

RESOLUTION NO. 2022-91

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO A STANDARD VOLUNTARY AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCE CONTROL AND PAY ASSOCIATED FEES FOR THE CITY PARK BARRACKS AND CYPRESS KNOLLS BUILDINGS BLIGHT REMOVAL 2022 PROJECT.

WHEREAS, the closure of Fort Ord resulted in land being deeded to the City of Marina in an “as-is” condition. The land contains numerous buildings that served the former Army base which have deteriorated since 1994 and need to be removed as part of the land redevelopment. Some of the buildings are on property that the City will retain and must be removed or renovated for adaptive reuse. These include 62-65 barracks buildings and 260 duplex housing units on what was planned to be the Cypress Knolls development; and

WHEREAS, the Fort Ord Reuse Authority (FORA) sunsetted on June 30, 2020, FORA secured bond funding for blight removal prior to closure. Included in the bond funding are FORA bond trust funds allocated to the City amounting to \$8,561,968 and escrow bonds that are projected to generate \$6.5M in blight removal funding through 2025; and

WHEREAS, on September 15, 2020, October 27, 2020, and January 20, 2021, the City Council of the City of Marina adopted Resolution No. 2020-127, 2020-140 and 2021-11, respectively, receiving staff presentation on blight removal and blight removal projects and provides direction to staff on priorities for blight removal; and

WHEREAS, On May 4, 2021, the City Council passed Resolution No. 2021-42 approving amendment to the Program Management Services and Construction Management and Inspection between the City of Marina and Wallace Group, to add program management and construction management and inspection services for the execution of hazardous material abatement and blighted building removal projects; and

WHEREAS, The Wallace Group prepared bidding documents (plans, specifications, and estimates) for the blight removal project. The goal for this project is for the abatement, proper removal, and disposal of forty-five barracks and miscellaneous debris, including debris from two burnt buildings at the proposed City Park located along Second Avenue and 8th Street and thirty duplex buildings and miscellaneous debris including debris from one burnt building, at the Cypress Knoll area along Rendova Avenue and Third Avenue for future park and or residential development. Site plans are shown in **Exhibits B and C**; and

WHEREAS, on March 10, 2022 the City of Marina Planning Commission held an open public hearing and adopted Resolution No. 2022-05b, approving the removal of 34 trees at the proposed City Park at the Dunes location and five trees at the Cypress Knolls location in order to remove the blighted buildings. All healthy trees are to be replaced at 2:1 ratio; and

WHEREAS, on June 9, 2022, the City of Marina Planning Commission held an open public hearing and adopted Resolution No. 2022-09, approving the removal of additional three trees for a total of thirty-five trees to be removed, and two potential additional trees for removal at the proposed City Park at the Dunes; and

WHEREAS, On March 15, 2022, the City Council passed Resolution No. 2022-43 approving advertising and call for bids for the City Park Barracks and Cypress Knolls Buildings Blight Removal 2022 Project; and

WHEREAS, the two parcels, 031-201-005 (City Park) and 031-221-008 (Cypress Knolls), included in this project were part of the scope of the original Removal Action Work Plan (RAW; Northgate, 2006) for Soil Impacted by Lead-Based Paint at former Fort Ord, Marina, California. For these parcels to be used as residential or for a non-restricted use, the City must follow the approved remedy in the RAW from 2006 with the updated lead cleanup goal of 80 mg/kg; and

WHEREAS, the City must execute an SVA with the California Department of Toxic Substance Control (DTSC) and pay associated fees required for the City Park Barracks and Cypress Knolls Buildings Blight Removal 2022 Project. The SVA is pursuant to Health and Safety Code section 25355.5 (a)(1)(C), which authorizes DTSC to enter into an enforceable agreement to oversee investigation and/or remediation of a release or a threatened release of any hazardous substance at the site; and

WHEREAS, This action, authorizing the City Manager to enter into a Standard Voluntary Agreement (SVA), with DTSC and pay associated fees for the City Park Barracks and Cypress Knolls Buildings Blight Removal 2022 Project will have a fiscal impact in the amount of \$39,936; and

WHEREAS, Sufficient funding for this action has been allocated in Capital Improvement Project HSF2101 for Barracks Blight Removal with a funding amount of \$4,100,000 and HSF2103 for the Cypress Knolls Building Removal (Partial) with a funding amount of \$1,600,000.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Authorize the City Manager, or his designee, to enter into a Standard Voluntary Agreement (SVA) with the California Department of Toxic Substance Control (DTSC), **Exhibit A**, and pay associated fees for the execution of the City Park Barracks and Cypress Knolls Buildings Blight Removal 2022 Project.

PASSED AND ADOPTED, at a regular meeting of the City Council of the City of Marina, duly held on the 6th day of July 2022, by the following vote:

AYES: COUNCIL MEMBERS: Medina Dirksen, Burnett, Berkley, Delgado

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: Biala

ABSTAIN: COUNCIL MEMBERS: None

ATTEST:

Bruce C. Delgado, Mayor

Anita Sharp, Deputy City Clerk

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Site 1: City Park and Site 2: Cypress
Knolls

2866 Second Avenue
Marina, California, 93933

Proponent:

The City of Marina
209 Cypress Avenue
Marina, California 93933

Docket No. HWCA-FY21/22-022

Standard Voluntary Agreement

Health and Safety Code
25355.5(a)(1)(C)

The California Department of Toxic Substances Control (DTSC) and the City of Marina (Proponent) enter into this Standard Voluntary Agreement (Agreement) and agree as follows:

1. **Sites.** This Agreement applies to the Sites located at 2866 Second Avenue, on the former Fort Ord; Marina, in Monterey County, California 93933 (Site), identified by Monterey County Assessor's Parcel Number(s) Site 1: 031-221-008, and Site 2: 031-201-005, and any off-site area to which hazardous substances have or may have migrated from the Site. The Site is comprised of two noncontiguous parcels totaling approximately 15.033 acres in size; the 031-221-008 parcel is bordered by Imjin Parkway, California Ave, and Patton Parkway, and the 031-201-005 parcel is bordered by Second Avenue and Eighth Street. The Site was previously used by the Army for barracks, administrative, maintenance and recreational activities. The land surrounding the Site is a mix of commercial and residential properties. A Site location map and a Site diagram are attached as Exhibits A and B.

2. **Jurisdiction.** This Agreement is entered into by DTSC and Proponent pursuant to Health and Safety Code section 25355.5(a)(1)(C), which authorizes DTSC to enter into an enforceable agreement to oversee investigation and/or remediation of a release or a threatened release of any hazardous substance at or from the Site.

3. **Purpose.** The purpose of this Agreement is for Proponent to investigate, remediate, and/or evaluate a release, a threatened release, or a potential release of any hazardous substance at or from the Site under the oversight of DTSC. The purpose of this Agreement is also for DTSC to obtain reimbursement from Proponent for DTSC's oversight costs incurred pursuant to this Agreement.

4. Ownership and Notification.

4.1. The Site is owned by the City of Marina.

4.2. Prior to DTSC providing oversight or review or comment on any document, Proponent shall provide DTSC with all of the following: (a) proof of the identity of all current record owners of fee title to the Site and their mailing addresses; (b) written evidence that the owners of record have been sent a notice that describes the actions completed or proposed by Proponent; and (c) an acknowledgment of the receipt of the notice required in subparagraph (b) from the property owners or proof that Proponent has made reasonable efforts to deliver the notice to the property owner and was unable to do so.

4.3. Proponent shall notify DTSC of any changes in ownership of the Site subsequent to the Effective Date of this Agreement and provide written evidence that Proponent notified the new owner(s) of record of the actions completed or proposed by Proponent under this Agreement.

5. Substances Found at the Site. Based on the information available to DTSC and Proponent, the Site is or may be contaminated with hazardous substances, including lead.

6. Scope of Work and DTSC Oversight. DTSC shall review and provide Proponent with written comments on all Proponent's deliverables as described in Exhibit C (Scope of Work) and other documents applicable to the scope of the project. DTSC shall provide oversight of field activities, including sampling and remedial activities, as appropriate. Proponent agrees to perform all the work required by this Agreement. Proponent shall perform the work in accordance with applicable local, state and federal statutes, regulations, ordinances, rules and guidance documents, in particular, Health and Safety Code section 25300 et seq., as amended.

7. Additional Activities. DTSC and Proponent may amend this Agreement to include additional activities in accordance with Paragraph 17 of this Agreement. If DTSC expects to incur additional oversight costs for these additional activities, it will provide an estimate of the additional oversight costs to Proponent.

8. Endangerment During Implementation.

8.1 Proponent shall notify DTSC's Project Manager immediately upon learning of any condition that may pose an immediate threat to public health or safety or the environment. Within seven days of the onset of such a condition, Proponent shall furnish a report to DTSC, signed by Proponent's Project Manager, setting forth the conditions and events that occurred and the measures taken in response thereto.

8.2 In the event DTSC determines that any activity (whether or not pursued in compliance with this Agreement) may pose an imminent or substantial endangerment to the health or safety of people on the Site or in the surrounding area or to the environment, DTSC may order Proponent to conduct additional activities in accordance with Paragraph 7 of this Agreement or to stop further implementation of this Agreement for such period of time as may be needed to abate the endangerment. DTSC may request that Proponent implement interim measures to address any immediate threat or imminent or substantial endangerment.

9. Access. Proponent shall provide, and/or obtain access to the Site and take all reasonable efforts to obtain access to offsite areas to which access is necessary to implement the Agreement. Such access shall be provided to DTSC's employees, contractors, and consultants at all reasonable times. Nothing in this paragraph is intended or shall be construed to limit in any way the right of entry or inspection that DTSC or any other agency may otherwise have by operation of law.

10. Sampling, Data and Document Availability. When requested by DTSC, Proponent shall make available for DTSC's inspection, and shall provide copies of, all data and information concerning contamination at or from the Site, including technical records and contractual documents, sampling and monitoring information and photographs and maps, whether or not such data and information was developed pursuant to this Agreement. For all final reports, Proponent shall submit one hard (paper) copy and one electronic copy with all applicable signatures and certification stamps as a text-readable Portable Document Formatted (pdf) file compatible with Adobe Acrobat or a formatted file compatible with Microsoft Word.

11. Photographs and Drawings. Upon request by DTSC, Proponent shall provide DTSC with photographs Proponent has in its possession of the Site and activities at the Site, as well as drawings Proponent has in its possession in connection with redevelopment plans for the Site. Proponent shall allow DTSC to take photographs of the Site, including activities at the Site, whenever DTSC accesses the Site pursuant to Section 9. Proponent grants DTSC the right to distribute, transmit, publish, or copy, in any medium, either in whole or in part, the photographs or drawings DTSC obtains pursuant to this section for any use, including, but not limited to, project documentation, public outreach, web and social media content, and marketing materials. This section does not apply to drawings that contain confidential business information.

12. Record Preservation. Proponent shall retain, during the implementation of this Agreement and for a minimum of six years after its termination, all data, reports, and other documents that relate to the performance of this Agreement. If DTSC requests that some or all of these documents be preserved for a longer period of time, Proponent shall either comply with the request, deliver the documents to DTSC, or permit DTSC to copy the documents at Proponent's expense prior to destruction.

13. Notification of Field Activities. Proponent shall inform DTSC at least seven days in advance of all field activities pursuant to this Agreement and shall allow DTSC and its authorized representatives to take duplicates of any samples collected by Proponent pursuant to this Agreement.

14. Project Managers. Within 14 days of the effective date of this Agreement, DTSC and Proponent shall each designate a Project Manager and shall notify each other in writing of the Project Manager selected. The Proponent's Project Manager shall have the technical expertise in project management, regulatory compliance, and hazardous substance site investigation and remediation sufficient to fulfill his or her responsibilities. Each Project Manager shall be responsible for overseeing the implementation of this Agreement and for designating a person to act in his/her absence. All communications between DTSC and Proponent, and all notices, documents and correspondence concerning the activities performed pursuant to this Agreement shall be directed through the Project Managers. Each party may change its Project Manager with at least seven days prior written notice.

15. Proponent's Consultant and Contractor. All engineering work performed pursuant to this Agreement shall be under the direction and supervision of a registered professional engineer licensed in California, with expertise in hazardous substance site investigation and remediation. All geological work performed pursuant to this Agreement shall be under the direction and supervision of a registered professional geologist licensed in California, with expertise in hazardous substance site investigation and remediation. Proponent's contractors and consultants shall have the technical expertise sufficient to fulfill his or her responsibilities. Within 14 days of the effective date of this Agreement, Proponent shall notify DTSC's Project Manager in writing of the name, title, and qualifications of the registered professional engineer and/or professional geologist and of any contractors or consultants and their personnel to be used in carrying out the work under this Agreement in conformance with applicable state law, including but not limited to, Business and Professions Code sections 6735 and 7835.

16. DTSC Review and Approval. All work performed pursuant to this Agreement is subject to DTSC's review and approval. If DTSC determines that any report, plan, schedule or other document submitted for approval pursuant to this Agreement fails to comply with this Agreement or fails to protect public health or safety or the environment, DTSC may (a) return comments to Proponent with recommended changes and a date by which the Proponent must submit to DTSC a revised document incorporating or addressing the recommended changes; or (b) modify the document in consultation with Proponent and approve the document as modified. All DTSC approvals and decisions made regarding submittals and notifications will be communicated to Proponent in writing by DTSC's Branch Chief or his/her designee.

No informal advice, guidance, suggestions or comments by DTSC regarding reports, plans, specifications, schedules or any other writings by the Proponent shall be construed to relieve Proponent of the obligation to obtain such written approvals.

17. Payment.

17.1 Proponent is required to pay (a) all costs incurred by DTSC in association with preparation of this Agreement, and for oversight activities, including review of documents, conducted prior to the effective date of this Agreement; and (b) all costs incurred by DTSC in providing oversight pursuant to this Agreement, including review of the documents and activities described in Exhibit C and associated documents, and oversight of field activities. Costs incurred include interest on unpaid amounts that are billed and outstanding more than 60 days from the date of the invoice.

17.2 An estimate of DTSC's oversight costs is attached as Exhibit D. It is understood by the parties that Exhibit D is an estimate and cannot be relied upon as the final cost figure. DTSC may provide an adjusted cost estimate as the work progresses. Prior to adjusting the cost estimate, DTSC will provide Proponent with a written notice and a detailed explanation of the change to the cost estimate. DTSC will bill Proponent quarterly. Proponent agrees to make payment within 30 days of receipt of DTSC's billing. Such billings will reflect any amounts that have been advanced to DTSC by Proponent.

17.3 In anticipation of oversight activities to be conducted, Proponent shall make an advance payment of \$ 19,968 to DTSC no later than 10 days after this Agreement is fully executed. It is expressly understood and agreed that DTSC's receipt of the entire advance payment as provided in this paragraph is a condition precedent to DTSC's obligation to provide oversight, review of or comment on documents. DTSC will draw-down from the advance payment, which will be documented in DTSC's invoice. When the advance payment is depleted, DTSC will continue to request payment through the invoice process.

17.4 All payments made by Proponent pursuant to this Agreement shall be by check payable to the "Department of Toxic Substances Control" and bearing on its face the project code for the Site (Site # 202420) and the docket number HWCA-FY21/22-022 of this Agreement. Upon request by Proponent, DTSC may accept payments made by credit cards or electronic funds transfer. Payments by check shall be sent to:

Accounting Office
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent concurrently to DTSC's Project Manager.

17.5 DTSC shall retain all cost records associated with the work performed under this Agreement as may be required by state law. DTSC will make all documents that support DTSC's cost determination available for inspection upon request in accordance with the Public Records Act, Government Code section 6250 et seq.

17.6 In addition to direct costs incurred by DTSC, DTSC also bills its indirect costs associated with direct staff costs. Such indirect costs are only applied to DTSC direct labor costs and not to DTSC contractor costs or DTSC staff travel costs. DTSC calculates separate indirect cost rates (salary/benefits and general operating costs) for each of its major programs (Site Mitigation and Restoration, Hazardous Waste Management, and Safer Products and Workplaces Programs). Because the ratio of direct to indirect costs varies among DTSC's various programs, the indirect cost rates associated with those programs will also vary. Pursuant to Health and Safety Code section 25269.4, the Department calculates and updates its indirect cost rates every six months. These indirect rates are reflected in the Cost Estimate in Exhibit D.

18. Amendments. This Agreement may be amended in writing by mutual agreement of DTSC and Proponent. Such amendment shall be effective the third business day following the day the last party signing the amendment sends its notification of signing to the other party. The parties may agree to a different effective date.

19. Termination for Convenience.

19.1 Except as otherwise provided in this paragraph, each party to this Agreement reserves the right to unilaterally terminate this Agreement for any reason. Termination may be accomplished by giving a 30-day advance written notice of the election to terminate this Agreement to the other party. In the event that this Agreement is terminated under Paragraph 19.1, Proponent shall be responsible for DTSC costs through the effective date of termination.

19.2 If operation and maintenance activities are required for the final remedy, Proponent may not terminate the Agreement under Paragraph 19.1 upon DTSC's approval of an Operation and Maintenance Plan as proposed by Proponent, unless an Operation and Maintenance Agreement is entered into between DTSC and Proponent or between DTSC and a party responsible for the required operation and maintenance activities.

20. Calendar of Tasks and Schedules. The attached Exhibit E (Calendar of Tasks and Schedules) is merely for the convenience of listing in one location the submittals required by this Agreement. The Calendar of Tasks and Schedules lists activities specific to this project based on the available information. DTSC and Proponent shall make a reasonable effort to complete the activity within the schedule

outlined in Exhibit E. A schedule for each related activity shall be established as part of this Agreement.

If Proponent is unable to meet the activity's schedule, Proponent will notify DTSC's Project Manager 10 days prior to the scheduled action or submittal date. If DTSC is unable to meet the activity's schedule, DTSC will notify Proponent 10 days prior to the scheduled action or submittal date.

21. Incorporation of Exhibits, Plans and Reports. All exhibits are incorporated into this Agreement by reference. All plans, schedules and reports that require DTSC's approval and are submitted by Proponent pursuant to this Agreement are incorporated in this Agreement upon DTSC's approval.

22. Reservation of Rights. DTSC reserves all of its statutory and regulatory powers, authorities, rights, and remedies under applicable laws to protect public health or the environment, including the right to recover its costs incurred therefor. Proponent reserves all of its statutory and regulatory rights, defenses and remedies available to the Proponent under applicable laws.

23. Non-Admission of Liability. By entering into this Agreement, Proponent does not admit to any finding of fact or conclusion of law set forth in this Agreement or any fault or liability under applicable laws.

24. Proponent Liabilities. Nothing in this Agreement shall constitute or be considered a covenant not to sue, release or satisfaction from liability by DTSC for any condition or claim arising as a result of Proponent's past, current, or future operations or ownership of the Site.

25. Government Liabilities. The State of California or DTSC shall not be liable for any injuries or damages to persons or the Site resulting from acts or omissions by Proponent or by related parties in carrying out activities pursuant to this Agreement, nor shall the State of California or DTSC be held as a party to any contract entered into by Proponent or its agents in carrying out the activities pursuant to this Agreement.

26. Third Party Actions. In the event that Proponent is a party to any suit or claim for damages or contribution relating to the Site to which DTSC is not a party, Proponent shall notify DTSC in writing within 10 days after service of the complaint in the third-party action. Proponent shall pay all costs incurred by DTSC relating to such third-party actions, including but not limited to responding to subpoenas.

27. California Law. This Agreement shall be governed, performed and interpreted under the laws of the State of California.

28. Severability. If any portion of this Agreement is ultimately determined not to be enforceable, that portion will be severed from the Agreement and the severability shall not affect the enforceability of the remaining provisions of the Agreement.

29. Parties Bound. This Agreement applies to and is binding, jointly and severally, upon Proponent and its agents, receivers, trustees, successors and assignees, and upon DTSC and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement. Proponent shall ensure that its contractors, subcontractors and agents receive a copy of this Agreement and comply with this Agreement.

30. Effective Date. The effective date of this Agreement is the date of signature by DTSC's authorized representative after this Agreement is first signed by Proponent's authorized representative. Except as otherwise specified, "days" means calendar days.

31. Representative Authority. Each undersigned representative of the party to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the party to this Agreement.

32. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document. This Agreement and documents related to it may be executed and transmitted by facsimile or pdf copy, which copies shall be deemed to be, and utilized in all respects as, an original. However, Proponent must provide the wet-inked signed original of each counterpart to DTSC by mail within 14 calendar days of signing.

Date: _____

Hortensia Muniz-Ghazi
Branch Chief
Site Mitigation and Restoration Program
Department of Toxic Substances Control

Date: _____

Brian McMinn
Representative
City of Marina

LIST OF EXHIBITS TO THE AGREEMENT

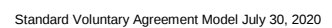
EXHIBIT A: SITE LOCATION MAP

EXHIBIT B: SITE DIAGRAMS

EXHIBIT C: SCOPE OF WORK

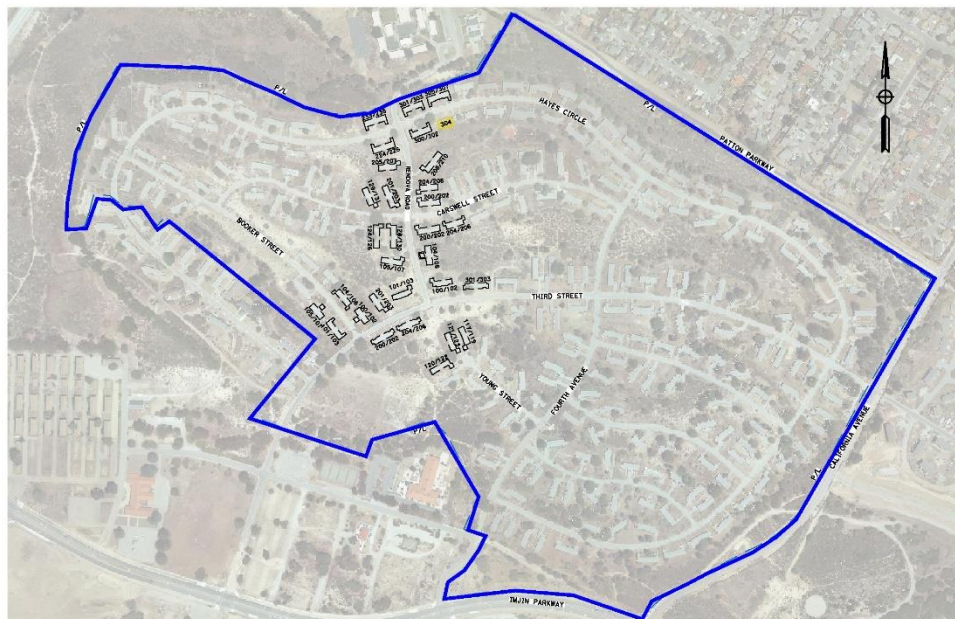
EXHIBIT D: COST ESTIMATE FOR DTSC OVERSIGHT SERVICES

EXHIBIT E: CALENDAR OF TASKS AND SCHEDULE



Site 2

— Site Boundary



211 HILLCREST BLVD.
SACRAMENTO, CALIF. 95833

CITY OF MARINA
DEPARTMENT OF PUBLIC WORKS

DEPARTMENT OF PUBLIC WORKS

SCALE: HORIZ
VERT

ORIGINAL SCALE IN INCHES
FOR REDUCED PLANS

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[illegible]

ONE-STOP TRANSPORTATION SOLUTIONS
CONCRETE & ASPHALT PAVING
LANDSCAPE & IRRIGATION
WATERLINE & SEWERAGE
POURINGS
PUBLIC WORKS CONSTRUCTION
SURVEYING & EROSION
WATER REGULATION

812 CLARKSON COURT
SAN LUIS OBISPO, CA 93401
T 805 844-4011 F 805 844-4284

PROJECT ENGINEER



PLANS APPROVAL: _____

CITY PARK BARRACKS AND CYPRESS KNOLLS
BUILDINGS BLIGHT REMOVAL 2022 PROJECT

CYPRESS KNOLL PLAN

EX-2

DESIGNED BY	DRAWN BY	CHECKED BY	JOS. MANUEL	SHEET	OF
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EXHIBIT C

SCOPE OF WORK

The following tasks will be completed as part of this Agreement:

TASK 1 Document Review

Proponent will submit to DTSC available background information, environmental assessment reports, and any other information pertinent to the hazardous substance management, release, characterization, and/or cleanup of the Site. DTSC may review some or all the information to identify areas and media of concern and to determine the additional work, if any, required to complete the investigation (which includes assessment/evaluation activities not requiring field sampling) and/or remediation of the Site. Proponent may also provide environmental investigation and/or cleanup-related documents for a specific review to determine if actions conducted without DTSC oversight were protective of human health and the environment. The information submitted by Proponent shall be reviewed for conformance with DTSC standards for quality assurance/quality control, investigation, and remediation.

Based on DTSC's review, these documents may be considered to be Preliminary Endangerment Assessment equivalent documents.

Subsequent to its review, DTSC may issue correspondence to the Proponent describing deficiencies of the environmental investigation or cleanup, indicate a limited concurrence with the findings, or make a different determination based on specific circumstances and documents included in the review. For projects where the scope of work is limited to document review only, a formal scoping meeting may not be required, based on mutual agreement between DTSC and the Proponent.

Documents included in this task are:

1. Removal Action Workplan, Northgate Environmental Management, Inc., 2006
2. Update Information for the Removal Action Workplan, West Environmental Services and Technology, 2020

TASK 2 Scoping Meeting

Scoping meetings are required for all voluntary projects where investigation or cleanup is an anticipated aspect of the scope of work; these are conducted shortly after the agreement has been executed, or depending on specific circumstances, may be held during the agreement-negotiation period. During the scoping meeting, potential issues, concerns, opportunities to optimize and expedite the investigation (which includes assessment/evaluation activities not requiring field sampling) and cleanup process, as applicable, and end-points/exit criteria will be discussed.

An abbreviated version of the scoping meeting is recommended prior to submittal of work plans, reports and cleanup plans to ensure that both the Proponent and DTSC are moving forward with clear and well-defined expectations.

The following elements may be addressed during the Scoping Meeting:

- a) **Site Objectives:** current and proposed future land uses and redevelopment plans and timetables, etc.
- b) **Site History:** historic operations and land uses, chemical uses, hazardous substance releases, permits, etc.
- c) **Conceptual Site Model:** identification of size, location, geology, lithology, hydrogeology, areas of concern, contaminants of concern, recognized environmental conditions, historic sampling locations and results, data gaps, risk assessments, offsite concerns, etc.
- d) **Scope of Work:** scope of work (phases) as specified in the Agreement based on the available information and preliminary document review; may include discussion about the cleanup determination (e.g., “No Further Action”) and decision document proposed for the Site, e.g., Preliminary Endangerment Assessment, Removal Action Work Plan for removal action with costs below \$2 million, or Remedial Action Plan for projects exceeding \$2 million in capital costs, or proposing innovative technologies, etc.
- e) **Data Quality Objectives and Remedial Action Objectives:** discussion of specific Data Quality Objectives to ensure that appropriate data of sufficient quality is collected to facilitate decision-making; discussion of potential cleanup goals and objectives.
- f) **Risk Assessment and Models:** evaluation of published screening levels, if available and appropriate, or use of project-specific risk assessments; discuss risk management and risk communication strategies.
- g) **California Environmental Quality Act (CEQA) requirements:** identification of project-specific requirements where applicable, e.g., cultural resources, traffic concerns, ecological resource protection, etc.; identify what DTSC’s CEQA role is predicted to be, which documents will be developed, and how to integrate CEQA needs within the overall schedule.
- h) **Public Participation & Tribal Outreach:** discussion of community and tribal involvement and public outreach process, methods, translation needs, and schedule.
- i) **Schedule:** agreed-upon submittal and review dates and timelines for work plans, fact sheets, reports and other key documents; development of optimal sequencing of activities to efficiently reach project goals.

- j) **Resources:** Review checklists, quick reference sheets, and templates are available for use by those developing documents for DTSC review and approval. (These tools will be periodically updated and may be made available to Proponents by the DTSC Project Manager)
- k) **Exit Strategy & Completion of Agreement:** proposed future land use, Site acquisition and construction dates, funding limitations or requirements, approval for occupancy, etc. to ensure alignment of Proponent and DTSC goals.
- l) **Site Visit:** A visit to the Site will be conducted to verify and confirm current conditions and project discussions; the visit may take place on the same date as the scoping meeting. Subsequent visits may be needed if Site conditions change, if new staff are assigned, or for field oversight.

TASK 3 Sampling and Analysis Plan

The Proponent shall provide a sampling and analysis plan (SAP) for the site following the conditions of the 2006 RAW and the 2020 SAP approved for this site.

TASK 4 Implementation of Remedy

Upon DTSC approval of the SAP, the Proponent shall implement the remedy, as approved in the 2006 RAW.

TASK 5 Remedial Action Completion Report

Proponent shall submit a report documenting the implementation of the final RAW noting any deviations from the approved plan.

During implementation of the final RAW, DTSC may specify such additions, modifications and revisions to the RAW as deemed necessary to protect human health and safety or the environment or to implement the RAW.

EXHIBIT D COST ESTIMATE

COST ESTIMATE WORKSHEET

Type of Agreement: Voluntary Cleanup Agreement

Date: 6/7/2022

Site Name: Fort Ord, City of Marina Parcels

Site Code: 202420

DTSC Project Team	VCP Coord.	Project Management	Supervision	Toxicology	Geology	Industrial Hygienist	Project Assistants	
Classification (personnel)	Sr. ES	EG	SR. EG	Staff Toxicologist	Engineering Geologist	Assoc IH	Associate Program Analyst	Office Technician (Typing)
Agreement Prep./Negotiation	5	5	2					2
Project Management		20	4					
Scoping Meeting		2	2					
Site Visit		10				1		
Sampling and Analysis Plan		10	2	10	10			2
Review Background Information		5	1					1
Removal Action Completion Report		20	2	10	10			2
Certification		5	1					2
Total No. Hours/Class	5	77	14	20	20	1	0	9
Hourly Rate/Class	\$213	\$257	\$301	\$251	\$257	\$213	\$157	\$96
Cost/Class	\$1,065	\$19,789	\$4,214	\$5,020	\$5,140	\$213	\$0	\$864
Subtotal	\$36,305							
Contingency (10%)	\$3,631							
Grand Total Cost	\$39,936							
Advance Payment	\$19,968							

EXHIBIT E
CALENDAR OF TASKS AND SCHEDULE

Activity	Schedule
Scoping Meeting	During Agreement negotiation, or shortly after Agreement execution based on DTSC evaluation of project needs
Advance Payment	Within 10 days of Agreement execution
Proponent provides ownership confirmation	Within 10 days of Agreement execution
Sampling and Analysis Plan (SAP)	Within 60 days of Agreement Execution
Lead Sampling and Removal Activities	Within 30 days of DTSC approval of SAP
Submit Lead Sampling and Removal Activity Completion Report (RACR)	Within 60 days of completion of field work ²
DTSC decision on Lead Sampling and Removal Activity Completion Report (RACR)	Within 30 days of receipt by DTSC ¹ . May include recommendation for further investigation or cleanup, no further action, or no further action with conditions.
Invoices	DTSC issues quarterly
Cost estimate and Scope of Work Updates and Amendments	DTSC updates the scope and cost estimate annually, or as needed, based on work needed to complete the Agreement. Amendments are issued on an as-need basis.

(1) Note that DTSC approvals in the target timeframes are contingent upon receiving documents that meet industry standards, comply with DTSC's direction, and that responses to DTSC questions and/or comments are received in a timely manner.

(2) If workplan activities are not initiated within six months of the date of DTSC approval, DTSC may require additional investigation, public participation activities, and/or revision to the document.

TABLE 1 - CITY PARK (PROJECT SITE 1)

TEMP ADDRESS	PREV USE	BLDG TYPE	APPROX AREA (SF)	NOTES	PRELIM SOIL SAMPLE	
					SAMPLE No.	LEAD CONT (mg/ kg)
T-2109	HQ	B1-SINGLE STORY	992	ABATE AND REMOVE BUILDING	S.2109	226
T-2111	HQ	B1-SINGLE STORY		BURNED, ABATE AND REMOVED DEBRIS	S.2111	75.1
T-2112	HQ	B1-SINGLE STORY	992	ABATE AND REMOVE BUILDING	S.2112	228
T-2113	HQ	B1-SINGLE STORY	992	ABATE AND REMOVE BUILDING	S.2113	113
T-2114	HQ	B1-SINGLE STORY	992	ABATE AND REMOVE BUILDING	S.2114	229
T-2115	HQ	B1-SINGLE STORY	992	ABATE AND REMOVE BUILDING	S.2115	93.6
T-2116	HQ	B1-SINGLE STORY	992	ABATE AND REMOVE BUILDING	S.2116	123
T-2110	HQ	B1-SINGLE STORY	1000	ABATE AND REMOVE BUILDING, INCLUDING SHED	S.2110	226
T-2189	ARM STORAGE	B1-SINGLE STORY	1144	ABATE AND REMOVE BUILDING	S.2189	601
T-2190	HQ	B1-SINGLE STORY	1144	ABATE AND REMOVE BUILDING	S.2190	73.8
T-2191	ARMS STORAGE	B1-SINGLE STORY	1144	ABATE AND REMOVE BUILDING	S.2191	601
T-2192	ARMS STORAGE	B1-SINGLE STORY		DEMOLISHED, REMOVE AND DISPOSE OF TEMPORARY STRUCTURES AND SITE DEBRIS	S.2192	
T-2193	ARMS STORAGE	B1-SINGLE STORY	1144	ABATE AND REMOVE BUILDING	S.2192	52
T-2194	ARMS STORAGE	B1-SINGLE STORY	1144	ABATE AND REMOVE BUILDING	S.2193	373
T-2195	HQ	B1-SINGLE STORY	1144	ABATE AND REMOVE BUILDING	S.2195	34.7
T-2196	HQ	B1-SINGLE STORY	1144	ABATE AND REMOVE BUILDING	S.2196	281
T-2129	DAY ROOM	B2-SINGLE STORY	2206	ABATE AND REMOVE BUILDING	S.2129	135
T-2130	DINING	B2-SINGLE STORY	2206	ABATE AND REMOVE BUILDING	S.2130	105
T-2131	DINING	B2-SINGLE STORY	2206	ABATE AND REMOVE BUILDING	S.2131	143
T-2132	DINING	B2-SINGLE STORY	2206	ABATE AND REMOVE BUILDING	S.2132	44.2
T-2133	DINING	B2-SINGLE STORY	2206	ABATE AND REMOVE BUILDING	S.2133	161
T-2134	DINING	B2-SINGLE STORY	2206	ABATE AND REMOVE BUILDING	S.2134	79.2
T-2135	DINING	B2-SINGLE STORY	2206	ABATE AND REMOVE BUILDING	S.2135	169
T-2136	DINING	B2-SINGLE STORY	2206	ABATE AND REMOVE BUILDING	S.2136	96
T-2149	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING	S.2149	106
T-2150	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING	S.2150	719
T-2151	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING	S.2151	156
T-2152	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING	S.2152	208
T-2153	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING	S.2153	102
T-2154	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING	S.2154	177
T-2155	OPERATIONS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING	S.2155	206
T-2156	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING	S.2156	199
T-2169	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING	S.2169	89.2
T-2170	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING	S.2170	1430
T-2171	BARACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING	S.2171	134
T-2172	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING	S.2172	86.4
T-2173	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING	S.2173	366
T-2174	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING	S.2174	67.1
T-2175	OPERATIONS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING	S.2175	82.1
T-2176	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING	S.2176	108
T-2209	BARRACKS	B3-TWO STORY		BURNED, NO WORK REQUIRED		
T-2210	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING	S.2210	122
T-2211	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING	S.2211	165
T-2212	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING	S.2212	195
T-2213	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING	S.2213	520
T-2214	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING	S.2214	168
T-2215	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING	S.2215	154
T-2216	HQ	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING	S.2216	149

NOTES:

- 1 CONTRACTOR SHALL BE RESPONSIBLE FOR FIELD VERIFYING BUILDING DIMENSIONS.
- 2 INSTALL TEMPORARY SECURITY CHAINLINK FENCE AROUND THE PERIMETER OF THE JOBSITE. CONTRACTOR MAY UTILIZE EXISTING CHAINLINK FENCE. EXISTING FENCE THAT IS USED SHALL BE PROTECTED DURING EXECUTION OF WORK AND SHALL BE RESTORED TO EQUAL OR BETTER CONDITION.
- 3 CONTRACTOR SHALL INSTALL ALL NECESSARY BMPS SHOWN ON THE SWPPP. SEE WPC SHEETS.
- 4 TREES TO BE REMOVED OR TRIMMED, SEE SHEET TR-1.
- 5 ALL BUILDINGS SHALL BE ABATED AS DESCRIBED IN TABLE 1 AND PER SPECIFICATIONS. ABATED BUILDINGS AND OTHER SITE DEBRIS SHALL BE REMOVED AND PROPERLY DISPOSED.

- 6 BURNT CAR TO BE REMOVED AND DISPOSED PROPERLY.
- 7 ALL DRUMS TO BE DISPOSED AS HAZADOUS MATERIAL. CONTRACTOR HAS OPTIONS TO TEST CONTENTS AND DISPOSE ACCORDIANGLY.
- 8 EXISTING ROADWAYS, CURB AND CUTTER ON THE JOBSITE SHALL BE REMOVED AND DISPOSED/RECYCLED (ADDITIVE ALTERNATIVE BID).
- 9 ALL WALKWAYS, STAIRS AND RETAINING WALLS ON THE JOBSITE SHALL BE REMOVED AND DISPOSED/RECYLCED (ADDITIVE ALTERNATIVE BID).
- 10 SOIL REMEDIATION SHOWN IS BASED ON PRELIMINARY SAMPLE RESULTS. ADDITIONAL TESTING SHALL BE PERFORMED BY THIRD PARTY CONSULTANT HIRED BY THE CITY.

LEGEND:

9" SOIL REMEDIATION, SEE SHEET DM-3

**CITY PARK PLAN**
NTS

REVISED DM-1 PER ADDENDUM No. 5

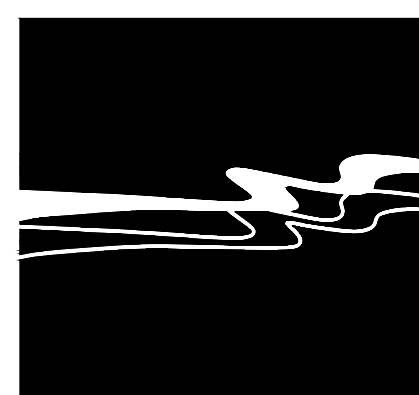

 211 Hillcrest Avenue
Marina, CA 93933
CITY OF MARINA

DEPARTMENT OF PUBLIC WORKS

SCALE: HORIZ
VERTORIGINAL SCALE IN INCHES
FOR REDUCED PLANS

0 1 2

REVISIONS				
NO.	BY	DATE	DESCRIPTION	APPROVED BY
1		5/05/22		
2				
3				
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PROJECT ENGINEER

 May 5, 2022
PLANS APPROVAL DATE
**CITY PARK BARRACKS AND CYPRESS KNOLLS
BUILDINGS BLIGHT REMOVAL 2022 PROJECT****DEMOLITION PLAN****DM-1**

DESIGNED BY	DRAWN BY	CHECKED BY	JOB NUMBER	SHEET	OF
EMC	ZVC	EMC	1585-0001	3	14

**CITY OF MARINA
AGREEMENT FOR ON-CALL CONSTRUCTION MANAGEMENT AND
INSPECTION SERVICES**

THIS AGREEMENT is made and entered into on July, 2021, by and between the City of Marina, a California charter city, hereinafter referred to as the "City," and Ghirardelli Associates, a California Corporation, hereinafter referred to as the "Contractor." City and Contractor are sometimes individually referred to as "party" and collectively as "parties" in this Agreement.

Recitals

- A. City desires to retain Contractor for on-call construction management and inspection services associated with various City projects described generally by Exhibit A – Contractor shall provide services pertaining to City projects and shall perform standby and support services for City as determined by the City Engineer.
- B. Contractor represents and warrants that it has the qualifications, experience and personnel necessary to properly perform the services in accordance with the terms of individual service orders as set forth herein.
- C. City desires to retain Contractor to provide such services.

Terms and Conditions

For of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and in consideration of the mutual promises contained herein, City and Contractor agree to the following terms and conditions:

1. Scope of Work.

(a) Contractor is hereby hired and retained by the City to work in a cooperative manner with the City to fully and adequately perform those services set forth in Exhibit "A" attached hereto ("Scope of Work") and by this reference made a part hereof. The Contractor shall be available to perform services under this Agreement as needed during the term of the Agreement. With prior written notice to Contractor, City may elect to delete certain tasks of the Scope of Work at its sole discretion.

(b) All work performed under this Agreement shall be authorized in advance and in writing by a specific Service Order prior to the commencement of services. Each Service Order given by the City shall describe the nature of the specific task or service to be performed by the Contractor, the time limit or estimated number of hours within which such task or service must be completed and the compensation for such task or service. Details shall include a description of the task or service which Contractor shall perform, the geographic limits, if any, the type and scope of task or services to be performed, the format and schedule for deliverables, the schedule of performance, and the schedule of compensation. Contractor shall not perform any task or service unless authorized by a fully executed Service Order. Contractor shall advise the Project Administrator in writing immediately of any anticipated change in any task or service, fee or time schedule, and shall obtain the Project Administrator's prior written consent to the change prior to

making any changes. In no event shall the Project Administrator's consent be construed to relieve the Contractor from its duty to render all services or perform all tasks in accordance with applicable law and accepted industry standards.

(c) Contractor shall begin work under the Service Order only after receipt of the Service Order bearing the approval signature of the City Engineer. Each authorized Service Order issued under this Agreement by City shall be incorporated by reference as an integral part of Exhibit A and into the terms and conditions of this Agreement.

(d) The City's Project Administrator may, without invalidating this Agreement, order changes in any tasks or service to be performed pursuant to a Service Order by altering, adding to or deducting from the task or services to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Agreement. If any such change causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any of the tasks or services, the Contractor shall so notify the Project Administrator. If appropriate an equitable adjustment to the Contractor's compensation may be made, provided that any adjustment must be pre-approved by the parties in writing; with the City's approval coming from the Project Administrator.

(e) Contractor shall perform all such work with skill and diligence and pursuant to generally accepted standards of practice in effect at the time of performance. Contractor shall provide corrective services without charge to the City for work which fails to meet these standards and which is reported to Contractor in writing within sixty days of discovery. Should Contractor fail or refuse to perform promptly its obligations under this Agreement, the City may render or undertake the performance thereof and the Contractor shall be liable for any expenses thereby incurred.

(f) If services under this Agreement are to be performed by a design professional, as that term is defined in California Civil Code §2782.8(c)(1-4), design professional certifies that all design professional services shall be provided by a person or persons duly licensed by the State of California to provide the type of services described in Section 1(a). By delivery of completed work, design professional certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws, and the professional standard of care in California.

(g) Contractor is responsible for making an independent evaluation and judgment of all relevant conditions affecting performance of the work, including without limitation site conditions, existing facilities, seismic, geologic, soils, hydrologic, geographic, climatic conditions, applicable federal, state and local laws and regulations and all other contingencies or considerations.

(h) City shall cooperate with Contractor and will furnish all information data, records and reports existing and available to City to enable Contractor to carry out work described in Exhibit "A" and the executed Service Orders. Contractor shall be entitled to reasonably rely on information, data, records and reports furnished by the City, however, the City makes no warranty as to the accuracy or completeness of any such information, data, records or reports available to it and provided to Contractor which were furnished to the City by a third party. Contractor shall have a duty to bring to the City's attention any deficiency or error it may discover in any information provided to the Contractor by the City or a third party.

2. Term of Agreement & Commencement of Work.

(a) Unless otherwise provided, the term of this Agreement shall begin on the date of its full execution and shall expire on June 30, 2024, unless extended by amendment or terminated earlier as provided herein. The date of full execution is defined as the date when all of the following events have occurred:

(i) This Agreement has been approved by the City's Council or by the officer or employee authorized to give such approval, and;

(ii) The office of the City Attorney has indicated in writing its approval of this Agreement as to form, and;

(iii) This Agreement has been signed on behalf of Contractor by the person or persons authorized to bind the Contractor hereto, and;

(iv) This Agreement has been signed on behalf of the City by the person designated to so sign by the City's Council or by the officer or employee authorized to enter into this Contract and is attested to by the Marina City Clerk.

(b) This Agreement may be extended up to one (1) year upon written agreement of both parties. Contractor may be required to prepare a written schedule for the work to be performed under any Service Order, which schedule shall be approved by the City's Project Administrator and made a part of Exhibit A, and to perform the work in accordance with the approved schedule.

3. Compensation.

(a) City liability for compensation to Contractor under this Agreement shall only be to the extent of the present appropriation to fund this Agreement. For services to be provided under this Agreement City shall compensate Contractor in accordance with the provisions of this Section and the hourly rates attached hereto as Exhibit B and incorporated herein by this reference. The total annual compensation under this agreement shall be limited to Eight Hundred Thousand Dollars (\$800,000) per fiscal year, which runs from July 1 to June 30, and the remainder of the first fiscal year of the Agreement.

(b) The City will pay the Contractor under Service Orders on a time and materials/reimbursable expenses (T&M) basis. The hourly rate and reimbursable schedule in Exhibit B applies to all Service Orders.

(c) This Agreement is for Contractor to perform "on call" services or tasks and as such it is a standby Agreement to assign work to the Contractor from time-to-time as needed and as appropriate. There is no minimum compensation for this engagement or for any work assigned pursuant to this On-Call Agreement and no guarantee that any work will be assigned to Contractor during its term.

(d) Invoice(s) in a format and on a schedule acceptable to the City shall be submitted to and be reviewed and verified by the Project Administrator (see Section 5(a)) not more frequently than once during every month and forwarded to the City's Finance Department for payment. City shall notify Contractor of exceptions or disputed items and their dollar value within fifteen days of receipt. Payment of the undisputed amount of the invoice will typically be made approximately thirty days after the invoice is submitted to the Finance Department.

(e) Contractor will maintain clearly identifiable, complete and accurate records with respect to all costs incurred under this Agreement on an industry recognized accounting basis. Contractor shall make available to the representative of City all such books and records related to this Agreement, and the right to examine, copy and audit the same during regular business hours upon 24-hour's notice for a period of four years from the date of final payment under this Agreement.

(f) Contractor shall not receive any compensation for Extra Work without the prior written authorization of City. As used herein, "Extra Work" means any work that is determined by the City to be necessary for the proper completion of a Service Order but which is not included within the Service Order and which the parties did not reasonably anticipate would be necessary at the execution of the Service Order.

(f) Expenses not otherwise addressed in the Service Order or the Fee Schedule incurred by Contractor in performing services under this Agreement shall be reviewed and approved in advance by the Project Administrator (Section 5(a)) and reimbursed to Contractor.

4. Termination or Suspension.

(a) This Agreement may be terminated in whole or in part in writing by either party in the event of a substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten days written notice of intent to terminate, and (2) provided an opportunity for consultation with the terminating party prior to termination.

(b) If termination for default is effected by the City, an equitable adjustment in the price provided for in this Agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due the Contractor at the time of termination may be adjusted to cover any additional costs to the City because of the Contractor's default. If after the termination for failure of Contractor to fulfill its contractual obligations, it is determined that the Contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the City.

(c) The City may terminate or suspend this Agreement at any time for its convenience upon not less than thirty days prior written notice to Contractor. Not later than the effective date of such termination or suspension, Contractor shall discontinue all affected work and deliver all work product and other documents, whether completed or in progress, to the City.

(d) If termination for default is effected by the Contractor or if termination for convenience is effected by the City, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for termination shall provide for payment to the Contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by Contractor relating to written commitments that were executed prior to the termination.

5. Project Administrator, Project Manager & Key Personnel.

(a) City designates as its Project Administrator the Public Works Director/City Engineer, Brian McMinn, who shall have the authority to act for the City under this Agreement. The Project Administrator or his/her authorized representative shall represent the City in all matters pertaining to the work to be performed pursuant to this Agreement.

(b) Contractor designates Scott Buckley, as its Project Manager who shall coordinate all phases of the Project. The Project manager shall be available to City at all reasonable times during the Agreement term as designated in Service Orders.

(c) Contractor warrants that it will continuously furnish the necessary personnel to complete each Service Order on a timely basis as contemplated by this Agreement. Contractor, at the sole discretion of City, shall remove from the task or service any of its personnel assigned to the performance of services upon written request of City. Contractor may be required to represent to City that certain key personnel will perform and coordinate the work under a Service Order. Should one or more of such personnel become unavailable, Contractor may substitute other personnel of at least equal competence upon written approval of the City Administrator. In the event that City Administrator and Project Manager cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause.

6. Delegation of Work.

(a) If Contractor utilizes any subcontractors, Contractors, persons, employees or firms having applicable expertise to assist Contractor in performing tasks or services under this Agreement, Contractor shall obtain City's prior written approval to such employment. Contractor's contract with any subcontractor shall contain a provision making the subcontract subject to all provisions of this Agreement. Contractor will be fully responsible and liable for the administration, completion, presentation, and quality of all work performed. City reserves its right to employ other contractors in connection with this Project.

(b) If work hereunder is performed by a design professional, design professional shall be directly involved with performing the work or shall work through his, her or its employees. The design professional's responsibilities under this Agreement shall not be delegated. The design professional shall be responsible to the City for acts, errors or omissions of his, her or its subcontractors. Negligence of subcontractors or agents retained by the design professional is conclusively deemed to be the negligence of the design professional if not adequately corrected by the design professional. Use of the term subcontractor in any other provision of this Agreement shall not be construed to imply authorization for a design professional to use subcontractors for performance of any professional service under this Agreement.

(c) The City is an intended beneficiary of any work performed by a subcontractor for purposes of establishing a duty of care between the subcontractor and the City.

7. Skill of Employees. Contractor shall ensure that any employees or agents providing services under this Agreement possess the requisite skill, training and experience to properly perform such services.

8. Confidential and Proprietary Information. In the course of performing services under this Agreement Contractor may obtain, receive, and review confidential or proprietary documents, information or materials that are and shall remain the exclusive property of the City. Should Contractor undertake the work on behalf of other agencies, entities, firms or persons relating to the matters described in any Service Order, it is expressly agreed by Contractor that any such confidential or proprietary information or materials shall not be provided or disclosed in any manner to any of Contractor's other clients, or to any other third party, without the City's prior express written consent.

9. Ownership of Data. Unless otherwise provided for herein, all documents, material, data, drawings, plans, specifications, computer data files, basis for design calculations, engineering notes, and reports originated and prepared by Contractor, or any subcontractor of any tier, under this Agreement shall be and remain the property of the City for its use in any manner it deems appropriate. Contractor agrees that all copyrights which arise from creation of the work pursuant to this Agreement shall be vested in the City and waives and relinquishes all claims to copyright or intellectual property rights in favor of the City. Contractor shall provide two (2) sets of reproducible of the above-cited items, except for the computer data files which shall consist of one (1) set. Contractor shall use all reasonable efforts to ensure that any electronic files provided to the City will be compatible with the City's computer hardware and software. Contractor makes no representation as to long-term compatibility, usability or readability of the format resulting from the use of software application packages, operating systems or computer hardware differing from those in use by the City at the commencement of this Agreement. Contractor shall be permitted to maintain copies of all such data for its files. City acknowledges that its use of the work product is limited to the purposes contemplated by the Scope of Work and the applicable Service Order, should City use these products or data in connection with additions to the work required under this Agreement or for new work without consultation with and without additional compensation to Contractor, Contractor makes no representation as to the suitability of the work product for use in or application to circumstances not contemplated by the Scope of Work and the applicable Service Order and shall have no liability or responsibility whatsoever in connection with such use which shall be at the City's sole risk. Any and all liability arising out of changes made by the City to Contractor's deliverables is waived against Contractor unless City has given Contractor prior written notice of the changes and has received Contractor's written consent to such changes.

10. Conflict of Interest.

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

(b) City understands and acknowledges that Contractor may be, as of the date of commencement of services under this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Contractor is unaware of any stated position of the City relative to such projects. Any future position of the City on such projects may result in a conflict of interest for purposes of this section.

(c) No official or employee of the City who is authorized in such capacity on behalf of the City to negotiate, make, accept, or approve, or take part in negotiating, making accepting or approving this Agreement, during the term of his or her tenure or service with City and for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof or obtain any present or anticipated material benefit arising there from.

11. **Disclosure.** Contractor may be subject to the appropriate disclosure requirements of the California Fair Political Practices Act, as determined by the City Manager.

12. **Non-Discrimination.**

(a) The Contractor's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the Contractor has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.

(b) During the performance of this Agreement, Contractor and its sub-contractors shall not deny the Agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor and sub-contractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

(c) Contractor and sub-contractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by CITY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

(d) Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the City upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or City shall require to ascertain compliance with this clause.

(e) Contractor and its sub-contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

(f) Contractor shall include the nondiscrimination and compliance provisions of this Section in all subcontracts.

13. **Indemnification & Hold Harmless.**

(a) Other than in the performance of professional services by a design professional, which shall be solely as addressed by subsection (b) below, and to the full extent permitted by law, Contractor shall indemnify, immediately defend (with independent counsel reasonably acceptable to the City) and hold harmless the City, its Council, boards, commissions, employees, officials

and agents (collectively "Indemnified Parties" or in the singular "Indemnified Party") from and against any claims, losses, damages, penalties, fines and judgments, associated investigation and administrative expenses, and defense costs including but not limited to reasonable attorney's fees, court costs, expert witness fees and costs of alternate dispute resolution (collectively "Liabilities"), where same arise out of the performance of this Agreement by Contractor, its officers, employees, agents and sub-contractors. The duty to defend is a separate and distinct obligation from the Contractor's duty to indemnify and Contractor shall be obligated to defend in all legal, equitable, administrative or special proceedings upon tender to the Contractor of any claim in any form or at any stage of an action or proceeding, whether or not liability is established and the obligation extends through final judgment including exhaustion of any appeals.. The Contractor's obligation to indemnify applies unless it is finally determined that the liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally determined that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, the Contractor's indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

(b) To the fullest extent permitted by law (including without limitation California Civil Code Sections 2782.8), when the services to be provided under this Agreement are design professional services to be performed by a design professional, as that term is defined by said section 2782.8(c)(2) ("Design Professional") Design Professional shall indemnify, protect and hold harmless any Indemnified Party for all Liabilities regardless of nature or type that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Design Professional, or such acts or omissions of an officer, employee, agent or subcontractor of the Design Professional. Design Professional shall not have an immediate duty to defend an Indemnified Party, however, Design Professional's obligation to indemnify (including reimbursing the cost to defend) and hold the Indemnified Parties harmless applies unless it is finally determined that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally determined that liability was caused by the comparative active negligence or willful misconduct of an Indemnified Party the Design Professional's indemnification obligation shall be reduced in proportion to the established comparative liability. Within 30 days following Design Professional's receipt of a properly presented written invoice Design Professional shall reimburse the Indemnified Party for the cost of reasonable attorney's fees and defense costs incurred by the Indemnified Party to the same extent of Design Professional's indemnity obligation herein. In no event shall the cost to defend charged to the Design Professional exceed the Design Professional's proportionate percentage of fault.

(c) The provisions of this Section are not limited by the provisions of sections relating to insurance including provisions of any worker's compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its employees and officials. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor, sub tier contractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance or subject matter of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

(d) If any action or proceeding is brought against any Indemnified Party by reason of any of the matters against which the Contractor has agreed to provide an immediate defense to any Indemnified Party, as provided above, Contractor, upon notice from the City, shall defend the

Indemnified Party at Contractor's expense by independent counsel reasonably acceptable to the City. Unless otherwise provided above, an Indemnified Party need not have first paid for any of the matters to which it is entitled to indemnification in order to be so defended. If it is finally adjudicated that liability for which Contractor has provided an immediate defense was caused by the sole active negligence or sole willful misconduct of an Indemnified Party, Contractor may submit a claim to the City for reimbursement of reasonable attorney's fees and defense costs.

(e) This obligation to indemnify and defend, as set forth herein, is binding on the successors, assigns, or heirs of Contractor and shall survive the termination of this Agreement or this Section.

14. Insurance.

(a) As a condition precedent to the effectiveness of this Agreement and without limiting Contractor's indemnification of the City, Contractor agrees to obtain and maintain in full force and effect at its own expense the insurance policies set forth in Exhibit "C" "Insurance" attached hereto and made a part hereof and as may be required for any Service Order. Contractor shall furnish the City with original certificates of insurance, manually autographed in ink by a person authorized by that insurer to bind coverage on its behalf, along with copies of all required endorsements. All certificates and endorsements must be received and approved by the City before any work commences. All insurance policies shall be subject to approval by the City Attorney and Risk Manager as to form and content. Specifically, such insurance shall: (1) protect City as an additional insured for commercial general and business auto liability; (2) provide City at least thirty days written notice of cancellation, material reduction in coverage or reduction in limits and ten days written notice for non-payment of premium; and (3) be primary with respect to City's insurance program. Contractor's insurance is not expected to respond to claims that may arise from the acts or omissions of the City.

(b) City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required for any Service Order issued as provided herein by giving Contractor ten days advance written notice of such change.

(c) All required insurance must be submitted and approved the City Attorney and Risk Manager prior to the inception of any operations by Contractor.

(d) The required coverage and limits are subject to availability on the open market at reasonable cost as determined by the City. Non-availability or non affordability must be documented by a letter from Contractor's insurance broker or agency indicating a good faith effort to place the required insurance and showing as a minimum the names of the insurance carriers and the declinations or quotations received from each. Within the foregoing constraints, Contractor's failure to procure or maintain required insurance during the entire term of this Agreement shall constitute a material breach of this Agreement under which City may immediately suspend or terminate this Agreement or, at its discretion, procure or renew such insurance to protect City's interests and pay any and all premium in connection therewith and recover all monies so paid from Contractor.

(e) By signing this Agreement, Contractor hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provision of that Code, and that it will comply with such provisions at all such times as they may

apply during the performance of the work pursuant to this Contract. Unless otherwise agreed, a waiver of subrogation in favor of the City is required.

15. Independent Contractor. The parties agree that Contractor, its officers, employees and agents, if any, shall be independent contractors with regard to the providing of services under this Agreement, and that Contractor's employees or agents shall not be considered to be employees or agents of the City for any purpose and will not be entitled to any of the benefits City provides for its employees. City shall make no deductions for payroll taxes or Social Security from amounts due Contractor for work or services provided under this Agreement.

16. Claims for Labor and Materials. Contractor shall promptly pay when due all amounts payable for labor and materials furnished in the performance of this Agreement, so as to prevent any lien or other claim under any provision of law from arising against any City property (including reports, documents, and other tangible matter produced by the Contractor hereunder), against the Contractor's rights to payments hereunder, or against the City, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

17. Discounts. Contractor agrees to offer the City any discount terms that are offered to its best customers for the goods and services to be provided herein, and apply such discounts to payment made under this Agreement which meet the discount terms.

18. Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

19. Dispute Resolution. If any dispute arises between the parties as to proper interpretation or application of this Agreement, the parties shall first meet and confer in a good faith attempt to resolve the matter between themselves. If the dispute is not resolved by meeting and conferring, the matter shall be submitted for formal mediation to a mediator selected mutually by the parties. The expenses of such mediation shall be shared equally between the parties. If the dispute is not or cannot be resolved by mediation, the parties may mutually agree (but only as to those issues of the matter not resolved by mediation) to submit their dispute to arbitration. Before commencement of the arbitration, the parties may elect to have the arbitration proceed on an informal basis; however, if the parties are unable so to agree, then the arbitration shall be conducted in accordance with the rules of the American Arbitration Association. The decision of the arbitrator shall be binding, unless within thirty days after issuance of the arbitrator's written decision, any party files an action in court. Venue and jurisdiction for any such action between the parties shall lie in the Superior Court for the County of Monterey.

20. Compliance with Laws.

(a) Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California and the City including but not limited to laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This Agreement shall be governed by, enforced and interpreted under the laws of the State of California. Contractor shall comply with new, amended or revised laws, regulations or procedures that apply to the performance of this Agreement., those dealing with prevailing wages, apprentices, certified payrolls and hours of work.

(b) Contractor shall conduct all work in strict accordance with applicable regulations and guidelines adopted by the California Department of Public Health (CDPH) and the California

Department of Industrial Relations (DIR), Division of Occupational Safety and Health, Safety for the prevention of COVID-19 and the regulations and guidelines for the prevention of COVID - 19 adopted by the County of Monterey and by the City.

(c) Contractor represents that it has obtained and presently holds all permits and licenses necessary for performance hereunder, including a Business License required by the City's Business License Ordinance. For the term covered by this Agreement, the Contractor shall maintain or obtain as necessary, such permits and licenses and shall not allow them to lapse, be revoked or suspended.

(d) This Agreement is not intended and shall not be utilized for a public work as that term is used in California Labor Code Section 1720 *et seq.*

21. Assignment or Transfer. This Agreement or any interest herein may not be assigned, hypothecated or transferred, either directly or by operation of law, without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

22. Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, sent by facsimile ("fax") or certified mail, postage prepaid with return receipt requested, addressed as follows:

To City: City Manager
City of Marina City Hall
211 Hillcrest Avenue
Marina, California 93933
Fax: (831) 384-9148

To Contractor:



Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three days after deposit in the custody of the U.S. Postal Service. A copy of any notice sent as provided herein shall also be delivered to the Project Administrator and Project Manager.

23. Amendments, Changes or Modifications. This Agreement and any Service Order are not subject to amendment, change or modification except by a writing signed by the authorized representatives of City and Contractor.

24. Force Majeure. Notwithstanding any other provisions hereof, neither Contractor nor City shall be held responsible or liable for failure to meet their respective obligations under this Agreement and any Service Order if such failure shall be due to causes beyond Contractor's or the City's control. Such causes include but are not limited to: strike, fire, flood, civil disorder, act of God or of the public enemy, act of the federal government, or any unit of state or local government in either sovereign or contractual capacity, epidemic, quarantine restriction, or delay in transportation to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

25. **Attorney's Fees.** In the event of any controversy, claim or dispute relating to this Agreement, any Service Order, or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.

26. **Successors and Assigns.** All of the 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 paragraph is intended to affect the limitation on assignment.

27. **Authority to Enter Agreement.** Contractor has all requisite power and authority to conduct its business and to execute, deliver and perform the Agreement and any Service Order. Each party warrants that the individuals who have signed this Agreement and shall sign Service Orders have the legal power, right and authority to make this Agreement and bind each respective party.

28. **Waiver.** A waiver of a default of any term of this Agreement or the terms and conditions of any Service Order shall not be construed as a waiver of any succeeding default or as a waiver of the provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

29. **Severability.** Should any portion of this Agreement or any Service Order be determined to be void or unenforceable, such shall be severed from the whole and the Agreement will continue as modified.

30. **Construction, References, Captions.** Since the parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party. Any term referencing time, days or period for performance shall be deemed calendar days and not workdays. The captions of the various sections are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, content or intent of this Agreement.

31. **Advice of Counsel.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor or against either party by reason of the extent to which each party participated in the drafting of this Agreement.

32. **Counterparts.** This Agreement and any Service Order may be signed in counterparts, each of which shall constitute an original.

33. **Time.** Time is of the essence in this contract.

34. **Entire Agreement.** This Agreement together with the Service Orders to be issued hereunder contains the entire agreement of the parties with respect to the matters as set forth in this Agreement, and no other agreement, statement or promise made by or to any party or by or to any employee, officer or agent of any party, which is not contained in this Agreement shall be binding or valid. . The exhibits attached hereto and the Service Orders to be attached as part of Exhibit A are incorporated into this Agreement. In the event of a conflict between the terms of this Agreement and any exhibit of Service Order, the terms of this Agreement shall control.

IN WITNESS WHEREOF, Contractor and the City by their duly authorized representatives, have executed this Agreement, on the date first set forth above, at Marina, California.

CITY OF MARINA

By: _____
Name: Layne P. Long
Its: City Manager
Date: _____

Attest:
Per Resolution 2021 - ____

By: _____
Anita Shepherd-Sharp
Deputy City Clerk

Approved as to form:

By: _____
City Attorney

CONTRACTOR

By: _____
Name: _____
Its: _____
Date: _____

EXHIBIT A

GENERAL DESCRIPTION OF SERVICES

[Individual Service Orders to be attached as executed and are incorporated herein and made a part of this Agreement.]

DRAFT

**EXHIBIT B
HOURLY RATE AND REIMBURSABLE SCHEDULE**

DRAFT



6/30/2022

City of Marina Pavement Resurfacing and Rehabilitation Program
On-Call Construction Management and Inspection Services

Role	Range	2022 Hourly Rates		
		Straight	OT	Double OT
Contract Manager / Project Manager	Min.	\$ 215.00	\$ 215.00	\$ 215.00
Contract Manager / Project Manager	Max.	\$ 235.00	\$ 235.00	\$ 280.00
Resident Engineer	Min.	\$ 185.00	\$ 185.00	\$ 185.00
Resident Engineer	Max.	\$ 235.00	\$ 235.00	\$ 280.00
Construction Inspector	Min.	\$ 160.00	\$ 240.00	\$ 320.00
Construction Inspector	Max.	\$ 210.00	\$ 315.00	\$ 420.00
Storm Water Pollution Prevention (SWPPP)	Min.	\$ 160.00	\$ 240.00	\$ 320.00
Storm Water Pollution Prevention (SWPPP)	Max.	\$ 210.00	\$ 315.00	\$ 420.00
Project Controls / Scheduler	Min.	\$ 190.00	\$ 285.00	\$ 380.00
Project Controls / Scheduler	Max.	\$ 250.00	\$ 285.00	\$ 380.00
Office Engineer	Min.	\$ 130.00	\$ 195.00	\$ 260.00
Office Engineer	Max.	\$ 170.00	\$ 255.00	\$ 340.00
Public Outreach	Min.	\$ 85.00	\$ 127.50	\$ 170.00
Public Outreach	Max.	\$ 170.00	\$ 255.00	\$ 340.00

- 1) Hourly rates include vehicle, mobile phone, laptop, and camera.
- 2) Any extensive reproduction or delivery service charges shall be billed at actual.
- 3) Rates valid until 12/31/2022. Annual rate escalation is 5%.
- 4) Construction inspection activities are subject to prevailing wage requirements.
- 5) Per prevailing wage requirements, a shift differential is for any covered work shift beginning after 2PM.

Exhibit C - Insurance

Contractor agrees to provide insurance in accordance with the requirements set forth herein. If Contractor uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein, Contractor agrees to amend, supplement or endorse the existing coverage to do so. Contractor shall furnish the City with original certificates of insurance, manually autographed in ink by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by the City before any work commences. The City reserves its right to require complete, certified copies of all required insurance policies at any time. The following coverage will be provided by Contractor and maintained on behalf of the City and in accordance with the requirements set forth herein.

Commercial General Liability (primary). Commercial general liability insurance covering Contractor's operations (and products where applicable) is required whenever the City is at risk of third party claims which may arise out of Contractor's work or presence on City premises. Contractual liability coverage is a required inclusion in this insurance.

Primary insurance shall be provided on ISO-CGL form No. CG 00 01 11 85 or 88 or on an ISO or ACORD form providing coverage at least as broad as ISO form CG 00 01 10 01 and approved in advance by the City Attorney and Risk Manager. Total limits shall be no less than one million dollars (\$1,000,000) combined single limit per occurrence for all coverages. 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 or the general aggregate limit shall be two million dollars (\$2,000,000). Contractor must give written notice to the City of any pending claim, action or lawsuit which has or may diminish the aggregate. If any such claim or lawsuit exists, Contractor shall be required, prior to commencing work under this Agreement, to restore the impaired aggregate or prove it has replacement insurance protection to the satisfaction of the City Attorney and Risk Manager.

City, its Council, boards and commissions, officers, employees, agents and volunteers shall be added as additional insureds using ISO additional insured endorsement form CG 20 10 11 85 or forms CG 20 10 10 01 and CG 20 37 10 01. Coverage shall apply on a primary, non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to the City or any agent of City. Coverage is not expected to respond to the claims which may arise from the acts or omissions of the City. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Coverage shall contain no contractors' limitation endorsement. There shall be no endorsement or modification limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage or employment-related practices.

Umbrella Liability Insurance. Umbrella liability insurance (over primary) shall apply to bodily injury/property damage, personal injury/advertising injury, contractual liability and completed operations at a minimum, and shall be in an amount of not less than two million dollars (\$2,000,000), and include a "drop down" provision providing primary coverage above a maximum \$25,000.00 self-insured retention for liability not covered by primary policies but covered by the umbrella policy. Coverage shall be following form to any underlying coverage.

Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion and no contractor's limitation endorsement. Policies limits shall be not less than one million dollars (\$1,000,000) per occurrence and in the aggregate, above any limits required in the underlying policies shall have starting and ending dates concurrent with the underlying coverage.

Business Auto. Automobile liability insurance is required where vehicles are used in performing the work under this Agreement or where vehicles are driven off-road on City premises, it is not required for simple commuting unless City is paying mileage. However, compliance with California law requiring auto liability insurance is a contractual requirement.

If automobile insurance is required for work under this Agreement, primary coverage shall be written on ISO Business Auto Coverage form CA 00 01 06 92 including symbol 1 (Any Auto) or on an ISO or ACORD form providing coverage at least as broad as CA 00 01 10 01 approved by the City Attorney and Risk Manager. Coverage shall be endorsed to stated that the City, its Council, boards and commissions, officers, employees, agents and volunteers shall be added as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible. Limits shall be no less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage. Starting and ending dates shall be concurrent. If Contractor owns no autos, a non-owned auto endorsement to the commercial general liability policy described above is acceptable.

Workers’ Compensation/Employers’ Liability. Workers' Compensation and Employer's Liability insurance are not required for single-person contractors. However, under California law these coverages (or a copy of the State's Consent to Self-Insure) must be provided if Contractor has any employees at any time during the period of this Agreement. Policy(s) shall be written on a policy form providing workers’ compensation statutory benefits as required by law. Employers’ liability limits shall be no less than one million dollars (\$1,000,000) per accident or disease and shall be scheduled under any umbrella policy described above. Unless otherwise agreed, policy(s) shall be endorsed to waive any right of subrogation as respects the City, its Council, boards and commissions, officers, employees, agents and volunteers.

Property Insurance. Property insurance, in a form and amount approved by the City Attorney and Risk Manager, is required for Contractors having exclusive use of premises or equipment owned or controlled by the City. City is to be named a Loss Payee As Its Interest May Appear in property insurance in which the City has an interest, e.g., as a lien holder. Fire damage legal liability is required for persons occupying a portion of City premises.

Errors and Omissions/Professional Liability. Errors and Omissions or professional liability coverage appropriate to Contractor's profession, in a form and amount approved by the City Attorney and Risk Manager, will be specified on a Service Order-specific basis if Contractor is working as a licensed professional. Contractor shall maintain such insurance for a period of five years following completion of work or services. Such insurance shall be in an amount of not less than one million dollars (\$1,000,000) per claim and in annual aggregate. Contractor shall maintain such insurance in place for a period of five years following completion of work or services provided under this Agreement. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than commencement of the work or services under this Agreement.

Contractor and City further agree as follows:

a) This Exhibit supersedes all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Exhibit.

b) Nothing contained in this Exhibit is to be construed as affecting or altering the legal status of the parties to this Agreement. The insurance requirements set forth in this Exhibit are intended to be separate and distinct from any other provision in this Agreement and shall be interpreted as such.

c) All insurance coverage and limits provided pursuant to this Agreement shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.

d) Requirements of specific coverage features or limits contained in this Exhibit are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

e) For purposes of insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or toward performance of this Agreement.

f) All general or auto liability insurance coverage provided pursuant to this Agreement, or any other agreements pertaining to the performance of this Agreement, shall not prohibit Contractor, Contractor's employees, or agents from waiving the right of subrogation prior to a loss. Contractor hereby waives all rights of subrogation against the City.

g) Unless otherwise approved by City, Contractor's insurance shall be written by insurers authorized and admitted to do business in the State of California with a minimum "Best's" Insurance Guide Rating of "A:VII." Self-insurance will not be considered to comply with these insurance specifications.

h) In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Contractor.

i) Contractor agrees to provide evidence of the insurance required herein, satisfactory to City Attorney and Risk Manager, consisting of certificate(s) of insurance evidencing all of the coverages required and an additional endorsement to Contractor's general liability and umbrella liability policies using ISO form CG 20 10 11 85. Certificate(s) are to reflect that the insurer will provide at least thirty days written notice of cancellation, material reduction in coverage or reduction in limits and ten days written notice for non-payment of premium. Contractor agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete

the word “endeavor” with regard to any notice provisions. Contractor agrees to provide complete copies of policies to City within ten days of City's request for said copies.

j) Contractor shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.

k) Any actual or alleged failure on the part of the City or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of City or any additional insured, in this or any other regard.

l) Contractor agrees to require all subcontractors or other parties hired for this Project to provide workers' compensation insurance as required herein and general liability insurance naming as additional insureds all parties to this Agreement. Contractor agrees to obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required here. Contractor agrees to require that no contract used by any subcontractor, or contracts Contractor enters into on behalf of City, will reserve the right to charge back to City the cost of insurance required by this Agreement. Contractor agrees that upon request, all agreements with subcontractors or others with whom Contractor contracts with on behalf of City, will be submitted to City for review. Contractor acknowledges that such contracts or agreements may require modification if the insurance requirements do not reflect the requirements herein. Failure of City to request copies of such agreements will not impose any liability on City, its Council, boards and commissions, officers, employees, agents and volunteers.

m) If Contractor is a Limited Liability Company, general liability coverage must be amended so that the Limited Liability Company and its Managers, Affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

n) Contractor agrees to provide immediate notice to City of any claim or loss against Contractor that includes City as a defendant. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.

o) Coverage will not be limited to the specific location or individual entity designated as the address of the Project. Contractor agrees to have its coverage endorsed so that all coverage limits required pursuant to this requirement are available separately for each and every location at which Contractor conducts operations of any type on behalf of City. Contractor warrants that these limits will not be reduced or exhausted except for losses attributable to those specific locations and not by losses attributable to any other operations of Contractor.

p) Contractor agrees not to attempt to avoid its defense and indemnity obligations to City, its Council, boards and commissions, officers, employees, agents and volunteers by using as a defense Contractor's statutory immunity under workers' compensation or similar statutes.

r) Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and that there will be no cross liability exclusions that preclude coverage for suits between Contractor and City or between City and any other insured or Named Insured under the policy, or between City and any party associated with City or its employees.

s) Contractor shall maintain commercial general liability, and if necessary, commercial umbrella liability insurance, with a limit of not less than two million dollars (\$2,000,000) each occurrence for at least three years following substantial completion of the work.

u) City reserves the right to modify the insurance requirements set forth herein in accordance with the terms of any specific Service Order issued as provided by the Agreement.

DRAFT

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
July 6, 2022

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-,
AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE TO ENTER
INTO A STANDARD VOLUNTARY AGREEMENT WITH THE
CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCE CONTROL AND
PAY ASSOCIATED FEES FOR THE CITY PARK BARRACKS AND
CYPRESS KNOLLS BUILDINGS BLIGHT REMOVAL 2022 PROJECT.**

RECOMMENDATION:

It is requested that the City Council consider adopting Resolution 2022- authorizing the City Manager, or his designee, to enter into a Standard Voluntary Agreement (SVA), **EXHIBIT A**, with the California Department of Toxic Substance Control (DTSC) and pay associated fees for the City Park Barracks and Cypress Knolls Buildings Blight Removal 2022 Project.

BACKGROUND:

The closure of Fort Ord resulted in land being deeded to the City of Marina in an “as-is” condition. The land contains numerous buildings that served the former Army base which have deteriorated since 1994 and need to be removed as part of the land redevelopment.

Some of the buildings are on property that the City will retain and must be removed or renovated for adaptive reuse. These include 62-65 barracks buildings and 260 duplex housing units on what was planned to be the Cypress Knolls development.

Although the Fort Ord Reuse Authority (FORA) sunsetted on June 30, 2020, FORA secured bond funding for blight removal prior to closure. Included in the bond funding are FORA bond trust funds allocated to the City amounting to \$8,561,968 and escrow bonds that are projected to generate \$6.5M in blight removal funding through 2025.

On September 15, 2020, October 27, 2020, and January 20, 2021, the Marina City Council adopted Resolution No. 2020-127, 2020-140 and 2021-11, respectively, receiving staff presentation on blight removal and blight removal projects and provides direction to staff on priorities for blight removal.

On May 4, 2021, the City Council passed Resolution No. 2021-42 approving amendment to the Program Management Services and Construction Management and Inspection between the City of Marina and Wallace Group, to add program management and construction management and inspection services for the execution of hazardous material abatement and blighted building removal projects.

The Wallace Group prepared bidding documents (plans, specifications, and estimates) for the blight removal project. The goal for this project is for the abatement, proper removal, and disposal of forty-five barracks and miscellaneous debris, including debris from two burnt buildings at the proposed City Park located along Second Avenue and 8th Street and thirty duplex buildings and miscellaneous debris including debris from one burnt building, at the Cypress Knoll area along Rendova Avenue and Third Avenue for future park and or residential development. Site plans are shown in **EXHIBITS B** and **C**.

On March 10, 2022, the City of Marina Planning Commission had an open public hearing and adopted Resolution No. 2022-05b, approving the removal of 34 trees at the proposed City Park at the Dunes location and five trees at the Cypress Knolls location in order to remove the blighted buildings. All healthy trees are to be replaced at 2:1 ratio.

Staff in consultation with DTSC determined that soil removal would be required at a greater depth to remediate lead in the soil adjacent to buildings to be removed. Due to additional depth of soil removal, additional tree removal was identified.

On June 9, 2022, the City of Marina Planning Commission had an open public hearing and adopted Resolution No. 2022-09, approving the removal of additional three trees for a total of thirty-five trees to be removed, and two potential additional trees for removal at the proposed City Park at the Dunes.

On March 15, 2022, the City Council passed Resolution No. 2022-43 approving advertising and call for bids for the City Park Barracks and Cypress Knolls Buildings Blight Removal 2022 Project. Eight bids were received on May 17, 2022, and are currently under review pending recommendation at a future City Council meeting.

ANALYSIS:

The two parcels, 031-201-005 (City Park) and 031-221-008 (Cypress Knolls), included in this project were part of the scope of the original Removal Action Work Plan (RAW; Northgate, 2006) for Soil Impacted by Lead-Based Paint at former Fort Ord, Marina, California. For these parcels to be used as residential or for a non-restricted use, the City must follow the approved remedy in the RAW from 2006 with the updated lead cleanup goal of 80 mg/kg.

The City must execute an SVA with the California Department of Toxic Substance Control (DTSC) and pay associated fees required for the City Park Barracks and Cypress Knolls Buildings Blight Removal 2022 Project. The SVA is pursuant to Health and Safety Code section 25355.5 (a)(1)(C), which authorizes DTSC to enter into an enforceable agreement to oversee investigation and/or remediation of a release or a threatened release of any hazardous substance at the site.

The purpose of this SVA is to allow the City to investigate, remediate and/or evaluate a release, a threatened release, or potential release of any hazardous substance at or from the site under the oversight of DTSC. The SVA also provides reimbursement to DTSC in the amount of \$39,936 for DTSC's oversight cost.

FISCAL IMPACT:

This action, authorizing the City Manager to enter into a Standard Voluntary Agreement (SVA), with DTSC and pay associated fees for the City Park Barracks and Cypress Knolls Buildings Blight Removal 2022 Project will have a fiscal impact in the amount of \$39,936.

Sufficient funding for this action has been allocated in Capital Improvement Project HSF2101 for Barracks Blight Removal with a funding amount of \$4,100,000 and HSF2103 for the Cypress Knolls Building Removal (Partial) with a funding amount of \$1,600,000 for a total project funding of \$5,700,000

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of Marina Planning Division determined that this action, authorizing the City Manager to enter into SVA with the California Department of Toxic Substance Control (DTSC) and pay associated fees for the City Park Barracks and Cypress Knolls Buildings Blight Removal 2022 Project is not a project under CEQA.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

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Project Management Services Wallace Group

REVIEWED/CONCUR:

Brian McMinn, P.E., P.L.S.
Public Works Director/City Engineer
City of Marina

Layne P. Long
City Manager
City of Marina