

RESOLUTION NO. 2021-26

CITY COUNCIL TO CONSIDER ADOPTING RESOLUTION NO. 2021-,
APPROVING CHANGE ORDERS FOR ADDITIONAL BIOLOGICAL SURVEY
WORK TO AGREEMENTS WITH DENISE DUFFY & ASSOCIATES, INC FOR
BIOLOGICAL CONSULTING SERVICES FOR FORT ORD HMP COMPLIANCE
AND TO ASSIST THE CITY IN ACQUIRING A CITY-WIDE INCIDENTAL TAKE
PERMIT, AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE
NECESSARY ACCOUNTING AND BUDGETARY ENTRIES, AND
AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENTS ON
BEHALF OF THE CITY, SUBJECT TO FINAL REVIEW AND APPROVAL BY
THE CITY ATTORNEY

WHEREAS, the U.S. Army's decision to close and dispose of the Fort Ord military base was considered a major federal action that could affect listed species under the federal Endangered Species Act (ESA). In 1993, the U.S. Fish and Wildlife Service (USFWS) issued a biological opinion in accordance with Section 7 of the ESA requiring that a habitat management plan be developed and implemented to reduce the incidental take of listed species and loss of habitat that supports these species. The Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord (HMP) was prepared to assess impacts on vegetation and wildlife resources, and provide mitigation for their loss associated with the remediation, disposal, and reuse of former Fort Ord; and,

WHEREAS, with the closure of FORA the City is responsible for four Habitat Management Areas (HMAs) including the Salinas River, Airport, Northwest Corner, and Landfill HMAs. In accordance with the requirements described in the Fort Ord HMP and the deed restrictions for the parcels, a Resource Management Plan (RMP) must be prepared and implemented by the City; and,

WHEREAS, on December 15, 2020, the City Council adopted Resolution No. 2020-157 approving Agreements with Denise Duffy & Associates (DD&A), Inc to provide biological consulting services to develop an RMP and to assist the city in acquiring a city-wide incidental take permit to mitigate for future planned development; and,

WHEREAS, following kickoff of the consultant services work and data gathering outlined in Task 1 of the Agreements, it was decided additional biological surveys than what were initially proposed would be necessary to adequately complete the work; and,

WHEREAS, to facilitate the additional biological survey work, Denise Duffy & Associates (DD&A), Inc. has provided Change Order No. 1 to the Agreement for Biological Consulting Services for Fort Ord HMP Compliance included in **"EXHIBIT A"**, and Change Order No. 1 to the Agreement for Biological Consulting Services for City-Wide Section 2081 ITP included in **"EXHIBITS B"**; and,

WHEREAS, Change Order No. 1 to the Agreement for Biological Consulting Services for Fort Ord HMP Compliance includes a not-to-exceed additional \$18,500, bringing the total contact cost for the project \$222,670, which has been allocated from Fund 223; and,

WHEREAS, Change Order No. 1 to the Agreement for Biological Consulting Services for City-Wide Section 2081 ITP includes a not-to-exceed additional \$10,000, bringing the total contact cost to \$38,989, which has been allocated from Fund 223.

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

1. Adopt Resolution No. 2021-26, approving change orders for additional biological survey work to agreements with Denise Duffy & Associates, Inc for biological consulting services for Fort Ord HMP compliance and to assist the city in acquiring a city-wide incidental take permit included in, and authorizing the Finance Director to make necessary accounting and budgetary entries, and authorizing the City Manager to execute the agreements 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 6th day of April 2021, by the following vote:

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

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

ATTEST:

Bruce C. Delgado, Mayor

Anita Sharp, Deputy City Clerk

**AMENDMENT NO. 1
TO
CITY OF ARINA
AGREEMENT FOR PROFESSIONAL SERVICES**

Biological Consulting Services

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 Denise Duffy & Associates, Inc, 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. On December 18, 2020 the City entered an Agreement with Contractor to provide biological consulting services to develop a Resource Management Plan for Fort Ord HMP compliance referred to as the "Project."
- B. Following kickoff of the consultant services work and data gathering outlined in Task 1 of the Agreements, it was decided additional biological surveys than what were initially proposed would be necessary to adequately complete the work
- C. To facilitate the additional biological survey work, Denise Duffy & Associates (DD&A), Inc. has provided Change Order No. 1 to the Agreement for Biological Consulting Services for Fort Ord HMP Compliance included in **"EXHIBIT A"**.
- D. Only the numbered paragraphs of the Agreement which are being amended are set forth in this Amendment. No. 1. All references in this Amendment No. 1 to a separate instrument or agreement shall include such instrument or agreement as the same may have been amended or supplemented from time to time pursuant to the applicable provisions thereof. Capitalized terms used but not defined in this Amendment No. 1 shall have the meanings given to them in the Agreement.

Terms and Conditions

The above recitals are true, correct and incorporated herein by this reference.

Now, therefore, the parties agree to enter into this Amendment No. 1, and to amend the Agreement effective as of the date first written above as follows:

- 1. Section 1(a) of the Agreement is hereby amended and restated to read in its entirety as follows:

"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 the Agreement for Biological Consulting Services entered into between the City and Contractor on December 18, 2021, and the

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.”

2. Section 3 (a) of the Agreement is hereby amended and restated to read in its entirety as follows:

“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-Twenty-Two Thousand-Six-Hundred-Seventy dollars (\$222,670) in accordance with the provisions of this Section and the Cost Estimate set forth in the Agreement for Biological Consulting Services entered into between the City and Contractor on December 18, 2021, and attached hereto as **Exhibit A** and incorporated herein by this reference.”

3. Integration. This Amendment No. 1 and the Agreement represent the entire agreement concerning this subject matter and supersedes prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Amendment No. 1 and the Agreement merge into this Amendment No. 1 and the Agreement.

4. Counterparts. This Amendment No. 1 may be executed in any number of counterparts and all of counterparts taken together shall be deemed to constitute one and the same instrument.

5. Authority. Each individual executing this Amendment No. 1 represents and warrants that he or she is duly authorized to execute and deliver this Amendment No. 1 and that this Amendment No. 1 is binding in accordance with its terms.

Except as provided above, the Agreement is in all other respects in full force and effect.

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:

Attest: (Per Resolution 20__-__)

Deputy City Clerk

Approved as to form:

By: _____
City Attorney

EXHIBIT A

SCOPE OF WORK



**Change Order No. 1
City of Marina Fort Ord HMP Compliance
Amendment to Existing Agreement**

To: Matthew Mogensen, City of Marina

Date: April 1, 2021

From: Erin Harwayne, AICP, DD&A

Ref: **Biological Consulting Services for Fort Ord HMP Compliance**

Denise Duffy & Associates, Inc. (DD&A) is contracted with the City of Marina (City) for the above-referenced project. During Task 1 of our scope of work, DD&A met with staff from the U.S. Fish and Wildlife Service as part of project initiation. We discussed the proposed scope of work and it was determined that focused botanical surveys within the four habitat management areas would be beneficial for the project by providing updated survey data that will better inform management recommendations. Therefore, this document requests and, if accepted, authorizes DD&A to perform the work as detailed below, for the budget allocated (also shown below).

This additional scope of work and budget is an amendment to the original agreement with the project applicant, as of the date shown below. This notification will serve as AUTHORIZATION TO PROCEED with the additional services once DD&A receives the signed authorization. All other terms and conditions of the original agreement shall remain unchanged.

Description of Work:

The following tasks would be subtasks to Task 3.1 of our original scope of work.

Task 3.1.a. Pre-Survey Data Collection/Reference Population Monitoring

Reference populations of special-status plant species with the potential to occur within the habitat management areas will be monitored in order to determine the appropriate timing for the focused plant surveys. Generally, spring and summer blooming periods for occur from March to May and June to September. The surveys will be conducted during the peak bloom for the species, as indicated by reference populations.

Deliverables: N/A

Task 3.1.b. Focused Botanical Surveys

DD&A will perform protocol-level focused plant surveys for the special-status plant species at the appropriate time of year, as determined by monitoring of reference populations identified above.

Deliverables: N/A

Task 3.1.c. Data Processing and Compilation

DD&A will process and compile the survey results. The results will be incorporated into the baseline inventory described in Task 3.1. of our original scope of work.

Deliverable: Data Processing

Budget:

DD&A estimates the cost of these services to not exceed \$18,500.

Denise Juby

4/1/2021

Submitted by:

DD&A Principal

Date

Accepted by:

City of Marina

Date

**AMENDMENT NO. 1
TO
CITY OF ARINA
AGREEMENT FOR PROFESSIONAL SERVICES**

City-Wide Section 2081 Incidental Take Permit

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 Denise Duffy & Associates, Inc, 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 to assist the City in acquiring an Incidental Take Permit (ITP) in compliance with Section 2081 of the California Endangered Species Act (CESA) for future take of Monterey Gilia that may result from multiple projects City-wide referred to as the "Project."
- B. Following kickoff of the consultant services work and data gathering outlined in Task 1 of the Agreements, it was decided additional biological surveys than what were initially proposed would be necessary to adequately complete the work
- C. To facilitate the additional biological survey work, Denise Duffy & Associates (DD&A), Inc. has provided Change Order No. 1 to the Agreement for Biological Consulting Services for City-Wide Section 2081 ITP included in **"EXHIBIT A"**.
- D. Only the numbered paragraphs of the Agreement which are being amended are set forth in this Amendment. No. 1. All references in this Amendment No. 1 to a separate instrument or agreement shall include such instrument or agreement as the same may have been amended or supplemented from time to time pursuant to the applicable provisions thereof. Capitalized terms used but not defined in this Amendment No. 1 shall have the meanings given to them in the Agreement.

Terms and Conditions

The above recitals are true, correct and incorporated herein by this reference.

Now, therefore, the parties agree to enter into this Amendment No. 1, and to amend the Agreement effective as of the date first written above as follows:

- 1. Section 1(a) of the Agreement is hereby amended and restated to read in its entirety as follows:

"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 the Agreement for Biological Consulting Services for

City-Wide Section 2081 ITP entered into between the City and Contractor on December 18, 2021, and the 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.”

2. Section 3 (a) of the Agreement is hereby amended and restated to read in its entirety as follows:

“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 Thirty-Eight-Thousand-Nine-Hundred-Eighty-Nine dollars (\$38,989) in accordance with the provisions of this Section and the Cost Estimate set forth in the Agreement for Biological Consulting Services for City-Wide Section 2081 ITP entered into between the City and Contractor on December 18, 2021, and attached hereto as **Exhibit A** and incorporated herein by this reference.”

3. Integration. This Amendment No. 1 and the Agreement represent the entire agreement concerning this subject matter and supersedes prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Amendment No. 1 and the Agreement merge into this Amendment No. 1 and the Agreement.

4. Counterparts. This Amendment No. 1 may be executed in any number of counterparts and all of counterparts taken together shall be deemed to constitute one and the same instrument.

5. Authority. Each individual executing this Amendment No. 1 represents and warrants that he or she is duly authorized to execute and deliver this Amendment No. 1 and that this Amendment No. 1 is binding in accordance with its terms.

Except as provided above, the Agreement is in all other respects in full force and effect.

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:

Attest: (Per Resolution 20__-__)

Deputy City Clerk

Approved as to form:

By: _____
City Attorney

EXHIBIT A

SCOPE OF WORK

**Change Order No. 1
City of Marina City-Wide Section 2081 ITP
Amendment to Existing Agreement**

To: Matthew Mogensen, City of Marina

Date: April 1, 2021

From: Erin Harwayne, AICP, DD&A

Ref: **Biological Consulting Services for City-Wide Section 2081 ITP**

Denise Duffy & Associates, Inc. (DD&A) is contracted with the City of Marina (City) for the above-referenced project. During Task 1 of our scope of work, DD&A met with the working group to compare occurrence and survey data for Monterey gilia. It was determined that there are some gaps in the data and additional surveys for this species would be beneficial for the project. Therefore, this document requests and, if accepted, authorizes DD&A to perform the work as detailed below, for the budget allocated (also shown below).

This additional scope of work and budget is an amendment to the original agreement with the project applicant, as of the date shown below. This notification will serve as AUTHORIZATION TO PROCEED with the additional services once DD&A receives the signed authorization. All other terms and conditions of the original agreement shall remain unchanged.

Description of Work:

Task 1a. Pre-Survey Data Collection/Reference Population Monitoring

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

Deliverables: N/A

Task 1b. Focused Botanical Surveys

DD&A has identified six survey areas within the City totaling approximately 160 acres. DD&A will conduct focused surveys within these survey areas for Monterey gilia. DD&A will perform protocol-level focused plant surveys for these species at the appropriate time of year, as determined by monitoring of reference populations identified above.

Deliverables: N/A

Task 1c. Data Processing and Compilation

DD&A will process and compile the survey results in coordination with the working group. The results will be incorporated into the mitigation strategy proposal as a component of Task 1 of our original scope of work.

Deliverable: Data Processing

Budget:

DD&A estimates the cost of these services to not exceed \$10,000.

Denise Juby

4/1/2021

Submitted by:

DD&A Principal

Date

Accepted by:

City of Marina

Date

March 31, 2021

Item No: **8g(2)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of April 6, 2021

**CITY COUNCIL TO CONSIDER ADOPTING RESOLUTION NO. 2021-,
APPROVING CHANGE ORDERS FOR ADDITIONAL BIOLOGICAL
SURVEY WORK TO AGREEMENTS WITH DENISE DUFFY &
ASSOCIATES, INC FOR BIOLOGICAL CONSULTING SERVICES FOR
FORT ORD HMP COMPLIANCE, AND TO ASSIST THE CITY IN
ACQUIRING A CITY-WIDE INCIDENTAL TAKE PERMIT, AND
AUTHORIZING THE FINANCE DIRECTOR TO MAKE NECESSARY
ACCOUNTING AND BUDGETARY ENTRIES, AND AUTHORIZING
THE CITY MANAGER TO EXECUTE THE AGREEMENTS ON
BEHALF OF THE CITY, SUBJECT TO FINAL REVIEW AND
APPROVAL BY THE CITY ATTORNEY**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2021-, approving change orders for additional biological survey work to agreements with Denise Duffy & Associates, Inc for biological consulting services for Fort Ord HMP compliance, and to assist the city in acquiring a city-wide incidental take permit, and authorizing the Finance Director to make necessary accounting and budgetary entries, and authorizing the City Manager to execute the agreements on behalf of the city, subject to final review and approval by the City Attorney.

BACKGROUND:

The U.S. Army's decision to close and dispose of the Fort Ord military base was considered a major federal action that could affect listed species under the federal Endangered Species Act (ESA). In 1993, the U.S. Fish and Wildlife Service (Service) issued a Biological Opinion (BO) on the disposal and reuse of former Fort Ord requiring that a Habitat Management Plan be developed and implemented to reduce the incidental take of listed species and loss of habitat that supports these species. As a result, the U.S. Army prepared the *Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord, California* (HMP) in 1997. The Fort Ord Reuse Authority (FORA) was in the process of preparing a Fort Ord Habitat Conservation Plan (HCP) to support the issuance of base-wide incidental take permits, which incorporated the habitat requirements of the HMP. However, the base-wide permitting effort was discontinued, and the Fort Ord HCP is no longer proposed. As a result, the Service requested that the local jurisdictions initiate the steps necessary to comply with the approved HMP. The City is responsible for four Habitat Management Areas (HMAs), including the Salinas River, Airport, Northwest Corner, and Landfill HMAs. In accordance with the requirements described in the HMP and the deed restrictions for the parcels, a Resource Management Plan (RMP) must be prepared and implemented.

On December 15, 2020, the City Council adopted Resolution No. 2020-157 approving Agreements with Denise Duffy & Associates (DD&A), Inc to provide biological consulting services to develop an RMP and to assist the city in acquiring a city-wide incidental take permit

to mitigate for future planned development. The RMP will bring the City into compliance with deed restrictions and federal agency requirements to manage the City's HMAs to mitigate development on former Fort Ord, but the City will also need to meet State of California requirements of the CA Endangered Species Act (CESA) for anticipated future take of Monterey Gilia that may result from future projects. To comply with CESA in carrying out future development projects in habitat sensitive areas, the City will need to acquire an Incidental Take Permit for Monterey Gilia as well.

ANALYSIS:

As described above, the City is required to develop a RMP to identify the habitat management activities required for each parcel in the HMAs with the City's jurisdiction. To meet this requirement, staff sought a proposal from DD&A, Inc. to provide biological consulting services to facilitate the City's compliance with the Fort Ord HMP and development of its RMP. In addition to the HMP Compliance services, the City sought a proposal from DD&A to assist the City in acquiring an Incidental Take Permit (ITP) in compliance with Section 2081 of the California Endangered Species Act (CESA) for the potential take of Monterey Gilia that is expected to result from multiple anticipated future projects City-Wide.

The work described in both Agreements with DD&A has begun. Task 1 for each work effort includes gathering data and information. Through efforts in Task 1, it became evident that additional biological surveys will be necessary to adequately complete the work efforts.

The additional work proposed is described below and in **"EXHIBITS A & B"** to the attached Resolution.

Change Order No. 1 to the Agreement for Biological Consulting Services for Fort Ord HMP Compliance

During Task 1 of the scope of work, DD&A met with staff from the U.S. Fish and Wildlife Service as part of project initiation. The proposed scope of work was discussed, and it was determined that focused botanical surveys within the four habitat management areas would be beneficial for the project by providing updated survey data that will better inform management recommendations.

The current costs of Agreement for Biological Consultant Services for Fort Ord HMP Compliance are for \$204,170. The increased contract cost of these services is estimated not to exceed \$18,500.

The following tasks would be subtasks to Task 3.1 of the original scope of work.

Task 3.1.a. Pre-Survey Data Collection/Reference Population Monitoring

Reference populations of special-status plant species with the potential to occur within the habitat management areas will be monitored in order to determine the appropriate timing for the focused plant surveys. Generally, spring and summer blooming periods for occur from March to May and June to September. The surveys will be conducted during the peak bloom for the species, as indicated by reference populations.

Task 3.1.b. Focused Botanical Surveys

DD&A will perform protocol-level focused plant surveys for the special-status plant species at the appropriate time of year, as determined by monitoring of reference populations identified above.

Task 3.1.c. Data Processing and Compilation

DD&A will process and compile the survey results. The results will be incorporated into the baseline inventory described in Task 3.1. of our original scope of work.

Change Order No. 1 to the Agreement for Biological Consulting Services for City-Wide Section 2081 ITP

During Task 1 of the scope of work, DD&A met with the working group to compare occurrence and survey data for Monterey gilia. It was determined that there are some gaps in the data and additional surveys for this species would be beneficial for the project.

The current cost of the Agreement for Biological Consulting Services for City-Wide Section 2081 ITP cost is \$28,989. The increase contract cost of these services is estimated not to exceed \$10,000.

The following tasks would be subtasks to Task 1 of the original scope of work.

Task 1b. Focused Botanical Surveys

DD&A has identified six survey areas within the City totaling approximately 160 acres. DD&A will conduct focused surveys within these survey areas for Monterey gilia. DD&A will perform protocol-level focused plant surveys for these species at the appropriate time of year, as determined by monitoring of reference populations identified above.

Task 1c. Data Processing and Compilation

DD&A will process and compile the survey results in coordination with the working group. The results will be incorporated into the mitigation strategy proposal as a component of Task 1 of our original scope of work.

FISCAL IMPACT:

On December 15, 2020, the City Council adopted Resolution No. 2020-157 approving the Agreement for Professional Services for Biological Consultant Services for Fort Ord HMP Compliance and appropriated \$204,170 from Fund 223. When FORA closed its doors on June 30, 2020, funding that had been dedicated to habit conservation planning efforts were divided and transferred to the land use jurisdictions with HMP responsibilities. Fund 223 currently contains a balance of approximately \$1,300,000. The Change Order No. 1 to this Agreement contained in “**EXHIBIT A**” includes a not-to-exceed additional \$18,500, bringing the total contact cost to \$222,670. Therefore, Fund 223 has adequate funding capacity to cover the estimated contract costs

The Agreement for Professional Services to assist the City in acquiring an ITP in compliance with Section 2081 was approved with an appropriation of \$28,989 from Fund 223. The Change Order No. 1 to this Agreement contained in “**EXHIBIT B**” includes a not-to-exceed additional \$10,000, bringing the total contact cost to \$38,989. Also appropriated in Resolution No. 2020-157 was funds for a CDFW ITP Application fee of \$32,669.75. Total project costs, including Change Order No. 1 and CDFW fee is \$71,658.75.

Total costs for both of the above-described projects is \$294,329. With the Fund 223 balance of approximately \$1,300,000, there are sufficient funds to appropriate to these two projects. Should there be additional costs necessary, staff will return to the City Council to request further spending authorization

CONCLUSION:

This request is submitted for the City Council consideration and approval.

Respectfully submitted,

Matt Mogensen
Assistant City Manager
City of Marina

REVIEWED/CONCUR:

Layne Long
City Manager
City of Marina