

CITY OF MARINA
REQUEST FOR QUALIFICATIONS
FOR
CONSTRUCTION MANAGEMENT
AND
CONSTRUCTION SUPPORT SERVICES
FOR THE
IMJIN PARKWAY IMPROVEMENT PROJECT



APPROVED BY:

A handwritten signature in black ink, appearing to read "B. McMinn", is written over a horizontal line.

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

1. INTRODUCTION

The City of Marina (City) is seeking submittals of qualifications and fees for the purpose of selecting a consultant for construction management and construction support services for the Imjin Parkway Improvement Project (Project).

The services to be provided by the selected consultant will be comprehensive and complete construction management services, including all professional services consistent with the industry-accepted role of Construction Manager for the construction of the Project. This shall include providing all services necessary to administer the construction contract in accordance with Caltrans Construction Manual and Construction Procedure Directives. Construction management and construction support work shall be performed in accordance with the tasks as described in the Caltrans Work Breakdown Structure.

The Imjin Parkway Improvement Project will widen the existing two-lane Imjin Parkway from Imjin Road to Reservation Road into a four-lane facility with a raised median separating the two directions of traffic, along with Class II bicycle lanes in both directions. Four roundabouts will be constructed at the intersections of Imjin Parkway with Imjin Road, Marina Heights Drive, Abrams Drive, and Preston Drive. The existing traffic signal at Imjin Parkway and Reservation Road will include modifications. A Class I pedestrian and bicycle path will be constructed along the north side of the road. The Project also includes retaining walls at locations along the corridor to support the new roadway improvements and drainage improvements.

This Project will be funded with Local and State dollars requiring the Consultant to follow all pertinent local, State, and Federal laws and regulations.

The proposals submitted in response to this RFP will be used as a basis for selecting the Consultant for this project. The Consultant's proposal will be evaluated and ranked according to the criteria provided in this RFP.

Addenda to this RFP, if issued, will be sent to all prospective Consultants the City of Marina has specifically e-mailed a copy of the RFP to and will be posted on the City of Marina's website at: <https://cityofmarina.org/1136/Imjin-Parkway-Widening-Project>

It shall be the Consultant's responsibility to check the City of Marina's website to obtain any addenda that may be issued.

Proposals received after the time and date specified in the RFP will be considered nonresponsive and will be returned to the Consultant.

Any proposals received prior to the time and date specified above may be withdrawn or modified by written request of the Consultant. To be considered, however, the modified Proposal must be received prior to the due date/time identified in the RFP.

Unsigned proposals or proposals signed by an individual not authorized to bind the prospective Consultant will be considered nonresponsive and rejected.

This RFP does not commit the City of Marina to enter into an agreement, to pay any costs incurred in the preparation of a proposal for this request, or to procure services. The City of Marina reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified Consultant, or to modify or cancel in part or in its entirety the RFP if it is in the best interests of the City to do so. Furthermore, a decision to enter into an agreement may not be made based solely on price.

The prospective Consultant is advised that should this RFP result in recommendation to enter into an agreement, the agreement will not be in force until it is approved and fully executed by the City of Marina.

All products used or developed in the execution of any agreement resulting from this RFP will remain in the public domain at the completion of the agreement.

Any questions related to this RFP shall be submitted in writing to the attention of Brian McMinin via email at bmcminin@cityofmarina.org. Questions shall be submitted before **5:00 PM on Monday, October 25th, 2021**.

No oral question or inquiry about this RFP shall be accepted.

2. PROJECT DESCRIPTION

PROJECT OVERVIEW

The City of Marina (City), with funding and assistance from the California Department of Transportation (Caltrans) District 5, and the Countywide Transportation Safety & Investment Plan (Measure X) proposes to provide improvements to Imjin Parkway from Reservation Road west to Imjin Road. The Imjin Parkway Improvement Project (project) would improve traffic operations, as well as improve pedestrian and bicycle access, and safety. The purpose of the proposed project is to provide multimodal improvements to relieve congestion, thereby improving the flow of traffic along Imjin Parkway as well as pedestrian and bicycle access to the project area. The proposed project would accommodate anticipated multimodal transportation increases by providing capacity for all travel modes, improving transit access and throughput, providing designated facilities separate from vehicular traffic for pedestrians and bicycles, providing one additional lane of travel to passenger cars and trucks in each direction, improving intersection capacity, reducing overall delays, and improving safety.

PROPOSED IMPROVEMENTS

The existing two-lane roadway with Class II bicycle lanes would be widened into a four-lane facility with a raised median separating the two directions of traffic and Class II bicycle lanes in both directions. The existing profile of the roadway will generally be maintained, with areas where it will be raised or lowered by a maximum of four feet. The travel lanes will be 11-feet wide, and the bicycle lanes will be five-feet-wide with a three-foot striped buffer from the travel way. The two directions of traffic will be separated by a six-foot-wide median. To accommodate the widening, existing slopes would need to be excavated and laid back. Retaining walls would be placed where needed to keep fill slopes within the right-of-way (ROW), or where needed to avoid impacts to existing features. Bioretention areas would be located along both sides of the roadway just beyond the edge of the pavement. A hot mix asphalt dike and/or concrete curbs and gutters with gaps to allow for water to leave the roadway and enter the bioretention area would be located adjacent to the roadway. Other drainage improvements would consist of inlets and pipes, requiring excavation up to ten feet in depth.

Four new roundabouts would be constructed at the intersections of Imjin Parkway with Imjin Road, Marina Heights Drive, Abrams Drive,

and Preston Drive. The existing traffic signal at Imjin Parkway and Reservation Road will include modifications. The intersection bus stops (bus pull-outs) would be located along the corridor in both directions, with new pedestrian facilities to facilitate Americans with Disabilities Act (ADA)-accessible pedestrian access to the bus stops.

A new Class I pedestrian and bicycle lane would be constructed along the north side of Imjin Parkway from Imjin Road to Reservation Road, closing a gap in the existing pedestrian and bike network. The trail would consist of an asphalt concrete surface with a crushed-rock shoulder. It would be constructed to a maximum width of up to 10 feet with 2 foot left and right shoulders. The proposed project would provide for pedestrian crossings to the south side of Imjin Parkway at three intersections—Imjin Parkway/Imjin Road, Imjin Parkway/Abrams Drive, and Imjin Parkway/Reservation Road—in part to provide access to new transit facilities. The existing Class II on-street bicycle lanes would be maintained, thereby providing cyclists with options for either the Class I or Class II bicycle lanes. The new Class I facility, new bus pull-outs, and the pedestrian improvements would provide secure and efficient access to these new bus pull-outs and along the corridor.

3. PROPOSED SCOPE OF SERVICES

Consultant shall provide all professional services consistent with the industry-accepted roles of Construction Manager for the construction of the Project. This shall include providing all services necessary to administer the construction contract in accordance with Caltrans Construction Manual and Construction Procedure Directives. Construction management and construction support work shall be performed in accordance with the tasks as described in the Caltrans Work Breakdown Structure.

Consultant shall generally provide resources fully equipped to ensure the project is constructed in accordance with the Plans, Specifications, and Estimates and in compliance with laws, funding requirements, and other project constraints. Anticipated resources include Resident Engineer, Assistant Resident Engineer, Office Engineer, Qualified Inspectors (e.g.: Materials, Electrical, Structural, Roadway), Scheduler, Outreach Communication Coordinator, Materials Testing, and Claims Expert to effectively administer the project through completion.

Subconsultants are anticipated for surveying, materials testing, and environmental monitoring and mitigation compliance.

This work shall include, but not be limited to:

- Review resident engineer files for completeness and errors.
- Conduct a biddability and constructability review of the plans and specifications ahead of bid opening. Prepare addendum as needed to implement changes prior to bid opening.
- Coordinate with the engineer of record to prepare addendum addressing bidder questions and/or clarifications to the bid package.
- Conduct pre-bid conferences and coordinate responses to bidder inquiries. Review bids, bid bonds, insurance certificates and related submittals. Assist in the review of qualified bidders. Assist in the acceptance of bids.
- Verify that necessary documents, including but not limited to permits, agreements, easements, temporary construction easements, and/or property rights have been secured and/or in place prior to construction contract award, and are accurately included and described in the contract documents.
- Set-up, maintain, and update as needed a public information website. Website should contain project information including status, upcoming work and closures, and schedule status.
- Prepare construction press releases for public consumption, to be communicated through media and reports in coordination with TAMC.
- Perform field inspection activities, monitor contractor's performance, and enforce all requirements of applicable codes, specifications, and contract drawings.
- Perform all construction administrative activities, including correspondence, construction phase records (e.g. diaries, requests for information, notice of potential claims, statement of working days, project photos), accounting, document tracking (e.g., requests for information, change orders), and document

control. Prepare plans and specifications to support change order.

- Prepare and maintain resident engineer's file in an audit-ready state.
- Manage coordination among City of Marina, the contractor, and stakeholders, including but not limited to: Monterey County, United States Army/Fort Ord, California State University: Monterey Bay, and Caltrans.
- Convene and host regular coordination meetings of an inter-agency task force.
- Respond to questions from the public, and coordinate project tours, as needed.
- Manage job site safety.
- Review and monitor the construction schedule. Develop alternative schedules to expedite the work, monitor and evaluate the contractor's progress, and evaluate construction claims.
- Review submittals (e.g. detours and staging plans) from the contractor and oversee the submittal process including obtaining necessary approvals from the designer and other impacted stakeholders as may be required.
- Evaluate, negotiate, recommend, and prepare change orders. Provide complete management of the change order process, including issuing approvals for change orders up to agency-provided maximum threshold.
- Prepare and recommend progress payments.
- Prepare time impact analysis for any changes in working days related to changed conditions.
- Monitor the Contractor's compliance with apprenticeship requirements.
- Provide environmental monitoring as required by the project's environmental document (CEQA) and various regulatory agency permits, and to confirm mitigation compliance.
- Perform labor compliance and field reviews to ensure compliance with prevailing wage requirements. May also include review of contractor's certified payroll, labor interviews, etc.
- Ensure contractor's compliance with the requirements of the state and local agencies, including encroachment permits,

regulatory permits, business licenses, regulations, etc. Provide proactive on-site coordination with utility owners and construction contractors. Coordinate installation and testing services with the utility owners and contractors, as needed. Coordinate with resource agencies as needed to demonstrate compliance with regulatory permits and regulations.

- Update and Implement Quality Assurance Program and ensure all reports, calculations, measurements, test data and other documentation on forms specified by or otherwise acceptable to the City of Marina and Caltrans.
- Schedule, manage, perform, and document all field and laboratory testing services. Material testing shall conform to the requirements and frequencies as defined in the CALTRANS Construction Manual and the CALTRANS Materials Testing Manuals and the City Quality Assurance Program.
- Provide final inspection services, including testing and installed facilities.
- Provide specialty material testing and source inspection & testing required for materials and equipment manufactured off-site.
- Review the contractor's red-line as-built plans and ensure that the red-line changes are incorporated by the design engineer into the final electronic version of the as-built plans.
- Procure agency-furnished items to minimize schedule and cost impacts to the project.
- Obtain and manage storage, control inventory, and release of materials to contractors in a secure and timely fashion.
- Perform project closeout activities, including preparation of the final construction project report, and filing of the notice of completion as necessary. "Project Closeout" is defined as all owner agencies accepting their respective improvements, and acceptance/approval of the project by all regulatory and resource agencies having jurisdiction over the project.
- Host and/or facilitate meetings including preparation of all materials and staffing as may be required (e.g., contractor progress meeting, partnering sessions, stakeholder progress meetings and/or field visits, resource agency site visits, and outreach to impacted property owners/communities done in conjunction with the City of Marina).
- As may be required, consultant shall secure special permits, fees, and insurance to access worksite.

- Participate in weekly construction meetings with the contractor, and weekly meetings with the City of Marina Project Manager.

Minimum Qualifications of Personnel: The Consultant shall meet the appropriate minimum qualifications as required enter into an agreement.

Equipment Requirements: Consultant shall provide the necessary equipment, tools and supplies to provide the required services. This may include cell phones, laptops, vehicles equipped for construction activities, laths, manuals, office supplies, safety gear, etc. These may be considered as reimbursable other direct costs if not already included in consultant overhead.

The contractor will provide an office space for use by the Consultant.

Schedule: The anticipated Project schedule is:

- November-December 2021 – Project Advertisement
- February 2022 – Project Award
- Summer 2022 – Start of Construction
- Summer 2024 – End of Construction

Quality Control/Assurance Measures: Implementing and maintaining quality control procedures to manage conflicts, ensure product accuracy, and identify critical reviews and milestones. Also, provide knowledge, experience, and familiarity Quality Control and Quality Assurance (QC/QA) for California Test Methods and laboratory.

Materials to be provided by the Agency: Unless otherwise specified in the agreement, the Consultant shall provide all materials to complete the required work in accordance with agreement. Materials (if deemed applicable, necessary, and when available from the City) that may be furnished or made available by the City and where listed in the agreement, are for the Consultant's use only, shall be returned at the end of the term of the agreement.

Conflict of Interest Requirements: Throughout the term of the agreement, any person, firm or subsidiary thereof who may provide, has provided or is currently providing Design Engineering Services and/or Construction Engineering Services under a contractual relationship with a construction contractor(s) on any local project listed in this Scope of Work must disclose the contractual relationship, the dates and the nature of the services. The prime consultant and its subconsultants shall also disclose any financial or business relationship with the construction contractor(s) who are

working on the projects that are assigned for material Quality Assurance services under the agreement.

Similar to the disclosures regarding contractors, all firms are also required to disclose throughout the term of the agreement, any Design Engineering services including claim services, Lead Project Management services and Construction Engineering Services provided to all other clients on any local project listed in this Scope of Work.

In addition to the disclosures, the Consultant shall also provide possible mitigation efforts, if any, to eliminate or avoid any actual or perceived conflicts of interest.

The Consultant shall ensure that there is no conflict before providing services to any construction contractor on any of the agency's projects listed in this Scope of Work. The submitted documentation will be used for determining potential conflicts of interest.

If a Consultant discovers a conflict during the execution of the agreement, the Consultant must immediately notify the Contract Manager regarding the conflicts of interest. The Contract Manager may remove from the agreement and scope of services involving the conflict of interest and may obtain the conflicted services in any way allowed by law. Failure by the Consultant to notify the Contract Manager may be grounds for termination of the agreement.

Some examples of conflict of interest are the following:

- Certified Materials Tester(s) or Plant Inspector(s) from the same company that performs Quality Control for the Contractor and Quality Assurance for the City of Marina on the same project.
- Providing services to construction contractor's subcontractors, fabricators, equipment installer, material suppliers and other firms associated with the projects listed in the Contract can be a potential conflict of interest when such contractor teams are identified.

4. SUBMITTAL

A. Submittal contents

1. One envelope or package clearly marked on the exterior as to the title of this solicitation, "Proposal" and due date/time.

Contents:

- a. Proposal - six bound hard copies, one unbound hard copy, and one electronic copy in PDF format on a thumb drive.

Your proposal should contain the following information in the order listed:

- 1. Introductory Letter:** The letter shall be on Consultant letterhead and include the Consultant's contact name, mailing address, telephone number, facsimile number, and email address. The letter will address the Consultant's understanding of the services being requested and any other pertinent information the Consultant believes should be included. All addendums received must be acknowledged in the transmittal letter.

The letter shall be wet-signed in blue ink by the individual authorized to bind the Consultant to the proposal.

- 2. Executive Summary**

- 3. Consultant Information, Qualifications, and Experience:** **The City of Marina will** only consider submittals from Consultants that demonstrate they have successfully completed comparable projects. These projects must illustrate the quality, type, and past performance of the project team. Submittals shall include a detailed description of a minimum of three (3) projects within the past five (5) years, along with resumes of all key staff proposed for this work. Provide resumes and references for all key team members. Resumes shall show relevant experience, for the Project's Scope of Work, as well as the length of employment with the proposing Consultant. Key members, especially the Project Manager, shall have significant demonstrated experience with this type of project, and should be committed to stay with the project for the duration of the project.

4. Organization and Approach: Describe the roles and organization of your proposed team for this project. Indicate the composition of subcontractors and number of project staff, facilities available and experience of your team as it relates to this project. Describe your project and management approach. Provide a detailed description of how the team and scope of work will be managed. Describe the roles of key individuals on the team.

5. Scope of Work

1. Include a detailed Scope of Work Statement describing all services to be provided.
2. Describe project deliverables for each phase of your work.
3. Describe your cost control and budgeting methodology for this project.
4. Provide responses to the following:
 - a. Describe critical engineering design issues associated with the project and how you will address these.
 - b. Describe critical environmental issues and how you will address these.
 - c. How cost and schedule could be minimized.

6. Conflict of Interest Statement: The proposing Consultant shall disclose any financial, business or other relationship with the [local agency] that may have an impact upon the outcome of the contract or the construction project. The Consultant shall also list current clients who may have a financial interest in the outcome of this contract or the construction project that will follow. The proposing Consultant shall disclose any financial interest or relationship with any construction company that might submit a bid on the construction project.

7. Litigation: Indicate if the proposing Consultant was involved with any litigation in connection with prior projects. If yes, briefly describe the nature of the litigation and the result.

8. Non-Discrimination Clause and Statement of Compliance: The proposing Consultant shall review the non-discrimination clause and sign the statement of compliance form attached to this RFP as **Exhibit A**.

9. Contract Agreement: Indicate if the proposing Consultant has any issues or needed changes to the proposed contract agreement included as **Exhibit B**. Include any issues or needed changes in the sealed cost proposal envelope.

The Consultant shall provide a brief statement affirming that the proposal terms shall remain in effect for ninety (90) days following the date proposal submittals are due.

An agreement will not be entered into with a consultant without an adequate financial management and accounting system as required by 48 CFR Part 31 and 2 CFR Part 200.

b. Cost Proposal – one copy

The consultant performs the services stated in the agreement for an agreed not-to-exceed amount as compensation, including a fee or profit.

In order to assure that the City of Marina is able to acquire professional services based on the criteria set forth in the Brooks Act and Government Code 4526, the proposal shall include a cost proposal for each service of the proposal. Proposing Consultants will be

required to submit certified payroll records, as required. Cost proposal shall be submitted in a separate sealed envelope from the proposal. The cost proposal is confidential and will be unsealed after all proposals have been reviewed, and most qualified consultant has been selected. Consultant and all sub-consultants must submit their cost proposal in **Caltrans Exhibit 10-H** form.

Selected Consultant shall comply with Chapter 10.1.3 of the Local Assistance Procedures Manual regarding the A&E Consultant Contract Audit and Review process.

B. Due Date/Time

Proposals will be received by the City's Public Works Department, until **5:00 p.m., Monday, November 1, 2021**. Submit proposal packet to:

Brian McMinn
Public Works Department
City of Marina
211 Hillcrest Avenue
Marina, CA 93933

5. PROCEDURES AND EVALUATION OF QUALIFICATIONS

A. Evaluation Criteria

An evaluation committee comprised of City staff and other stakeholders will review and evaluate technical qualifications against the following criteria:

1. Understanding of the City's Goals and Unique Nature of the Project (5% of selection consideration): Based on the information provided by the City and past experience in Marina, does the consultant understand the unique nature of Marina and of the Project?
2. Construction Manager (50% of selection consideration): Does the Construction Manager understand the Project? Does the assigned person have the requisite education, experience, and

professional qualifications to successfully manage the construction of the Project?

3. Familiarity with Locality (5% of selection consideration): Does the consultant have familiarity with the City and the Project area necessary to successfully deliver the Project? How close are the consultant's permanent offices to the Marina Peninsula? (Preference is to local or near-local consultants).
4. Specific Management Approach (10% of selection consideration): How does the consultant intend to achieve the City's budget and time goals for the Project? How will the consultant apply its management techniques and resources?
5. Experience (5% of selection consideration): Has the consultant demonstrated the ability to successfully provide services for the construction of projects of a similar complexity and nature as described herein?
6. Organization (10% of selection consideration): Are the qualifications of the consultant's personnel suitable for the execution of the services required; and, does the consultant's organizational structure show sufficient depth for its present workload?
7. Reputation (10% of selection consideration): Are the consultant's references from past clients and associates favorable; and, does the consultant show financial and operational stability?
8. Services Offered (5% of selection consideration): Does the consultant offer the breadth and quality of services required for construction management?

B. Procedures

1. At completion of the review process, consultants will be ranked, and the most highly qualified ones will be placed on a short list for further evaluation. The City reserves the right to waive interviews and enter into an agreement with the highest ranked consultant.

2. Should a short list be prepared, the consultants on the short list will be invited for an interview and presentation process that will aid in making a final selection, as the City deems necessary. Interviews are tentatively scheduled for **Friday, November 19th, 2021**. The presentation and interview session will not exceed one hour per proposer. Following the presentations/interviews, the evaluation committee will complete its ranking.
3. Fee negotiations begin with the highest ranked consultant. The final scope of services and cost proposal shall be established by mutual agreement between the City and the consultant. If no agreement can be reached, the first ranked consultant will be excused, and fee negotiations will begin with the second ranked consultant. This procedure will be followed until a proposer is selected.
4. Once a final selection is made, staff may elect to refine the scope of services and the fees with the selected consultant.
5. The City Council will authorize entering into an agreement with the best qualified consultant at a not to exceed cost mutually agreed upon by the City and consultant, and a formal agreement will be entered into by the consultant and the City.
6. The City of Marina reserves the right to reject any and all submittals and to reissue its request for qualifications. The City reserves the right to cancel resulting agreements at any point and pay the consultant only for costs incurred to that point and for work completed which is usable by the City as determined by the City.

6. POINT OF CONTACT

Interested consultants desiring additional information are asked to contact the City of Marina's Public Works Office, 211 Hillcrest Avenue, Marina, CA 93933 at (831) 884-1212.

Primary point of contact: Brian McMinn, Public Works Director/City Engineer.

7. GENERAL

- A. The period of service required will be three (3) years from the date of agreement execution. The period of service can be amended for time extension, if the City deems necessary.
- B. The draft form of agreement for is attached as **Exhibit B**.

EXHIBIT A

NON-DISCRIMINATION CLAUSE AND
STATEMENT OF COMPLIANCE
(Must be signed and included with proposal)

NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE

The following language shall be incorporated into any agreement entered between CONSULTANT'S and the CITY. The signature of the authorized representative for the firm submitting a statement of qualifications acknowledges that the firm has reviewed the Non-Discrimination Clauses and Statements of Compliance and consents to inclusion in all contracts related to on-call professional services with the CITY.

- A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants 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. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. CONSULTANT and subconsultants 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 LOCAL AGENCY 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. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY 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 LOCAL AGENCY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under

EXHIBIT B

EXAMPLE OF CITY OF MARINA PROFESSIONAL SERVICES AGREEMENT

CITY OF MARINA
AGREEMENT FOR CONSTRUCTION MANAGEMENT AND CONSTRUCTION
SUPPORT SERVICES FOR THE IMJIN PARKWAY IMPROVEMENT PROJECT

THIS AGREEMENT is made and entered into on _____, 2021, by and between the City of Marina, a California charter city, hereinafter referred to as the "City," and _____, a California _____, 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 construction management and construction support services for the Imjin Parkway Improvement Project, hereinafter referred to as the "Project."
- B. Contractor represents and warrants that it has the qualifications, experience and personnel necessary to properly perform the services as set forth herein.
- C. Consultant represents that it has the degree of specialized expertise contemplated within California Government Codes §§37103 and 53060 and holds all necessary licenses to practice and perform the services herein contemplated.
- D. 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. With prior written notice to Contractor, City may elect to delete certain tasks of the Scope of Work at its sole discretion.

(b) 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.

(c) If services under this Agreement are to be performed by a design professional, as that term is defined in California Civil Code §2782.8(b)(2), 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.

(d) 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, soils, hydrologic, geographic, climatic conditions, applicable federal, state and local laws and regulations and all other contingencies or considerations.

(e) 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 outlined in Exhibit "A." 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, 2025, 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 (i) by the City's Council or by the board, 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) Contractor shall commence work on the Project on or by _____, 2021. This Agreement may be extended upon written agreement of both parties. Contractor may be required to prepare a written schedule for the work to be performed, which schedule shall be approved by the City 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 an amount not to exceed _____ dollars (\$_____) in accordance with the provisions of this Section and the Cost Estimate attached hereto as Exhibit B and incorporated herein by this reference

(b) 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)) and forwarded to the City's Finance Department for payment. City shall notify Contractor of exceptions or dispute 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.

(c) 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.

(d) 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 the Project, but which is not included within the Scope of Work and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with the prior written authorization.

(e) Expenses not otherwise addressed in the Scope of Services 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)), be charged at cost 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 Public Works Director/City Engineer Mr. 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 [REDACTED] 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.

(c) Contractor warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement. Contractor, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of services upon written request of City. Contractor has represented to City that certain key personnel will perform and coordinate the work under this Agreement. 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. In the event that City and Contractor cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement are as follows: Ms. Erin Harwayne, AICP (Project Manager)

6. Delegation of Work.

(a) If Contractor utilizes any subcontractors other than those set forth in Exhibit A section 2, consultants, persons, employees or firms having applicable expertise to assist Contractor in performing the 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 payment, administration, completion, presentation and quality of all work performed. City reserves its right to employ other contractors in connection with this Project.

(b) If the 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 the Scope of Work, 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, 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 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 therefrom.

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, defend (with independent counsel reasonably acceptable to the City) and hold harmless City, its Council, boards, commissions, employees, officials and agents ("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 Contractor's obligation to indemnify applies unless it is adjudicated that its liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, the Contractor's 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 under said section 2782.8, Contractor shall indemnify, protect, defend (with independent counsel reasonably acceptable to the City) and hold harmless City and 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 Contractor, or the acts or omissions of an officer, employee, agent or subcontractor of the Contractor. The Contractor's obligation to indemnify applies unless it is adjudicated that its liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, the Contractor's obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

(c) All obligations under this section are to be paid by Contractor as incurred by City. 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 defend the Indemnified Party, as provided above, Contractor, upon notice from the City, shall defend any Indemnified Party at Contractor's expense by counsel reasonably acceptable to the City. 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.

(e) This obligation to indemnify and defend City, 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. 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 herein by giving Contractor ninety days advance written notice of such change. If such change should result in substantial additional cost of the Contractor, City agrees to negotiate additional compensation proportional to the increased benefit to City.

(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.

(b) If the Project is a "public work," or prevailing wages are otherwise required, Contractor shall comply with all provision of California Labor Code section 1720 *et seq.*, as applicable, and laws dealing with prevailing wages, apprentices and hours of work., etc.

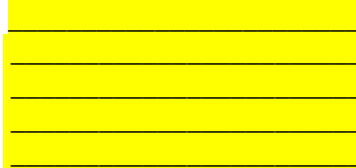
(c) Contractor represents that it has obtained and presently holds all permits and licenses necessary for performance hereunder, including a Business License required by the City's Business License Ordinance. For the term covered by this Agreement, the Contractor shall maintain or obtain as necessary,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

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:

A rectangular area consisting of four horizontal lines, completely redacted with a solid yellow color.

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 is 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 if such failure shall be due to causes beyond Contractor's or the City's control. It is understood and agreed to by the Contractor and the City that they cannot, and will not, claim Force Majeure based on an economic downturn of any type. 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, 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. Each party warrants that the individuals who have signed this Agreement 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 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 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 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 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.

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

CONTRACTOR

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

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

Approved as to form:

By: _____
City Attorney

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 is required, in a form and amount approved by the City Attorney and Risk Manager. 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.