

REPORT

To the Honorable City Council
From the Mayor

August 28, 2006

Subject

Agreement for Consulting Services with W.H. Fawcett for consulting related to the City's interest in the restoration of Bair Island, and restoring public access to the levees in Redwood Shores.

Recommendation

Approve the Agreement for Consulting Services with W.H. Fawcett

Background

In May, 2003, the City hired William "Buzz" Fawcett, then with the lobbying firm of Perkins Coie, LLC, based in Washington DC,. His initial scope of work focused on determining the feasibility of developing a workable plan to address habitat and public access issues for the Redwood Shores levees. The contract was for a period of six months.

At the end of the six month period, after numerous stakeholder meetings and research Mr. Fawcett concluded that a workable plan could be developed which could balance a renewal of public access to the Redwood Shores levees, with species conservation and protection. The central concept relied upon looking at the larger ecosystem encompassing the entire Bair Island complex, the Redwood Shores levees, and the U.S. Fish and Wildlife Service's (FWS) intent to restore Bair Island to tidal wetlands/habitat.

In January of 2004, Council authorized a contract amendment with Mr. Fawcett in the amount of a \$7,500 per month retainer, with funding that had already been earmarked for Redwood Shores levees from GID 1-64 (General Improvement District), to pursue this work program. In June, 2005, Mr. Fawcett became a sole practitioner of his own firm, at which time the City retained him at a reduced monthly retainer of \$6,000 plus expenses. For several months in 2005, Mr. Fawcett did not invoice the City in anticipation of no immediate action during certain months while the Refuge and FWS were studying the Environmental Impact Statement (EIS) comments. The City Manager extended the agreement with Mr. Fawcett in June, 2006 for a period of three months.

From 2004 through the first half of 2006, Mr. Fawcett worked closely with the City Council's Ad Hoc Committee on Bair Island/Levees Land Access and City staff. The critical tasks focused on the dual goals of assuring continued public access to portions of Bair Island with appropriate facilities to accommodate that access, as part if its restoration by the federal government, and of gaining a return of public access to certain levees in the Redwood Shores area which are currently closed to public access. In brief, those critical tasks included (but were not limited to):

- Numerous meetings and work sessions with a wide variety of stakeholders, City staff, City's environmental and biological consultants, staff of federal and state elected officials, staff of state and federal agencies, and the Council's Ad Hoc Committee on Bair Island/Levees Land Access, taking place locally, in Sacramento, and in Washington, D.C.
- Researching and reviewing of federal and state documents, on-site studying and photographing of the refuge and adjoining properties, developing presentation materials for Council use
- Developing and processing of the *Redwood City Bair Island Restoration Plan*, for inclusion in the Environmental Impact Statement of the National Wildlife Refuge Service Restoration Plan for Bair Island Refuge.
- Meeting with Deputy Assistant Secretaries for Fish, Wildlife and Parks, Department of Interior, to brief them on the *Redwood City Plan*.
- Briefing the United States Secretary of the Interior Dirk Kempthorne on Redwood City's interests related to Bair Island restoration.

The timing of some critical elements of the project has largely been a function of the pace of activities on the part of the Fish and Wildlife Service (FWS) and the Don Edwards Refuge. Involvement of the federal government also added significant time delay. For example, the analysis of and completion of the Plan took nearly a year longer than anticipated. Nonetheless, the City has made good progress in its efforts, with Mr. Fawcett's assistance, toward its goals to support the restoration of Bair Island, ensure public access for the wide diversity of our region's communities, and restore public access to the levees in Redwood Shores.

The development of the *Redwood City Plan*, and the inclusion of nearly all of its elements into the Bair Island Restoration Final EIS, is a very noteworthy accomplishment. Another significant success is that Redwood City and the Port of Redwood City are now part of a larger collaboration that includes the U.S. Army Corp of Engineers, Bay Planning Coalition, Save the Bay, U.S. Fish and Wildlife Service, South Bayside System Authority (SBSA), and the offices of U.S. Senator Dianne Feinstein and U.S. Representative Anna Eshoo. Working together, this group's efforts to secure funding for restoration efforts, coordinate plans, and ensure that all the agencies and stakeholders are on the same page are yielding results that never would have been achieved without the development of the *Redwood City Plan* and Mr. Fawcett's assistance.

This is an extremely complex, multi-faceted project with critical elements locally, in Sacramento, and in Washington, D.C. Completion of the project will occur upon federal approval of the City's desired secondary public access bridge to Bair Island, and a request for a Corps of Engineers Permit for Construction for the bridge, and; the issuance of a new biological opinion on the Redwood Shores levees, and subsequent federal decision on a renewal of public access.

Over the next six-to-eighteen months the Council's Ad Hoc Committee on Bair Island/Levees Land Access anticipates the need for substantial negotiation and marshaling of efforts in both Sacramento and in Washington D.C., to assure further progress and completion of the City's objectives.

The Committee recommends that the City Council approve the attached Agreement for Consulting Services with W.H. Fawcett, to continue representing the City's interests, carry out necessary tasks, and move the project forward.

The specific tasks to be accomplished are outlined in the Scope of Services, included as Attachment "A" to the Agreement for Consulting Services. The Agreement is for a period of six months, at a monthly retainer of \$6,000 plus approved expenses. As part of each monthly invoice submitted to the City by the Consultant, a detailed overview of activities undertaken and time spent on those activities during that month will be required.

By the nature of this project, not all tasks in the Scope of Services can or are expected to be accomplished within the initial six-month period of this Agreement. Extensions of this Agreement may be made with City Council approval.

Alternative

- 1) The Council could choose not to approve this Agreement for Consulting Services, and direct the Ad Hoc Committee to develop an alternative strategy for achieving the City's objectives related to Bair Island and the Redwood Shores levees.
- 2) The Council could propose amendments to the Agreement for Consulting Services.

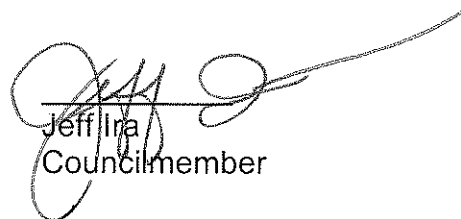
Fiscal Impact

The six-month cost of this agreement is \$36,000, plus approved expenses. Funding is from GID 1-64.



Barbara Pierce
Mayor

Rosanne Foust
Vice Mayor



Jeff Ira
Council member

Attachments

Draft Agreement for Consulting Services, including Scope of Services

**AGREEMENT FOR CONSULTING SERVICES
W.H. Fawcett**

THIS AGREEMENT is made and entered into as of the 28th day of August 2006, by and between the CITY OF REDWOOD CITY, a charter city and municipal corporation of the State of California ("City"), and W.H. Fawcett ("Consultant") (collectively, the "Parties").

RECITALS

A. City requires the professional services of a consultant that is experienced in the political and strategic elements of environmental restoration, urban wetlands, issues of public access to natural areas, and the operations, processes, and funding of the U.S. Fish and Wildlife Service and related agencies of the state and federal government, for the purposes of advancing the City's interests in assuring continued and future public access to portions of Bair Island and appropriate facilities to accommodate that access, as part of its restoration by the federal government, and of gaining a return of public access to certain levees in the Redwood Shores area which are currently closed to public access.

B. Consultant has worked extensively with the City on these issues since June, 2003 and has consistently exhibited the unique and necessary skills, knowledge, and experience in providing the desired and required professional services, strategy development and implementation, and overall counsel, guidance, and assistance related to the City's interests in the restoration of/public access to Bair Island, and public access issues on the levees in Redwood Shores.

C. Selection of Consultant is expected to achieve the desired results in an expedited fashion.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the Parties agree as follows:

1. Scope of Work. City retains Consultant to perform, and Consultant agrees to render, those services (the "Services") that are defined in Attachment "A," which is incorporated by this reference in accordance with this Agreement's terms and conditions.

2. Standard of Performance. While performing the Services, Consultant will exercise the reasonable professional care and skill customarily exercised by reputable members of Consultant's profession practicing in the Metropolitan Northern California Area, and will use reasonable diligence and best judgment while exercising its professional skill and expertise.

3. Term. Unless earlier terminated, the term of this Agreement will be effective for a period of six months from the date first above written. The City Council may amend the Agreement to extend it for additional six-month periods or parts thereof as deemed necessary. Extensions will be based upon a satisfactory review of Consultant's performance, City needs, and appropriation of funds by the City Council. The parties will prepare a written amendment indicating the effective date and length of any extension of this Agreement.

4. Schedule. Consultant will generally adhere to the schedule set forth in Attachment "A" hereof, attached hereto and by this reference incorporated herein; provided, that City will grant reasonable extensions of time for the performance of such services occasioned by unusually lengthy governmental reviews of Consultant's work product or other unavoidable delays occasioned by circumstances.

Consultant acknowledges the importance to City of City's project schedule and agrees to put forth its best professional efforts to perform the Services under this Agreement in a manner consistent with that schedule. City understands, however, that Consultant's performance must be governed by sound practices.

5. Time is of the Essence. Time is of the essence for each and every provision of this Agreement.

6. Compensation. The total fee payable for the Services to be performed during the term of this Agreement will be six-thousand dollars (\$6,000) per month in the form of a retainer, plus approved expenses. No other compensation for the Services will be allowed except for items covered by subsequent amendments to this Agreement.

Monthly payment will occur only after receipt by City of monthly invoices sufficiently detailed to include that month's relevant activities, time spent, and additional expenses for approval by City.

7. Status of Consultant. Consultant will perform the Services in Consultant's own way as an independent contractor and in pursuit of Consultant's independent calling, and not as an employee of City. The persons used by Consultant to provide services under this Agreement will not be considered employees of City for any purposes.

The payment made to Consultant pursuant to the Agreement will be the full and complete compensation to which Consultant is entitled. City will not make any federal or state tax withholdings on behalf of Consultant or its agents, employees or subcontractors. City will not be required to pay any workers' compensation insurance or unemployment contributions on behalf of Consultant or its employees or subcontractors. Consultant agrees to indemnify City within thirty (30) days for any tax, retirement contribution, social security, overtime payment,

unemployment payment or workers' compensation payment which City may be required to make on behalf of Consultant or any agent, employee, or subcontractor of Consultant for work done under this Agreement. At the City's election, City may deduct the indemnification amount from any balance owing to Consultant.

8. Subcontracting. Consultant will not subcontract any portion of the Services without prior written approval of City Manager or his/her designee. If Consultant subcontracts any of the Services, Consultant will be fully responsible to City for the acts and omissions of Consultant's subcontractor and of the persons either directly or indirectly employed by the subcontractor, as Consultant is for the acts and omissions of persons directly employed by Consultant. Nothing contained in this Agreement will create any contractual relationship between any subcontractor of Consultant and City. Consultant will be responsible for payment of subcontractors. Consultant will bind every subcontractor and every subcontractor of a subcontractor by the terms of this Agreement applicable to Consultant's work unless specifically noted to the contrary in the subcontract and approved in writing by City.

9. Other Consultants. The City reserves the right to employ other consultants in connection with the Services.

10. Indemnification. Consultant will defend, indemnify and hold harmless City and its officers, agents, employees and volunteers from and against all claims, damages, losses and expenses including attorney fees arising out of the performance of the Services, caused in whole or in part by the willful misconduct or any negligent act or omission of the Consultant, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of City.

The Parties expressly agree that any reasonable payment, attorney's fee, cost or expense City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense or cost for the purposes of this section, and that this section will survive the expiration or early termination of the Agreement.

11 Maintenance of Records. Consultant will maintain complete and accurate records with respect to costs incurred under this Agreement. All records will be clearly identifiable. Consultant will allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of records and any other documents created pursuant to this Agreement. Consultant will allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

12. Ownership Of Documents. All work product produced by Consultant or its agents, employees, and subcontractors pursuant to this Agreement is the property of City. In the event this Agreement is terminated, all work product produced by Consultant or its agents, employees and subcontractors pursuant to this Agreement will be delivered to City pursuant to the termination clause of this Agreement. Consultant will have the right to make one (1) copy of the work product for Consultant's records.

13. Copyrights. Consultant agrees that all copyrights that arise from the Services will be vested in City and Consultant relinquishes all claims to the copyrights in favor of City.

14. General Compliance with Laws. Consultant will keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Consultant, or in any way affect the performance of the Services by Consultant. Consultant will at all times observe and comply with these laws, ordinances, and regulations and will be responsible for the compliance of Consultant's Services with all applicable laws, ordinances and regulations.

15. Discrimination and Harassment Prohibited. Consultant will comply with all applicable local, state and federal laws and regulations prohibiting discrimination and harassment.

16. Termination. In the event of the Consultant's failure to prosecute, deliver, or perform the Services, City may terminate this Agreement for nonperformance by notifying Consultant in writing pursuant to the notice provisions of this Agreement. If City decides to abandon or indefinitely postpone the work or services contemplated by this Agreement, City may terminate this Agreement upon written notice to Consultant pursuant to the notice provisions of this Agreement. Termination will be effective immediately upon notification. Consultant has five (5) business days to deliver any documents owned by City and all work in progress to City address contained in this Agreement. If this agreement is terminated before the end of a month, the City will prorate the retainer and compensate the Consultant for that portion of the month that has passed prior to termination, plus any approved expenses to that date.

Either Party upon tendering thirty (30) days written notice to the other party may terminate this Agreement. In this event and upon request of City, Consultant will assemble the work product without charge and put it in order for proper filing and closing and deliver it to City. Consultant will be paid for work performed to the termination date; however, the total will not exceed the lump sum fee plus approved expenses payable under this Agreement. City will make the final determination as to the portions of tasks completed and the compensation to be made.

17. Covenants Against Contingent Fees. Consultant warrants that Consultant has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that Consultant has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, City will have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of the fee, commission, percentage, brokerage fees, gift, or contingent fee.

18. Claims And Lawsuits. By signing this Agreement, Consultant agrees that any Agreement claim submitted to City must be asserted as part of the Agreement process as set forth in this Agreement and not in anticipation of litigation or in conjunction with litigation. Consultant acknowledges that if a false claim is submitted to City by Consultant, it may be considered fraud and Consultant may be subject to criminal prosecution. Consultant acknowledges that California Government Code sections 12650 *et seq.*, the False Claims Act applies to this Agreement and, provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of information. If City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorney's fees. Consultant acknowledges that the filing of a false claim may subject Consultant to an administrative debarment proceeding as the result of which Consultant may be prevented to act as a Consultant on any public work or improvement for a period of up to five (5) years. Consultant acknowledges debarment by another jurisdiction is grounds for City to terminate this Agreement.

19. Jurisdiction and Venue. Any action at law or in equity brought by either of the Parties for the purpose of enforcing a right or rights provided for by this Agreement will be tried in a court of competent jurisdiction in the County of San Mateo, State of California, and the Parties waive all provisions of law providing for a change of venue in these proceedings to any other county.

20. Successors and Assigns. It is mutually understood and agreed that this Agreement will be binding upon the Parties and their respective successors. Neither this Agreement nor any part of it nor any monies due or to become due under it may be assigned by Consultant without the prior consent of City, which will not be unreasonably withheld.

21. Paragraph Headings. Paragraph headings as used herein are for convenience only and will not be deemed to be a part of such paragraphs and will not be construed to change the meaning thereof.

22. Entire Agreement. This Agreement, together with any other written document referred to or contemplated by it, along with the purchase order for this Agreement and its provisions, embody the entire Agreement and understanding between the parties relating to the subject matter of it. In case of conflict, the terms of the Agreement supersede the purchase order. Neither this Agreement nor any of its provisions may be amended, modified, waived or discharged except in a writing signed by both parties.

23. Authority. The individuals executing this Agreement and the instruments referenced in it on behalf of Consultant each represent and warrant that they have the legal power, right and actual authority to bind Consultant to the terms and conditions of this Agreement.

CITY: CITY OF REDWOOD CITY, a charter city and
municipal corporation of the State of California
1017 Middlefield Road
Redwood City, CA 94063

By: _____
Ed Everett, City Manager

ATTEST:

Patricia Howe, City Clerk

CONSULTANT: W.H. Fawcett
1667 K. St. N.W.
Suite 1220
Washington D.C. 20006

By: _____

Printed Name: W. H. Fawcett

Title: Principle

ATTACHMENT "A"
SCOPE OF SERVICES

By the nature of this project, not all tasks below can or are expected to be accomplished within the initial six-month period of this Agreement, or necessarily in the order presented. Based on the City's experience, it is likely there will be incidences of unavoidable delays at any one of the various levels of state and federal government involved. It is conceivable that one or more additional six-month extensions of this Agreement, upon City Council approval, will be required to bring this project to a conclusion.

This Scope of Services outlines the overall tasks necessary to accomplish the City's objectives of 1) assuring continued and future public access to portions of Bair Island, and the provision of appropriate facilities to accommodate that access, as part of its restoration by the federal government, and 2) gaining a return of public access to certain Redwood Shores' levees which are currently closed to public access.

Under the terms of this agreement, Consultant shall undertake the following tasks:

1. Federal Funding for Bair Island Public Access Elements
 - a. Work with the City and the Bair Island Task Force in seeking an appropriation for public access elements of the Bair Island Restoration Plan into the Department of Interior budget for Fiscal Year 2008, and seek out and pursue other federal appropriations strategies.
 - b. Work at the federal level to protect and secure Bair Island restoration funding from any political impediments.
2. Redwood Shores Levee Access
 - a. Work with Consultant's contacts to obtain their conceptual approval of the City's desired amendment of the biological opinion which predicated closure to public access of certain levees in Redwood Shores.
 - b. Schedule and attend meetings within the next six months in Sacramento with U.S. Fish and Wildlife Service (FWS) staff, coordinated with and accompanied by the City's environmental consultant, to obtain FWS' understanding and conceptual approval as to the general scope of the City's objectives and specific desires.
 - c. Prepare a formal proposal to amend the biological opinion.
 - d. Work with staff of the City and the South Bayside Systems Authority within the next six months to investigate the possibility of converting the area outside of that facility's new levee to tidal wetland, equating to more clapper rail habitat.
 - e. Plan and implement a specific strategy to obtain issuance of the final federal permits for the re-initiation of "*Consultation on Changed Circumstance*" with the accompanying new biological opinion on Redwood Shores levees, and/or issuance of a Corps of Engineers permit for levee

alteration with a new biological opinion.

3. Secondary Bridge Access/Airport Issues

- a. Plan and implement a strategy to obtain federal approval of the “northern” or secondary access bridge to Bair Island.
- b. Within the next six months, secure San Carlos Airport/San Mateo County and Federal Aviation Administration (FAA) concurrence with the concept of the northern bridge, including scheduling meetings with appropriate County/Airport and FAA staff, locally and in Washington, D.C. as needed, in order to gain approval to proceed with the northern bridge.
- c. Assist the City in identifying a suitable project sponsor for the northern bridge.
- d. Assist the City in gaining FWS acceptance of the northern bridge proposal.
- e. Assist the City and project sponsor in requesting a Corps of Engineers Permit for construction of the bridge, ensuring the alignment of the bridge site offers minimum disturbance of protected species.

4. General Tasks, and Reporting to City Council

- a. Represent the City’s interests and maintain a regular flow of information to Consultant’s contacts in the Department of the Interior, FWS, staff of the City’s federal legislative delegation, and other relevant contacts in Washington, D.C., Sacramento, and elsewhere on all elements of Redwood City’s objectives.
- b. Conduct various informational/strategy/consensus-building meetings with stakeholder groups with interests in Bair Island restoration/public access, Redwood Shores levee access, environmental issues, related aviation issues, special needs groups, education groups, and others as needed.
- c. Meet with City staff as needed for updates, planning, and strategy.
- d. As part of each monthly invoice submitted by Consultant, provide a detailed overview of activities undertaken and time spent on those activities during that month.