

RESOLUTION NO. 2018-97

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING AGREEMENT BETWEEN APPLIED DEVELOPMENT ECONOMICS, INC. (ADE) AND THE CITY OF MARINA FOR A FEASIBILITY STUDY AND CONCEPTUAL PLAN FOR THE MARINA ARTS VILLAGE; AND, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY; AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE BUDGETARY AND ACCOUNTING ENTRIES.

WHEREAS, on May 31, 2005, City Council adopted Resolution No. 2005-130 approving the University Villages Specific Plan (AKA The Dunes Specific Plan) containing development principles and design guidelines for the redevelopment of 420 acres within south Marina bounded by 8th Street and 1st Street to the south, Highway 1 to the west and Imjin Road to the north. The east boundary is California Avenue to the north and 2nd Avenue to the south. The specific plan identified a Public Arts Program which includes an Arts District and other amenities. The Arts District has the opportunity to create a unique regional draw to the City of Marina. Envisioned as a combination of individual studio spaces, galleries or shops for artists, designers and high profile/interactive art/learning center types of facilities that capitalize on unique resources, and;

WHEREAS, at a regular scheduled meeting of June 20, 2017, the Economic Development Commission adopted the Marina Arts District as one of its FY 2017-18 Goals, and;

WHEREAS, a representative from the U.S. Department of Commerce Economic Development Administration (EDA) visited the site and informed us that the site is eligible and would be very competitive to receive EDA grant funding between \$1,000,000 - \$3,000,000.

WHEREAS, for the City to be eligible for funding by EDA, a market and financial feasibility analysis is necessary to ensure that the development can be sustainable and create jobs, and;

WHEREAS, on August 10, 2018, the City received a proposal and scope of work from Applied Development Economics, Inc. (ADE) to complete a Feasibility Study and Conceptual Plan for the Marina Arts Village. The Agreement amount is \$22,570 (EXHIBIT "A"). Attached to the Agreement is the Scope of Work and Cost estimate (Bid), and;

WHEREAS, this agreement is necessary to complete the market and financial feasibility of the project. As such, staff recommends approval of the agreement, and;

WHEREAS, the cost for the professional services by ADE is covered in the budget from Economic Development Division. Therefore, there is no fiscal impact.

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

1. Approves an agreement between Applied Development Economics, Inc. and the City of Marina for a Feasibility Study and Conceptual Plan for the Marina Arts Village, and
2. Authorizes the City Manager to execute the agreement on behalf of the City, subject to final review and approval by the City's Attorney, and
3. Authorizes the Finance Director to make the necessary budgetary and accounting entries.
4. Adopting the recommended addition of the plan including an additional focus of multi-cultural diversity within our city, and
5. direct staff to secure release the clout on title that's currently held by marina community partners for this property.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 21ST day of August 2018, by the following vote:

AYES, COUNCIL MEMBERS: Amadeo, Morton, O'Connell, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: Brown

ABSTAIN, COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

**CITY OF MARINA
AGREEMENT FOR FEASIBILITY STUDY AND CONCEPTUAL PLAN
FOR THE MARINA ARTS VILLAGE**

THIS AGREEMENT is made and entered into on August ____, 2018, by and between the City of Marina, a California charter city, hereinafter referred to as the "City," and Applied Development Economics, Inc., (ADE), a California corporation, hereinafter referred to as the "Consultant." City and Consultant are sometimes individually referred to as "party" and collectively as "parties" in this Agreement.

Recitals

- A. City desires to retain Consultant for Feasibility Study and Conceptual Plan for the Marina Arts Village and estimating services associated with the Marina Arts Village – Consultant shall provide services pertaining to the City this project including related support services for City as determined by the City Engineer and Economic Development Coordinator.
- B. Consultant represents and warrants that it has the qualifications, experience and personnel necessary to properly perform the services as set forth herein.
- C. City desires to retain Consultant 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 Consultant agree to the following terms and conditions:

1. Scope of Work.

(a) Consultant is hereby hired and retained by the City to work in a cooperative manner with the City to fully and adequately perform feasibility study and conceptual plan for the Marina Arts Village, as more completely described in Exhibit "A" attached hereto Scope of Work and Cost Estimate (Bid) and by this reference made a part hereof. With prior written notice to Consultant, City may elect to delete certain tasks of the Scope of Work at its sole discretion.

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

(c) Services under this Agreement are to be performed by an economic planning and development professional

(d) Consultant is responsible for making an independent evaluation and judgment of all relevant conditions affecting performance of the work, including without limitation site conditions and existing facility.

(e) City shall cooperate with Consultant and will furnish all information data, records and reports existing and available to City to enable Consultant to carry out work outlined in Exhibit "A." Consultant 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 Consultant which were furnished to the City by a third party. Consultant shall have a duty to bring to the City's attention any deficiency or error it may discover in any information provided to the Consultant by the City or a third party.

2. Term of Agreement & Commencement of Work.

(a) Unless otherwise provided, the term of this Agreement shall begin on the date of its full execution and shall expire on November 5, 2018, unless extended by amendment or terminated earlier as provided herein. The date of full execution is defined as the date when all of the following events have occurred:

(i) This Agreement has been approved by the City's Council or by the board, officer or employee authorized to give such approval, and;

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

(iii) This Agreement has been signed on behalf of Consultant by the person or persons authorized to bind the Consultant hereto, and;

(iv) This Agreement has been signed on behalf of the City by the person designated to so sign by the City's Council or by the officer or employee authorized to enter into this Contract and is attested to by the Marina City Clerk.

(b) Consultant shall commence work on the Project upon date of execution. This Agreement may be extended upon written agreement of both parties. Consultant may be required to prepare a written schedule for the work to be performed, which schedule shall be approved by the City and made a part of Exhibit A, and to perform the work in accordance with the approved schedule.

3. Compensation.

(a) City liability for compensation to Consultant 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 Consultant in an amount not to exceed Twenty-two thousand five-hundred seventy dollars (\$22,570.00) in accordance with the provisions of this Section and the Cost Estimate attached hereto as Exhibit B and incorporated herein by this reference

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

(c) Consultant will maintain clearly identifiable, complete and accurate records with respect to all costs incurred under this Agreement on an industry recognized accounting basis. Consultant 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) Consultant shall not receive any compensation for Extra Work without the prior written authorization of City. As used herein, "Extra Work" means any work that is determined by the City to be necessary for the proper completion of the Project but which is not included within the Scope of Work and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement.

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

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 Consultant at the time of termination may be adjusted to cover any additional costs to the City because of the Consultant's default. If after the termination for failure of Consultant to fulfill its contractual obligations, it is determined that the Consultant 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 Consultant. Not later than the effective date of such termination or suspension, Consultant 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 Consultant 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 Consultant for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by Consultant 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) Consultant designates Doug Svensson, AICP 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) Consultant warrants that it will furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement. Consultant, 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. Consultant 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, Consultant may substitute other personnel of at least equal competence upon written approval of the City. In the event that City and Consultant 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: Doug Svensson, AICP, of ADE.

6. Delegation of Work.

(a) If Consultant utilizes any consultants, persons, employees or firms having applicable expertise to assist Consultant in performing the services under this Agreement, Consultant shall obtain City's prior written approval to such employment. Consultant's contract with any other consultant shall contain a provision making the subcontract subject to all provisions of this Agreement. Consultant will be fully responsible and liable for the administration, completion, presentation, and quality of all work performed. City reserves its right to employ other Consultants in connection with this Project, and will perform all coordination between Consultant and those other Consultants, or pay additional fees for Consultant to do that work.

(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 as the licensed entity shall not be delegated. The design professional shall be responsible to the City for acts, errors or omissions of his, her or its consultants. Negligence of consultants 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 consultant in any other provision of this Agreement shall not be construed to imply authorization for a design professional to use consultants for performance of any professional service under this Agreement.

(c) The City is an intended beneficiary of any work performed by a consultant for purposes of establishing a duty of care between the consultant and the City.

7. Skill of Employees. Consultant 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 Consultant may obtain, receive, and review confidential or proprietary documents, information or materials that are and shall remain the exclusive property of the City. Should Consultant 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 Consultant that any such confidential or proprietary information or materials shall not be provided or disclosed in any manner to any of Consultant'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 Consultant, or any consultant of any tier, under this Agreement shall be and remain the property of the City for its use in any manner it deems appropriate. Consultant 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. Consultant 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. Consultant shall use reasonable efforts to provide electronic files to the City compatible with the City's computer hardware and software. Consultant 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. Consultant 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 Consultant, Consultant 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 Consultant's deliverables is waived against Consultant unless City has given Consultant prior written notice of the changes and has received Consultant's written consent to such changes.

10. Conflict of Interest.

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

(b) City understands and acknowledges that Consultant 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. Consultant is unaware of any stated position of the City relative to such projects. Any future position of the City on such projects may result in a conflict of interest for purposes of this section.

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

11. Disclosure. Consultant 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 Consultant 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, Consultant 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 as may be applicable. Consultant shall give written notice of its obligations under this clause to labor organizations with which it has a collective bargaining or other agreement.

(b) Consultant shall include the nondiscrimination and compliance provisions of this Section in all subcontracts.

13. Design Professional Services Indemnification.

(a) To the fullest extent permitted by law, Consultant agrees to indemnify and hold harmless the City and its officers, and employees from and against any and all claims, demands, costs, or liabilities to the proportionate extent that same arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant and its employees or agents in the performance of services under this Agreement as determined by a court or arbitrator of competent jurisdiction. Consultant shall have no upfront duty to defend the City, but shall reimburse reasonable defense costs of the City to the same extent of Consultant's indemnity obligation herein.

(b) Consultant must cooperate, at no additional cost to the City, in the defense of any claims. The provisions of this section are not limited by the requirements in this Agreement related to insurance.

(c) This obligation to indemnify City, as set forth herein, is binding on the successors, assigns, or heirs of Consultant 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 Consultant's indemnification of the City, Consultant 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. Consultant shall furnish the City with original certificates of insurance, autographed by a person authorized by that insurer to bind coverage on its behalf, along with copies of all required endorsements. 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, and ten days written notice for non-payment of premium; and (3) be primary with respect to City's insurance program. Consultant'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 Consultant ninety days advance written notice of such change. If such change should result in substantial additional cost of the

Consultant, 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 Consultant.

(d) The required coverage and limits are subject to availability on the open market at reasonable cost. Non availability or non affordability must be documented by a letter from Consultant'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, Consultant'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 other than Professional Liability to protect City's interests and pay any and all premium in connection therewith.

(e) By signing this Agreement, Consultant 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 Consultant. The parties agree that Consultant, its officers, employees and agents, if any, shall be independent Consultants with regard to the providing of services under this Agreement, and that Consultant'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 Consultant for work or services provided under this Agreement.

16. Claims for Labor and Materials. Consultant 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 Consultant hereunder), against the Consultant'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. Consultant agrees to offer the City any discount terms that are offered to its 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. Consultant shall comply with new, amended or revised laws, regulations or procedures that apply to the performance of this Agreement.

(b) Consultant 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 Consultant 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: Public Works Director
 City of Marina City Hall
 211 Hillcrest Avenue
 Marina, California 93933
 Fax: (831) 384-9148

To Consultant: Applied Development Economics, Inc.
 1756 Lacassie Avenue, Suite 100
 Walnut Creek, CA 94596
 Phone (925) 934-8712

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 Consultant.

24. **Force Majeure.** Notwithstanding any other provisions hereof, neither Consultant 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 Consultant's or the City's control. Such causes include but are not limited to: strike, fire, flood, civil disorder, act of God or of the public enemy, act of the federal government, or any unit of state or local government in either sovereign or contractual capacity, epidemic, quarantine restriction, or delay in transportation to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

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

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

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

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

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

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

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

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

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

34. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the matters as set forth in this Agreement, and no other agreement, statement or promise made by or to any party or by or to any employee, officer or agent of any party, which is

not contained in this Agreement shall be binding or valid. . The exhibits attached hereto are incorporated into this Agreement. In the event of a conflict between the terms of this Agreement and any exhibit, the terms of this Agreement shall control.

IN WITNESS WHEREOF, Consultant 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

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

CONSULTANT

By: _____
Name: Doug Svensson, AICP
Its: President
Date: _____

Approved as to form:

By: _____
City Attorney

ATTEST: (Pursuant to Resolution No. 2018-____)

Anita Sharp, Deputy City Clerk

EXHIBIT A
SCOPE OF SERVICES

MARINA ARTS VILLAGE FEASIBILITY ANALYSIS
APPLIED DEVELOPMENT ECONOMICS
SCOPE OF WORK

Introduction

Marina has a unique opportunity to utilize existing buildings and property at former Fort Ord to create an Arts Village that can help support and stimulate arts activities in the region, complement ongoing development of Marina Dunes and other commercial and institutional uses in the vicinity and serve as a regional visitor attraction to help Marina capture a larger share of the significant tourist traffic to the Monterey Peninsula. EDA has expressed an initial interest in awarding grant funds to jump start the project but requires a market and financial feasibility analysis to ensure that the development can reach a sustainable operating level without continued public subsidy.

The City's success in obtaining grant funding from the EDA will rest in significant part on our ability to identify and refine programming/space needs for the Arts Village and to understand the monetary value of that space to end users as measured in willingness to pay (e.g. rents, lease values, etc.). The interplay between these two variables is fundamental to assessing the economic feasibility of the Arts Village concept.

ADE will lead this study, with significant contribution from EMC Planning Group. ADE and EMC have a long history of collaboration, including an award-winning redesign of Downtown Gonzales, an Artisan Agriculture development plan in Greenfield, the award-winning Economic Development Element in Salinas and most recently, the Vibrancy Plan in Sand City. This last project is significant because of the large number of artists in Sand City and the potential of the Marina Arts Village to serve that market.

ADE has extensive experience with non-residential market research and has prepared pro forma studies for a number of different types of real estate and business operations. In particular, we have completed a number of projects involving adaptive reuse of older or historic structures, as detailed later in this proposal.

EMC Planning Group's primary role will be to survey the local and broader Monterey Peninsula/Salinas Valley arts community, including faculty in the arts department at CSUMB, to ascertain art space/facility needs and potential rents that could be generated from such space and facilities. EMC Planning Group's secondary role is to provide inputs regarding possible modifications to the current conceptual plan to reflect survey results.

Market Analysis

The market analysis will address uses for the 60,000 sq. ft. building that include the following:

1. Auditorium with stage
2. Individual artisan workspace studios and small retail stores comingled throughout the footprint. Retail would be comprised of café, jewelry, pottery, sculpture, etc.

3. Small theater
4. Small-entertainment businesses
5. Foundries
6. Painter Studio
7. Museums
8. Wine tasting/storage
9. Define market/demand for artisans, light industrial, retail/commercial, foundry and auditorium uses
10. Define market lease rate for artisans, light industrial, retail/commercial, foundry and auditorium uses
11. Define barriers to leasing space in the City of Marina for artisans, light industrial, retail/commercial, foundry and auditorium uses
12. Define quantifiable shortage of space for artisans, light industrial, retail/commercial, foundry and auditorium uses

Arts Community Survey. EMC Planning Group will prepare a survey questionnaire that focuses on the status of existing art space/facilities, gaps in and demand for new space and facilities by end user type, existing art space/facility rent and lease rates, and interest in occupying new art space/facilities in Marina. This information will be discussed in the context of the Arts Village concept and how it can be best utilized to grow opportunities for the arts. Interviewees will be asked to suggest what space configurations, facilities, and programs could best serve their needs.

The Monterey County Arts Council maintains a comprehensive list of art community organizations and interests; it will be used as a starting point to identify priority contacts. It is likely that this will be a somewhat iterative process, with additional contacts identified through our initial outreach. Telephone interviews will be the primary mode of communication, but in-person meetings will be conducted to the extent possible given budget considerations.

The uses addressed in this part of the analysis would include the individual artisan workspaces, foundries and painter studio.

Complementary Uses. ADE will research the other potential uses in the Arts Village, including a performing arts venue and auditorium, a military museum, ancillary retail and food service, entertainment as well as wine tasting and storage. We will cast the net as wide as appropriate to seek out uses complimentary to the main function of the Arts Center to host and support the regional arts community.

The market analysis will define the quantifiable shortage of space for the uses listed above, as well as market demand, lease rates and barriers to leasing space for these uses, if any.

Financial Analysis and Job Creation

ADE will also research the real estate and operational aspects of the project in terms of likely construction costs, rent and lease levels for the various uses (supplementing the survey data collected by EMC), and operating models in terms of facility ownership and management.

From prior research, ADE and EMC have compiled a number of case study materials that can help provide models for effective establishment and operation of the Marina Arts Village:

- Arts incubators in San Jose, Chicago, New Orleans, Houston, Fort Lauderdale and Pennsylvania
- Fort Mason Center for Arts and Culture
- Headlands Center for the Arts
- Healdsburg Shed project
- ArtSpace projects in St. Paul and other locations
- “How to Do Creative Placemaking” by the National Endowment for the Arts
- Creative City Making, Minneapolis

ADE will prepare a detailed pro forma analysis from project start to projected stabilized operations. The financial analysis will detail capital and operating cost items, anticipated funding and operating revenues, including any City operating subsidies, phasing of the development and absorption of the project. The analysis will show the anticipated annual cash flow for the project and indicate how many years would be necessary to achieve a self-sustaining operating level. The analysis will include a discussion of the sensitivity of the results to specific variables in the analysis. This discussion will include consideration of constraints to market capture for the project as well as cost issues that may jeopardize the success of the project.

ADE will estimate the potential job creation associated with the project. We understand this is a critical variable in EDA’s ability to help fund the project.

Conceptual Development Plan

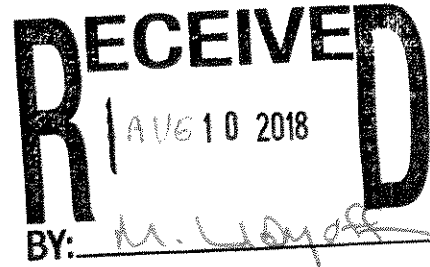
Based on the outcome of the market and financial analysis, ADE will work with EMC, project architect Brian Congleton, and City staff to prepare an optimal space utilization plan and overall conceptual development plan for the project. Combined with the financial analysis, this can provide the basis for the City’s grant application to EDA. The specific deliverables for the project include:

- A Project Scope Narrative
- Conceptual Plan of “User and Space Utilization”, including parking
- Discussion and documentation of the complete market and financial analysis, including the business operations pro forma

EXHIBIT B
COST ESTIMATE

August 10, 2018

Marilyn Lidyoff
Economic Development Coordinator
City of Marina
211 Hillcrest Avenue
Marina, CA 93933



Dear Marilyn:

In support of our technical proposal for the Marina Ars Feasibility Project, we submit the following cost bid. We propose to complete the project for a not to exceed price of \$22,570. The staffing plan and billing rates are shown in the Table below, by Task. The billing rates are inclusive of all direct and indirect expenses associated with the project. We anticipate that any charges from Brian Congleton Architects would be billed directly to the City outside of our contract. However, we can revise the budget and contractual arrangements to include the architects at the City's option.

Task	Svensson	Cheng	Groves	James	Sissem	Total
	\$200.00	\$150.00	\$210.00	\$205.00	\$205.00	
Project Initiation/Mgmt	4		2	2	2	\$2,040
Market Analysis	16	18		20	18	\$13,690
Financial/Jobs	16					\$3,200
Conceptual Plan	2		2	2	2	\$1,640
Report	10					\$2,000
Total	48	18	4	24	22	\$22,570

We appreciate the opportunity to submit this bid and look forward to discussing it with you at your convenience.

Sincerely,



Doug Svensson, AICP
President



Exhibit C - Insurance

Consultant agrees to provide insurance in accordance with the requirements set forth herein. If Consultant uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein, Consultant agrees to amend, supplement or endorse the existing coverage to do so. Consultant 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 Consultant 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 Consultant's operations (and products where applicable) is required whenever the City is at risk of third party claims which may arise out of Consultant'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 approved in advance by the City Attorney providing coverage at least as broad as ISO form CG 00 01. 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). Consultant 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, Consultant 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, officials, officers, and employees shall be added as additional insureds using ISO additional insured endorsement form approved in advance by the City Attorney. 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 Consultants' limitation endorsement. -

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 approved in advance by the City Attorney providing coverage at least as broad as CA 00 01 10 01. Coverage shall be endorsed to stated that the City, its Council, boards and commissions, officers, and employees 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 Consultant or for which the Consultant 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 Consultant 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 Consultants. However, under California law these coverages (or a copy of the State's Consent to Self-Insure) must be provided if Consultant 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. Unless otherwise agreed, policy(s) shall be endorsed to waive any right of subrogation as respects the City, its Council, boards and commissions, officers and employees.

Errors and Omissions/Professional Liability. Errors and Omissions or professional liability coverage appropriate to Consultant's profession is required in a form and amount reviewed prior to commencement of services by the City Attorney. Consultant shall maintain such insurance for a period of three years following completion of the project. Such insurance shall be in an amount of not less than one million dollars (\$1,000,000) per claim and in annual aggregate.

Consultant 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 Consultant, Consultant's employees, or agents from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.

g) Unless otherwise approved by City, Consultant'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 Consultant.

i) Consultant 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. Consultant agrees to provide complete copies of policies to City within ten days of City's request for said copies.

j) Consultant 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) Consultant agrees to require all 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.

m) Coverage will not be limited to the specific location or individual entity designated as the address of the Project. Consultant 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 Consultant conducts operations of any type on behalf of City. Consultant 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 Consultant.

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

o) Consultant 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 Consultant 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.

p) Consultant shall maintain commercial general liability,-with a limit of not less than one million dollars (\$1,000,000) each occurrence for at least three years following substantial completion of the work.

EXHIBIT D
(includes Exhibits 1-3)

Affirmative Action

In rendering the services contemplated by this AGREEMENT with the CITY, the CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, creed, sex, age, or national origin. CONSULTANT shall also comply with Title IV of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.

Furthermore:

A. CONSULTANT shall take affirmative action to insure that job applicants are employed and that employees are treated during employment without regard to race, religion, sex, color, age, national origin, or physical handicap. The term "affirmative action" shall include, but not be limited to, employment, upgrading, demotion, or transfer; recruitment advertisement; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

B. CONSULTANT agrees to post such notices, to be provided, setting forth the provisions of this equal employment opportunity and affirmative action program.

C. CONSULTANT shall in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT state that all qualified applicants will receive consideration to employment without regard to race, religion, sex, color, age, national origin, or physical handicap. Notification that CONSULTANT is an "Equal Opportunity Employer" or "EOE" constitutes satisfaction of this notice requirement.

Fair Employment Practices

CONSULTANT will permit access to records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices Commission, or any other agency of the State of California designated by awarding authority, for the purposes of investigation to ascertain compliance with the Fair Employment Practices Provision. In the event of any violations by the CONSULTANT of state fair employment laws, the State of California shall have the right to terminate this AGREEMENT either in whole or in part. In the event of such termination, any loss or damage sustained by the State of California and/or CITY in securing the goods or services hereunder shall be borne and paid for by the CONSULTANT and by their surety under performance bond, if any, and, in addition to other remedies, the State of California and the CITY may deduct from any monies due or that thereafter become due to the CONSULTANT the difference between the price named in the particular agreements and the actual cost thereof to the State of California and the CITY.

Compliance with Labor Code of State of California

Pursuant to the provisions of Section 3700 of the Labor Code, CONSULTANT will require every employer to be insured against liability for workmen's compensation, or to undertake self-insurance in accordance with the provisions of that code, and will comply with such provisions before commencing the performance of the work of a particular agreement. Furthermore, CONSULTANT shall also provide evidence of workmen's compensation insurance, unemployment insurance, and disability insurance to cover all of CONSULTANT's employees.

The Civil Rights Act, HCD, Age Discrimination, and Rehabilitation Acts Assurance

During the performance of this contract the CONSULTANT assures that no otherwise qualified person shall be excluded from the participation or employment, denied program benefits, or be subject to discrimination based on race, color, national origin, sex, age, or handicap, under any program or activity funded by this AGREEMENT, as required by Title VI of the Civil Rights Act of 1964; Title I, of the Housing and Community Development Act of 1974, as amended; the Age Discrimination Act of 1975; the Rehabilitation Act of 1973; and all implementing programs.

The Training, Employment, and Contracting Opportunities for Business and Lower-Income Persons Assurance of Compliance

A. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701 u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

B. The parties to this AGREEMENT will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this AGREEMENT. The parties to this AGREEMENT certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

C. The CONSULTANT will send to each labor organization or representative of workers with which there is a collective bargaining agreement or other contract or understanding, if any, a notice advertising the said labor organization or workmen's representative of the commitment under this Section 3 Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

D. The CONSULTANT will include this Section 3 Clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon finding the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided a preliminary statement of ability to comply with the requirements of these regulations.

E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractor or subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

State Non-Discrimination Clause

A. During the performance of this AGREEMENT, CONSULTANT and its subcontractors shall not lawfully discriminate against any employee or applicant for employment

because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40), or sex. Contractors and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.) And the applicable regulations promulgated thereunder (California Administrative Code Section 12990), set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. CONSULTANT and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

B. This AGREEMENT shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this contract.

Indemnity and Liability

CITY shall not be liable for any damage or injuries caused, nor the cost or expense incurred, by CONSULTANT in the performance of any of the CONSULTANT's duties under this AGREEMENT. If a claim or lawsuit is brought against the CITY for any damages or injuries caused, or costs and expenses incurred, by CONSULTANT, then CONSULTANT shall defend against and indemnify CITY for any such claim or lawsuit. Furthermore, the CITY is not liable or responsible for any damages or injuries caused to, nor costs or expenses charged to, the CONSULTANT as a result of CONSULTANT's performance of the duties under this AGREEMENT.

Entire Agreement

This AGREEMENT supersedes any and all other agreements, either written or oral, between the parties hereto with respect to the subject matter hereof, and no other agreement, or promises relating to the subject matter of this AGREEMENT which is not contained herein, shall be valid or binding.

Provided, however, the parties may later enter into written modifications or amendments to this AGREEMENT, signed and dated by both parties.

Exhibit 1
Federal Regulations Associated with HCD and HOME Program
Provisions related to Federal Regulations included in Exhibits 1 – 3 below.

Grant Agreement Provisions

Non-Discrimination Clause

A. During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully 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), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

B. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontractors to perform work under the Agreement.

Anti-Lobbying Certification

The Contractor agrees to include the following language of this certification in all contracts or subcontracts entered into in connection with this grant activity and shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and no more than \$100,000 for such failure.

Contractor certifies, by signature of this contract, to the best of his or her knowledge or belief, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member

of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Conflict of Interest

Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

A. Current State Employees (Public Contracts Code section 10410):

1. No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2. No officer or employee shall contract on his or her own behalf as an independent Contractor with any state agency to provide goods or services.

B. Former State Employees (Public Contracts Code section 10411):

1. For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2. For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

C. If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Public Contracts Code section 10420).

D. Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Public Contracts Code section 10430(e)).

Conflict of Interest of Members, Officers, or Employees of Contractors, Member of Local Governing Body, or other Public Officials

No member, officer, or employee of the Contractor, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise any functions or responsibilities with respect to the program during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for grant activities to be performed in connection with the program assisted under this agreement. The Contractor shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this section.

Conflict of Interest of Certain Federal Officials

No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this agreement or to any benefit to arise from the same.

Equal Opportunity

a. The Civil Rights, Housing and Community Development, and Age Discrimination Acts Assurances

During the performance of this agreement, the Contractor assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, handicap, religion, familial status, or religious preference, under any grant activity funded by this agreement, as required by Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of 1974, as amended, the Age Discrimination Act of 1975, the Fair Housing Amendment Act of 1988, and all implementing regulations.

b. Rehabilitation Act of 1973 and the "504 Coordinator"

The Contractor further agrees to implement the Rehabilitation Act of 1973, as amended, and its regulations, 24 CFR Part 8, including, but not limited to, for Contractors with 15 or more permanent full or part-time employees, the local designation of a specific person charged with local enforcement of this Act, as the "504 Coordinator."

c. The Training, Employment, and Contracting Opportunities for Business and Lower Income Persons Assurance of Compliance

1) The grant activity to be performed under this agreement is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Recipients, contractors, and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of section 3 covered assistance to section 3 residents in order of priority provided in 24 CFR 135.34(a)(2).

2) The parties to this agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this agreement. The parties to this agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

3) The Contractor will include these Section 3 clauses in every contract and subcontract for work in connection with the grant activity and will, at the direction of the State, take appropriate action pursuant to the contract or subcontract upon a finding that the Contractor or any subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135 and, will not let any contract unless the Contractor or subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

4) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this agreement shall be a condition of the Federal financial assistance provided to the grant activity, binding upon the Contractor, its successors, and assigns. Failure to fulfill these requirements shall subject the Contractor and its subcontractors, its successors, and assigns to those sanctions specified by the agreement through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

d. Assurance of Compliance with Requirements Placed on Construction Contracts of \$10,000 or more

The Contractor hereby agrees to place in every contract and subcontract for construction exceeding \$10,000 the Notice of Requirement for Affirmative Action to ensure Equal

Employment Opportunity (Executive Order 11246), the Standard Equal Employment Opportunity, and the Construction Contract Specifications. The Contractor furthermore agrees to insert the appropriate Goals and Timetables issued by the U.S. Department of Labor in such contracts and subcontracts.

Insurance

The Contractor shall have and maintain in full force and effect during the term of this agreement such forms of insurance, at such levels, as may be determined by the City/County and the State to be necessary for specific components of the grant activity, including, but not limited to, worker's compensation insurance, unemployment insurance, disability insurance and liability insurance.

Drug-Free Workplace Requirements

Contractor shall comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and shall provide a drug-free workplace by taking the following actions:

- A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- B. Establish a Drug-Free Awareness Program to inform employees about: (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available counseling, rehabilitation and employee assistance programs; (4) penalties that may be imposed upon employees for drug abuse violations.
- C. Every employee who works on the proposed contract will: (1) receive a copy of the Contractor's drug-free workplace policy statement; and (2) agree to abide by the terms of the Contractor's statement as a condition of employment under this agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future contracts if it is determined that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Government Code section 8350 et seq.)

Child Support Compliance Act

For all contracts in excess of \$100,000, by executing this agreement, Contractor acknowledges and agrees to the following:

- A. The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- B. The Contractor, to the best of his/her knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

Retention and Inspection of Records

Contractor agrees that the Department of Housing and Community Development or its delegate will have the right to review, obtain, and copy all records pertaining to performance of the contract. Contractor agrees to provide HCD or its delegate with any relevant information requested and shall permit HCD or its delegate access to its premises, upon reasonable notice,

during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with PCC § 10115 et seq., GC § 8546.7 and 2 CCR § 1896.60 et seq. Contractor further agrees to maintain such records for a period of four (4) years after final payment under this contract.

Contractor shall comply with the caveats and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in PCC § 10115.10.

Subcontractors

A. The Contractor shall not enter into any agreement, written or oral, with any subcontractor without the prior determination by the City/County of the subcontractor's eligibility. A subcontractor is not eligible to receive grant funds if the subcontractor is not licensed in good standing in California, or is listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible Contractors.

B. The agreement between the Contractor and any subcontractor shall require the subcontractor to:

- 1) Perform the grant activity in accordance with Federal, State and local housing and building codes as are applicable.
- 2) Comply with the applicable State and Federal requirements pertaining to labor standards, non-discrimination, Americans with Disabilities Act, Equal Employment Opportunity, and Drug-Free Workplace.
- 3) Maintain at least the minimum State-required Worker's Compensation Insurance for those employees who will perform the grant activity or any part of it.
- 4) Maintain, if so required by law, unemployment insurance, disability insurance and liability insurance in an amount to be determined by the State which is reasonable to compensate any person, firm, or corporation who may be injured or damaged by the contractor or any subcontractor in performing the grant activity or any part of it.
- 5) Retain all books, records, accounts, documentation, and all other materials relevant to this agreement for a period of four (4) years from the date of termination of this agreement, or four (4) years from the conclusion or resolution of any and all audits or litigation relevant to this agreement and any amendments, whichever is later.
- 6) Permit the State, Federal government, the Bureau of State Audits, the Department of Housing and Community Development and/or their representatives, upon reasonable notice, unrestricted access to any or all books, records, accounts, documentation, and all other materials relevant to the agreement for the purpose of monitoring, auditing, or otherwise examining said materials.

Independent Contractor

Contractor, and the agents and employees of Contractor, in the performance of the Agreement, shall act in an independent capacity and not as officers, employees or agents of the City/County/State.

The City/County/State will monitor for conformity with the State contract.

Exhibit 2

ANTI-LOBBYING CERTIFICATION

The undersigned certifies, to the best of his or her knowledge or belief, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, " Disclosure Form to Report Lobbying," in accordance with its instructions.

Signature

Date

Exhibit 3

**CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTIONS**

NONDEBARMENT CERTIFICATION

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' Responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160 – 19211). (BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS FOR CERTIFICATION)

A. The prospective recipient of federal assistance funds certifies, by submission of this proposal, that neither it nor its City are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

B. Where the prospective recipient of federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization_____

Name & Title of Authorized Representative:_____

Signature:_____ Date: _____

REF: CDBG STD contract Language

August 15, 2018

Item No: **8g(1)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of August 21, 2018

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2018-
APPROVING AGREEMENT BETWEEN APPLIED DEVELOPMENT
ECONOMICS, INC. (ADE) AND THE CITY OF MARINA FOR A
FEASIBILITY STUDY AND CONCEPTUAL PLAN FOR THE MARINA
ARTS VILLAGE, AND AUTHORIZING THE CITY MANAGER TO
EXECUTE THE AGREEMENT ON BEHALF OF THE CITY SUBJECT
TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY, AND
AUTHORIZING THE FINANCE DIRECTOR TO MAKE BUDGETARY
AND ACCOUNTING ENTRIES.**

REQUEST:

It is requested that City Council consider:

1. Adopting Resolution No. 2018- approving an agreement between Applied Development Economics, Inc. and the City of Marina for a Feasibility Study and Conceptual Plan for the Marina Arts Village;
2. Authorizing the City Manager to execute the agreement on behalf of the City subject to final review and approval by the City Attorney, and;
3. Authorizing the Finance Director to make the necessary budgetary and accounting entries.

BACKGROUND:

On May 31, 2005, City Council adopted Resolution No. 2005-130 approving the University Villages Specific Plan (AKA The Dunes Specific Plan) containing development principles and design guidelines for the redevelopment of 420 acres within south Marina bounded by 8th Street and 1st Street to the south, Highway 1 to the west and Imjin Road to the north. The east boundary is California Avenue to the north and 2nd Avenue to the south. The specific plan identified a Public Arts Program which includes an Arts District and other amenities. The Arts District has the opportunity to create a unique regional draw to the City of Marina. Envisioned as a combination of individual studio spaces, galleries or shops for artists, designers and high profile/interactive art/learning center types of facilities that capitalize on unique resources.

At a regular scheduled meeting of June 20, 2017, the Economic Development Commission adopted the Marina Arts District as one of its FY 2017-18 Goals.

A representative from the U.S. Department of Commerce Economic Development Administration (EDA) visited the site and informed us that the site is eligible and would be very competitive to receive EDA grant funding between \$1,000,000 - \$3,000,000.

For the City to be eligible for funding by EDA, a market and financial feasibility analysis is necessary to ensure that the development can be sustainable and create jobs.

On August 10, 2018, the City received a proposal from Applied Development Economics, Inc. (ADE) to complete a Feasibility Study and Conceptual Plan for the Marina Arts Village. The Agreement amount is \$22,570 (**EXHIBIT “A”**). Attached to the Agreement is the Scope of Work and Cost estimate (Bid).

ANALYSIS:

This agreement is necessary to complete the market and financial feasibility of the project. As such, staff recommends approval of the agreement.

FISCAL IMPACT:

The cost for the professional services by ADE is covered in the budget from Economic Development Division. Therefore, there is no fiscal impact.

CONCLUSION:

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

Respectfully submitted,

Marilyn Lidyoff
Economic Development Coordinator
City of Marina

REVIEWED/CONCUR:

Layne P. Long
City Manager
City of Marina