charge	Hours or Unit Estimate	Subtotal
1	Conduct Annual LUC Inspection at Alden and Chapel Parks - Obtain records, activity logs, other relevant information from City of Vallejo - Coordinate schedule with City of Vallejo - Conduct inspection and complete checklist/site inspection form - Prepare Annual Inspection Letter for City of Vallejo review - Report will summarize the activities and identify existing land use, condition of surfaces, fences, signage or other specific items as required by the LUC. The reports will include the completed and signed inspection forms, a legal description of the restricted property, and photographs Assumptions: - Inspection to be conducted on a day when Remedy Engineering staff at Mare Island (no travel time from Redding office is included) - Letter Report outline and content will follow the previous Annual Inspection Reports for the City of Vallejo. - An electronic version of the draft LUC report will be submitted to City of Vallejo for review. - A maximum of five hard copies of the annual report will be submitted. - Legal description of the restricted property to be provided by the City of Vallejo.	Principal Engineer Project Manager Project Engr/Geol Assoc. Engr/Geol Staff Engr/Geol Senior Technician Drafting Clerical Labor	\$155.00 \$139.00 \$125.00 \$102.00 \$88.00 \$82.00 \$67.00 \$57.00	0 1 0 10 0 0 0 6	\$0 \$139 \$0 \$1,020 \$0 \$0 \$0 \$342 \$1,501
		Postage/report production Company Vehicle Per diem/hotel Expenses	\$109 \$90 \$150	1 1 0	\$109 \$90 \$0 \$189
		Subcontractors/Suppliers	\$0 10% markup on subcontractors	0	\$0 \$0
		Task 1 Subtotal			\$1,700

Summary of Basic Tasks		PROJECT TOTAL
Task 1	Conduct Annual LUC Inspection at Alden and Chapel Parks	\$1,700
	Subtotal	\$1,700

Attachment 2
2018 Rate Schedule



2510 Old Eureka Way
Redding, CA 96001

2018 Time and Materials Billing Rate Schedule
Prepared for City of Vallejo

Labor Category	2018 Hourly Rate
Principal	\$155.00
Project Manager	\$139.00
Project Engineer	\$102.00
Associate Engineer	\$88.00
Staff Engineer	\$70.00
Senior Technician	\$82.00
Junior Technician	\$72.00
Graphics	\$67.00
Office/Clerical/Accounting	\$57.00

Vehicle: \$90/day
Expenses: Cost
Subcontracts: Cost + 10%

**THIRD AMENDMENT TO
AGREEMENT BETWEEN
CITY OF VALLEJO
AND
REMEDY ENGINEERING, INC.**

This Third Amendment to the Consultant Agreement made and entered into on first day of August, 2015, hereafter referred to as Agreement, between Remedy Engineering, Inc., a California corporation, therein referred to as Consultant, and the City of Vallejo, a municipal corporation, therein referred to as City, is made and entered into on this 27th day of December, 2018.

Consultant and City do mutually agree as follows:

1. **Replacement of Exhibit A.** Exhibit A to the Agreement (Scope of Work) is hereby amended and replaced in its entirety with Exhibit A attached hereto.
2. **Revision of Payment Schedule.** The Payment Schedule of the Agreement shall be modified to read as shown in Exhibit A of this Third Amendment.
3. **Revision of Term of the Agreement.** The First Amended Agreement term expired on July 31, 2017. The Second Amendment term expired on July 31, 2018. As of the date of this Third Amendment, the term of the Agreement is extended to and shall expire on July 31, 2021.
4. **Additional Services.** The scope of services to be provided as specified in Exhibit A of the Agreement is amended to include the services described in Exhibit A of this Third Amendment ("Additional Services").
5. **Payment for Additional Services.** In consideration of Consultant providing the Additional Services, Consultant shall be paid an amount not to exceed Eighteen Thousand Five Hundred dollars and no/100 cents [\$18,500.00]. The maximum not to exceed amount specified in Exhibit B of the Agreement is increased by said amount and the new not to exceed amount is Thirty Five Thousand Nine Hundred Ninety-two dollars and no/100 cents [\$35,992.00].

Consultant agrees that the amount of increase in the not to exceed amount specified above shall constitute full compensation for the Additional Services, and shall fully compensate Consultant for any and all direct and indirect costs that may be incurred by Consultant in connection with the Additional Services, including costs associated with any changes and/or delays in work schedules or in the performance of other services or work by Consultant.

Approved as to form:

By: Shamaila Edmeyer for
Claudia Quintana
City Attorney

6. Integration. This Third Amendment contains the entire agreement between the parties with respect to its subject matter and supersedes whatever oral or written understanding they may have had prior to the execution of this Third Amendment. This Third Amendment shall not be amended or modified except by a written agreement executed by each of the parties. Except as specifically revised herein, all terms and conditions of the Agreement shall remain in full force and effect, and Consultant shall perform all duties, obligations and conditions required under the Agreement.

7. Inconsistencies. In the event of any conflict or inconsistency between the provisions of this Third Amendment and the Agreement, and any prior amendment, if any, the provisions of this Third Amendment shall control in all respects.

8. Ambiguities. The parties have each carefully reviewed this Third Amendment and have agreed to each term of this Third Amendment. No ambiguity shall be presumed to be construed against either party.

9. Counterparts. This Third Amendment may be executed by the parties in one or more counterparts all of which collectively shall constitute one document and agreement.

10. Authority. The person signing this Third Amendment for Consultant hereby represents and warrants that he or she is fully authorized to sign this Third Amendment on behalf of Consultant.

(SIGNATURES ARE ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties have entered into this Third Amendment on the day and year first hereinabove appearing.

REMEDY ENGINEERING, INC.
a California corporation

By: 
Jeffery Morris
Principal

DATE: 12-27-18

CITY OF VALLEJO,
a municipal corporation

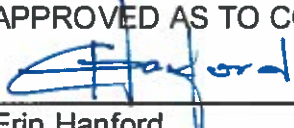
By: 
Greg Nyhoff
City Manager
*Dore Cordwell
Acting City Manager*

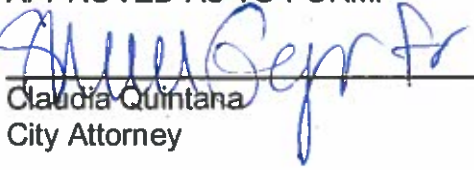
DATE: 1/10/19

19 pm
18-00003396
Vallejo Business License No.

ATTEST:
By: 
Dawn G. Abrahamson
City Clerk

(City Seal)

APPROVED AS TO CONTENT:

Erin Hanford
Admin Analyst II

APPROVED AS TO FORM:

Claudia Quintana
City Attorney

APPROVED AS TO INSURANCE:

Erika Leahy
Interim Risk Manager



EXHIBIT A
SCOPE OF WORK

1. Representatives.

The City Representative for this Agreement is:

Erin Hanford
Economic Development Project Manager
Economic Development Department
555 Santa Clara Street
Vallejo, CA 94590
707.648.5406
707.648.4499

The Consultant's Representative for this Agreement is:

Jeffery Morris
Principal
Remedy Engineering, Inc.
2510 Old Eureka Way
Redding, CA 96001
530.241.7658
530.241.7659

All routine administrative communications between the parties will be between the above named representatives and may be by personal delivery, mail, facsimile transmission or electronic mail as agreed between the Consultant Representative and City's Representative.

2. Services to be Provided. The services provided shall be as set forth in Attachment 1 of Exhibit A, attached hereto and incorporated herein by this reference.

3. Time for Performance. Consultant will perform the services in a timely manner and/or diligently pursue work to completion. Failure to do so may be ground for termination of this Agreement.

June 25, 2018

Ms. Erin Hanford
Administrative Analyst II
Mare Island Project Manager
City of Vallejo / Economic Development Department
555 Santa Clara Street
Vallejo, California 94592

Subject: Proposal to Conduct the 2019 and 2020 Annual Land Use Covenant Inspections and the
2021 Third Five-Year Review for Alden and Chapel Parks in Investigation Area D1.2,
Mare Island, Vallejo, California

Dear Ms. Hanford:

Remedy Engineering, Inc. is pleased to submit this proposed scope of work and cost estimate for the annual land use covenant (LUC) inspections and the Third Five-Year Review (FYR) for Alden and Chapel Parks located in the general commercial/industrial area of Investigation Area (IA) D1.2 on Mare Island. This proposal is organized into the following sections.

- Scope of Work
- Proposed Schedule
- Cost Estimate and Assumptions
- Current Labor Rate and Expense Schedules

Scope of Work

Task 1 – Annual LUC Inspections at Alden and Chapel Parks

Remedy Engineering will work with the City of Vallejo to conduct an annual LUC inspection for Alden and Chapel Parks located on Mare Island. This proposal includes two annual inspections, one in 2019 and one in 2020. The purpose of the annual inspection is to document the existing property uses and verify that activities conducted at Alden and Chapel Parks during the reporting period are in compliance with the provisions of the LUC.

Remedy Engineering will review the requirements defined by the LUC and obtain and review any updated checklists or other input provided by the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC). The City of Vallejo will provide available records or documentation of any soil disturbance activities. Remedy

Engineering will coordinate the LUC inspection with the City of Vallejo and DTSC, if necessary. Following the LUC inspection, Remedy Engineering will complete a site inspection form and prepare a letter report documenting the inspection for submittal to DTSC.

Task 2 – 2021 Third Five-Year Review (FYR) for Alden and Chapel Parks

Remedy Engineering will work with the City of Vallejo to conduct the Third FYR review of the selected remedy of LUCs for Alden and Chapel Parks located on Mare Island. The purpose of the FYR is to ensure that the LUCs established for Alden and Chapel Parks are effectively protecting human health and the environment. Similar to the Second FYR prepared in 2016, the Third FYR will be performed in general accordance with the USEPA guidance document (Comprehensive Five-Year Review Guidance, EPA-540-R-01-007 [USEPA, 2001]) and will be presented in a format that is consistent with the Five-Year Review Recommended Template, OLEM Directive 9200.0-89, January 2016. In addition, Remedy Engineering will work with the DTSC to ensure that requirements of the State of California are also met.

Remedy Engineering will submit the public notification to the City of Vallejo and DTSC for review and comment. Review comments will be incorporated into the public notification prior to being run in a Sunday edition of the Vallejo Times Herald. Specific notification details will include:

- Site name, location, and web address
- Lead agency overseeing the review
- Description of the selected remedy
- Summary of contamination addressed by selected remedy
- How the community can contribute
- Contact name and phone number for additional information
- Scheduled completion date of the five-year review

Remedy Engineering will review relevant documents relating to the Alden and Chapel Parks, as recommended by the five-year review process. In addition, relevant documents will be reviewed to obtain information and data concerning the effectiveness of the selected remedy of LUCs for Alden and Chapel Parks. Remedy Engineering will focus the review on the following pertinent documents:

- Remedial Action Plan for IA D1, Implementation Report for IA D1.2, and the EETP-Wide Operations and Maintenance (O&M) Plan.
- Available Annual Inspection Reports from 2017 through 2021.

- Second Five Year Review Report for Alden and Chapel Parks dated June 2017.

Remedy Engineering will coordinate and conduct the site inspection of Alden and Chapel Parks on Mare Island as part of the five year review process. Remedy Engineering will complete the five-year site inspection checklist taken from the most recent update of the EETP-Wide O&M Plan at the time of the inspections. The inspection and checklist will also serve as documentation of the annual site inspection for 2021. Remedy Engineering will coordinate the site inspection with representatives of the City of Vallejo and DTSC.

Remedy Engineering will prepare a combined Annual Inspection Report (2021) and Third FYR report for submittal to DTSC. The report will include the results of the review of relevant documents and the site inspections.

A draft of the report will be submitted to the City of Vallejo for review. Remedy Engineering will incorporate comments from the City of Vallejo and the report will be submitted to DTSC for review and comment. No hard copies of the draft report will be produced. Remedy Engineering will incorporate comments from DTSC to prepare a final report to be submitted to DTSC and the City of Vallejo. It is assumed that no more than five hard copies of the final report will be produced, including an electronic copy on a compact disc (CD) with each report.

Once the report is finalized and approved by DTSC, Remedy Engineering will prepare a public notification of the completion of the five-year review process. The public notification will be submitted to the City of Vallejo and DTSC for review and comment prior to being run in a Sunday edition of the Vallejo Times Herald. The notification will at a minimum include the following details:

- Site name, location, and web address
- Lead agency overseeing the review
- Description of the selected remedy
- Summary of contamination addressed by selected remedy
- Summary of the results of the five-year review
- Contact name and phone number for additional information
- Date of the next five-year review

Proposed Schedule

Remedy Engineering will review the relevant documents and conduct the annual LUC inspections during February of each year. Remedy Engineering will provide a draft letter report to the City of Vallejo for review within 10 working days of completing the inspection.

The annual LUC inspection report will be delivered to DTSC by March 31 of each year (2019 and 2020).

The public notification of the start of the third five-year review will be completed and submitted to DTSC for review during January 2021. The site inspection is expected to take place during February 2021. Following review of the relevant documents and site inspection, Remedy Engineering will prepare a draft of the Third FYR Report to be submitted to the City of Vallejo within 3 weeks of completing the site inspections. The revised draft report will be submitted to DTSC by March 31, 2021. Within three weeks following receipt of comments from DTSC, Remedy Engineering will prepare the final five-year review report for distribution.

Cost Estimate

The cost estimate to perform the proposed scope of work described above and the associated assumptions are presented by task in Attachment 1. Remedy Engineering proposes to conduct the work on a time and materials basis. The estimated cost to complete each Annual LUC inspection is \$1,775, and the estimated cost for completing the FYR process, including the 2021 site inspection is \$14,950. The total estimated cost for all tasks is \$18,500.

Current Labor Rate and Expense Schedules

A 2019 Rate Schedule for Remedy Engineering, Inc. is included in Attachment 2. The rate schedule includes labor rates by category and the proposed subcontractor markup. All reimbursable expenses will be billed at cost. Subcontractor and outside services, if used are billed at cost plus 10 percent. Vehicles are billed at \$90 per day.

Remedy Engineering appreciates the opportunity to submit this proposal to the City of Vallejo, and we look forward to helping you with this project. Please contact me at 530-241-7658 if you have any questions about this proposal.

Sincerely,

Remedy Engineering, Inc.



Jeffery C. Morris, P.E.
Principal
Attachments

Attachment 1 Cost Estimate

ATTACHMENT 1 COST ESTIMATE



2019 AND 2020 ANNUAL LAND USE COVENANT INSPECTIONS AND REPORTING AND 2021 FIVE-YEAR REVIEW

Task	Activity Description and Assumptions	Category	2019 Hourly Rate or Charge (T&M)	Hours or Unit Estimate	Subtotal
1	Annual LUC Inspection at Alden and Chapel Parks - Obtain records, activity logs, other relevant information from City of Vallejo - Coordinate schedule with City of Vallejo - Conduct inspection and complete checklist/site inspection form - Prepare Annual Inspection Letter for City of Vallejo review - Report will summarize the activities and identify existing land use, condition of surfaces, fences, or other specific items as required by the LUC. The reports will include the completed and signed inspection forms, a legal description of the restricted property, and photographs. Assumptions: - Inspection to be conducted on a day when Remedy Engineering staff are at Mare Island (no travel time from Redding office is included) - Letter Report outline and content will follow the previous Annual Inspection Reports for the City of Vallejo - An electronic version of the draft LUC report will be submitted to City of Vallejo for review - A maximum of five hard copies of the annual report will be submitted - Maintenance and use records for the restricted property to be provided by the City of Vallejo	Principal Engineer	\$162.75	0	\$0
		Project Manager	\$145.95	1	\$146
		Project Engr/Geol	\$131.25	0	\$0
		Assoc. Engr/Geol	\$107.10	10	\$1,071
		Staff Engr/Geol	\$92.40	0	\$0
		Senior Technician	\$86.10	0	\$0
		Drafting	\$70.35	0	\$0
		Clerical	\$59.85	6	\$359
		Labor			\$1,576
		Copies/Postage	\$109	1	\$109
		Company Vehicle	\$90	1	\$90
		Per diem/hotel	\$150	0	\$0
		Expenses			\$199
		Subcontractors/Suppliers			\$0
2	2021 Third Five-Year Review (FYR) for Alden and Chapel Parks - Prepare Public Notice announcing the start of the FYR and run in a Sunday edition of the newspaper - Review existing data and reports for each site - Conduct Site Inspection - Submit an electronic version of the FYR Report to the City of Vallejo for review - Incorporate City of Vallejo comments and prepare draft for submittal to DTSC - Prepare Public Notice for completion of the FYR and run in a Sunday edition of the newspaper Assumptions: - DTSC will review and approve Public Notices. One round of DTSC comments is assumed - Notices will be run in a Sunday edition of the Vallejo Times-Herald. Cost of the add is based on 2018 publication rates inflated by 10% - Report outline will follow regulatory guidance and the previously completed FYR Reports - Draft Report will be submitted to DTSC by March 31, 2021 - Final Report will be submitted to DTSC by December 31, 2021 - No hard copies of the Draft FYR Report will be prepared - A maximum of 5 hard copies of the Final FYR Report will be prepared	Total Task 1 (per Annual Inspection)			\$1,775
		Total Task 1 for 2019 and 2020 Inspections			\$3,550
		Principal Engineer	\$162.75	0	\$0
		Project Manager	\$145.95	12	\$1,751
		Project Engr/Geol	\$131.25	16	\$2,100
		Assoc. Engr/Geol	\$107.10	60	\$6,426
		Staff Engr/Geol	\$92.40	0	\$0
		Senior Technician	\$86.10	0	\$0
		Drafting	\$70.35	0	\$0
		Clerical	\$59.85	45	\$2,693
		Labor			\$12,971
		Supplies/Equip	\$250	1	\$250
		Company Vehicle	\$90	0	\$0
		Expenses			\$250
Public Notice (Sunday ed.)	\$414.50	2	\$829		
Copies and Printing	\$900	1	\$900		
Subcontractors/Suppliers			\$1,729		
Total Task 2			\$14,950		

Summary of Basic Tasks			PROJECT TOTAL
Task 1	Annual LUC Inspection at Alden and Chapel Parks		\$3,550
Task 2	2021 Third Five-Year Review (FYR) for Alden and Chapel Parks		\$14,950
	Total		\$18,500

Notes: (a) Price for reimbursable expenses (field supplies, postage/shipping, copying, etc.) are estimated at cost.

Attachment 2
2019 Rate Schedule



2510 Old Eureka Way
Redding, CA 96001

2019 Time and Materials Billing Rate Schedule
Prepared for City of Vallejo

Labor Category	2018 Hourly Rate
Principal	\$162.75
Project Manager	\$145.95
Project Engineer	\$131.25
Associate Engineer	\$107.10
Staff Engineer	\$92.40
Senior Technician	\$86.10
Graphics	\$70.35
Office/Clerical/Accounting	\$59.85

Vehicle: \$90/day
Expenses: Cost
Subcontracts: Cost + 10%



DATE: July 1, 2021
TO: Mayor and Members of the City Council
FROM: Veronica A.F. Nebb, City Attorney
SUBJECT: **CONSIDERATION AND APPROVAL OF A RESIGNATION AND SEPARATION AGREEMENT BETWEEN THE CITY OF VALLEJO AND CITY MANAGER GREG NYHOFF**

RECOMMENDATION

Approve a Resignation and Separation Agreement between the City of Vallejo and City Manager Greg Nyhoff.

REASONS FOR RECOMMENDATION

Approval of the proposed agreement will provide for the separation of Mr. Nyhoff while preserving cooperation in the defense of several lawsuits and providing for a mutual release of any potential claims.

BACKGROUND AND DISCUSSION

City Manager Greg Nyhoff ("Nyhoff") and the City of Vallejo entered into a City Manager Employment Agreement on December 14, 2017 ("Employment Agreement"). Said Employment Agreement provides for Nyhoff to be employed as the City Manager effective January 22, 2018 for a term of sixty (60) months, continuing until January 21, 2023.

At this time, the parties desire to end the Employment Agreement, by entering into the attached Resignation and Separation Agreement ("R&S Agreement"). The R&S Agreement provides for the payment of certain amounts to Nyhoff that generally would have been paid to him as City Manager through the end of the current Employment Agreement.

Specifically, the R&S Agreement provides for payment of the following amounts:

\$408,542.00 an amount equal to the amount of salary which would have been paid through the end of the Employment Agreement; 528.9 hours of vacation in the amount of \$67,382.00; \$23,100.00 in housing allowance; \$3,000.00 in automobile allowance; \$720.00 for ICMA dues; \$36,768.00 as payment of the amount that would have been paid to CalPERS through the end of the Employment Agreement; and Payment of COBRA health benefits through the end of the Employment Agreement. The R&S Agreement also provides for the reimbursement of \$15,000.00 in attorney fees.

In addition, if Mr. Nyhoff's services are needed in any of the pending litigation matters in which he is named as either a witness or party, Mr. Nyhoff would be paid an hourly rate equal to his current hourly salary. The R&S Agreement also provides for a waiver and release of all claims by both parties relating to Nyhoff's employment.

FISCAL IMPACT

**Subject: CONSIDERATION AND APPROVAL OF A RESIGNATION AND SEPARATION AGREEMENT
BETWEEN THE CITY OF VALLEJO AND CITY MANAGER GREG NYHOFF**

Page 2

Approval of the agreement will result in a total benefit (direct payment, Cobra and reimbursements total) of \$577,536.00 to Mr. Nyhoff which he would have been paid under the terms of his employment contract. There may be additional fiscal impacts if the City requires that Mr. Nyhoff participate in certain litigation matters in which he is either a party or a witness.

ENVIRONMENTAL REVIEW

This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

ATTACHMENTS

1.	Nyhoff Resignation and Separation Agreement DRAFT 6-24-21 clean
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CONTACT

Veronica A.F. Nebb, City Attorney (707) 648-4545

veronica.nebb@cityofvallejo.net

RESIGNATION AND SEPARATION AGREEMENT

THIS AGREEMENT ("Agreement") is entered this 30th day of June, 2021, by and between the City of Vallejo ("City"), a chartered municipal corporation, and Greg Nyhoff ("Nyhoff"). Nyhoff and the City are collectively referred to herein as the "Parties."

RECITALS

- A. The City and Nyhoff entered into a City Manager Employment Agreement on December 14, 2017 ("Employment Agreement") under which Nyhoff has been employed by the City as the City Manager.
- B. City and Nyhoff agree that it is in the best interest of the Parties that he resign his position as City Manager under the terms and conditions of this Agreement, and that the City accept that resignation.
- C. The Parties wish to resolve all issues relating to Nyhoff's employment with the City.

Now, therefore, the City and Nyhoff, in consideration of the mutual covenants, promises, conditions and agreements, herein contained, agree as follows.

AGREEMENT

1. Incorporation of Recitals

The factual recitals set forth above are hereby expressly incorporated in this Agreement as if set forth in full in this paragraph.

2. Effective Date

This Agreement shall become effective and irrevocable upon the execution of the Agreement by both Parties, approval of the Agreement by the City Council, and upon expiration of the Revocation Period set forth in paragraph 9(c) below ("Effective Date").

3. Resignation and Separation

Nyhoff hereby resigns his position as City Manager of the City as of the Effective Date hereof. Until the Effective Date, Nyhoff will be on paid administrative leave, receiving his regular base salary and benefits. From and after the Effective Date, Nyhoff shall not be entitled to any compensation, benefits, pay, leave or any other consideration from the City except as is expressly set forth herein.

4. Severance and Other Consideration

In accordance with the Employment Agreement, and in full consideration of the amicable separation of Nyhoff, the City will pay the following:

- a. **Severance Payments**. The City will pay Nyhoff Four Hundred Eight Thousand Five Hundred Forty Two Dollars (\$408,542) as a “Severance Payment”. Said Severance Payment will be made in two payments. The First Severance Payment shall be in the amount of One Hundred Ten Thousand Five Hundred Forty Two Dollars (\$110,542,000) paid on the City’s first regular payroll day following the Effective Date. The Second Severance Payment shall be in the amount of Two Hundred Ninety Eight Thousand Dollars (\$298,000) paid on January 31, 2022. Twenty Six Thousand (\$26,000) of said Second Severance Payment shall be paid pre-tax into Nyhoff’s 401k account. Said Severance Payments shall be non-pensionable and shall not be calculated in Nyhoff’s salary calculation for purposes of determining any pension benefits pursuant to PERS. Said Severance Payments shall be subject to appropriate deductions for federal and state withholdings and other applicable taxes and legally required deductions.
- b. **Annual Leave**. The City shall pay Nyhoff the cash equivalent of 528.9 hours of unused annual leave, which has a value of Sixty Seven Thousand Three Hundred Eighty Two Dollars (\$67,382). Said amount shall be paid in a lump sum at the same time as the First Severance Payment.
- c. **Housing Allowance**
The City shall pay to Nyhoff a total amount of Twenty Three Thousand One Hundred Dollars (\$23,100.00) as a Housing Allowance as described in the Employment Agreement. Said amount shall be paid to Nyhoff in a lump sum at the same time as the First Severance Payment. The purpose of this payment is to compensate Nyhoff for the amount of rent left on his lease for his home in Vallejo.
- d. **Vehicle Allowance**
The City shall pay to Nyhoff a total amount of Three Thousand Dollars (\$3,000.00) as a Vehicle Allowance as described in the Employment Agreement. Said amount shall be paid to Nyhoff in a lump sum at the same time as the First Severance Payment. The purpose of this payment is to permit Nyhoff a period of time to address alternate transportation financing.
- e. **ICMA Membership**
The City shall pay to Nyhoff a total amount of Seven Hundred Twenty Dollars (\$720.00) as an allowance for 2021 and 2022 ICMA membership dues. Said amount shall be paid to Nyhoff at the same time as the First Severance Payment.
- f. **CalPers in Lieu Payment**

The City shall pay to Nyhoff Thirty Six Thousand Seven Hundred Sixty Eight Dollars (\$36,768) in lieu of the amount that the City would have paid to CalPERS on behalf of Nyhoff. Said payment shall be paid in a lump sum at the same time as the First Severance Payment. However, Twenty Six Thousand Dollars (\$26,000) of said payment shall be paid, pre-tax, into Nyhoff's 401k account.

- g. **Health Insurance.** The City shall pay the premium of Nyhoff's COBRA Coverage for a period not to exceed eighteen (18) months or until such time as Nyhoff secures full time employment with health benefits or retires, whichever occurs first.
- h. **Attorneys' Fees and Costs.** The City shall pay to Nyhoff a total amount of Fifteen Thousand Dollars (\$15,000) as an allowance for attorney fees. Said amount shall be paid to Nyhoff in a lump sum payment at the time of the First Severance Payment.
- i. **No Other Payments.** Except as set forth herein, the City will make no other payment to or on behalf of Nyhoff pursuant to the Employment Agreement, this Agreement or otherwise, the above payments representing the total compensation to Nyhoff to be paid pursuant to any and all agreements, laws, rules or regulations.

5. **Nyhoff's Representations Regarding Claims**

Nyhoff represents there are no known actions at law or equity or administrative proceedings initiated by Nyhoff currently pending which relate, reflect, or concern allegations arising out of Nyhoff's hiring, retention, employment or compensation by the City, or the termination of his employment, or based on any act or failure to act by the City affecting, involving, or relating to Nyhoff and his employment with the City.

6. **City Representations Regarding Claims**

The City represents that there are no known actions at law or equity or administrative proceedings initiated by the City currently pending which relate, reflect, or concern allegations arising out of Nyhoff's hiring, retention, employment or compensation by the City, or the termination of his employment; or based on any act or failure to act by Nyhoff affecting, involving, or relating to his employment with the City.

7. **Litigation Cooperation**

Nyhoff is currently a named defendant in four (4) litigation matters for which the City is providing Nyhoff a defense and is a witness in another, and is also a witness/participant as to one or more personnel matters. Additionally, it is possible

that additional litigation matters may also be filed. Nyhoff agrees to fully and unequivocally Cooperate with the City and its attorneys in the defense of the cases. Cooperation shall specifically include, but is not limited to Nyhoff providing documents, appearing for, and fully participating in strategy meetings, interviews, depositions and court, and truthfully provide information relevant to the defense of each case, and to do everything reasonably requested by the City's attorneys or the attorneys representing Nyhoff. The City shall provide reasonable notice to Nyhoff of any request that he Cooperate, and shall reimburse Nyhoff for any reasonable expenses which are actually related to said Cooperation and incurred by Nyhoff. Further, except for preparation and execution of declarations as provided hereafter, the City shall pay Nyhoff at the rate of One Hundred Twenty Eight (\$128.00) per hour for each hour of Cooperation. In addition, Nyhoff agrees to execute declarations of fact under penalty of perjury (the "Declarations") concurrently with the execution by Nyhoff of this Agreement and before he receives any payment hereunder. The Declarations shall be prepared by the City's attorneys, in cooperation with Nyhoff. The Declarations shall contain a recitation of facts in each case identified below and as currently known to Nyhoff. The Declarations shall be prepared in the following cases:

1. *Matzke, et al. v. City of Vallejo, et al.* – Solano County Court, Case No. FCS056066 (Defendant)
2. *Whitney v. City of Vallejo, et al.* – Solano County Court, Case No. FCS055842 (Defendant)
3. *VPOA, et al. v. City of Vallejo, et al.* (Nichelini) – U.S. District Court, EDCA, Case No. 2:21-cv-00454-KJM-CKD (Defendant)
4. *Lake v. City of Vallejo, et al.* – U.S. District Court, EDCA, Case No. 2:19-cv-01439-KJM-KJN (Defendant)
5. *VPOA v. City of Vallejo* – Solano County Court, Case No. FCS055533 (Witness)
6. *City Pending Personnel Matters* – As identified by City.

Preparation and execution of the Declarations is a condition precedent to the City's performance hereunder. Further, failure of Nyhoff to fully and unequivocally cooperate with the defense of the cases shall be a material breach of this Agreement for which the City may exercise any available legal remedy including rescission.

In addition, in the event that any subsequent action is filed which names Nyhoff as a Defendant, Nyhoff agrees to fully and unequivocally Cooperate with the defense of any such action and the failure of Nyhoff to so Cooperate shall be a material breach of this Agreement for which the City may exercise any available legal remedy including rescission.

8. Press Release

Immediately following the Effective Date, the parties shall issue a joint press release pertaining to Nyhoff's resignation in substantially the form attached hereto as Exhibit A, and incorporated herein by reference. Either party may verbally repeat the substance of the joint press release in response to any inquiry, but no member of the City Council, City Management Staff or Nyhoff shall make any other written, oral or electronic statement concerning Nyhoff's resignation.

9. Nyhoff's Release of Claims

(a) In consideration for the promises contained in and the City's performance under this Agreement, Nyhoff, on behalf of himself, his heirs, executors, administrators, representatives, assigns and successors, hereby fully, finally, and forever discharges and releases: the City; its City Council and each and every member of the City Council, both past, present and future, individually; all City related Boards and Commissions and the present, past and future members thereof; all present, past and future elected and appointed officials and officers of the City or appointed by the City; all agents, employees, attorneys, consultants, officers, directors, (whether former or current); all successors, assigns, and insurers; (all hereafter singly and collectively the "Released Parties"), from any and all claims, charges, complaints, promises, agreements, controversies, suits, rights, costs, losses, debts, actions, grievances, judgments, obligations, damages, expenses (including any claims for attorneys' fees and costs), demands, causes of action, liability, and obligation of any kind or nature, whether known or unknown, suspected or unsuspected, anticipated and unanticipated which Nyhoff has, owns or holds, or claims to have, own or hold, or may have, own or hold against the City and the Released Parties based upon, arising out of or related to any matter, cause, fact, thing, act, or omission whatsoever occurring or existing at any time to and including the Effective Date, except for the obligations of the City set forth in this Agreement, including but not limited to:

- (1) Any and all claims for wages, salary, paid leave, and/or benefits;
- (2) Any grievance or other administrative remedy deriving from any law, rule, regulation or City policy;
- (3) Any and all claims for wrongful or constructive discharge and/or

reinstatement;

- (4) Any and all claims relating to any contracts, express or implied, or breach of the covenant of good faith and fair dealing, express or implied;
 - (5) Any and all tort claims of any nature, including but not limited to fraud, deceit, misrepresentation, negligent misrepresentation, defamation, invasion of privacy, negligent or-intentional infliction of emotional distress;
 - (6) Any and all claims of discrimination, harassment, retaliation, or failure to accommodate under Federal, State, or municipal statute or ordinance, pertaining to but not limited to race, national origin, color, age, sex, gender, sexual orientation, disability, religion, marital status, whistleblower, protected activity, or any other legally recognized protected status, and including, but not limited to, any claims under the United States Constitution, California Constitution, California Fair Employment and Housing Act, Family and Medical Leave Act, California Family Rights Act, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, 42 U.S.C. Section 1981, 42 U.S.C. Section 1983, the Americans with Disabilities Act and comparable state statutes and regulations, the Age Discrimination in Employment Act of 1967 ("ADEA"), the Older Workers' Benefit Protection Act, the California Labor Code including but not limited to Section 1102.5, any and all state and federal whistle-blower statutes and/or freedom of speech causes of action; the California and United States Constitution; the Equal Pay Act of 1963, the Equal Pay Act of 1963; the Fair Labor Standards Act ("FLSA"); the Civil Rights Act of 1866, and any other laws and regulations relating to employment and/or discrimination; and
 - (7) Any and all claims for attorneys' fees or costs.
- (b) Nyhoff hereby further agrees that this Agreement shall operate as a complete bar against any and all litigation, charges, grievances now pending or contemplated by him or which might at any time be filed including but without limiting the foregoing, any and all matters arising out of or connected with Nyhoff's employment by and separation of employment from the City up to the Effective Date, except as to any litigation to enforce the terms of this Agreement. Each of the aforesaid claims are hereby fully and finally settled, compromised and released by Nyhoff.
- (c) With regard to Nyhoff's waiver of rights under the ADEA and Older Workers' Benefit Protection Act ("OWBPA") only (see 29 CFR Section 1625.22), such waiver shall not be deemed to waive rights or claims that may arise after the Effective Date. Nyhoff is waiving his rights to sue City and the Released Parties

on any basis related to his age. Nyhoff has been advised to consult with, and he has, in fact, consulted with, an attorney prior to signing this Agreement. Nyhoff may revoke his waiver under the OWBPA within seven (7) days following his execution of this Agreement ("Revocation Period"). Such waiver will not become effective or enforceable until such revocation period has passed without Nyhoff exercising his right to revoke as aforesaid. Nyhoff and City acknowledge and recognize that under 29 U.S.C. section 626 and 29 Code Fed. Regs. Section 1625.22, Nyhoff is entitled to have twenty-one (21) days within which to review and consider this Agreement. However, under 29 Code Fed. Regs. Section 1625.22(e)(4), the CITY and Nyhoff can agree to shorten this review period, and by this Agreement they hereby agree to shorten said review period to twelve (12) days beginning on June 24, 2021 and ending on July 6, 2021. Moreover, since the time that this Agreement was originally offered to Nyhoff, changes have been made to the Agreement and agreed to by the parties hereto. In this connection, the parties agree that such modifications are not material, but even if they are, the parties agree to shorten said twenty-one (21) day review period as aforesaid. They agree to shorten the review period because, among other reasons, Nyhoff wishes to expedite receipt of the consideration promised to him by the City. Consequently, Nyhoff has been given twelve (12) days to consider this particular waiver and after reviewing and considering same has voluntarily agreed to execute this Agreement.

- (d) Notwithstanding anything herein to the contrary, Nyhoff does not release any claim that by law he cannot release, including any worker's compensation claim, and any claim for unemployment benefits.

Nyhoff's Initials _____

10. The City's General Release of Claims Against Nyhoff

As a material inducement to Nyhoff to enter into this Agreement, the City hereby fully, finally, and forever discharges and releases Nyhoff, together with his heirs, devisees, legatees, executors, representatives, successors, and assigns, from any and all claims, charges, complaints, promises, agreements, controversies, suits, rights, costs, losses, debts, actions, grievances, judgments, obligations, damages, expenses (including any claims for attorneys' fees and costs), demands, causes of action, liability, and obligation of any kind or nature, whether known or unknown, suspected or unsuspected, anticipated and unanticipated which the City has, owns or holds, or claims to have, own or hold, or may have, own or hold against Nyhoff (together with his heirs, devisees, legatees, executors, representatives, successors, and assigns) based upon, arising out of or related to any matter, cause, fact, thing, act, or omission whatsoever occurring or existing at any time to and including the date of execution of this Agreement, excepting therefrom any liability arising out of the violation of any state, federal or local, law, rule or regulation, the violation of which could give rise to criminal prosecution.

11. Mutual Release of Claims Under California Civil Code Section 1542

It is the intention of the Parties, in executing this Agreement, that except as set forth herein relating to criminal activity, the same shall be effective as a bar to each and every claim, demand, arbitration, and cause of action, regardless of its basis, by such Parties against the other, and such Parties knowingly, voluntarily, and expressly waive any and all rights and benefits otherwise conferred by the provisions of Section 1542 of the California Civil Code which states as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties expressly consent that, notwithstanding Section 1542 of the California Civil Code, this Agreement shall be given full and final effect according to each and all of its express terms and conditions, including those relating to unknown and unsuspected claims, demands, arbitrations, and causes of action. The Parties acknowledge and agree that this waiver is an essential and material term of this Agreement and, without such waiver, this Agreement would not have been entered into. This release is intended to be as broad as the law allows.

Nyhoff's Initials _____

City Authorized Signatory Initials _____

12. No Admissions

This Agreement and compliance with this Agreement shall not be construed as an admission of any liability by either Nyhoff and/or the City of any unlawful or wrongful acts by either Party, individually, or collectively. This Agreement is entered into solely to allow Nyhoff to resign his employment with the City, and to allow the City to accept his resignation.

13. No Disparagement

Subject to applicable law, each of the Parties covenants and agrees that, at no time prior to the 2nd anniversary of the Effective Date, shall either Party in any way publicly criticize, disparage, or call into disrepute, to individuals, newspapers, or other media or their staff or in any other public forums, the other Party, or such other Parties' officers, elected and appointed officials, agents, employees, attorneys, consultants, and/or directors, (whether former or current), or any successors or assigns thereof, the facts of this Agreement or the facts or conditions that led to this Agreement, in any manner that would reasonably be expected to damage the business or reputation of such other Party,

or such other Parties' officers, elected and appointed officials, agents, employees, attorneys, consultants, and/or directors, (whether former or current), or any successors or assigns ("Disparaging Communications"). The City shall instruct each of its elected and appointed officials not to engage in any Disparaging Communications. This Section 13 shall not limit the ability of any officer or official of the City to act in accordance with his or her fiduciary duties or otherwise in accordance with applicable law. Notwithstanding the foregoing, nothing in this Section 13 shall be deemed to: (1) prevent any Party from complying with a request for information from any governmental authority with jurisdiction over the Party from whom information is sought; or (2) prevent the City from complying with any request for public documents pursuant to the California Public Records Act or the Freedom of Information Act.

14. Public Record

Nyhoff acknowledges and agrees that this Agreement is a public record under the California Public Records Act (California Government Code section 6250 et seq.) and that if City receives a request for disclosure of this Agreement pursuant to the California Public Records Act or any similar federal law, that City shall release a copy to said requestor.

15. Return of Property

Nyhoff confirms that he has returned or will return to the City all City property in his possession or subject to his control, including without limitation any keys (physical and electronic), credit cards, cellular telephones, computers, electronic devices, City files, records, and documents.

16. No Precedent

The Parties specifically acknowledge and agree that this Agreement is a compromise which shall not operate, nor be considered, as evidence of a practice or past practice of the City or a precedent in the future.

17. Tax Effects/Consequences

The City makes no promise or representation, and shall have no obligation, concerning the tax consequences of the payments made pursuant to this Agreement. The City shall make such deductions and reports to the taxing authorities as are required by law. Nyhoff will consult with Nyhoff's tax attorney or advisor regarding the tax consequences and characterization of the payments.

18. Construction of the Agreement

Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed

against any Party on the basis that the Party was the drafter.

19. Acknowledgment of Voluntary Execution

Both Parties have carefully read this Agreement and understand the contents. Both the City and Nyhoff have been afforded the opportunity to consult with their own counsel regarding this matter and have in-fact consulted with attorneys of their own choosing. Nyhoff freely, knowingly, and voluntarily enters into this Agreement without any duress or undue influence on the part of any person released by this Agreement, or by any third party. Nyhoff warrants and represents that he has the mental and emotional capacity to understand the provisions of this Agreement and its effects upon his legal rights. Nyhoff acknowledges that he has read and understands the terms, conditions, releases and waivers contained in this Agreement, and he has executed this Agreement voluntarily and without coercion. Nyhoff further acknowledges that the waivers and releases he has made by executing this Agreement are knowing, conscious and with full appreciation that he is forever foreclosed from pursuing any of the rights so waived.

20. Partial Invalidity

In the event that any of the covenants, duties, or restrictions of this Agreement are found to be illegal, invalid, or unenforceable, such provision, if possible, shall be construed so as to render the provision legal, valid, and enforceable.

21. Entire Agreement

This Agreement sets forth the entire agreement between the Parties and supersedes any and all prior agreements or understandings, written or oral, between the Parties pertaining to the subject matter hereof. No other promises or agreements shall be binding upon the Parties with respect to the subject matter of this Agreement unless contained herein or separately agreed to in writing by the Parties. This Agreement may not be modified except by a writing signed by Nyhoff and a duly authorized representative of the City. This Agreement shall be binding on each of the Parties and their heirs, estates, administrators, representatives, executors, successors, and assigns, and shall inure to the benefit of each of the Parties and of the Released Parties, and to their heirs, estates, administrators, representatives, executors, successors, and assigns.

22. Applicable Law

This Agreement shall be governed by the laws of the State of California, and shall in all respects, be interpreted and enforced under the laws of California. Litigation arising out of or connected with this Agreement shall be instituted and maintained in the courts of Solano County in the State of California or in the United States District Court, Eastern District of California, and the Parties consent to jurisdiction over their person and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

23. No Assignment

Nyhoff warrants that he has not assigned, transferred, nor purported to assign or transfer, any claim(s) he may have against the City, and he will not assign or transfer, nor purport to assign or transfer, any claim(s) he may have against the City. The City warrants that it has not assigned, transferred, nor purported to assign or transfer any claim(s) it may have against Nyhoff and that it will not assign nor purport to assign or transfer hereafter any claim(s) it may have against Nyhoff.

24. Waiver.

Waiver by either party of any default, breach, or condition precedent shall not be construed as a waiver of any other default, breach, or condition precedent or any other right hereunder.

25. Section Headings

The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

26. Originals

This Agreement may be executed in one or more originals, each of which shall, for all purposes, be deemed a legally enforceable original representative of the full and complete agreement of the Parties.

27. Attorneys' Fees and Costs

The prevailing party in any litigation, arbitration, bankruptcy proceeding, or other formal or informal resolution of any claims brought by any Party to this Agreement against any other Party to this Agreement based upon, arising from, or in any way related to this Agreement or the transactions contemplated herein, including without limitation contract claims, tort claims, breach of duty claims, and all other common law or statutory claims, shall be entitled to recover from such other party reasonable fees and costs. Should the Parties agree to arbitrate, attorney's fees and costs shall be awarded by the arbitrator in accordance with California Civil Code Section 1717 and/or California Code of Civil Procedure Section 1032 *et al. seq.* and the cases interpreting those statutory provisions. For the purpose of this Agreement, the term "prevailing party" shall have the same meaning as that set forth in Code of Civil Procedure Section 1032(a)(4).

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year written below.

Greg Nyhoff

Dated: _____

City of Vallejo

By: _____
Robert McConnell, Mayor

Dated: _____