

RESOLUTION NO. 2020-137

A RESOLUTION OF CITY COUNCIL OF THE CITY OF MARINA APPROVING AN AGREEMENT BETWEEN CITY OF MARINA AND KIMLEY-HORN AND ASSOCIATES, INC. OF SALINAS, CALIFORNIA, TO PROVIDE ENGINEERING SERVICES FOR THE PROPOSED WIDENING OF IMJIN PARKWAY BETWEEN RESERVATION ROAD AND IMJIN ROAD, AUTHORIZE THE FINANCE DIRECTOR TO MAKE THE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES, AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

WHEREAS, at the regular meeting of October 4, 2016, the City Council adopted Resolution No. 2016-142, Approving agreement between City of Marina and Kimley-Horn and Associates, Inc. of Salinas, California, to provide engineering services for the widening of Imjin Parkway in the amount of \$2,173,520, and;

WHEREAS, at the regular meeting of February 5, 2019, the City Council adopted Resolution No. 2019-14, approving Amendment No. 1 to the agreement between City of Marina and Kimley-Horn and Associates, Inc. of Salinas, California in the amount of \$150,312.95 for a total amended contract amount of \$2,323,832.95. This amendment included expansion for environmental, geotechnical and landscaping design, and;

WHEREAS, at the regular meeting of November 5, 2019, the City Council adopted Resolution No. 2019-115, approving Amendment No. 2 to the agreement between City of Marina and Kimley-Horn and Associates, Inc. of Salinas, California in the amount of \$179,052 for a total amended contract amount of \$2,502,884.95. This amendment included additional engineering and environmental work, and;

WHEREAS, the current project design plans are nearing completion, with final land acquisition, utility relocation coordination and environmental coordination requiring further consideration, and;

WHEREAS, the right of way acquisition processes necessary for the project design is nearing completion. All but two land transfers are in escrow as the final properties are under purchase agreement review by legal counsel. The property acquisition support of Associated Right of Way Services (AR/WS) is required to close escrow on the final two properties with City legal counsel assistance to meet the City's State grant funding requirements for construction, and;

WHEREAS, the project will impact multiple utility agencies and require relocation of existing systems. Legal descriptions of the relocations by Whitson Engineers are underway, with all utility agencies currently on schedule for project planning to match the City's construction schedule. Additional coordination is required to meet the City's State grant funding requirements for construction, and;

WHEREAS, consultation with the California Department Fish and Wildlife (CDFW) for the project's incidental take permit (ITP) has resulted in an expanded review of the mitigation acreage required for the Project's Mitigation and Monitoring Plan (MMP). With the acquisition of mitigation lands from the County, the City now has a proposed MMP to provide to CDFW with the support services of Denise Duffy and Associates and WRECO, and;

WHEREAS, as the project scope and complexity has grown, the necessity for managing the multiple project disciplines has also expanded past the original proposal scope. The project management aspects of the contract scope have included contract amendments without additional funding requests. But as the project is nearing completion, the City is requesting project management support to finalize the review and approval process with Caltrans, the California Transportation Commission (CTC), and through the project bidding process to address any potential addendums, and;

WHEREAS, the preceding summary of additional right of way and environmental work is required to finalize the project bid set for construction approval by the CTC. As the previous contract had expired on August 31, 2020, staff has reviewed and recommend for approval the proposed new contract of \$254,056.00 for this scope of work for bid-ready plans, specifications and bid support to final project construction contract award.

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

1. Approve an agreement between City of Marina and Kimley-Horn and Associates, Inc. of Salinas, California, to provide engineering services to complete the plans for the widening of Imjin Parkway between Reservation Road and Imjin Road;
2. Authorize the Finance Director to make the necessary accounting and budgetary entries;
3. Authorize the City Manager to execute the agreement on behalf of the City subject to final review and approval by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 20th day of October 2020, by the following vote:

AYES: COUNCIL MEMBERS: Burnett, Berkley, O'Connell, Morton

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: Delgado

ABSTAIN: COUNCIL MEMBERS: None

Gail Morton, Mayor Pro-Tem

ATTEST:

Anita Sharp, Deputy City Clerk

**CITY OF MARINA
AGREEMENT FOR ENGINEERING SERVICES FOR THE IMJIN PARKWAY
WIDENING PROJECT**

THIS AGREEMENT is made and entered into on _____, 2020, by and between the City of Marina, a California charter city, hereinafter referred to as the "City," and Kimley Horn and Associates, a California corporation, hereinafter referred to as the "Contractor." City and Contractor are sometimes individually referred to as "party" and collectively as "parties" in this Agreement.

Recitals

- A. City desires to retain Contractor for engineering services associated with the Imjin Parkway Widening Project – Contractor shall provide services pertaining to the City project and shall perform support services for City as determined by the City Public Works Director.
- B. Contractor represents and warrants that it has the qualifications, experience and personnel necessary to properly perform the services as set forth herein.
- C. City desires to retain Contractor to provide such services.

Terms and Conditions

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

1. Scope of Work.

(a) Contractor is hereby hired and retained by the City to work in a cooperative manner with the City to fully and adequately perform those services set forth in Exhibit "A" attached hereto ("Scope of Work") and by this reference made a part hereof. 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, seismic, geologic, 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 December 31, 2021, unless extended by amendment or terminated earlier as provided herein. The date of full execution is defined as the date when all of the following events have occurred:

(i) This Agreement has been approved by the City's Council or by the 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 June 20, 2014. 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 Two Hundred Fifty Four Thousand Fifty Six Dollars (\$254,056.00) 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 disputed items and their dollar value within fifteen days of receipt. Payment of the undisputed amount of the invoice will typically be made approximately thirty days after the invoice is submitted to the Finance Department.

(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.

(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)) 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 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 Daniel Carley, 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: Daniel Carley, Project Manager.

6. Delegation of Work.

(a) If Contractor utilizes any subcontractors, 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 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 there from.

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

12. Non-Discrimination.

(a) During the performance of this Agreement the Contractor shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California and the City. In performing this Agreement, Contractor shall not discriminate, harass, or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), medical condition (including cancer), age, marital status, denial of family and medical care leave and denial of pregnancy disability leave. Contractor shall give written notice of its obligations under this clause to labor organizations with which it has a collective bargaining or other agreement.

(b) 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 the 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 indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

(b) To the fullest extent permitted by law (including without limitation California Civil Code Sections 2782.8), when the services to be provided under this Agreement are design professional services to be performed by a design professional, as that term is defined 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 design professional, or the acts or omissions of an officer, employee, agent or subcontractor of the design professional. The design professional's obligation to indemnify applies unless it is adjudicated that the liability was caused by the sole active

negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an indemnified party the design professional's indemnification obligation shall be reduced in proportion to the established comparative liability.

(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. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Contractor may submit a claim to the City for reimbursement of reasonable attorney's fees and defense costs.

(e) This obligation to indemnify and defend 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.

(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: Kimley Horn & Associates
555 Capitol Mall, Suite 300
Sacramento, CA 95814
Fax (831) 333-0340

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. 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. . The exhibits attached hereto are incorporated into this Agreement. In the event of a conflict between the terms of this Agreement and any exhibit, the terms of this Agreement shall control.

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

CITY OF MARINA

CONTRACTOR

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

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

Approved as to form:

By: _____
City Attorney

EXHIBIT A

SCOPE OF SERVICES
(See attached)

October 8, 2020

Edrie Delos Santos
City of Marina
211 Hilcrest Avenue
Marina, CA 93933

Re: Proposal – Imjin Parkway Widening Project - Completion of PS&E and Bidding Support

Dear Mr. Delos Santos:

Thank you for asking Kimley-Horn and Associates, Inc. (Kimley-Horn) to continue providing design and coordination services for the Imjin Parkway Widening Project.

Per our previous phone conversations and email correspondence, the contract for services between the City of Marina and Kimley-Horn for the Imjin Parkway Widening Project expired on August 31, 2020. As authorized by the City via email on 9/16/2020, Kimley-Horn continued effort on the Scope of Work from the original contract and approved amendments after the contract expiration date due to the critical project funding deadlines and required documentation for CTC approval, including obtaining the Project's Right of Way Certification.

This letter is in accordance with your request we discussed over the phone on 9/11/2020 and constitutes a proposal setting forth our proposed Scope of Services, Schedule, and Fee. This Proposal includes services as outlined below to continue providing coordination, design, environmental mitigation, bidding and general project support for completion of the Imjin Parkway Widening Project PS&E package and bidding support. We assume the project will be advertised for bidding within the first six months of 2021. Design services during construction (DSDC) are not included in this Proposal.

Scope of Services

Task 1 – Project Management and Coordination

Kimley-Horn assumes the management activities will last up to 10 months (from September 2020 through June 2021). This task covers project management, attendance at project meetings, and performance of quality control, from final design through bidding support.

The management activities are as outlined in the following sub-task descriptions:

Sub-Task Project Administration

Kimley-Horn staff's administration efforts include processing invoices, monthly progress reports, and managing project's subconsultants invoices.

Deliverables: Monthly Invoices & Progress Summaries

Sub-Task Meetings

Kimley-Horn will participate in up to three (3) project meetings, including supporting the City's staff in presenting to TAMC in October. We assume these meetings to occur through online platforms.

We will take notes and distribute draft meeting minutes after each meeting for the City's review and comment/approval. City comments will be incorporated and final meeting minutes will be distributed to the City.

Deliverable: Electronic copy of meeting minutes (draft and final), up to three meetings

Sub-Task Coordination

Kimley-Horn will coordinate with stakeholders other than the City, as necessary, including:

- Caltrans District 5
- Transportation Agency for Monterey County (TAMC)
- Monterey County
- Monterey-Salinas Transit (MST)
- University of California (UC)
- California State University Monterey Bay (CSUMB)
- City Council, Public Work Commission, and Design Review Board

Coordination with resource agencies is covered in Task 3 Environmental Mitigation Support.

This task also includes internal coordination between the design team and subconsultants.

Task 2 – Utility Coordination

Kimley-Horn will coordinate with utility owners, as needed, in support of finalizing the project's right of way certification through Caltrans. We will submit the necessary draft documents to Caltrans for review, revise, and send to the City and utility owners for execution. We assume coordination with be limited to Suddenlink/Altice, PG&E, AT&T, and MCWD.

Since Suddenlink/Altice, PG&E, and AT&T are relocating their own facilities, we will prepare and send Notice To Owner (NTO) letters with appropriate exhibits/attachments.

For MCWD, a Utility Agreement (UA), Report Of Investigation (ROI), exhibits, and NTO are required. We will prepare and send the above documents for approval.

In addition to the NTO, PG&E is requiring adjustments to existing easements for relocation of their facilities. The Kimley-Horn team will coordinate with PG&E to support the preparation of necessary exhibits, plats, and legal descriptions for approval. Preparation of plats and legal descriptions is included in Task 4 Right of Way Support.*Deliverables: NTO with attachments (Suddenlink/Altice, PG&E, AT&T)*

ROI, UA, NTO with attachments (MCWD)

Easement Exhibits (PG&E)

Task 3 – Environmental Mitigation Support

Kimley-Horn will provide support to the City in obtaining the project's Incidental Take Permit (ITP) and updating project environmental documents through coordination with subconsultants, Caltrans, and CDFW. We will participate in conference calls, as required, for assistance in obtaining the project's Incidental Take Permit (ITP) and updating project environmental documents. Denise Duffy & Associates, Inc. (DD&A) and WRECO will also provide environmental mitigation support under this task.

Sub-Task DD&A - Project Initiation

DD&A will initiate the project by consulting with the client to obtain pertinent project information, including project plans, technical studies and environmental review documents, and correspondence with CDFW, including but not limited to the permit application and incomplete letter. Project initiation will include the following tasks:

- Review additional available background information,
- Conduct initial project management,
- Attend a kick-off meeting to discuss the project approach and finalize the scope of work,
- Identify data and documentation needs,
- Confirm format, quantities, and distribution of deliverables, and
- Establish schedules and protocols for communication.

Deliverable(s): Information needs request, if required

Sub-Task DD&A - Pre-Survey Data Collection/Reference Population Monitoring

Prior to the focused plant surveys as part of Task 3, DD&A will review available reference materials, including the California Department of Fish and Wildlife's (CDFW's) California Natural Diversity Database (CNDDB) occurrence reports, aerial photographs, and other relevant biological documentation that has been prepared in the project area, including specific mapping of sand gilia populations. DD&A will use this information to better focus survey efforts within the study area.

In addition, reference populations of sand gilia will be monitored in order to determine the appropriate timing for the focused plant surveys. Generally, the blooming period for this species is March through May. The surveys will be conducted during the peak bloom for each species, as indicated by reference populations.

This scope of work assumes the request for take authorization for seaside bird's beak is removed from the ITP application since this species has not been observed in the project area and is not known to occur within the project area. As a result, surveys and mitigation strategy for this species is not included in this proposal.

Sub-Task DD&A - Conduct Focused Surveys

DD&A biologists will survey the study area, which includes three sites (i.e., approximately 124 acres within the Landfill Habitat Management Area HMA, 31 acres within APN 031-081-023-000, and 26 acres within APN 031-101-055-000) to identify existing sand gilia populations and sand gilia habitat. DD&A will conduct focused surveys in accordance with the CDFW, U.S. Fish and Wildlife Service, and California Native Plant Society survey protocols. DD&A will identify and map sand gilia occurrences and estimate the number of individuals within the area. DD&A will walk the area and map locations of sand gilia, if found, using a Trimble ProXH GPS.

Sub-Task DD&A - Prepare Sand Gilia Maps & Research Potential Mitigation Sites

Following the surveys, DD&A will prepare draft sand gilia maps depicting the area(s) and acreage of sand gilia occurrences and habitat within the study area; sand gilia habitat will consist of sand gilia habitat observed during the 2020 surveys as well as historical occurrences.

In addition, DD&A will utilize its comprehensive GIS database and local knowledge to identify any additional potential sand gilia mitigation sites for both preservation and restoration opportunities. DD&A will apply documented sand gilia occurrences data layers to potentially available parcels in the area and conduct desktop and field surveys, as needed. DD&A will compile a list of potential mitigation strategy options to the project team for consideration.

DD&A will provide draft maps to the project team for review and comment. DD&A will participate in one meeting to discuss the results and mitigation strategy. DD&A will finalize the sand gilia maps based on comments received and provide the final maps and associated GIS files to the project team. This scope of work assumes one round of comments from the project team.

Deliverable(s): Draft and Final Sand Gilia Maps (PDF)

Sub-Task DD&A - Mitigation Strategy Proposal

Based on the data collected and discussions with the project team, DD&A will coordinate with Kimley-Horn, City, and the Sea Haven project team to prepare a mitigation strategy proposal to present and discuss with CDFW in order to obtain an ITP in accordance with Section 2081 of the California Endangered Species Act. This scope of work assumes continued coordination with the Sea Haven project team on permitting approach.

DD&A will coordinate with Kimley-Horn to calculate the estimated acreage of impacts to sand gilia that would be impacted by the proposed project, identify an appropriate mitigation ratio and strategy, and describe the potential mitigation sites in a memorandum format. This scope of work assumes that DD&A will submit an administrative draft proposal to the project team for review and comment. This scope of work assumes one round of comments from the project team. DD&A will incorporate comments and prepare a draft proposal to submit to CDFW. The draft proposal will be presented to CDFW at a meeting (assuming a conference call or in-person meeting at City offices) for discussion and consideration. DD&A will work closely with the project team and CDFW to respond to information requests and finalize the terms of the proposal. This task includes an estimated amount of project management time to coordinate with CDFW and the project team. This task assumes one in-person meeting and two conference calls with CDFW, as well as one in-person meeting and one conference call with Kimley-Horn and the City.

Deliverable(s): Draft and Final Mitigation Strategy Proposal Memorandum

Sub-Task DD&A - Prepare Revised ITP Application

Based on the terms of the agreed-upon mitigation strategy proposal, DD&A will work closely with the project team to prepare and submit a revised Section 2081 ITP application. The application will include all the required information, including, but not limited to, a description of the extent of take, proposed measures to minimize and fully mitigate the impacts of the proposed take, proposed plan to monitor compliance with the proposed measures, and a description of the funding sources and level of funding available to implement the proposed measures. The CDFW ITP application requires a Mitigation and Monitoring Plan. While a Habitat Mitigation and Monitoring Plan was prepared for the project, a supplemental plan will likely be required to describe the proposed mitigation strategy for impacts to sand gilia and this scope of work assumes the preparation of such plan.

This scope of work assumes that DD&A will submit a draft of the revised ITP application to Kimley-Horn and the City for review and comment. This scope of work assumes one round of comments. DD&A will incorporate the comments as appropriate and submit the revised permit application to the CDFW.

This scope and budget assume that the application materials will be based on the agreed-upon mitigation strategy proposal and no significant revisions will be required to the mitigation strategy proposal for the revised application submittal. Upon revised application submittal, DD&A will work closely with the project team and CDFW to respond to information requests and questions regarding the application. This task includes an estimated amount of project management time to coordinate with the project team and CDFW through permit issuance.

The proposed budget does not include the application fees. This scope of work assumes the application fee was paid with the original ITP application submittal.

Deliverable(s): Draft and Final Revised ITP Application and supporting information as requested

Sub-Task DD&A - Permit Issuance Requirements

The issuance of the ITP by the CDFW will result in various requirements, often required to be completed before the proposed take can occur. These requirements include, but are not limited to, acquisition of mitigation land, conservation of mitigation land in the form of deed restrictions or conservation easement, creation of security and endowment funding, execution of any required agreements, Phase 1 Environmental Site Assessment, preliminary title report(s), policy of title insurance, and biological reports. The extent of these requirements will vary by species and depend on whether existing information is sufficient. DD&A will coordinate with the project team and CDFW to identify, compile, and submit all requested documents in a timely manner.

Deliverables: Various/TBD

Sub-Task DD&A - Revised Mitigation Area for Section 7 ESA Consultation

DD&A will assist the client and WRECO in revising the mitigation strategy for Section 7 ESA compliance. DD&A will review the Biological Assessment and Biological Opinion and compile necessary plant population GIS data. DD&A will identify a proposed mitigation area on the landfill property, which overlaps the proposed mitigation area for the CDFW ITP. DD&A will prepare a draft and final figure depicting the revised mitigation area and preservation calculations. DD&A will participate in three (3) meetings associated with this task. This scope of work assumes that the client and WRECO will be responsible for submitting the revised strategy to Caltrans and the U.S. Fish and Wildlife and facilitating the revision to the Biological Opinion.

Deliverables: Draft and Final Figure

Sub-Task WRECO - Coordination with Caltrans/USFWS

WRECO will coordinate with Caltrans and USFWS in order to update the contents of the Biological Opinion (BO). This coordination is necessary to ensure the revised approach to mitigating impacts on Monterey spineflower and Monterey gilia, developed to obtain an Incidental Take Permit from California Department of Fish and Wildlife (CDFW), is acceptable to the USFWS and is able to replace the mitigation requirements currently required by the BO.

It is assumed that informal coordination with USFWS is required, and that formally amending the BO is not required. It is assumed that coordination with Caltrans/USFWS would occur after CDFW has provided preliminary approval of the revised approach to mitigating impacts on Monterey spineflower and Monterey gilia.

Deliverables: Draft and Final BO Update Memorandum (PDF)

Task 4 – Right of Way support

The Kimley-Horn team will coordinate with the City and property owners, as needed, in support of finalizing the project's right of way certification through Caltrans. This task includes the completion of the right of way certification document for review and approval by Caltrans.

Sub-Task AR/WS - Negotiations/Acquisitions

- AR/WS will provide continued negotiations to acquire partial acquisitions from up to 4 properties.
- If non-residential lessees or tenants are in occupancy, AR/WS will prepare, if necessary, offset statements or similar documentation to attempt to identify lessor/lessee interests in improvements and relevant lease terms.
- All discussions for the acquisition of property or an interest therein will be directed to result in the payment of just compensation.
- If settlement with owners and other required interests is reached pursuant to the City approved appraisal or City approved administrative settlement, AR/WS will prepare a Memorandum of Settlement for transmittal to City. If an administrative settlement appears to be prudent, AR/WS will prepare a settlement discussion memorandum reviewing the issues. This memorandum will require City written approval before implementation of any settlement agreement.
- AR/WS will make every reasonable effort to acquire property on behalf of the City expeditiously through agreement with its owner and to avoid litigation. This may necessitate greater levels of effort in the negotiations phase and, where appropriate, should continue after eminent domain has been initiated. City will provide ongoing feedback to AR/WS as to authorization for settlements.
- AR/WS will establish a process of coordinating escrow closings and reviewing escrow instructions. Where there are escrow closings, preparation of escrow instructions will be completed by title company. Approval of conditions of title and escrow instructions, including but not limited to, "subject to" title exceptions, will be done by City.
- If agreement with all owners and other required interests cannot be reached, AR/WS will advise City that negotiations have reached an impasse. The City will consider scheduling of an action in eminent domain including the required public necessity hearing. AR/WS will provide condemnation support as needed and requested, budget allowing.

It is assumed the City will provide direction as to administrative settlements, negotiating authority and condition of title acceptance. City will review and provide approval of title company prepared escrow instructions including acceptable condition of title.

Deliverables: Memorandum of Settlement (upon settlement)

Notice that negotiations have reached an impasse (if needed)

Sub-Task *Whitson - Additional Legal Descriptions & Plats - PG&E Facilities*

Whitson Engineers will prepare legal descriptions and plats for easements for Pacific Gas and Electric (PG&E) facilities being relocated as part of the Imjin Parkway Widening project. This includes:

1. Review PDF document provided by client illustrating easement needs. Coordinate with client to obtain CAD drawings and refine easement geometry if necessary.
2. Prepare up to eight draft legal descriptions and accompanying plats for PG&E easements to be granted and portions of existing easements to be relinquished, in four locations as illustrated on provided documents. Descriptions and plats will be prepared according to PG&E guidelines as outlined in their "Private Sector Land Surveyors Check List." Submit draft descriptions to client, to be forwarded to PG&E for review.

3. Perform edits following PG&E & client review of draft legal descriptions and plats, to address comments and markups received.
4. Provide finalized signed legal descriptions and plats suitable for recordation as attachments to easement grant deeds or relinquishment documents (to be prepared by PG&E or others)

Deliverables: Legal descriptions and plats for PG&E easements

Sub-Task *Whitson - Contingency Budget for Additional Land Survey Services (T&M)*

On an as needed, time and materials basis, Whitson will perform additional land surveying or related tasks, including preparation of additional legal descriptions, or responding to additional survey-related inquiries. No additional field surveying is currently anticipated, but if required can be performed according to the rates shown on the attached budget worksheet.

Task 5 – Final PS&E

Sub-Task *Quality Control*

Kimley-Horn will meet with the City (teleconference/online platform) to do a page-turn review of the PS&E package to confirm final package includes all required information and proposed improvements. We will also perform additional internal QC of the PS&E package before we submit the final/bid package. Internal review of landscape and irrigation plans prepared by Merrill Morris Partners (MMP) is included in this task.

Deliverable: QA/QC Meeting notes and markups, with proof of corrections

Sub-Task *Prepare Final/Bid Plans, Specifications, and Estimate (PS&E)*

Kimley-Horn and MMP will revise the PS&E package based on internal and external quality control reviews. We will prepare the final/bid PS&E and submit hardcopies and PDF to the City. MMP will update the Model Water Efficient Landscape Ordinance (MWELO), Water Budget Calculation if there are any changes to the planting and irrigation design.

Deliverable: Final/Bid Plans, Specifications, and Estimate (PS&E) (PDF)

Final/Bid PS&E hardcopies (4 sets, bond)

Task 6 – Bidding Support

Kimley-Horn will provide design support ahead of and during project advertisement by reviewing and responding to contractor inquiries, and preparing limited addenda, if requested by the City of Marina. Addenda prepared by Kimley-Horn are assumed to be written responses to contractor inquiries, with limited and minor revisions to plan sheets, estimate quantities, or project specifications, up to the assumed total hours of this task.

This task does not include design or plan sheet revisions generated from comments provided by the City's selected Construction Management (CM) firm. If design or plan sheet changes are required, these services can be provided for additional scope and fee.

We assume up to two (2) Kimley-Horn staff will attend a Pre-Bid meeting teleconference (online platform).

We assume a total of up to 140 hours of Kimley-Horn staff effort for this task.

MMP will provide limited design support ahead of and during project advertisement by reviewing and responding to contractor inquiries. This task assumes addenda responses will be in text format only, and revisions or reissue of plans, details, or specifications is not included in this scope of work.

WRECO will assist the Project Team with general coordination and support during the bidding process as necessary in regards to planting or other revegetation/mitigation factors. We assume a total of up to 16 hours of WRECO staff effort for this task.

Parikh Consultants, Inc, (PARIKH) will provide limited design support ahead of and during project advertisement by reviewing and responding to contractor inquiries. This task assumes responses to RFIs in the event there are questions from perspective contractors relating to our scope of work/geotechnical findings/recommendations included in the "Geotechnical Investigation Report" prepared by Parikh. The responses will be in text format only, and revisions or reissue of geotechnical reports are not included in this scope of work. Additional field investigations are not included in this scope of work.

We assume MMP, WRECO, and Parikh staff will not attend the Pre-Bid meeting.

Schedule:

Kimley-Horn understands this contract will be included on the agenda for the City Council approval at the October 20, 2020 meeting.

This proposal includes services beginning on September 1, 2020.

We anticipate the project bidding phase to occur within the first six months of 2021 and last for up to eight (8) weeks.

Compensation, Fees and Expenses:

Kimley-Horn will perform the services in Tasks 1 - 6 on a labor fee plus expense basis with the maximum labor fee shown below.

Task 1	Project Management and Coordination	\$ 29,540.00
Task 2	Utility Coordination	\$ 11,710.00
Task 3	Environmental Mitigation Support	\$ 49,036.00
Task 4	Right of Way Support	\$ 61,246.00
Task 5	Final/Bid PS&E	\$ 58,542.00
Task 6	Bidding Support	\$ 36,815.00
	Direct Expenses	\$ 7,167.00

Maximum Labor Fee	\$254,056.00
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Kimley-Horn will not exceed the total maximum labor fee shown without authorization from the Client. Individual task amounts are provided for budgeting purposes only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary.

Labor fee will be billed on an hourly basis according to our then-current rates. As to these tasks, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. A percentage of labor fee will be added to each invoice to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project may be billed hourly. All permitting, application, and similar project fees will be paid directly by the Client. Should the Client request Kimley-Horn to advance any such project fees on the Client's behalf, a separate invoice for such fees, with a 15% markup, will be immediately issued to and paid by the Client.

Payment will be due within 30 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

A handwritten signature in blue ink, appearing to read "Daniel Carley".

Daniel Carley P.E.

Project Manager

P.E. No.: C76304

EXHIBIT B
COST ESTIMATE
(See attached)



CITY OF MARINA
IMJIN PARKWAY WIDENING PROJECT
COST PROPOSAL
October 8, 2020

		Project Manager Daniel Carley	Sr. Tech. Advisor Chadi Chazbek	Sr. Tech. Advisor	Sr. Professional II	Professional	Analyst	Project Support			AR/WS	DD&A	Parikh	MMP	WRECO	Whitson	Total Proposal
Task	HOURLY BILLING RATE	\$226.00	\$325.00	\$276.00	\$246.00	\$204.00	\$154.00	\$182.00	Total Hours	Total Labor Cost							
1.0	PROJECT MANAGEMENT AND COORDINATION (6 months)	110	6					15	131	\$ 29,540	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 29,540
	Project Administration	10						15	25	\$ 4,990							\$ 4,990
	Meetings (assume 3 teleconference)	20	6						26	\$ 6,470							\$ 6,470
	Coordination	80							80	\$ 18,080							\$ 18,080
2.0	UTILITY COORDINATION	45					10		55	\$ 11,710	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 11,710
	Utility Coordination	45					10		55	\$ 11,710							\$ 11,710
3.0	ENVIRONMENTAL MITIGATION SUPPORT	30	10						40	\$ 10,030	\$ -	\$ 32,603	\$ -	\$ -	\$ 6,403	\$ -	\$ 49,036
	Mitigation coordination	30	10						40	\$ 10,030		\$ 32,603			\$ 6,403		\$ 49,036
4.0	RIGHT OF WAY SUPPORT	36							36	\$ 8,136	\$ 35,290	\$ -	\$ -	\$ -	\$ -	\$ 17,820	\$ 61,246
	Negotiations/Acquisitions	6							6	\$ 1,356	\$ 35,290						\$ 36,646
	Legal Descriptions & Plats - PG&E Facilities	15							15	\$ 3,390						\$ 13,170	\$ 16,560
	Contingency for Additional/As-Needed Survey Services	15							15	\$ 3,390						\$ 4,650	\$ 8,040
5.0	FINAL/BID PS&E	75		35	15	15	75		215	\$ 44,910	\$ -	\$ -	\$ -	\$ 13,632	\$ -	\$ -	\$ 58,542
	Quality Control of Final Deliverables (includes teleconference)	25		20					45	\$ 11,170							\$ 11,170
	Prepare Final/Bid Plans	20		10	10		65		105	\$ 19,750				\$ 13,632			\$ 33,382
	Prepare Final/Bid Specifications	25		5	5				35	\$ 8,260							\$ 8,260
	Prepare Final Cost Estimate and Bid List	5				15	10		30	\$ 5,730							\$ 5,730
6.0	BIDDING SUPPORT (2 months)	45	10	10		30	45		140	\$ 29,230	\$ -	\$ -	\$ 2,960	\$ 2,726	\$ 1,899	\$ -	\$ 36,815
	Bidding Support	40	5	10		30	45		130	\$ 26,475			\$ 2,960	\$ 2,726	\$ 1,899		\$ 34,060
	Pre-Bid meeting (teleconference)	5	5						10	\$ 2,755							\$ 2,755
		341	26	45	15	45	130	15	617	\$133,556.00	\$35,290.00	\$32,603.00	\$2,960.00	\$16,358.00	\$8,302.00	\$17,820.00	\$246,889.00
	Total Other Direct Costs																\$7,166.65
	Reproduction/Printing									\$ 1,500							\$ 1,500
	Subconsultant Markup (5%)									\$ -							\$ 5,667
	TOTAL									\$ 135,056	\$ 35,290	\$ 32,603	\$ 2,960	\$ 16,358	\$ 8,302	\$ 17,820	\$ 254,056

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, at a minimum, and shall 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.

C-2

Errors and Omissions/Professional Liability. Errors and Omissions or professional liability coverage appropriate to Contractor's profession, in a form and amount approved by the City Attorney and Risk Manager, will be specified on a project-by-project basis if Contractor is working as a licensed professional. Contractor shall maintain such insurance for a period of five years following completion of the project. Such insurance shall be in an amount of not less than one million dollars (\$1,000,000) per claim and in annual aggregate. Design professionals shall maintain such insurance in place until the expiration of the warranty period of the Project.

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 one million dollars (\$1,000,000) each occurrence for at least three years following substantial completion of the work.

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of October 20, 2020

RECOMMENDATION TO CONSIDER ADOPTING RESOLUTION NO. 2020-, APPROVING AN AGREEMENT BETWEEN CITY OF MARINA AND KIMLEY-HORN AND ASSOCIATES, INC. OF SALINAS, CALIFORNIA, TO PROVIDE ENGINEERING SERVICES FOR THE PROPOSED WIDENING OF IMJIN PARKWAY BETWEEN RESERVATION ROAD AND IMJIN ROAD, AUTHORIZE THE FINANCE DIRECTOR TO MAKE THE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES, AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

RECOMMENDATION:

It is recommended that the City Council:

1. Consider adopting Resolution No. 2020-, approving an agreement between City of Marina and Kimley-Horn and Associates, Inc. of Salinas, California, to provide engineering services to complete the plans for widening of Imjin Parkway between Reservation Road and Imjin Road; (**"EXHIBIT A"**)
2. Authorize the Finance Director to make the necessary accounting and budgetary entries;
3. Authorize the City Manager to execute the agreement on behalf of the City subject to final review and approval by the City Attorney.

BACKGROUND:

At the regular meeting of October 4, 2016, the City Council adopted Resolution No. 2016-142, Approving agreement between City of Marina and Kimley-Horn and Associates, Inc. of Salinas, California, to provide engineering services for the widening of Imjin Parkway in the amount of \$2,173,520.

At the regular meeting of February 5, 2019, the City Council adopted Resolution No. 2019-14, approving Amendment No. 1 to the agreement between City of Marina and Kimley-Horn and Associates, Inc. of Salinas, California in the amount of \$150,312.95 for a total amended contract amount of \$2,323,832.95. This amendment included expansion for environmental, geotechnical and landscaping design.

At the regular meeting of November 5, 2019, the City Council adopted Resolution No. 2019-115, approving Amendment No. 2 to the agreement between City of Marina and Kimley-Horn and Associates, Inc. of Salinas, California in the amount of \$179,052 for a total amended contract amount of \$2,502,884.95. This amendment included additional engineering and environmental work.

ANALYSIS:

The current project design plans are nearing completion, with final land acquisition, utility relocation coordination and environmental coordination requiring further consideration.

The right of way acquisition processes necessary for the project design is nearing completion. All but two land transfers are in escrow as the final properties are under purchase agreement review by legal counsel. The property acquisition support of Associated Right of Way Services (AR/WS) is required to close escrow on the final two properties with City legal counsel assistance to meet the City's State grant funding requirements for construction.

The project will impact multiple utility agencies and require relocation of existing systems. Legal descriptions of the relocations by Whitson Engineers are underway, with all utility agencies currently on schedule for project planning to match the City's construction schedule. Additional coordination is required to meet the City's State grant funding requirements for construction.

Consultation with the California Department Fish and Wildlife (CDFW) for the project's incidental take permit (ITP) has resulted in an expanded review of the mitigation acreage required for the Project's Mitigation and Monitoring Plan (MMP). With the acquisition of mitigation lands from the County, the City now has a proposed MMP to provide to CDFW with the support services of Denise Duffy and Associates and WRECO.

As the project scope and complexity has grown, the necessity for managing the multiple project disciplines has also expanded past the original proposal scope. The project management aspects of the contract scope have included contract amendments without additional funding requests. But as the project is nearing completion, the City is requesting project management support to finalize the review and approval process with Caltrans, the California Transportation Commission (CTC), and through the project bidding process to address any potential addendums.

The preceding summary of additional right of way and environmental work is required to finalize the project bid set for construction approval by the CTC. As the previous contract had expired on August 31, 2020, staff has reviewed and recommend for approval the proposed new contract of \$254,056.00 for this scope of work for bid-ready plans, specifications and bid support to final project construction contract award.

FISCAL IMPACT:

The original project contract agreement, as amended, had an approved budget of \$2,502,884.95. As of the close of the contract agreement period of August 31, 2020, the remaining balance on the contract is \$148,702.28. Due to the complexity of right of way and mitigation land acquisition, the additional scope of work to the original contract exceeds the remaining contract balance by \$105,353.72. The following is a summary of these balances:

Original Contract Agreement	\$2,173,521.00
Amendment No.1 (Landscape & Geo.)	\$ 150,312.95
Amendment No.2 (Engr. & Environ.)	\$ 179,052.00
Expended on Original Contract	(\$2,354,182.67)
Remaining Contract Balance	\$148,702.28

Should the City Council approve this request, adequate funding is available in the Capital Improvement Program project account R46B (#401) Imjin Widening Project.

CONCLUSION:

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

Respectfully submitted,

Edrie Delos Santos, P.E.
Senior Engineer
Public Works Department
City of Marina

REVIEWED/CONCUR:

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

Layne P. Long
City Manager
City of Marina