

RESOLUTION NO. 2022-116

A REOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MARINA AND SCS ENGINEERS FOR ENVIRONMENTAL SERVICES FOR THE ODOR ATTRIBUTION STUDY PROJECT, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENTS ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY.

WHEREAS, a number of odor complaints have been reported to the City and the Monterey Bay Air Resources District (MBARD) by citizens of the City of Marina in recent years. The complaints are often reported after hours and often appear to be transitory in nature. Several surrounding public agencies have also been engaged with the City and MBARD during this time and have been working cooperatively to identify weather-related information such as wind speed, direction, and temperature during each reported event, in addition to investigating current operating conditions at their facilities and, when timely, visiting the area of the reported odor; and

WHEREAS, on April 19, 2022, the City Council approved resolution no. 2022-49 to release a Request for Qualifications for hiring a contractor to conduct an odor attribution study; and

WHEREAS, City staff issued an RFP on May 17 and received two proposals from SCS Engineers and Montrose Environmental. On July 8, interview meetings were held to evaluate the consultants' qualifications by the interview panel, including two staff members, one representative from Monterey Bay Air Resources District (MBARD), one representative from County of Monterey Health Department, and one representative from the residents. Based on the evaluation process SCS Engineers is selected as the most qualified firm for conducting the odor attribution study with a total cost of \$150,000 (**Exhibit B**); and

WHEREAS, Staff has prepared a Memorandum of Understanding (MOU) between the City of Marina, ReGen Monterey (ReGen), and Monterey One Water (M1W) for the funding and reimbursement of the project cost and outline the scope of work and duties of each agency during the project. ReGen and M1W will agree based on the MOU, to pay up to \$75,000 per agency and \$150,000 in total to cover the project expenses, excluding the City staff time. The MOU is an item for City Council consideration on this meeting; and

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

1. Approve a professional services agreement between the City of Marina and SCS Engineers for environmental services for the odor attribution study project (**Exhibit A**); and
2. Author the city manager to execute the agreement on behalf of the City subject to final review and approval by the city attorney; and

PASSES AND ADOPTED, by the City Council of the City of Marina at a regular meeting duly held on September 20 2022 by the following vote:

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

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

EXHIBIT A

CITY OF MARINA AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into on _____, 2022, by and between the City of Marina, a California charter city, hereinafter referred to as the "City," and SCS Engineers, a California Incorporation, 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 environmental services for the odor attribution study project, hereinafter referred to as the "Project."
- B. Contractor represents and warrants that it has the qualifications, experience, and personnel necessary to properly perform the services as set forth herein.
- C. Consultant represents that it has the degree of specialized expertise contemplated within California Government Codes §§37103 and 53060 and holds all necessary licenses to practice and perform the services herein contemplated.
- D. City desires to retain Contractor to provide such services.

Terms and Conditions

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

1. Scope of Work.

(a) Contractor is hereby hired and retained by the City to work in a cooperative manner with the City to fully and adequately perform those services set forth in Exhibit "A" attached hereto ("Scope of Work") and by this reference made a part hereof. With prior written notice to Contractor, City may elect to delete certain tasks of the Scope of Work at its sole discretion.

(b) Contractor shall perform all such work with skill and diligence and pursuant to generally accepted standards of practice in effect at the time of performance. Contractor shall provide corrective services without charge to the City for work which fails to meet these standards and which is reported to Contractor in writing within sixty days of discovery. Should Contractor fail or refuse to perform promptly its obligations under this Agreement, the City may render or undertake the performance thereof and the Contractor shall be liable for any expenses thereby incurred.

(c) If services under this Agreement are to be performed by a design professional, as that term is defined in California Civil Code §2782.8(b)(2), design professional certifies that all design professional services shall be provided by a person or persons duly licensed by the State of California to provide the type of services described in Section 1(a). By delivery of completed work, design professional certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws, and the professional standard of care in California.

(d) Contractor is responsible for making an independent evaluation and judgment of all

(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.

(a) Unless otherwise provided, the term of this Agreement shall begin on the date of its full execution and shall expire on June 30, 2025, unless extended by amendment or terminated earlier as provided herein. The date of full execution is defined as the date when all of the following events have occurred:

(ii) The office of the City Attorney has indicated in writing its approval of this Agreement as to form, 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.

3. Compensation.

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(b) Invoice(s) in a format and on a schedule acceptable to the City shall be submitted to and be reviewed and verified by the Project Administrator (see Section 5(a)) and forwarded to the City's Finance Department for payment. City shall notify Contractor of exceptions or dispute items and their dollar value within fifteen days of receipt. Payment of the undisputed amount of the invoice will typically be made approximately thirty days after the invoice is submitted to the Finance Department.

(c) Contractor will maintain clearly identifiable, complete and accurate records with respect to all costs incurred under this Agreement on an industry recognized accounting basis. Contractor shall make available to the representative of City all such books and records related to this Agreement, and the right to examine, copy and audit the same during regular business hours upon 24-hour's notice for a period of four years from the date of final payment under this Agreement.

(d) Contractor shall not receive any compensation for Extra Work without the prior written authorization of City. As used herein, "Extra Work" means any work that is determined by the City to be necessary for the proper completion of the Project but which is not included within the Scope of Work and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with the prior written authorization.

(e) Expenses not otherwise addressed in the Scope of Services or the Fee Schedule incurred by Contractor in performing services under this Agreement shall be reviewed and approved in advance by the Project Administrator (Section 5(a)), be charged at cost and reimbursed to Contractor.

4. Termination or Suspension.

(a) This Agreement may be terminated in whole or in part in writing by either party in the event of a substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten days written notice of intent to terminate, and (2) provided an opportunity for consultation with the terminating party prior to termination.

(b) If termination for default is effected by the City, an equitable adjustment in the price provided for in this Agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due the Contractor at the time of termination may be adjusted to cover any additional costs to the City because of the Contractor's default. If after the termination for failure of Contractor to fulfill its contractual obligations, it is determined that the Contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the City.

(c) The City may terminate or suspend this Agreement at any time for its convenience upon not less than thirty days prior written notice to Contractor. Not later than the effective date of such termination or suspension, Contractor shall discontinue all affected work and deliver all work product and other documents, whether completed or in progress, to the City.

(d) If termination for default is effected by the Contractor or if termination for convenience

is effected by the City, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for termination shall provide for payment to the Contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by Contractor relating to written commitments that were executed prior to the termination.

5. Project Administrator, Project Manager & Key Personnel.

(a) City designates as its Project Administrator Public Works Director/City Engineer Mr. Brian McMinn who shall have the authority to act for the City under this Agreement. The Project Administrator or his/her authorized representative shall represent the City in all matters pertaining to the work to be performed pursuant to this Agreement.

(b) Contractor designates Patrick Sullivan as its Project Manager who shall coordinate all phases of the Project. The Project manager shall be available to City at all reasonable times during the Agreement term.

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

6. Delegation of Work.

(a) If Contractor utilizes any subcontractors other than those set forth in Exhibit A section 2, consultants, persons, employees or firms having applicable expertise to assist Contractor in performing the services under this Agreement, Contractor shall obtain City's prior written approval to such employment. Contractor's contract with any subcontractor shall contain a provision making the subcontract subject to all provisions of this Agreement. Contractor will be fully responsible and liable for the payment, administration, completion, presentation and quality of all work performed. City reserves its right to employ other contractors in connection with this Project.

(b) If the work hereunder is performed by a design professional, design professional shall be directly involved with performing the work or shall work through his, her or its employees. The design professional's responsibilities under this Agreement shall not be delegated. The design professional shall be responsible to the City for acts, errors or omissions of his, her or its subcontractors. Negligence of subcontractors or agents retained by the design professional is conclusively deemed to be the negligence of the design professional if not adequately corrected by the design professional. Use of the term subcontractor in any other provision of this Agreement shall not be construed to imply authorization for a design professional to use subcontractors for performance of any professional service under this Agreement.

(c) The City is an intended beneficiary of any work performed by a subcontractor for

purposes of establishing a duty of care between the subcontractor and the City.

7. **Skill of Employees.** Contractor shall ensure that any employees or agents providing services under this Agreement possess the requisite skill, training and experience to properly perform such services.

8. **Confidential and Proprietary Information.** In the course of performing services under this Agreement Contractor may obtain, receive, and review confidential or proprietary documents, information or materials that are and shall remain the exclusive property of the City. Should Contractor undertake the work on behalf of other agencies, entities, firms or persons relating to the matters described in the Scope of Work, it is expressly agreed by Contractor that any such confidential or proprietary information or materials shall not be provided or disclosed in any manner to any of Contractor's other clients, or to any other third party, without the City's prior express written consent.

9. **Ownership of Data.** Unless otherwise provided for herein, all documents, material, data, drawings, plans, specifications, computer data files, basis for design calculations, engineering notes, and reports originated and prepared by Contractor, or any subcontractor of any tier, under this Agreement shall be and remain the property of the City for its use in any manner it deems appropriate. Contractor agrees that all copyrights which arise from creation of the work pursuant to this Agreement shall be vested in the City and waives and relinquishes all claims to copyright or intellectual property rights in favor of the City. Contractor shall provide two (2) sets of reproducible of the above-cited items, except for the computer data files which shall consist of one (1) set. Contractor shall use all reasonable efforts to ensure that any electronic files provided to the City will be compatible with the City's computer hardware and software. Contractor makes no representation as to long-term compatibility, usability or readability of the format resulting from the use of software application packages, operating systems or computer hardware differing from those in use by the City at the commencement of this Agreement. Contractor shall be permitted to maintain copies of all such data for its files. City acknowledges that its use of the work product is limited to the purposes contemplated by the Scope of Work and, should City use these products or data in connection with additions to the work required under this Agreement or for new work without consultation with and without additional compensation to Contractor, Contractor makes no representation as to the suitability of the work product for use in or application to circumstances not contemplated by the Scope of Work and shall have no liability or responsibility whatsoever in connection with such use which shall be at the City's sole risk. Any and all liability arising out of changes made by the City to Contractor's deliverables is waived against Contractor unless City has given Contractor prior written notice of the changes and has received Contractor's written consent to such changes.

10. **Conflict of Interest.**

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

(b) City understands and acknowledges that Contractor may be, as of the date of

commencement of services under this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Contractor is unaware of any stated position of the City relative to such projects. Any future position of the City on such projects may result in a conflict of interest for purposes of this section.

(c) No official or employee of the City who is authorized in such capacity on behalf of the City to negotiate, make, accept, or approve, or take part in negotiating, making accepting or approving this Agreement, during the term of his or her tenure or service with City and for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof or obtain any present or anticipated material benefit arising therefrom.

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

12. Non-Discrimination.

(a) 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 its liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, the Contractor's obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

(b) To the fullest extent permitted by law (including without limitation California Civil Code Sections 2782.8), when the services to be provided under this Agreement are design professional services to be performed by a design professional, as that term is defined under said section 2782.8, Contractor shall indemnify, protect, defend (with independent counsel reasonably acceptable to the City) and hold harmless City and any Indemnified Party for all Liabilities regardless of nature or type that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor, or the acts or omissions of an officer, employee, agent or subcontractor of the Contractor. The Contractor's obligation to indemnify applies unless it is adjudicated that its liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, the Contractor's obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

(c) All obligations under this section are to be paid by Contractor as incurred by City. The provisions of this Section are not limited by the provisions of sections relating to insurance including provisions of any worker's compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its employees and officials. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor, sub tier contractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance or subject matter of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

(d) If any action or proceeding is brought against any Indemnified Party by reason of any of the matters against which the Contractor has agreed to defend the Indemnified Party, as provided above, Contractor, upon notice from the City, shall defend any Indemnified Party at Contractor's expense by counsel reasonably acceptable to the City. An Indemnified Party need not have first paid for any of the matters to which it is entitled to indemnification in order to be so defended.

(e) This obligation to indemnify and defend City, as set forth herein, is binding on the successors, assigns, or heirs of Contractor and shall survive the termination of this Agreement or this Section.

14. Insurance.

(a) As a condition precedent to the effectiveness of this Agreement and without limiting Contractor's indemnification of the City, Contractor agrees to obtain and maintain in full force and effect at its own expense the insurance policies set forth in Exhibit "C" "Insurance" attached hereto and made a part hereof. Contractor shall furnish the City with original certificates of insurance, manually autographed in ink by a person authorized by that insurer to bind coverage on its behalf, along with copies of all required endorsements. All certificates and endorsements must be received and approved by the City before any work commences. All insurance policies shall be subject to approval by the City Attorney and Risk Manager as to form and content. Specifically, such insurance shall: (1) protect City as an additional insured for commercial general and business auto liability; (2) provide City at least thirty days written notice of cancellation, material reduction in coverage or reduction in limits and ten days written notice for non-payment of premium; and (3) be primary with respect to City's insurance program. Contractor's insurance is not expected to respond to claims that may arise from the acts or omissions of the City.

(b) City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required herein by giving Contractor ninety days advance written

notice of such change. If such change should result in substantial additional cost of the Contractor, City agrees to negotiate additional compensation proportional to the increased benefit to City.

(c) All required insurance must be submitted and approved the City Attorney and Risk Manager prior to the inception of any operations by Contractor.

(d) The required coverage and limits are subject to availability on the open market at reasonable cost as determined by the City. Non availability or non affordability must be documented by a letter from Contractor's insurance broker or agency indicating a good faith effort to place the required insurance and showing as a minimum the names of the insurance carriers and the declinations or quotations received from each. Within the foregoing constraints, Contractor's failure to procure or maintain required insurance during the entire term of this Agreement shall constitute a material breach of this Agreement under which City may immediately suspend or terminate this Agreement or, at its discretion, procure or renew such insurance to protect City's interests and pay any and all premium in connection therewith and recover all monies so paid from Contractor.

(e) By signing this Agreement, Contractor hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provision of that Code, and that it will comply with such provisions at all such times as they may apply during the performance of the work pursuant to this Contract. Unless otherwise agreed, a waiver of subrogation in favor of the City is required.

15. **Independent Contractor.** The parties agree that Contractor, its officers, employees and agents, if any, shall be independent contractors with regard to the providing of services under this Agreement, and that Contractor's employees or agents shall not be considered to be employees or agents of the City for any purpose and will not be entitled to any of the benefits City provides for its employees. City shall make no deductions for payroll taxes or Social Security from amounts due Contractor for work or services provided under this Agreement.

16. **Claims for Labor and Materials.** Contractor shall promptly pay when due all amounts payable for labor and materials furnished in the performance of this Agreement, so as to prevent any lien or other claim under any provision of law from arising against any City property (including reports, documents, and other tangible matter produced by the Contractor hereunder), against the Contractor's rights to payments hereunder, or against the City, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

17. **Discounts.** Contractor agrees to offer the City any discount terms that are offered to its best customers for the goods and services to be provided herein, and apply such discounts to payment made under this Agreement which meet the discount terms.

18. **Cooperation: Further Acts.** The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

19. Dispute Resolution. If any dispute arises between the parties as to proper interpretation or application of this Agreement, the parties shall first meet and confer in a good faith attempt to resolve the matter between themselves. If the dispute is not resolved by meeting and conferring, the matter shall be submitted for formal mediation to a mediator selected mutually by the parties. The expenses of such mediation shall be shared equally between the parties. If the dispute is not or cannot be resolved by mediation, the parties may mutually agree (but only as to those issues of the matter not resolved by mediation) to submit their dispute to arbitration. Before commencement of the arbitration, the parties may elect to have the arbitration proceed on an informal basis; however, if the parties are unable so to agree, then the arbitration shall be conducted in accordance with the rules of the American Arbitration Association. The decision of the arbitrator shall be binding, unless within thirty days after issuance of the arbitrator's written decision, any party files an action in court. Venue and jurisdiction for any such action between the parties shall lie in the Superior Court for the County of Monterey.

20. Compliance With Laws.

(a) Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California and the City including but not limited to laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This Agreement shall be governed by, enforced and interpreted under the laws of the State of California. Contractor shall comply with new, amended or revised laws, regulations or procedures that apply to the performance of this Agreement.

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

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

21. Assignment or Transfer. This Agreement or any interest herein may not be assigned, hypothecated or transferred, either directly or by operation of law, without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

22. Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, sent by facsimile ("fax") or certified mail, postage prepaid with return receipt requested, addressed as follows:

To City:

City Manager
City of Marina City Hall
211 Hillcrest Avenue
Marina, California 93933
Fax: (831) 384-9148

To Contractor:

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three days after deposit in the custody of the U.S. Postal Service. A copy of any notice sent as provided herein shall also be delivered to the Project Administrator and Project Manager.

23. **Amendments, Changes or Modifications.** This Agreement is not subject to amendment, change or modification except by a writing signed by the authorized representatives of City and Contractor.

24. **Force Majeure.** Notwithstanding any other provisions hereof, neither Contractor nor City shall be held responsible or liable for failure to meet their respective obligations under this Agreement if such failure shall be due to causes beyond Contractor's or the City's control. It is understood and agreed to by the Contractor and the City that they cannot, and will not, claim Force Majeure based on an economic downturn of any type. Such causes include but are not limited to: strike, fire, flood, civil disorder, act of God or of the public enemy, act of the federal government, or any unit of state or local government in either sovereign or contractual capacity, epidemic, quarantine restriction, or delay in transportation to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

25. **Attorney's Fees.** In the event of any controversy, claim or dispute relating to this Agreement, or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.

26. **Successors and Assigns.** All of the terms, conditions and provisions of this Agreement shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties. Nothing in this paragraph is intended to affect the limitation on assignment.

27. **Authority to Enter Agreement.** Contractor has all requisite power and authority to conduct its business and to execute, deliver and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective party.

28. **Waiver.** A waiver of a default of any term of this Agreement shall not be construed as a waiver of any succeeding default or as a waiver of the provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

29. **Severability.** Should any portion of this Agreement be determined to be void or unenforceable, such shall be severed from the whole and the Agreement will continue as modified.

30. **Construction, References, Captions.** Since the parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party. Any term referencing time, days or period for performance shall be deemed calendar days and not workdays. The captions of the various sections are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, content or intent of this Agreement.

31. **Advice of Counsel.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor or against either party by reason of the extent to which each party participated in the drafting of this Agreement.

32. **Counterparts.** This Agreement may be signed in counterparts, each of which shall constitute an original.

33. **Time.** Time is of the essence in this contract.

34. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the matters as set forth in this Agreement, and no other agreement, statement or promise made by or to any party or by or to any employee, officer or agent of any party, which is not contained in this Agreement shall be binding or valid.

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

CITY OF MARINA

CONTRACTOR

By: _____

By: _____

Name: Layne Long
Its: City Manager
Date: _____

Name: _____
Its: _____
Date: _____

Approved as to form:

By: _____
City Attorney

Exhibit C - Insurance

Contractor agrees to provide insurance in accordance with the requirements set forth herein. If Contractor uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein, Contractor agrees to amend, supplement or endorse the existing coverage to do so. Contractor shall furnish the City with original certificates of insurance, manually autographed in ink by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by the City before any work commences. The City reserves its right to require complete, certified copies of all required insurance policies at any time. The following coverage will be provided by Contractor and maintained on behalf of the City and in accordance with the requirements set forth herein.

Commercial General Liability (primary). Commercial general liability insurance covering Contractor's operations (and products where applicable) is required whenever the City is at risk of third party claims which may arise out of Contractor's work or presence on City premises. Contractual liability coverage is a required inclusion in this insurance.

Primary insurance shall be provided on ISO-CGL form No. CG 00 01 11 85 or 88 or on an ISO or ACORD form providing coverage at least as broad as ISO form CG 00 01 10 01 and approved in advance by the City Attorney and Risk Manager. Total limits shall be no less than one million dollars (\$1,000,000) combined single limit per occurrence for all coverages. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project or the general aggregate limit shall be two million dollars (\$2,000,000). Contractor must give written notice to the City of any pending claim, action or lawsuit which has or may diminish the aggregate. If any such claim or lawsuit exists, Contractor shall be required, prior to commencing work under this Agreement, to restore the impaired aggregate or prove it has replacement insurance protection to the satisfaction of the City Attorney and Risk Manager.

City, its Council, boards and commissions, officers, employees, agents and volunteers shall be added as additional insureds using ISO additional insured endorsement form CG 20 10 11 85 or forms CG 20 10 10 01 and CG 20 37 10 01. Coverage shall apply on a primary, non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to the City or any agent of City. Coverage is not expected to respond to the claims which may arise from the acts or omissions of the City. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Coverage shall contain no contractors' limitation endorsement. There shall be no endorsement or modification limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage or employment-related practices.

Umbrella Liability Insurance. Umbrella liability insurance (over primary) shall apply to bodily injury/property damage, personal injury/advertising injury, contractual liability and completed operations at a minimum, and shall be in an amount of not less than two million dollars (\$2,000,000), and include a "drop down" provision providing primary coverage above a maximum \$25,000.00 self-insured retention for liability not covered by primary policies but covered by the umbrella policy. Coverage shall be following form to any underlying coverage.

Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion and no contractor's limitation endorsement. Policies limits shall be not less than one million dollars (\$1,000,000) per occurrence and in the aggregate, above any limits required in the underlying policies shall have starting and ending dates concurrent with the underlying coverage.

Business Auto. Automobile liability insurance is required where vehicles are used in performing the work under this Agreement or where vehicles are driven off-road on City premises, it is not required for simple commuting unless City is paying mileage. However, compliance with California law requiring auto liability insurance is a contractual requirement.

If automobile insurance is required for work under this Agreement, primary coverage shall be written on ISO Business Auto Coverage form CA 00 01 06 92 including symbol 1 (Any Auto) or on an ISO or ACORD form providing coverage at least as broad as CA 00 01 10 01 approved by the City Attorney and Risk Manager. Coverage shall be endorsed to stated that the City, its Council, boards and commissions, officers, employees, agents and volunteers shall be added as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible. Limits shall be no less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage. Starting and ending dates shall be concurrent. If Contractor owns no autos, a non-owned auto endorsement to the commercial general liability policy described above is acceptable.

Workers' Compensation/Employers' Liability. Workers' Compensation and Employer's Liability insurance are not required for single-person contractors. However, under California law these coverages (or a copy of the State's Consent to Self-Insure) must be provided if Contractor has any employees at any time during the period of this Agreement. Policy(s) shall be written on a policy form providing workers' compensation statutory benefits as required by law. Employers' liability limits shall be no less than one million dollars (\$1,000,000) per accident or disease and shall be scheduled under any umbrella policy described above. Unless otherwise agreed, policy(s) shall be endorsed to waive any right of subrogation as respects the City, its Council, boards and commissions, officers, employees, agents and volunteers.

Property Insurance. Property insurance, in a form and amount approved by the City Attorney and Risk Manager, is required for Contractors having exclusive use of premises or equipment owned or controlled by the City. City is to be named a Loss Payee As Its Interest May Appear in property insurance in which the City has an interest, e.g., as a lien holder. Fire damage legal liability is required for persons occupying a portion of City premises.

Errors and Omissions/Professional Liability. Errors and Omissions or professional liability coverage appropriate to Contractor's profession is required, in a form and amount approved by the City Attorney and Risk Manager. Such insurance shall be in an amount of not less than one million dollars (\$1,000,000) per claim and in annual aggregate. Contractor shall maintain such insurance in place for a period of five years following completion of work or services provided under this Agreement. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than commencement of the work or services under this Agreement.

Contractor and City further agree as follows:

a) This Exhibit supersedes all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Exhibit.

b) Nothing contained in this Exhibit is to be construed as affecting or altering the legal status of the parties to this Agreement. The insurance requirements set forth in this Exhibit are intended to be separate and distinct from any other provision in this Agreement and shall be interpreted as such.

c) All insurance coverage and limits provided pursuant to this Agreement shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.

d) Requirements of specific coverage features or limits contained in this Exhibit are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

e) For purposes of insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or toward performance of this Agreement.

f) All general or auto liability insurance coverage provided pursuant to this Agreement, or any other agreements pertaining to the performance of this Agreement, shall not prohibit Contractor, Contractor's employees, or agents from waiving the right of subrogation prior to a loss. Contractor hereby waives all rights of subrogation against the City.

g) Unless otherwise approved by City, Contractor's insurance shall be written by insurers authorized and admitted to do business in the State of California with a minimum "Best's" Insurance Guide Rating of "A:VII." Self-insurance will not be considered to comply with these insurance specifications.

h) In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Contractor.

i) Contractor agrees to provide evidence of the insurance required herein, satisfactory to City Attorney and Risk Manager, consisting of certificate(s) of insurance evidencing all of the coverages required and an additional endorsement to Contractor's general liability and umbrella liability policies using ISO form CG 20 10 11 85. Certificate(s) are to reflect that the insurer will provide at least thirty days written notice of cancellation, material reduction in coverage or reduction in limits and ten days written notice for non-payment of premium. Contractor agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions. Contractor agrees to provide complete copies of policies to City within ten days of City's request for said copies.

j) Contractor shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.

k) Any actual or alleged failure on the part of the City or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of City or any additional insured, in this or any other regard.

l) Contractor agrees to require all subcontractors or other parties hired for this Project to provide workers' compensation insurance as required herein and general liability insurance naming as additional insureds all parties to this Agreement. Contractor agrees to obtain certificates evidencing such coverage

and make reasonable efforts to ensure that such coverage is provided as required here. Contractor agrees to require that no contract used by any subcontractor, or contracts Contractor enters into on behalf of City, will reserve the right to charge back to City the cost of insurance required by this Agreement. Contractor agrees that upon request, all agreements with subcontractors or others with whom Contractor contracts with on behalf of City, will be submitted to City for review. Contractor acknowledges that such contracts or agreements may require modification if the insurance requirements do not reflect the requirements herein. Failure of City to request copies of such agreements will not impose any liability on City, its Council, boards and commissions, officers, employees, agents and volunteers.

m) If Contractor is a Limited Liability Company, general liability coverage must be amended so that the Limited Liability Company and its Managers, Affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

n) Contractor agrees to provide immediate notice to City of any claim or loss against Contractor that includes City as a defendant. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.

o) Coverage will not be limited to the specific location or individual entity designated as the address of the Project. Contractor agrees to have its coverage endorsed so that all coverage limits required pursuant to this requirement are available separately for each and every location at which Contractor conducts operations of any type on behalf of City. Contractor warrants that these limits will not be reduced or exhausted except for losses attributable to those specific locations and not by losses attributable to any other operations of Contractor.

p) Contractor agrees not to attempt to avoid its defense and indemnity obligations to City, its Council, boards and commissions, officers, employees, agents and volunteers by using as a defense Contractor's statutory immunity under workers' compensation or similar statutes.

r) Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and that there will be no cross liability exclusions that preclude coverage for suits between Contractor and City or between City and any other insured or Named Insured under the policy, or between City and any party associated with City or its employees.

s) Contractor shall maintain commercial general liability, and if necessary, commercial umbrella liability insurance, with a limit of not less than two million dollars (\$2,000,000) each occurrence for at least three years following substantial completion of the work.

u) City reserves the right to modify the insurance requirements set forth herein in accordance with the terms of any specific Service Order issued as provided by the Agreement.

EXHIBIT B

Revised Cost Proposal for an Odor Attribution Study



City of Marina
Public Works Department
211 Hillcrest Avenue
Marina, CA 93933
831-884-1212

SCS ENGINEERS

010577222 | September 7, 2022

4683 Chabot Drive, Suite 200
Pleasanton, CA 94588
925-426-0080

1 PROJECT PLAN

SCS developed an initial project plan for completion of the scope of work in the original proposal for this work. We will update this plan as part of Task 2.1 prior to moving into subsequent phases of the work.

TASK 1.0. INITIAL REVIEW OF INFORMATION

SCS will conduct an initial review of relevant information provided by the client with a goal of defining the parameters for a field investigation. This will include a review of odor complaints from the last two years, compilation and analysis of relevant meteorological data from the same period, initial identification of potential sources of odor, field inspection of candidate sources, and an evaluation of topographic conditions.

TASK 1.1. REVIEW OF COMPLAINT DATA

As a first step, SCS will review the available complaint data as well as any inspection reports issued by regulatory agencies over the last two years. The purpose of this review is to better understand the dates, times of day, and characteristics of the odor as compared to the potential sources, which were operating at the same time. We will also compare the complaint data from identified odor episodes over the last two years to relevant meteorological data (see Task 1.2 below) to assess the relationship of the two. This step will include identifying potential odor sources and their locations, as well as determining locations representative of odor complaint groups or characteristics based on location, time of day, time of year (season), meteorology (see below), geography (topography) of Marina and surrounding areas; pattern of probable businesses' impact; and other information present in the complaint logs. To complete this task, SCS will need the complaint data from the City, MBARD, MRWMD, and M1W over the last two years; we assume that these data are readily available and can be provided to SCS at the project outset.

TASK 1.2. REVIEW OF POTENTIAL SOURCES

As the next step in the Task 1 process, SCS will spend two days conducting initial odor inspections of the identified potential sources of odor in the study region. This may include the landfill, wastewater treatment facility, agricultural operations and natural wet lands and sloughs that may reside in the area. This inspection would include collecting odor data from surveying aspects (subcomponents and/or perimeter) of each facility/source using a portable olfactometer such as a Nasal Ranger and combining that information with observations made by SCS personnel experienced in conducting odor surveys. This step will help define the relative odor magnitude of sources as compared to the general background level of odor concentration.

TASK 1.3. METEOROLOGICAL ANALYSIS

After Task 1.1, SCS will evaluate the meteorological data available for the project area for the last two years. SCS will attempt to obtain local data from a nearby stations, both publicly-available and private sources. We assume that the City, MBARD, MRWMD, and/or M1W will provide access to data that they control and assist SCS in obtaining data from other sources. Otherwise, we will identify and obtain regional data, which is most representative of the Marina area. We will determine prevailing wind patterns (e.g., wind speed, wind direction), which may be affecting the movement of odors into and through the community from the various sources. During Task 1.3, SCS will also review available topographic information for the areas in question.

Since source attribution is a desired goal of this project, it is critical to understand the relationship between the source locations and the areas where complaints have occurred. An important component of this is evaluating meteorological conditions that existed during the time periods when complaints occurred. At the same time, SCS's Chief Meteorologist will determine whether the existing data is representative of the specific areas where odor sources and complaints exist. If not, then, as detailed in Task 2, SCS will outline how and when meteorological measurements will be performed during the investigatory phase of the project.

TASK 1.4. PRESENTATION OF FINDINGS

SCS will prepare a brief presentation via PowerPoint of findings based on the various analyses completed above. The presentation will summarize the analyses completed, the results of those analyses, any conclusions, and recommendations as they relate to the sampling program (Task 2). The presentation will be presented to the City and other stakeholder via Zoom to receive feedback. This meeting will cover the stakeholder meeting in Task 3. Your comments on the presentation will be incorporated into Task 2.

DELIVERABLES

There is one deliverable under Task 1:

- Summary presentation for complaint and meteorological data review.

TASK 2.0. FIELD SAMPLING AND ANALYSIS PROGRAM

SCS will conduct a limited Winter Season Field Sampling and Analysis program that will be informed by the findings in Task 1. The first step in the program will be to develop the Odor Investigation Plan (OIP). This Plan will be considered a living document that evolves based upon the data that is generated by the program. The second step will be conducting the Field Investigation Program, which is likely to take place over approximately 2 weeks in the Winter Season during meteorological conditions that have been known to cause odor issues. This program will include discrete odor samples, and meteorological monitoring. Finally, the results and conclusions will be reported to the City and Stakeholder groups. Additional details can be found in the following sections.

TASK 2.1. ODOR INVESTIGATION PLAN

As part of Task 2.1, SCS will expand on the initial investigation plan developed as part of the original proposal, including any updates based on the results of Task 1. SCS will develop an OIP as described below. The plan will include the following elements:

- Summary of Task 1 findings as they pertain to the field sampling program.
- Outline of field project goals and expected findings.
- Overall testing and monitoring methodology to be implemented.
- Odor sources to be evaluated.
- Locations of sampling and justification for their selection.
- Quantity of samples to be collected.
- Analyses to be performed (scope will be limited to odor sampling and will not include chemical speciation).
- Description of sampling activities including equipment, methods, spatial and temporal considerations.
- Meteorological measurements during sampling.
- Quality Assurance and Quality Control (QA/QC) requirements.

SCS suggests that the odor investigation plan be a “living” document that relies on the measured data to inform the next steps of the program. This will allow for dynamic decision making for optimization of both the project timeline and budget. SCS will submit a draft OIP to the City and stakeholder review and comment, and incorporate your comments into the final OIP. SCS will discuss the plan during one of the quarterly meetings described in Task 3.

TASK 2.2. FIELD INVESTIGATION PROGRAM

SCS will implement the field investigation program according to the plan developed in Task 2.1. The investigation will take place during the Winter Season concurrent with the periods of the most historical complaints. This investigation would be focused on gauging:

- Potential odor sources and odor concentrations at identified odor sources.
- Odor concentrations in the community downwind from potential odor sources.

This initial survey would encompass conducting odor observations via personal sensory perception. For example, when investigating a landfill source odor survey work will be conducted in multiple subcomponent areas of the landfill including, but not limited to the following:

- Covered areas.
- Working face(s).
- Leachate storage and processing area.
- Truck lanes.
- Storage area.
- Daily cover areas.
- Sludge and liquids receiving and process areas.
- Construction and demolition (C&D) landfill activities and areas.

Odor survey activities will also be conducted at or near off-site locations which could include:

- Other nearby industrial facilities and activities that could potentially be a source of odor.
- Nearby areas that could be a natural source of odors (bogs, lakes, farmland, etc.).
- Some of the adjacent neighborhoods to obtain a snap-shot reading of potential odors experienced locally.

Discrete odor samples will be collected utilizing an air displacement sampler. Odor samples will be analyzed for odor concentration (D/T), intensity and character using SCS’s in-house Olfactometer (SS400 Six Station Olfactometer) according to ASTM method E-679-04 and EN13725. Most sampling will be accompanied by meteorological measurements. The measurements will either come from nearby existing stations with the temporal resolution necessary to support the project or by temporary meteorological stations that will be installed by SCS.

Please note that based on the results of Task 1 or initial sampling results as part of Task 2.2, SCS may recommend that a selected number of samples be analyzed for individual speciated odor-causing chemicals. If this occurs, SCS may request re-allocation of budget from odor sample analysis to speciation analysis, subject to the client’s approval.

TASK 2.3. REPORTING

Once complete, SCS will compile a position report that will outline our preliminary findings and impressions of the odor sources in the region. The report will also detail recommended next steps, and suggestions for odor control relative to specific sources. Report elements will include:

- Detailed odor source measurements of the source operations and the methods utilized for the measurements.
- Investigation of odor complaint data and cross compare to concurrent measurements and wind data.
- Recommendations of Best Management Practices for the sources identified to be contributing to citizen complaints and odor impacts.
- QA/QC procedures utilized to insure the defensibility of the data collected.
- A recommended standardized program for the City to utilize for the purpose of receiving, investigating, processing, and responding to future complaints.

SCS will incorporate comments/suggestions that are agreed upon by all interested parties, including SCS. We will discuss and receive feedback on the draft report at the public outreach meeting.

DELIVERABLES

There are four deliverables under Task 2:

- Draft OIP.
- Final OIP.
- Draft Project Report.
- Final Report.

TASK 3.0. PROJECT COORDINATION, MEETINGS, AND OUTREACH

SCS will utilize Task 3 to cover the additional project management, coordination, meetings, and outreach necessary for successful completion of the project. This work will include the following subtasks:

- Overall project management and coordination.
- Coordinate with City staff to hold an agency stakeholder meeting via Zoom. This will be combined with the presentation under Task 1.4.
- Coordinate and attend one public outreach meeting via Zoom for citizen involvement to present the draft report under Task 2.3. SCS would prepare a PowerPoint to discuss the draft report and findings. It is assumed that the City would setup and host this meeting.
- Coordinate implementation of the OIP.
- Provide periodic updates via email to outline progress towards identifying any sources, and variability of observations.
- Participate in quarterly meetings via Zoom with the City Project Manager and other stakeholders, as determined by the City.

2. SCHEDULE

SCS has provided a brief timeline for the project in the table below. Per the RFP, the timeline is estimated to cover one calendar year. Based on the reduced scope described above, we have allocated sufficient time for data collection and sampling in the timeline to cover one Winter season. We would like to start work by October 1, 2022 to make sure we can get Task 1 completed in time to allow Task 2 to occur during this Winter season when odors are typical at their worst.

#	Task	Timeline
1	Initial Review of Information	3 months
2	Field Sampling and Analysis Program and Reporting	4 months
3	Project Coordination, Meetings, and Outreach	Throughout the Project

3. COST PROPOSAL

We look forward to providing the City of Marina with Odor Attribution Study services, which are detailed in this revised Cost Proposal. We believe our proven record of adding value whenever possible offers the City unbeatable value on the proposed contract. However, if you would like us to revisit any aspect of our scope and pricing, we would be pleased to attempt to find a way to fine-tune the scope of work and our budget to better meet your needs. We have provided our pricing below to meet the requirement in the RFP for the Cost Proposal; it has been revised based on discussions with the City and budget constraints.

Odor Attribution Study

Task/Subtask	Unit Cost	Number	Task Cost	Assumptions
Task 1. Initial Review of Information				
1.1. Review of Complaint Data	NA	NA	3,000	Complaint data provided to SCS at project outset
1.2. Review of Potential Sources	NA	NA	3,000	Two day survey of sources
1.3. Meteorological Analysis	NA	NA	4,000	Analysis of up to 3 met datasets
1.4. Presentation of Findings	NA	NA	5,000	To cover Tasks 1.1, 1.2, and 1.3 includes meeting that will cover stakeholder meeting
			15,000	
Task 2. Field Sampling and Analysis Program				
2.1. Odor Investigation Plan			10,000	
2.2. Field Investigation Program			96,512	See Detail on Task 2.2
2.3. Reporting			10,000	
Total - Task 2			116,512	
Task 3. Project Coordination, Meetings, and Outreach				
Agency stakeholder meeting	0	1	0	Covered under Task 1.4
Public outreach meetings	3,000	1	3,000	Two SCS senior staff via Zoom
Prepare for public meetings	1,500	1	1,500	Prepare PowerPoint for the above
Monthly project updates	500	9	4,500	9-month project schedule, via email
Quarterly meetings	1,000	3	3,000	Assumed via Zoom meetings; updates by one SCSer
Overall project management/coordination	700	9	6,300	Estimated cost per month
Total - Task 3			18,300	
Total Estimated Project Cost			149,812	
		Rounded	\$ 150,000	
Alternative Testing for Speciation			20,000	See Detail on Task 2.2

Task 2.2 Field Sampling Detail				
Project Manager Labor	224	100	22,400	
Project Professional Labor	166	80	13,280	
Technicians	102	160	16,320	
ODC's	200	16	3,200	\$ 200/day 16 field days (8 field days two people)
Equipment Rental	12,500	1	12,500	
Meteorological Sites	5,000	1.5	7,500	
Analytical Costs	1,332	16	21,312	Assumes 16 discrete sampling events
Total - Task 2.2			96,512	Estimated Testing Budget
Equipment Rentals:*	Period	Number	Unit Cost	Total
Olfactometer	Weeks	4	\$ 2,000.00	\$ 8,000.00
Lung Samplers	Weeks	24	\$ 150.00	\$ 3,600.00
Sample Pumps	Weeks	24	\$ 37.50	\$ 900.00
				\$ 12,500.00
Analytical Costs:	Events	Per Event	Unit Cost	
Odor Sample Analysis	16	24	\$55.50	\$21,312.00
Alternative Testing for Speciation**	4	5	1000	\$20,000.00
* Assumes Client can provide space for olfactometer analysis local to project. Includes delivery to region.				
**This is intended to be re-allocation of budget but could be contingency				

SCS fully understands that the scope of work on this contract can vary significantly based on the chosen course of action for Task 2. There are a variety of field investigation techniques that can be used in an odor study. We have proposed a logical scope of work and associated budget for this effort based on input from the City as to available budget. However, the ultimate scope of work and cost could vary, based on the results of Task 1. SCS proposes to utilize an iterative approach to our sampling and analysis efforts. This will ensure that we only complete tasks that are necessary to meet the City's goals and will provide useful information toward the effort to accurately attribute odors to their respective sources.

Please see our rate sheet below.

4. PROJECT PHASING

To address budgeting cycles and available funding, at the City's request, we have broken the work into the following phases. The budget for Phase 1 would be \$100,000. The budget for Phase 2 would be \$50,000. While this breakdown is not how SCS would normally configure the project, we have created this to allow the project to move forward.

PHASE 1

Task/Subtask	Budget
All of Task 1	\$15,000
Task 2.1	\$10,000
Monthly Project Updates (6)	\$3,000
Quarterly Meetings (2)	\$2,000
Project Management (6 months)	\$4,200
Portion of Task 2.2	\$65,800
Phase 1 Total	\$100,000

PHASE 2

Task/Subtask	Budget
Remainder of Task 2.2	\$30,680
Task 2.3	\$10,000
Monthly Project Updates (3)	\$1,500
Quarterly Meetings (1)	\$1,000
Project Management (3 months)	\$2,100
Public Outreach Meeting	\$4,500
Phase 2 Total	\$50,000

Fee Schedule
(Effective April 1, 2022 through March 31, 2024)

	Rate/Hour
Clerical	82
Administrative/Secretarial	93
Technician	102
CAD Drafter.....	108
Senior Engineering Technician.....	114
Technical Associate I	118
Technical Associate II	125
Assistant Office Services Manager/Project Administrator	125
Office Services Manager/Senior Project Administrator	130
Associate Staff Professional.....	130
Project Analyst.....	130
CAD Designer	135
Staff Professional I.....	145
Staff Professional II.....	152
Senior Office Services Manager.....	152
Staff Professional III.....	159
Project Professional I	166
Project Professional II	173
Project Professional III	184
Senior Project Professional I	189
Senior Project Professional II	201
Senior Project Professional III	213
Industrial Hygienist/Safety Professional	218
Project Manager I.....	224
Project Manager II.....	233
Senior Certified Industrial Hygienist/Safety Professional	243
Project Manager III.....	249
Project Manager IV.....	257
Senior Project/Technical Manager	266
Senior Project Advisor.....	275
Project Director I	281
Project Director II	290
Principals and Executives.....	See Note 7

General Terms

1. Scheduled rates are effective through March 31, 2024. Work performed thereafter is subject to a new Fee Schedule.
2. Costs for outside consultants and subcontractors, equipment/supplies, and for job-related employee travel and subsistence, are billed at actual cost plus a 15 percent administrative fee.



3. Charges for SCS field equipment and instruments will be in accordance with SCS's Field Equipment Rental Rates Schedule in effect at the time the work is performed. Company trucks are charged at \$70 for up to a half day (4 hours) of use, and \$125 for up to a full day (company cars at \$60/\$100). These charges incorporate an allowance of 100 miles per job per day; a \$0.40 per mile surcharge is applied for additional miles. Vehicle charges for long-term and/or high-mileage projects may be negotiated on a case-by-case basis.
4. Invoices will be prepared monthly or more frequently for work in progress, unless otherwise agreed. Invoices are due and payable upon receipt. Invoices not paid within 30 days are subject to a service charge of 1.5 percent per month on the unpaid balance.
5. Payment of SCS invoices for services performed will not be contingent upon the client's receipt of payment from other parties, unless otherwise agreed in writing. Client agrees to pay legal costs, including attorney's fees, incurred by SCS in collecting any amounts past due and owing on client's accounts.
6. For special situations such as expert court testimony and limited consultation, hourly rates will be on an individually negotiated basis.
7. Hourly rates for Principals and Executives will be on an individually negotiated basis. Typically, these rates are \$298/hour for Principals, \$315 for Vice Presidents, and \$380/hour for Senior Vice Presidents and Senior Executives.



SCS ENGINEERS

Driven by Client Success



Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of September 20, 2022

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-,
APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF MARINA AND SCS ENGINEERS FOR ENVIRONMENTAL
SERVICES FOR THE ODOR ATTRIBUTION STUDY PROJECT,
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. 2022-, approving a professional services agreement between the City of Marina and SCS Engineers for environmental services for the odor attribution study project (**EXHIBIT A**); and
2. Authorizing the city manager to execute the agreement on behalf of the City subject to final review and approval by the city attorney.

BACKGROUND:

A number of odor complaints have been reported to the City and the Monterey Bay Air Resources District (MBARD) by citizens of the City of Marina in recent years. The complaints are often reported after hours and often appear to be transitory in nature. Several surrounding public agencies have also been engaged with the City and MBARD during this time and have been working cooperatively to identify weather-related information such as wind speed, direction, and temperature during each reported event, in addition to investigating current operating conditions at their facilities and, when timely, visiting the area of the reported odor.

On April 19, 2022, the City Council approved resolution no. 2022-49 to release a Request for Qualifications for hiring a contractor to conduct an odor attribution study.

ANALYSIS:

City staff issued an RFP on May 17 and received two proposals from SCS Engineers and Montrose Environmental. On July 8, interview meetings were held to evaluate the consultants' qualifications by the interview panel, including two staff members, one representative from Monterey Bay Air Resources District (MBARD), one representative from County of Monterey Health Department, and one representative from the residents. Based on the evaluation process SCS Engineers is selected as the most qualified firm for conducting the odor attribution study with a total cost of \$150,000. The study will be conducted over 9 months, and it includes: (**EXHIBIT B**)

- Initial Review of Information
- Review of complaint data
- Review of potential sources
- Meteorological analysis
- Presentation of findings
- Field sampling and analysis program
- Odor investigation plan

- Field investigation program
- Reporting
- Project coordination, meetings, and outreach

FISCAL IMPACT:

Staff has prepared a Memorandum of Understanding (MOU) between the City of Marina, ReGen Monterey (ReGen), and Monterey One Water (M1W) for the funding and reimbursement of the project cost and outline the scope of work and duties of each agency during the project. ReGen and M1W will agree based on the MOU, to pay up to \$75,000 per agency and \$150,000 in total to cover the project expenses, excluding the City staff time. The MOU is an item for City Council consideration on this meeting.

CONCLUSION:

This request is submitted for City Council consideration and action.

Respectfully submitted,

Saber Messhenas, E.I.T.
Assistant Civil Engineer / Department of Public Works
City of Marina

REVIEWED/CONCUR:

Brian McMinn, P.E., PLS.
Public Works Director & City Engineer
City of Marina

Layne Long
City Manager
City of Marina