



## CITY OF ALBANY CITY COUNCIL AGENDA STAFF REPORT

Agenda Date: June 20, 2023  
Reviewed by: NA

**SUBJECT:** Albany Hill Eucalyptus Project (CIP No. 41015) – Award of Consulting Contract No. C23-40 for Development of the Albany Hill Forest Management and Habitat Restoration Plan

**REPORT BY:** Margot Cunningham, Natural Areas Coordinator  
Devora Zauderer, Public Works Program Manager  
Mark Hurley, Public Works Director

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### **SUMMARY**

The City of Albany's Albany Hill Eucalyptus Project (CIP No. 41015) was established on October 18, 2021. The issue before Council is to award Contract No. C23-40 to Restoration Design Group (RDG) in the not-to-exceed amount of \$158,848 for development of the Albany Hill Forest Management and Habitat Restoration Plan (Project). The Project is primarily funded by a State Coastal Conservancy Wildfire Resilience Program Grant, and no additional budget appropriations are recommended at this time.

### **STAFF RECOMMENDATION**

That the Council adopt Resolution No. 2023-48, authorizing the City Manager to award Contract No. C23-40 to RDG for development of the Albany Hill Forest Management and Habitat Restoration Plan, in the not-to-exceed amount of \$158,848, using funds previously appropriated for the Albany Hill Eucalyptus Project (CIP No. 41015).

### **BACKGROUND**

In the Fall of 2020, staff noticed a sudden decline in the health of many of the Eucalyptus trees on Albany Hill, matching the observations of other professionals in other East Bay communities. That following winter and spring, staff partnered with researchers at UC Berkeley and the US Forest Service's Pacific Southwest Research Station, who collected samples and performed in-depth scientific analysis.

On June 7, 2021, City Council received a [report](#) on the status of the condition of Blue Gum Eucalyptus on Albany Hill. At that time staff showed Council photos of the declining trees on the hill. Staff reported that they had retained a consulting arborist (SBCA Tree Consulting) to

conduct an inspection of trees near roads and trails to evaluate the near-term risk to residences, vehicles, and passers-by. The arborist submitted a [report](#) to staff on July 23, 2021.

Staff also briefed Council about the study sampling declining eucalyptus for pathogens by researchers from UC Berkeley. The sampling study was reported to the Parks Recreation and Open Space Commission at their [May 2021 meeting](#). Results of the [pathogen study](#) became available on September 21, 2021.

On October 18, 2021 staff [updated](#) the Council on the findings of the following reports: Albany Hill Eucalyptus Tree Survey from SBCA Tree Consulting, Eucalyptus Dieback Report from UC Berkeley, and Water Stress Readings Report from Cal Fire. Staff also provided an update on studies on fuel loads and monarch habitat. At that meeting Council adopted [Resolution No. 2021- 105](#), authorizing establishment of the Albany Hill Eucalyptus Project (CIP No. 41015) and appropriating \$100,000 from remaining Measure R capital funds for the project.

On May 2, 2022 Council adopted [Resolution No. 2022-41](#), which authorized staff to submit an application to the Coastal Conservancy for a Wildfire Resilience Grant in the amount of \$230,000 for the Albany Hill Eucalyptus Project (CIP No. 41015) and associated activities. On September 22, 2022 the Coastal Conservancy [awarded](#) the City the grant in full.

Staff presented findings from a [higher-level tree assessment](#), conducted by McNeil Arboriculture Consultants, at the May 12, 2022 Parks Recreation and Open Space Commission meeting as well as an overall update on activities on Albany Hill.

At the December 8, 2022 Parks Recreation and Open Space Commission meeting staff shared findings from the almost-completed fire fuel load and expanded monarch habitat studies as well as an overall update on the activities on Albany Hill.

Earlier this year the City received completed studies on [fire fuel load risk](#) and [assessment of monarch habitat](#) on all open spaces of Albany Hill. The results of these studies, which will be incorporated into Plan development as well as inform the City's ongoing vegetation management activities, will be presented to Council in July.

## **DISCUSSION**

As outlined in the Albany Hill Eucalyptus Project (CIP Project No. 41015) the City seeks to develop a plan for phased removal of dead and declining eucalyptus trees. This plan will include but is not limited to: plantings of other tall trees in areas of the hill where monarchs have traditionally clustered; survey of the existing native understory which will be allowed to grow after eucalyptus removal; and analysis and design of additional plantings of Albany Hill-sourced native plants. This project element includes CEQA (California Environmental Quality Act) analysis and compliance as necessary.

On March 28, 2023, the City sent out a Request for Proposals on the Albany Hill Forest Management and Habitat Restoration Plan, and on April 19, 2023 the City received and opened three (3) proposals for the development of the Project.

Staff reviewed the three bids as shown below:

Bidder	Bid Amount
LSA Associates, Inc. with subconsultants Spatial Informatics Group LLC, Wildland Res Mgt, AIM Consulting	\$169,944
Restoration Design Group (RDG) with subconsultant Nomad Ecology	\$158,848
RECON Environmental	\$59,206

Staff interviewed two firms and based on quality of responsiveness, relevance of previous projects, knowledge of Albany Hill and the community of Albany, project management expertise, and thoughtfulness of approach to the Project, selected the proposal from Restoration Design Group (RDG)/Nomad Ecology.

### **SUSTAINABILITY CONSIDERATIONS**

The project is consistent with the goals, policies, and actions of the following plans:

*City of Albany Climate Action and Adaptation Plan 2019*, Goal 3: Increase resilience of natural lands and systems. Approach: Manage, restore, and partner to foster resilient natural landscapes. Action 4.3.2: Continue to manage wildfire risk by implementing vegetation management and fuel reduction programs.

*Albany 2035 General Plan, Parks, Recreation, and Open Space Element:*

Action PROS-1.B: Creekside Master Plan Implementation: Implement the open space management recommendations of the 2012 Creekside Master Plan, including vegetation management, trail improvements, signage and other park improvements

Policy PROS-3.7: Vegetation Management: Ensure that park landscaping and maintenance practices are consistent with City policies to reduce wildfire hazards and manage vegetation. These practices should also reinforce City programs to conserve water, promote Bay-friendly landscaping such as native, non-invasive, drought- tolerant plants, and use reclaimed water for irrigation

*Albany 2035 General Plan, Conservation and Sustainability Element:*

Policy CON-1.3: Conservation of Albany Hill: Protect and restore natural features, native vegetation, and wildlife on Albany Hill.

Policy CON-2.5: Albany Hill Vegetation Management: Protect the remaining native plant communities on Albany Hill. Vegetation on the Hill should be managed in a way that gradually reduces the extent of the eucalyptus forest and encourages native plants to return.

Action CON-2.D: Creekside Master Plan Implementation: Implement the vegetation management prescriptions of the Albany Hill Creekside Master Plan, and periodically update the Plan as conditions change.

Action CON-2.G: Native Plant Restoration: Preserve and enhance native plant communities in the city while encouraging the control or removal of invasive and non-native species.

Policy CON-5.3: Monarch Butterfly Roosting: Consider potential impacts to Monarch butterfly roosting sites on Albany Hill in any future applications for development, park expansion, trail construction, and fuel reduction on the Hill.

Action CON-5.D: Monarch Butterfly Surveys: For construction projects that would affect eucalyptus, pine, and cypress groves during the period between September and March, require pre-construction surveys by a qualified biologist to determine if roosting Monarch butterflies are present. In the event winter colonies are identified, require appropriate measures to avoid impacts, such as postponing tree removal until butterflies have left or by designating buffer areas around the affected trees.

## **SOCIAL EQUITY AND INCLUSIVITY CONSIDERATIONS**

Development of the Albany Hill Forest Management and Habitat Restoration Plan will involve soliciting feedback from community members and organizations through multiple avenues of community outreach. In addition, the City and Consultant will engage members of the Sogorea Te and Lisjan Ohlone in Plan development.

Ongoing vegetation management work by the Watershed Stewardship Restoration Field Crew of Urban Tilth is critical to keeping Albany Hill safe from fire hazards as well as helping to restore ecosystems on the hill. Their Watershed Stewardship Program employs and empowers young adults who live in Richmond and surrounding communities. Development of the Plan will create future work for the Urban Tilth crew in planting and maintenance of vegetation communities on the hill.

## **CITY COUNCIL STRATEGIC PLAN INITIATIVES**

Goal 1: Advance Climate Action & Adaptation

Goal 6: Increase Public Health, Safety & Resiliency

## **FINANCIAL CONSIDERATIONS**

The Albany Hill Eucalyptus Project (CIP No. 41015), as noted previously, was established in October 2021 and budget was appropriated from local Lighting & Landscaping Assessment District 1996-1 (LLAD 1996-1, Measure R) fund balance. Additionally, the City applied for and was awarded a Wildfire Resilience Program Grant from the State Coastal Conservancy for the Albany Hill Eucalyptus Project (CIP No. 41015) as well as associated activities.

<u>Funding Sources</u>	<u>Amount</u>	<u>Resolution No.</u>
2302 Measure R – Open Space Capital Funds	\$100,000	2021-105
1506 Grant Funds	\$230,000	2022-41
<b>Total</b>	<b>\$330,000</b>	

The Coastal Conservancy-approved budget for the grant funds is as follows. (Table 2)

<u>Task Number</u>	<u>Task Title</u>	<u>Grant Funds</u>	<u>Description</u>
1	Project Management	\$0	Staff Time – In Kind (Public Works)
2	<b>Forest Management &amp; Habitat Restoration Plan Development</b>	<b>\$140,000</b>	<b>CIP No. 41015</b>
3	Fire Safety Maintenance	\$60,000	Urban Tilth Contract Extension
4	Education & Research	\$30,000	Habitat Restoration Internship Program & Sogorea Te/Lisjan Partnership
	<b>Total Grant Funds:</b>	<b>\$230,000</b>	

Additionally, \$12,194 of the allocated LLAD 1996-1 (Measure R) budget for CIP No. 41015 has been expended to date, with \$87,806 remaining.

The contract recommended for award in this staff report is within the appropriated LLAD 1996-1 and grant funded project budget, including contingency, and no further appropriations are recommended at this time.

**Attachments**

1. Resolution No. 2023-48
2. Consultant’s Contract No. C23-40
3. Restoration Design Group Proposal





**CONTRACT #C23-40  
AGREEMENT FOR CONSULTANT SERVICES  
BETWEEN  
THE CITY OF ALBANY  
AND  
RESTORATION DESIGN GROUP (RDG)**

**FOR PROJECT: ALBANY HILL FOREST MANAGEMENT AND HABITAT  
RESTORATION PLAN**

This AGREEMENT FOR CONSULTANT SERVICES ("AGREEMENT"), is made and entered into this \_\_\_ day of \_\_\_\_\_ 2023 by and among the City of Albany a California charter city ("CITY") and Restoration Design Group, Inc. (RDG), a California corporation ("CONSULTANT").

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

**SECTION 1. TERM OF AGREEMENT.**

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

**SECTION 2. SCOPE OF SERVICES.**

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

**SECTION 3. ADDITIONAL SERVICES.**

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



#### **SECTION 4. COMPENSATION AND METHOD OF PAYMENT.**

Subject to any limitations set forth in this AGREEMENT, CITY agrees to pay CONSULTANT the amounts specified in EXHIBIT "B" "COMPENSATION" and made a part of this AGREEMENT. The total compensation, including reimbursement for actual expenses, shall not exceed \$158, 848 unless additional compensation is approved in writing by the City Council or City Manager.

Each month CONSULTANT shall furnish to CITY an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by sub-category), travel, materials, equipment, supplies, sub-consultant contracts and miscellaneous expenses. CITY shall independently review each invoice submitted by the CONSULTANT to determine whether the work performed and expenses incurred are in compliance with the provisions of this AGREEMENT. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth below. In the event any charges or expenses are disputed by CITY, the original invoice shall be returned by CITY to CONSULTANT for correction and resubmission.

Except as to any charges for work performed or expenses incurred by CONSULTANT which are disputed by CITY, CITY will use its best efforts to cause CONSULTANT to be paid within thirty (30) days of receipt of CONSULTANT's invoice.

Payment to CONSULTANT for work performed pursuant to this AGREEMENT shall not be deemed to waive any defects in work performed by CONSULTANT.

#### **SECTION 5. INSPECTION AND FINAL ACCEPTANCE.**

CITY may inspect and accept or reject any of CONSULTANT's work under this AGREEMENT, either during performance or when completed. CITY shall reject or finally accept CONSULTANT's work within sixty (60) days after submitted to CITY. CITY shall reject work by a timely written explanation, otherwise CONSULTANT's work shall be deemed to have been accepted. CITY's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of CONSULTANT's work by CITY shall not constitute a waiver of any of the provisions of this AGREEMENT including, but not limited to, SECTIONS 15 and 16, pertaining to indemnification and insurance, respectively.

#### **SECTION 6. OWNERSHIP OF DOCUMENTS.**

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by CONSULTANT in the course of providing any services pursuant to this AGREEMENT shall become the sole property of CITY and may be used, reused or otherwise disposed of by CITY without the permission of the CONSULTANT. Upon

completion, expiration or termination of this AGREEMENT, CONSULTANT shall turn over to CITY all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

## **SECTION 7. CONSULTANT'S BOOKS AND RECORDS.**

CONSULTANT shall maintain any and all documents and records demonstrating or relating to CONSULTANT's performance of services pursuant to this AGREEMENT. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to CITY pursuant to this AGREEMENT. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by CONSULTANT pursuant to this AGREEMENT. Any and all such documents or records shall be maintained for three years from the date of execution of this AGREEMENT and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon written request by CITY or its designated representative. Copies of such documents or records shall be provided directly to the CITY for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.

(c) Where CITY has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of CONSULTANT's business, CITY may, by written request, require that custody of such documents or records be given to the requesting party and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to CITY, as well as to its successors-in-interest and authorized representatives.

## **SECTION 8. STATUS OF CONSULTANT.**

(a) CONSULTANT is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of CITY. CONSULTANT shall have no authority to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against CITY, whether by contract or otherwise, unless such authority is expressly conferred under this AGREEMENT or is otherwise expressly conferred in writing by CITY.

(b) The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and

control. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that CONSULTANT or any of CONSULTANT's officers, employees or agents are in any manner officials, officers, employees or agents of CITY.

(c) Neither CONSULTANT, nor any of CONSULTANT's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to CITY'S employees. CONSULTANT expressly waives any claim CONSULTANT may have to any such rights.

#### **SECTION 9. STANDARD OF PERFORMANCE.**

CONSULTANT represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this AGREEMENT in a thorough, competent and professional manner. CONSULTANT shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this AGREEMENT, CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of CONSULTANT under this AGREEMENT.

#### **SECTION 10. COMPLIANCE WITH APPLICABLE LAWS, PERMITS, AND LICENSES.**

CONSULTANT shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this AGREEMENT. CONSULTANT shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this AGREEMENT. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.

CONSULTANT shall obtain and maintain in full force and effect during the term of this AGREEMENT a Business License from the CITY's Finance Department. Provide City of Albany Business License number and Expiration Date on Page 11 of this contract.

#### **SECTION 11. NONDISCRIMINATION.**

CONSULTANT shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with or related to the performance of this AGREEMENT.

## **SECTION 12. UNAUTHORIZED ALIENS.**

CONSULTANT hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et M., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should CONSULTANT so employ such unauthorized aliens for the performance of work and/or services covered by this AGREEMENT, and should any liability or sanctions be imposed against CITY for such use of unauthorized aliens, CONSULTANT hereby agrees to and shall reimburse CITY for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by CITY.

## **SECTION 13. CONFLICTS OF INTEREST.**

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

(b) CITY understands and acknowledges that CONSULTANT is, or may be, as of the date of execution of this AGREEMENT, independently involved in the performance of non-related services for other governmental agencies and private parties. CONSULTANT is unaware of any stated position of CITY relative to such projects. Any future position of CITY on such projects shall not be considered a conflict of interest for purposes of this section.

## **SECTION 14. CONFIDENTIAL INFORMATION AND RELEASE OF INFORMATION.**

(a) All information gained or work product produced by CONSULTANT in performance of this AGREEMENT shall be considered confidential, unless such information is in the public domain or already known to CONSULTANT. CONSULTANT shall not release or disclose any such information or work product to persons or entities other than CITY without prior written authorization from the City Administrator, except as may be required by law.

(b) CONSULTANT, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of CITY, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work

performed under this AGREEMENT. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives CITY notice of such court order or subpoena.

(c) If CONSULTANT, or any officer, employee, agent or subcontractor of CONSULTANT, provides any information or work product in violation of this AGREEMENT, then CITY shall have the right to reimbursement and indemnity from CONSULTANT for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of CONSULTANT's conduct.

(d) CONSULTANT shall promptly notify CITY should CONSULTANT, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this AGREEMENT and the work performed thereunder. CITY retains the right, but has no obligation, to represent CONSULTANT or be present at any deposition, hearing or similar proceeding. CONSULTANT agrees to cooperate fully with CITY and to provide CITY with the opportunity to review any response to discovery requests provided by CONSULTANT. However, this right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response.

## **SECTION 15. INDEMNIFICATION.**

(a) To the fullest extent permitted by law, CITY and its elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "INDEMNITEES") shall have no liability to CONSULTANT or any other person for, and CONSULTANT shall indemnify, defend, protect and hold harmless INDEMNITEES from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "CLAIMS"), which INDEMNITEES may suffer or incur or to which INDEMNITEES may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of or allegedly caused by the CONSULTANT's performance of or failure to perform any services under this AGREEMENT or by the negligent or *willful* acts or omissions of CONSULTANT, its agents, officers, directors, subcontractors or employees, committed in performing any of the services under this AGREEMENT except CLAIMS caused by the sole negligence or willful misconduct of INDEMNITEES.

(b) If any action or proceeding is brought against INDEMNITEES by reason of any of the matters against which CONSULTANT has agreed to indemnify INDEMNITEES as provided above, CONSULTANT, upon notice from CITY, shall defend INDEMNITEES at CONSULTANT's expense by counsel acceptable to CITY, such acceptance not to be unreasonably withheld. INDEMNITEES need not have first paid for any of the matters to which INDEMNITEES are entitled to indemnification in order to

be so indemnified. The insurance required to be maintained by CONSULTANT under SECTION 16 shall ensure CONSULTANT's obligations under this section, but the limits of such insurance shall not limit the liability of CONSULTANT hereunder. The provisions of this section shall survive the expiration or earlier termination of this AGREEMENT.

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

#### **SECTION 16. INSURANCE.**

CONSULTANT agrees to obtain and maintain in full force and effect during the term of this AGREEMENT the insurance policies set forth in EXHIBIT "C" "INSURANCE" and made a part of this AGREEMENT. All insurance policies shall be subject to approval by CITY as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Administrator. CONSULTANT agrees to provide CITY with copies of required policies upon request.

#### **SECTION 17. ASSIGNMENT.**

The expertise and experience of CONSULTANT are material considerations for this AGREEMENT. CITY has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon CONSULTANT under this AGREEMENT. In recognition of that interest, CONSULTANT shall not assign or transfer this AGREEMENT or any portion of this AGREEMENT or the performance of any of CONSULTANT's duties or obligations under this AGREEMENT without the prior written consent of the CITY. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this AGREEMENT entitling CITY to any and all remedies at law or in equity, including summary termination of this AGREEMENT. CITY acknowledges, however, that CONSULTANT, in the performance of its duties pursuant to this AGREEMENT, may utilize subcontractors.

#### **SECTION 18. CONTINUITY OF PERSONNEL.**

CONSULTANT shall make every reasonable effort to maintain the stability and continuity of CONSULTANT's staff assigned to perform the services required under this AGREEMENT. CONSULTANT shall notify CITY of any changes in CONSULTANT's

staff assigned to perform the services required under this AGREEMENT, prior to any such performance.

#### **SECTION 19. TERMINATION OF AGREEMENT.**

(a) CITY may terminate this AGREEMENT, with or without cause, at any time by giving thirty (30) days written notice of termination to CONSULTANT. In the event such notice is given, CONSULTANT shall cease immediately all work in progress.

(b) CONSULTANT may terminate this AGREEMENT at any time upon thirty (30) days written notice of termination to CITY. In the event such notice is given, CONSULTANT shall cease immediately all work in progress.

(c) If either CONSULTANT or CITY fail to perform any material obligation under this AGREEMENT, then, in addition to any other remedies, either CONSULTANT, or CITY may terminate this AGREEMENT immediately upon written notice.

(d) Upon termination of this AGREEMENT by either CONSULTANT or CITY, all property belonging exclusively to CITY which is in CONSULTANT's possession shall be returned to CITY. CONSULTANT shall furnish to CITY a final invoice for work performed and expenses incurred by CONSULTANT, prepared as set forth in SECTION 4 of this AGREEMENT. This final invoice shall be reviewed and paid in the same manner as set forth in SECTION 4 of this AGREEMENT.

#### **SECTION 20. DEFAULT.**

In the event that CONSULTANT is in default under the terms of this AGREEMENT, the CITY shall not have any obligation or duty to continue compensating CONSULTANT for any work performed after the date of default and may terminate this AGREEMENT immediately by written notice to the CONSULTANT.

#### **SECTION 21. EXCUSABLE DELAYS.**

CONSULTANT shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of CONSULTANT. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of CITY, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this AGREEMENT shall be equitably adjusted for any delays due to such causes.

#### **SECTION 22. COOPERATION BY CITY.**

All public information, data, reports, records, and maps as are existing and available to CITY as public records, and which are necessary for carrying out the work as outlined in the EXHIBIT "A" "SCOPE OF SERVICES", shall be furnished to CONSULTANT in





this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

#### **SECTION 27. WAIVER**

Waiver by any party to this AGREEMENT of any term, condition, or covenant of this AGREEMENT shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this AGREEMENT shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this AGREEMENT. Acceptance by CITY of any work or services by CONSULTANT shall not constitute a waiver of any of the provisions of this AGREEMENT.

#### **SECTION 28. LAW TO GOVERN; VENUE.**

This AGREEMENT shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in Alameda County. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Northern District of California, in San Francisco.

#### **SECTION 29. CLAIMS.**

All claims arising out of or related to this agreement must be presented not later than six (6) months after the accrual of the cause of action. Such claims shall be governed by the provisions of the Albany Municipal Code and such claims shall further be governed by the provisions of section 930.4 of the Government Code for the purposes of filing leave to present a later claim. It is further provided that subdivision (b) of section 911.4 sections 911.6 to 912.2, inclusive and section 946.6 are applicable to all such claims, and the time specified in this agreement shall be deemed the "time specified" in section 911.2 within the meaning of sections 911.6 and 946.6.

#### **SECTION 30. W-9 FORM**

Complete the attached EXHIBIT "D W-9 FORM" that will be removed from this contract and forwarded to our Finance Department for use during invoice processing.

#### **SECTION 31. ENTIRE AGREEMENT.**

This AGREEMENT, including the attached EXHIBITS "A" through "D", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between CONSULTANT and CITY prior to the execution of this AGREEMENT. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding. No

amendment to this AGREEMENT shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

**SECTION 32. SEVERABILITY.**

If any term, condition or covenant of this AGREEMENT is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this AGREEMENT shall not be affected thereby and the AGREEMENT shall be read and construed without the invalid, void or unenforceable provision(s).

**IN WITNESS WHEREOF**, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

**CITY OF ALBANY: (#C23-40)**

**CONSULTANT:**

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

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

Name:

Title:

Date \_\_\_\_\_

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

Name:

Title:

City of Albany Business License

**BL #** \_\_\_\_\_

Expiration Date:

\_\_\_\_\_

**ATTEST:**

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

Date \_\_\_\_\_



# ALBANY HILL FOREST MANAGEMENT AND HABITAT RESTORATION PLAN

## A. SCOPE OF SERVICES

### Project Understanding

The City is facing safety risks due to dead and dying eucalyptus trees on Albany Hill and wants to remove most, if not all, of them on City property near roads and trails. However, since the hill is a habitat for overwintering Monarchs, replacement trees will need to be planted in areas where the butterflies gather and nearby windbreak locations. The City also wants to encourage and supplement native plant communities after the Eucalyptus removal.

The City seeks a comprehensive plan for the removal of 300+ eucalyptus trees on Albany Hill and the restoration of habitat for monarchs and native plants in a way that creates self-sustaining ecosystems with low fire hazards and minimal maintenance requirements.

The project breaks down to a few key efforts:

1. Distill the existing information into a straw proposal plan (Task 2)
2. Incorporate additional expert perspectives (Task 2)
3. Educate the public (Task 3)
4. Verify that the plan is consistent with the will of the public (Task 3 and 4)
5. Produce construction documents and maintenance plans to implement the project (Task 5)
6. Key issues for each Task are described in the scope below.

The approach toward the eucalyptus removal will be to initially assume removal of all 300+ recommended trees. RDG and Nomad's focus will be on revising this plan based on the needs of the fire department, Monarch butterflies, accepted input from stakeholders, any need for phasing due to cost, biological needs, community preferences, and aesthetic concerns.

The existing studies suggest not using herbicides and given the City's Integrated Pest Management Policy, it may be the preference of the City as well. RDG and Nomad both recommend thoughtful and limited application of herbicides to remaining stumps. Continued mechanical removal of sprouts is labor intensive, requires trampling of restored areas for years post-removal, and generally has a low success rate. We are open to either approach but acknowledge our preference.

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The restoration plan will require creative work. For the health and success rate of the plants and for ease of weeding and management, we recommend patch planting around remaining oaks, toyon, or new trees planted to serve the Monarchs. This combines a passive restoration approach that will encourage the remaining native trees, now exposed to much greater sunlight, to flourish with an active and managed restoration that establishes native plant communities. Young or newly planted oaks have a much higher success rate when co-planted with baccharis and other appropriate native vegetation. This patch approach also facilitates maintenance by focusing the initial maintenance efforts around identified patches that are easy to locate and manage.

RDG is currently working with Urban Tilth to contract grow, install, and maintain native riparian vegetation on a riparian habitat project in west Contra Costa County. We believe that Albany Hill would be another excellent opportunity for Urban Tilth to grow, install, and maintain restoration plantings. They are already actively maintaining trails and vegetation on Albany Hill, their nursery has increased its capacity to contract grow at this scale, and the benefits of employing local youth and young adults in the restoration and stewardship of their lands are numerous. RDG is prepared to draft construction documents and maintenance plans for staff, contractors, volunteers, and/or Urban Tilth. We offer the idea but defer to the City's preference.

### **Task 1 - Project Management**

**Task Approach and Key Issues:** Task Approach and Key Issues: Frequent check-ins and clear communication are of paramount importance to any project. RDG's proximity to the project site and the City's offices, as well as our facility with MS Teams, Zoom, and other online meeting and discussion tools simplifies communication with the City. RDG uses company-wide project management software to allocate our staffing resources, establish and adhere to project schedules, and communicate directly with the City. RDG will provide the project schedule, invoices, and reporting using a live link to this comprehensive system.

1. RDG will prepare the work plan and project schedule and provide a link to the City to view and interact with the schedule. This link will remain active allowing RDG and the City to collaborate on changes in the project schedule. RDG will submit the project schedule and work plan to the City for approval prior to the first invoice.
2. RDG will coordinate other project activities, such as site visits, meetings, and administrative tasks, including monthly invoicing and accompanying progress report reflecting work completed with the invoice.
3. Periodically update the work plan, detailing tasks and milestones to track progress.

## Deliverables:

- Project schedule (via link) and project work plan (Word)
- Monthly invoices and progress reporting (PDF)
- Updates to project schedule (via link)

## Task 2 - Analysis of Current Situation

**Task Approach and Key Issues:** The outcome of Task 2 will be a straw proposal plan based on existing studies and RDG/Nomad's expertise in the subject area. This will be used to initial discussions with City staff, the City fire department, and the Monarch butterfly specialist.

RDG and Nomad will review the documents provided during the proposal process prior to the first meeting with the parties identified below. If desired, RDG can host these and other relevant documents online where they can be conveniently accessed (via passcode) by project partners.

Coordinating with the Natural Areas Coordinator, Fire Department Staff, and consulting Monarch biologist will be critically important to developing the plan. The work done to date lays out a fairly clear directive for eucalyptus removal but that will need to be nuanced and revised to incorporate the needs and interests of the City, its fire department, and the Monarchs. RDG will meet with each party three times to 1) understand their objectives and constraints early in the process, 2) review the draft plan, 3) review draft construction documents and maintenance plan. Meetings 1 and perhaps 2 will likely occur prior to any public outreach described in Task 3 (except perhaps the tribal consultation). Meetings may be in person in the City of Albany or online. Nomad will meet with the Natural Areas Coordinator at least twice (once on site) and will be available for coordination and input/advice on biological issues. Nomad will also be available to meet with and/or coordinate with the City of Albany fire department and the Monarch Biologist.

1. RDG will review and evaluate all relevant documents listed in Background section of the RFP. RDG will determine how information in them can further the Statement of Purpose and inform development of Plans.
2. RDG will coordinate with City staff and partners as follows:
  - a. Natural Areas Coordinator on locations and status of native plants and native plant habitats on the hill.
  - b. Fire Department staff on best practices for fire hazard reduction.
  - c. Consulting monarch biologist on tree removal plans in and near monarch overwintering habitat. Coordinate with consulting monarch biologist on appropriate replacement trees to plant for optimal monarch overwintering habitat.

RDG shall meet with each of these staff and partners throughout plan development three times: in the beginning of plan development, in the middle of plan development, and towards the end of plan development. RDG will prepare meeting notes documenting the information discussed in the various meetings.

RDG will solicit LiDAR data from the Monarch Biologist and prepare a base plan for the project. If the data is not adequate, RDG will use available County LiDAR and aerial photographs to prepare the baseplan.

### **Deliverables:**

- Document review and meetings as described above
- Meeting notes (PDF)
- Base plan based on available LiDAR

### **Task 3 - Stakeholders Engagement and Community Outreach**

**Task Approach and Key Issues:** This is perhaps the most critically important task in the project. It involves both educating the public and accepting input from the public on the direct of the plan.

As stated above, the existing studies lay out a fairly clear directive for eucalyptus removal and through Task 2, the City will incorporate fire and Monarch concerns. However, the City will want to incorporate the perspectives and concerns of the Lisjan-Ohlone tribe, the Albany population at large, the Parks, Recreation, and Open Space Commission, and the City Council into the final plan for Albany Hill.

As RDG has discovered on other similar projects, there is not broad concurrence with eucalyptus removal in the East Bay. Many people resist the removal of *any* trees. Others are fond of eucalyptus. Depending on the City's approach to post removal treatment (pruning new sprouts vs. herbicide) people may have concerns regarding either. People may also be concerned with the aesthetics of the tree removal. The project will modify the profile of one of the most well-known landmarks in the City which could also cause concern.

For the July City Council meeting, RDG will prepare and present a PowerPoint presentation to the City Council that describes the reports completed to date, the driving issues, the known constraints on site, and other characterizations of the site, the various challenges, and possible outcomes.

RDG will prepare an evolving presentation that clearly communicates the risks associated with the existing eucalyptus trees, the protections provided to the Monarchs, the risks of not acting on sick and failing trees, and the benefits of the proposed habitat restoration plan. RDG will ensure that the concepts are communicated in a way that the lay person can understand and engage with, including compelling graphics, basic maps, and simple language. This presentation will evolve as the plan evolves so that by the time RDG and City staff present to City Council, the will of the community, the Lisjan-Ohlone tribe, and the Parks,

Recreation, and Open Space Commission will already be described and reflected in the plan.

Note that RDG has worked closely with the Amah Mutsen, Graton Rancheria, Quartz Valley Indian Reservation, Keruk, and other tribes to plan habitat restoration projects. We look forward to working with the Lisjan-Ohlone.

1. RDG will support staff in outreach to and engagement with members of the community with diverse backgrounds and needs to solicit feedback to inform goals for the Plans. Outreach methods may include up to 4 in-person gatherings, such as field trips, attendance at community events, or workshops.
2. RDG will consult with Lisjan-Ohlone tribal representatives for inclusion of culturally significant native plants in Habitat Restoration Plan.
3. Assist staff in presenting draft plans and providing technical expertise to Parks Recreation and Open Space Commission for discussion/modification of plans (minimum of 2 presentations) and in presenting final plan and providing technical expertise to City Council for adoption.

Nomad will provide biological input as needed for stakeholder engagement and community outreach. This may include reviewing any materials prepared by RDG, providing input on Eucalyptus removal and herbicide use native plant protection, or wildlife protection. Nomad will provide photos and text for RDG to include in presentation materials. Nomad will review presentation materials for biological accuracy.

### **Deliverables:**

- Presentation to the City Council in July 2023
- Presentation development and revisions (PPI)
- 4 in-person gatherings with Albany community
- Consultation with Lisjan-Ohlone tribal s
- 2 Parks, Rec & Open Space Commission presentations
- 1 City Council presentation

### **Assumptions:**

- The City will schedule, notice, and organize the logistics for all meetings.

## **Task 4 - Plan Development**

**Task Approach and Key Issues:** The key to plan development is to integrate the knowledge and recommendations from all the various sources: existing studies and reports, City staff knowledge and preferences, fire department needs and concerns, Monarch butterfly specialists, the professional experience of RDG and Nomad, Lisjan-Ohlone tribal representatives, the Albany community, the Parks, Recreation, and Open Space Commission, and finally the City Council. There will be

contradictory recommendations that RDG and Nomad will work with staff to resolve and select the appropriate path forward.

As part of the effort to refine the many options, RDG and Nomad will prepare three alternative approaches that blend the science, City policy, and stakeholder opinions with City budget and schedule constraints. The plan development will dovetail with the outreach (Task 3) so that the public and other stakeholders have an opportunity to weigh in on preferred approaches.

RDG will develop up to three alternative approaches for removing dead and dying eucalyptus trees and restoring native plant habitat and monarch habitat in areas where trees are removed.

A critical issue will be phasing. The bird nesting season and the Monarch butterfly over-wintering season collectively cover nearly the entire year. Identifying the best time to remove certain trees and the best time to project certain areas from impacts will be an important component of these alternatives.

Each alternative shall include the following elements:

1. A priority of trees designated for removals, such as removal of most hazardous trees first.
2. Recommendations for treatment, disposal, and/or reuse of eucalyptus logs and other debris after felling. If chipping is recommended, describe areas for spreading and depth of chips.
3. Identification of staging requirements including proposed areas within Albany Hill.
4. A high-level schedule identifying major work items and expected duration for each as well as an optimal start time considering biological resources and weather.
5. Description of measures to protect biological resources, including nesting birds, native plants, and monarchs.
6. Discuss safety plans, including provisions for minimizing fire hazards during work.
7. Description of habitat preservation and enhancement approach, including these elements:
  - a. Protect the native plant understory.
  - b. Replant trees for monarch overwintering habitat near to and in areas where they have traditionally clustered.
  - c. Augment existing native plants populations with additional Albany Hill-sourced native plants, including those important to the culture of Lisjan-Ohlone People.
  - d. Create habitat with minimal fire hazards.
  - e. Protect soils and minimize erosion.



## 8. Budgetary costs

Nomad will contribute to the Plan Development for up to three alternative approaches for removing dead and dying eucalyptus trees and restoring native plant habitat and monarch habitat in areas where trees are removed. Nomad will review the draft Plan prepared by RDG and provide text for specific sections including:

- Recommendations for treatment, disposal, and/or reuse of Eucalyptus logs and other debris after felling. If chipping is recommended, describe areas for spreading and depth of chips.
- Description of measures to protect biological resources, including nesting birds, native plants, and monarchs.
- Description of habitat preservation and enhancement approach, including protecting the native plant understory, replanting trees for monarch overwintering habitat near to and in areas where they have traditionally clustered, and augmenting existing native plants populations with additional Albany Hill sourced native plants, including those important to the culture of Lisjan-Ohlone People.

### **Deliverables:**

- 3 alternative plans (map and accompanying text descriptions for each)
- One meeting with City

## **Task 5 - Implementation Documents**

**Task Approach and Key Issues:** The goal of Task 5 will be to produce construction documents and a maintenance plan that communicate the specifics of the Plan to a public bid contractor. Ninety-five percent of RDG's design projects are within the public sphere and we excel at producing accurate bid documents that allow contractors to accurately bid for the project and reduce the potential for change orders.

RDG will also produce a maintenance plan for either the City, a contractor, volunteers, or another party to maintain the restored habitat. RDG has developed maintenance plans for post-eucalyptus removal oak woodland habitat restoration sites for East Bay Regional Park District staff and riparian habitat maintenance plans for creeks all over the Bay Area.

Based on feedback from the City, RDG shall develop a completed set of implementation plans and specifications for one preferred alternative including drawings detailing removals, restoration, erosion control, a maintenance plan for restored areas and detailed cost estimate.

Nomad will provide input as needed on the set of implementation plans prepared by RDG. Nomad will provide input as needed for details and specifications detailing removals, restoration, and maintenance for restored areas.

**Deliverables:**

- Draft (90%) implementation plans (PDF)
- Draft (90%) specifications (Word)
- Draft (90%) estimate (XLS)
- Draft maintenance plan (Word)
- One review meeting with City
- Final implementation plans (PDF)
- Final specifications (PDF)
- Final estimate (XLS)
- Final maintenance plan (PDF)

**Assumptions:**

- City or other party will provide topographic survey for the project base plan, if necessary
- City or other party will provide georeferenced tree locations, if necessary
- Scope and fee does not include permitting or CEQA support
- SWPPP not included in scope (assumed to be completed by the selected contractor)

# B. FEE PROPOSAL

Exhibit B

	Restoration Design Group				Nomad Ecology				TOTAL	
	E. Stromberg	A. Swinehart	R. Walking	Various	E. McDermott	D. Terry				
	Principal Landscape Architect	Landscape Architect	Planning Director	Landscape Designer	Sr. Biologist	Sr. Biologist		Fully Loaded		
	\$ 175	\$ 150	\$ 150	\$ 125	Subtotal	\$ 120	\$ 120	Subtotal	10%	
<b>Task 1. Project Management</b>										
Work plan/work schedule	8									
Project coordination	40					8				
Monthly invoices/reporting			6							
Updates to work plan	4									
Subtotal hours	52	0	6	0		8	0			
Subtotal fee	\$ 9,100	\$ -	\$ 900	\$ -	\$ 10,000	\$ 960	\$ -	\$ 960	\$ 1,056	\$ 11,056
<b>Task 2. Analysis of Current Situation</b>										
Document review/Site Visit	20	16		12		10	10			
Coordination with Natural Areas Coordinator	12	8		16		12	12			
Coordination with Fire Department Staff	12	8		16		4	4			
Coordination with Monarch Biologist	12	8		16		8	8			
Base Plan	4			16						
Subtotal hours	60	40	0	76		34	34			
Subtotal fee	\$ 10,500	\$ 6,000	\$ -	\$ 9,500	\$ 26,000	\$ 4,080	\$ 4,080	\$ 8,160	\$ 8,976	\$ 34,976
<b>Task 3. Stakeholders Engagement and Community Outreach</b>										
City Council Presentation	2	12	4	8						
Presentation development and revisions	4	4	8	24		8	16			
4 in-person gatherings	24	8	16	8						
Consultation with Lisjan-Ohlone tribal representatives	8		12	12						
2 Parks, Rec & Open Space Commission presentations	12		8							
1 City Council presentation	4		4	8						
Subtotal hours	54	24	52	60		8	16			
Subtotal fee	\$ 9,450	\$ 3,600	\$ 7,800	\$ 7,500	\$ 28,350	\$ 960	\$ 1,920	\$ 2,880	\$ 3,168	\$ 31,518
<b>Task 4. Plan Development</b>										
3 alternative plans	60	24	16	120		50	20			
Meeting with City to select preferred plan	8	2		8						
Subtotal hours	68	26	16	128		50	20			
Subtotal fee	\$ 11,900	\$ 3,900	\$ 2,400	\$ 16,000	\$ 34,200	\$ 6,000	\$ 2,400	\$ 8,400	\$ 9,240	\$ 43,440
<b>Task 5. Implementation Documents</b>										
Draft implementation plans, specifications, and estimate	24			60		16	6			
Draft maintenance plan	20	8		40						
1 review meeting with City	3			3						
Final implementation plans, specifications, and estimate	20			40						
Final maintenance plan	8			20						
Subtotal hours	75	8	0	163		16	6			
Subtotal fee	\$ 13,125	\$ 1,200	\$ -	\$ 20,375	\$ 34,700	\$ 1,920	\$ 720	\$ 2,640	\$ 2,904	\$ 37,604
<b>Expenses</b>										
Mileage					\$ 200			\$ 49.00	\$ 54	\$ 254
<b>TOTAL</b>					\$ 133,450			\$ 25,397.90	\$ 158,848	



# Restoration Design Group Fee Schedule

2023

<b>Classification</b>	<b>Hourly Rate</b>
RDG Principal	\$200
Principal Civil Engineer	\$200
Principal Landscape Architect	\$175
Director	\$150
Junior Civil Engineer	\$125
Associate/Landscape Designer	\$125
Expert Witness/Testimony	\$300
Mileage	\$.655/mile

10% mark-up on all approved direct costs.

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