

RESOLUTION NO. 2018-121

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING AMENDMENT NO. 2 TO THE AGREEMENT BETWEEN CITY OF MARINA AND SAVE THE WHALES OF SEASIDE, CALIFORNIA, TO PROVIDE PROFESSIONAL SERVICES FOR THE CITY OF MARINA'S STORM WATER PROGRAM, AUTHORIZING THE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY.

WHEREAS, on February 5, 2013, the State Water Quality Control Board adopted new National Pollutant Discharge Elimination System (NPDES) Phase II Stormwater permit requirements, requiring the City to submit a Notice of Intent for coverage under the new permit by July 1, 2013. The Permit term is five years ending on June 30, 2018, and;

WHEREAS, at the regular meeting on October 15, 2013, the City Council adopted Resolution No. 2013-149, approving termination of the City of Marina's participation in the Memorandum of Agreement (MOA) with the Monterey Regional Water Pollution Control Agency (MRWPCA) effective November 1, 2013, and;

WHEREAS, to fulfill the City's Program Management requirements, including its needed Public Education & Outreach (PE/PO) program under the current NPDES Phase II permit, the City contracted program support for the first two permit years with Save the Whales of Seaside, California, and;

WHEREAS, at the regular meeting on December 15, 2015, the City Council adopted Resolution No. 2015-148, approving a one-year agreement between the City of Marina and Save the Whales of Seaside, California, to provide professional services for the City of Marina's Storm Water Program Permit Year 3, and;

WHEREAS, at the regular meeting on October 18, 2016, the City Council received a presentation on the City's Stormwater Program accomplishments for Permit Year 3 as well as a summary for new required activities for Permit Year 4, and;

WHEREAS, with the additive general Permit supplemental reporting to the expanding Stormwater Program requirements, staff sought to better evaluate the scope and value of the program's consultant support provided for the City's Stormwater Program. On November 2, 2016 staff issued a request for proposals (RFP) for Public Education and Outreach as well as Program Support for the additional permit elements, and;

WHEREAS, at the regular meeting on March 7, 2017, the City Council adopted Resolution No. 2017-21, approving a one-year agreement between the City of Marina and Save the Whales of Seaside, California, to provide professional services for the City of Marina's Storm Water Program Permit Year 4, and;

WHEREAS, at the regular meeting on November 7, 2018, the City Council adopted Resolution No. 2018-100, approving Amendment No. 1 to the agreement between the City of Marina and Save the Whales of Seaside, California, to provide professional services for the City of Marina's Storm Water Permit Program, and;

WHEREAS, since the adoption of the new Phase II Stormwater Permit in 2013, the permit requirements outline a steady increase in permit regulations per year. The City's Stormwater program has complied with the escalating permit requirements through a joint effort of City staffing and consulting services, and;

WHEREAS, as summarized to the City Council at the December 15th, 2015 meeting, the Regional Water Board who regulates local agency's compliance to the Permit has enacted three additional provisions that effect local agencies during Permit Year 4 and 5: Industrial General Permit Requirements, the New Statewide Trash Policy Amendment, and Water Code Section 13267 Technical Report Order dated June 13, 2016, and;

WHEREAS, the Industrial General Permit (IGP), enacted by Order 2015-0057-DWQ, implements the federally required storm water regulations in California for storm water associated with industrial activities. The IGP requires the implementation of best management practices, a site-specific Storm Water Pollution Prevention Plan (SWPPP), and monitoring plan for each of the 18 industrial businesses within the City's jurisdiction. The Phase II Permit for the City requires tracking and enforcement to local industrial facilities for compliance to the IGP along with reporting to the Regional Water Board in Permit Year 5, and;

WHEREAS, the State Water Resources Control Board and Regional Water Quality Control Boards are controlling trash primarily through Total Maximum Daily Loads (TMDLs) established in permits. On April 7, 2015, the State Water Resources Control Board adopted Resolution 2015-0019, an Amendment to the Water Quality Control Plan for Ocean Waters of California to Control Trash and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California (collectively known as "Amendment 1"). The Amendment requires agencies to implement and report on capture systems from priority facilities and sites within their jurisdiction, such as corporation yards and percolation basins. Reporting requirements will be further detailed in an upcoming Water Code Section 13267 Technical Report Order, and;

WHEREAS, on June 13, 2016, the City received a Water Code Section 13267 Technical Report Order for an assessment on Stormwater pollutant load reduction practices and their effectiveness. The Order requires the planning, implementation, and reporting on best management practices in reducing storm water pollutants in the City's drainage system as well as quantifying the amount of reduction the best management practices produce. As the Order has a very large area of effect in an agency's program, the Requirements' deliverables span until the expiration of the current permit life cycle, and;

WHEREAS, with the additive general Permit requirements as well as the supplementary requirements detailed above, staff has found Save the Whales as the most qualified consultant to manage the City's Phase II permit program for the remainder of Permit Year 6 (October – June 2018). The Regional Board allows approximately 4 months to produce the reporting requirements after each permit year. This means that the report-production period for Permit Year 6 will overlap activities for the next Fiscal Year from July through October 2019, and;

WHEREAS, for a list of permit requirements, see "Scope of Work" in the draft Amendment No. 2 to the Professional Services Agreement, and;

WHEREAS, City staff will oversee the amended scope to the agreement with Save the Whales to fulfill the requirements of the remaining Permit term, by providing, among other things, the necessary information needed for preparation of the annual report, and by ensuring compliance with the required staff training as part of the requirements of the new Phase II permit, and;

WHEREAS, the total program costs for the professional services contract with Save the Whales for Permit Year 6 is \$163,276.00, and;

WHEREAS, should the City Council approve this request, adequate funds are available in the approved budget for Fiscal Year 2018/19 activities in NPDES account No. 100.420.000.00-6370.540. The remainder of the Program professional services costs of \$9,890 will need to be appropriated during the budget approval process for a distribution into Fiscal Year 2019/20 and is not a part of Contract Amendment No.2 at this time.

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

1. Approves Amendment No.2 to the agreement between the City of Marina and Save the Whales of Seaside, California, to provide professional services for the City of Marina's Storm Water Permit Program, and;
2. the total program costs for the professional services contract with Save the Whales for Permit Year 6 is \$163,276.00, and;
3. adequate funds are available in the approved budget for Fiscal Year 2018/19 activities in NPDES account No. 100.420.000.00-6370.540. The remainder of the Program professional services costs of \$9,890 will need to be appropriated during the budget approval process for a distribution into Fiscal Year 2019/20 and is not a part of Contract Amendment No.2 at this time.
4. Authorizes the Finance Director to make accounting and budgetary entries, and;
5. Authorizes the City Manager to execute the agreement on behalf of the City, subject to final review and approval by the City's Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 16th day of October 2018, by the following vote:

AYES, COUNCIL MEMBERS: Amadeo, Morton, O'Connell, Brown, 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 TO STAFF REPORT

CITY OF MARINA AGREEMENT FOR PROFESSIONAL SERVICES FOR THE CITY OF MARINA'S STORM WATER PROGRAM

THIS AGREEMENT is made and entered into on May 4, 2017, by and between the City of Marina, a California charter city, hereinafter referred to as the "City," and Save the Whales of Seaside, California hereinafter referred to as the "Contractor." City and Contractor are sometimes individually referred to as "party" and collectively as "parties" in this Agreement.

Recitals

- A. City desires to retain Contractor for professional services associated with the City of Marina's Storm Water Permit Program (Program) – Contractor shall provide general assistance as requested on issues pertaining to City Program and shall perform other support services for City as determined by the City Engineer, to assist the City in complying with State Water Resources Control Board Water Quality Order No. 2013-0001-DWQ National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000004 (hereafter, "Phase II Permit")
- B. Contractor represents and warrants that it has the qualifications, experience and personnel necessary to properly perform the services as set forth herein.
- C. City desires to retain Contractor to provide such services.

Terms and Conditions

For 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. The Scope of Work in Exhibit "A" is referencing compliance requirements under the Phase II Permit. With thirty (30) days prior written notice to Contractor, City may elect to delete certain tasks of the Scope of Work at its sole discretion, as provided in Section 4 to this Agreement.

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

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

(d) Contractor is responsible for making an independent evaluation and judgment of all relevant conditions affecting performance of the work, including without limitation site conditions, existing facilities, seismic, geologic, soils, hydrologic, geographic, climatic conditions, applicable federal, state and local laws and regulations and all other contingencies or considerations.

(e) City shall cooperate with Contractor and will furnish all information data, records and reports existing and available to City to enable Contractor to carry out work outlined in Exhibit "A." Contractor shall be entitled to reasonably rely on information, data, records and reports furnished by the City, however, the City makes no warranty as to the accuracy or completeness of any such information, data, records or reports available to it and provided to Contractor which were furnished to the City by a third party. Contractor shall have a duty to bring to the City's attention any deficiency or error it may discover in any information provided to the Contractor by the City or a third party.

2. Term of Agreement & Commencement of Work.

(a) Unless otherwise provided, the term of this Agreement shall begin on the date of its full execution and shall expire upon the earlier of October 30, 2018 or thirty (30) days after the issuance of the City's WDRs by the RWQCB. Upon the issuance of the WDRs to the City, the City may elect not to terminate this Agreement, and to otherwise have Contractor continue with all or parts of the Scope of Work in order for the City to comply with certain elements of the issued WDRs, but in no event shall this Agreement extend beyond October 30, 2018, unless extended by written amendment by the parties hereto. In the event the City determines to continue with all or certain elements of the Scope of Work to comply with its WDRs, the City, within fifteen (15) days from the date of the issuance of the WDRs, shall provide written notice to Contractor of those services under the Scope of Work the City has determined to continue to have Contractor provide. The date of full execution is defined as the date when all of the following events have occurred:

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

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

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

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

(b) Contractor shall commence work on the Project on or by March 8, 2017, or the date of full execution, whichever is later. This Agreement may be extended upon written agreement of both parties. At the City's election, Contractor may be required to prepare a more detailed schedule than the general schedule contained in Exhibit A hereto, for the work to be performed, which detailed schedule shall be approved by the City and made a part of Exhibit A. Once approved by the City, Contractor shall perform the work in accordance with the approved detailed schedule.

3. Compensation.

(a) City liability for compensation to Contractor under this Agreement shall only be to the extent of the present appropriation to fund this Agreement. For services to be provided under this Agreement City shall compensate Contractor in an amount not to exceed seventy three thousand seven hundred and thirty dollars (\$73,730.00), in accordance with the provisions of this Section and the Cost Estimate attached hereto as Exhibit B and incorporated herein by this reference

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

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

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

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

4. Termination, Suspension or Deletion of Tasks.

(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 (10) 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 under subsection (a) above is effectuated by the City, Contractor shall be compensated for services actually rendered and expenses incurred prior to the termination except that any payment due the Contractor at the time of termination may be adjusted to cover any additional fees, costs, damages, expenses or liabilities 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 in fact fulfilled its contractual obligations, the termination shall be deemed to have been for the convenience of the City.

(c) The City may terminate or suspend all or any part of this Agreement at any time for its convenience and at the City's sole discretion, upon not less than thirty (30) days prior written notice to Contractor, including electing to delete certain tasks under the Scope of Work. Not later than the effective date of such termination, suspension or deletion of tasks from the Scope of Work, Contractor shall discontinue all affected work and deliver all affected work product and other related documents, whether completed or in progress, to the City.

(d) If termination for default is effectuated by the Contractor, or if termination, suspension or deletion of tasks from the Scope of Work for convenience is effectuated by the City, Contractor shall be compensated for services actually rendered and expenses incurred prior to the termination, suspension or deletion of tasks, in addition to any 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 Maris Sidenstecker 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 all phases of 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: Maris Sidenstecker (Project Manager).

6. Delegation of Work.

(a) If Contractor utilizes any subcontractors, consultants, persons, employees or firms having applicable expertise to assist Contractor in performing the services under this Agreement, Contractor shall obtain City's prior written approval to such employment or providing of services. Contractor's contract with any subcontractor shall contain a provision making the subcontract subject to all provisions of this Agreement. Contractor will be fully responsible and liable for the administration, completion, presentation and quality of all work performed. City reserves its right to employ other contractors in connection with the 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 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, or any non-performance, of any Contractor duty under this Agreement by Contractor, its officers, employees, agents and sub-contractors. The Contractor's obligation to defend and indemnify applies unless it is adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, the Contractor's indemnification obligation (but not its defense obligation) shall be reduced in proportion to the established comparative liability of the indemnified party.

(b) To the fullest extent permitted by law (including without limitation California Civil Code Sections 2782.8), when the services to be provided under this Agreement are design professional services to be performed by a design professional, as that term is defined under said section 2782.8, Contractor shall indemnify, protect, defend (with independent counsel reasonably acceptable to the City) and hold harmless City and any Indemnified Party for all Liabilities regardless of nature or type that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of design professional, or the acts or omissions of an officer, employee, agent or subcontractor of the design professional. The design professional's obligation to defend and indemnify applies unless it is adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an indemnified party the design professional's indemnification obligation (but not its defense obligation) shall be reduced in proportion to the established comparative liability.

(c) All obligations under this section are to be paid by Contractor as incurred by City. The provisions of this Section are not limited by the provisions of sections relating to insurance including provisions of any Worker's Compensation Act or similar Act. Contractor expressly waives its statutory immunity under any such applicable statutes or laws as to City, its employees and officials. Contractor agrees to obtain executed defense and 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 defense/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 sole expense by counsel reasonably acceptable to the City. An Indemnified Party need not have first paid for any of the matters to which it is entitled to indemnification in order to be so defended. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Contractor may submit a claim to the City for reimbursement of reasonable attorney's fees and defense costs.

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

14. Insurance.

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

(b) City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required herein by giving Contractor ninety days advance written notice of such change. If such change should result in substantial additional cost of the Contractor, City agrees to negotiate additional compensation proportional to the increased benefit to City.

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

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

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

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

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

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

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

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

20. **Compliance With Laws.**

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

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

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

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

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

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

To Contractor: Maris Sidenstecker
 Save The Whales
 1192 Waring Street
 Seaside, CA 93955
 Fax (831) 394-5555

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

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

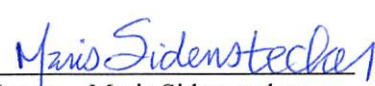
24. **Force Majeure.** Notwithstanding any other provisions hereof, neither Contractor nor City shall be held responsible or liable for failure to meet their respective obligations under this Agreement if such failure shall be due to causes beyond Contractor's or the City's control. Such causes include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

25. **Attorney's Fees.** In the event of any controversy, claim or dispute relating to this Agreement, or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.
26. **Successors and Assigns.** All of the terms, conditions and provisions of this Agreement shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties. Nothing in this paragraph is intended to affect the limitation on assignment.
27. **Authority to Enter Agreement.** Contractor has all requisite power and authority to conduct its business and to execute, deliver and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective party.
28. **Waiver.** A waiver of a default of any term of this Agreement shall not be construed as a waiver of any succeeding default or as a waiver of the provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.
29. **Severability.** Should any portion of this Agreement be determined to be void or unenforceable, such shall be severed from the whole and the Agreement will continue as modified.
30. **Construction. References. Captions.** Since the parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party. Any term referencing time, days or period for performance shall be deemed calendar days and not workdays. The captions of the various sections are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, content or intent of this Agreement.
31. **Advice of Counsel.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor or against either party by reason of the extent to which each party participated in the drafting of this Agreement.
32. **Counterparts.** This Agreement may be signed in counterparts, each of which shall constitute an original.
33. **Time.** Time is of the essence in this contract.
34. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the matters as set forth in this Agreement, and no other agreement, statement or promise made by or to any party or by or to any employee, officer or agent of any party, which is not contained in this Agreement shall be binding or valid. The exhibits attached hereto are incorporated into this Agreement. In the event of a conflict between the terms of this Agreement and any exhibit, the terms of this Agreement shall control.

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

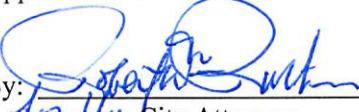
CITY OF MARINA

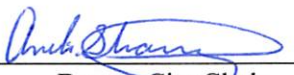
CONTRACTOR

By:  By: 
Name: Layne P. Long Name: Maris Sidenstecker
Its: City Manager Its: Project Manager

Date: 5/4/17 Date: 4/20/17

Approved as to form:

By: 
for the City Attorney

Attest: 
Deputy City Clerk

Resolution No. 2017- 21



City of Marina Stormwater Program										
Detailed (Revised - Reduced 2/10/17) Scope of Work - (RFP #4 / "D1, 2, 3, 4") Stormwater Program Services (PE/PO)										
Year 4 (2016 - 2017) Revised Proposed Task to Complete										
Reference		Permit Element / Time Schedule / BMP Classification				Scope of Services By	Anticipated Deliverables	Revised Fee Proposal		
Ref No.	Permit	ETA Date	Permit Year	Task / Recommendation - Respondent Shall:				Est Hrs	Rate	PY-4 2016/17
n/a	n/a	(RFP # 2 / D1)		(RFP # 4 - D3)		(#3 RFP/D2)	(RFP # 5 / D4)	(RFP # 8 / E1)		
1 Task 1: Provide Program Outline to meet NPDES Permit Requirements										
3	E.7.a.i/ii.(c,d,e,g,h,i,k,l,m)	Throughout	4&5	Internet Updates: Provide as needed updates for City's stormwater public education and outreach program website, facebook and etcetera.		ECS / STW	Updates provided to City representative as needed and overview in Annual Report.	10	86	860
6	E.7.a.i/ii.(d); E.8.i/ii.c/etc	Spring	4&5	Storm Drain Labeling: Continue City's existing storm drain inlet labeling program and litter cleanup of inlets to engage public participation.		STW	Label storm drains and provide details in Annual Report to City.	30	86	2580
11	E.7.a.ii.(c,d,f)	Winter	4&5	Restaurants: Visit 10-12 restaurants, distribute proportional number of pieces of bilingual educational materials (<i>posters, brochures, and link to online BMP in English and Spanish</i>).		STW	Implement annually, and provide list to City in Annual Report and updates as necessary.	4	86	344
12	E.7.a.i/ii.(i)	Spring - Fall	4&5	IPM: Continue distribution of "Our Water Our World" Integrated Pest Management materials through public events, and partner with MRWMD workshops, participate in at least 1 event at Last Chance Mercantile. The focus is to show examples of alternatives to pesticides. The goal is to reach 20-40 people through events; report on increase/decrease in sales of "natural insecticides" from box store corporate headquarters.		STW	Implement annually, and provide list to City in Annual Report and updates as necessary.	8	86	688
13	E.7.a.i/ii.(j)	Spring - Fall	4&5	Schools: Provide environmental place-based learning in schools with hands-on presentations for grades K-3 and 4-12, with materials to effectively educate school-age children about storm water runoff, marine life in the MBNMS, and how they can help protect the environment (<i>groundwater and coastal areas</i>). Partner with MRWMD to provide an assembly on protecting wildlife, recycling, and litter issues. Contact schools and principals for programs. For grades 4-12, pre-and post-student evaluations will be collected, tabulated, and analyzed for effectiveness in the annual report. All teachers who receive a program for their students will be asked to evaluate the presentation.		STW	Implement annually, and provide list to City in Annual Report and updates as necessary.	30	86	2580
17	E.7.a.ii.d	Throughout	4&5	Movie, Radio, Print: Continue existing PE / PO messaging using a multi-pronged approach (<i>print, radio, movie ad</i>) in applicable languages. Recommend substituting TV ad approach (<i>from MRSWMP</i>) to radio ads (<i>English and Spanish</i>) and digital movie ad (<i>already produced</i>) at local theater to run during blockbuster movie season in winter or summer. Number of patrons reached via radio and movie ads to be reported annually.		STW	Throughout the Contract Term, and provide overview and results to City in Annual Report, and updates as necessary.	40	86	3440
Incurred in FY 17/18 Budget										
19	E.7.a.ii.c	fall	4&5	Workshops: Recommend changing this to Annual Council presentation - program updates and a look ahead approach.		ECS / STW	Annually, and provide overview and results to City in Annual Report.	12	86	1032
1										



Reference				Permit Element / Time Schedule / BMP Classification	Scope of Services By	Anticipated Deliverables	Revised Fee Proposal		
Ref No.	Permit	ETA Date	Permit Year	Task / Recommendation - Respondent Shall:			Est Hrs	Rate	PY-4 2016/17
n/a	n/a	(RFP # 2 / D1)		(RFP # 4 - D3)	(#3 RFP/D2)	(RFP # 5 / D4)	(RFP # 8 / E1)		
20	E.7.b.1.i/ii.(a-e)	Spring	4&5	IDDE Training: Develop, implement staff training program for staff that as part of their normal job responsibilities, may be notified of, come into contact with, or otherwise observe an illicit discharge or illegal connection to the storm drain system. This task item will include: (c) Follow-up training as needed to address changes in procedures, techniques, or staffing. (d) Annual assessment of staff's knowledge of illicit discharge response and refresher training as needed. (e) Train all new staff that as part of their normal job responsibilities that may be notified of, come into contact with, or otherwise observe an illicit discharge or illegal connection to the storm drain system within 6 months of hire date. Also, to manage cost with this Permit Element (E.7.b.1.i/ii.(a-e) IDDE) should be combined with E.7.b.3.i/ii-MO/GH training. These trainings will incorporate the unique aspect of Marina, specifically that no outfalls discharge to a waterway, and all percolation ponds in town are designed to replenish the communities drinking water supplies, thus the concept of if you don't want to drink it, then do not put it on the ground.	ECS	Implement annually, and as needed provide overview of results to the City and in Annual Report.	50	86	4300
21	E.7.b.1.i/ii.(f)	Summer	4+	IDDE Info: All City vehicles equip with a laminated flyer on: how to address an licit discharge and / or spill, who to report the discharge / spill too based upon the type of discharge / spill, the procedures for reporting an illicit discharge, additional agencies that must be notified based upon discharge / spill type, and various tips on documenting the discharge / spill to ensure that appropriate follow-up can occur.	ECS	Implement annually, and as needed provide overview of results to the City and in Annual Report.	18	86	1548
24	E.7.b.3.i/ii	fall	4+	MO/GH Training: Train appropriate employees on how to incorporate pollution prevention / good housekeeping techniques into Permittee operations and conduct knowledge assessment in alternate years. Train all new hires within 1 year of hire date. For contractors performing Operations and Maintenance work (i.e. sewer / water line replacements) they will receive a fact sheet on appropriate stormwater BMPs for that work activity. Respondent shall conduct random in the field assessments at least 4 times a year of O&M work being performed. These assessments shall coincide with other work being performed in order to manage cost. Also, to manage cost combine this task with IDDE training (E.7.b.1.i/ii.(a-e) IDDE)	ECS	Implement annually, and as needed provide overview of results to the City and in Annual Report.	60	86	5160
Incurred in FY 17/18 Budget									
25	E.8.i.ii.(a-d)	Throughout	4&5	Event: As required public participation and involvement program shall encourage volunteerism, public comment and input on policy, and activism in the community. With this in mind Respondent shall coordinate, engage and lead the public in numerous events and/or sponsor partner events; such as coastal clean-up, pet poo markers installation, clean-up of debris and trash at local parks (at least 4 events annually), dune plant restoration, bi-annual Marina tree and garden club garden tour. Respondent shall engage the public via existing well established contacts with CSUMB and local environmental groups through Respondent's website, facebook, the City's website and via word of mouth recruitment at local community events, such as, farmers markets and etcetera. Respondent routinely solicits public input on program materials via each and every outreach material. Note: Some aspects of these tasks are carry-overs from the MRSWMP program.	ECS / STW	Throughout the year, and provide overview of results to the City as needed and in Annual Report.	21	86	1806
26	E.8.i/ii.(e)	Throughout	4&5	IRWMP: Respondent shall participate on behalf of client in monthly and / or quarterly IRWMP meetings and associated watershed-level planning efforts, if applicable. The time provided is just an estimate	ECS	As needed, and provide updates to City as needed and overview in Annual Report.	21	86	1806



Reference				Permit Element / Time Schedule / BMP Classification		Scope of Services By (#3 RFP/D2)	Anticipated Deliverables (RFP # 5 / D4)	Revised Fee Proposal		
Ref No.	Permit	ETA Date	Permit Year	Task / Recommendation - Respondent Shall:				Est Hrs	Rate	PY-4 2016/17
n/a	n/a	(RFP # 2 / D1)		(RFP # 4 - D3)			(RFP # 5 / D4)	(RFP # 8 / E1)		
30	E.11.a/c	Summer	4	MO/GH Inspections: Conduct an annual review and assessment of all municipally owned and/or operated facilities to determine potential to impact storm water quality and eventually ground water. These annual assessments will be fully documented, including photographs with recommendations.		ECS	Conduct inspections annually, and provide updates to City as needed and overview in Annual Report.	50	86	4300
31	E.11.d	Summer	4	MO/GH SWPPP: Develop SWPPP for municipally owned and / or operated pollutant hotspots where Hazardous Materials Business Plan, Spill Prevention Plan, or other equivalent document does not already exist. Estimate 1 plan will be required and / or review and updates of at least two current HMBPs and /or SPPs.		ECS	Develop SWPPP and / or modify existing equivalent facility document (i.e. HMBP or SPCC Plan), and provide updates to City as needed and overview in Annual Report.	60	86	5160
Incurred in FY 17/18 Budget										
33	E.11.g	Winter-Summer	4&5	Trash TMDL: Since the City does not have any outfalls that discharge to a US waterway (Note caveat regarding vernal pools on Dune side of Freeway), but which instead discharge to "Percolation Ponds" it is Respondent's position that this situation meets the Track 1 objectives of the Trash TMDL Policy. Thus, with this in mind, Respondent proposes the following tasks which will follow receipt of the Central Coast RWQCB's 13267 or 13383 Notice: 1) Enter into discussions with the CCRWQCB demonstrating that the City's "Percolation Ponds" meet and fulfill the Track 1 objectives. 2) Within 3 months of receipt of the CCRWQCB Notice, issue a Notice of Intent to implement and / or codify the Track 1 approach. 3) Upon RWQCB approval, Respondent will develop a written program / plan that documents the City's current efforts, including data from extracting and weighing refuse (i.e. garbage, if already available from City data) from the Percolation Ponds by City immediately following the rainy season when the ponds are dry and just before the rainy season. This data will enable the development of a compliant Trash TMDL Plan or actually demonstrate that this approach again meets the objectives of Track 1. This data will begin the formal process to document efforts associated with the Monitoring and Reporting element of the Track 1 approach. 4) Although not required, Respondent recommends that an outreach program concerning garbage be implemented in high prone trash areas based upon data compiled during years 4 or 5. Note that the time estimated is based upon a reasonable response from the Central Coast RWQCB, thus the time required may be less than estimated or more and thus for this line item the cost can not be a not to exceed amount. In addition, the time projections herein do not include actual implementation and monitoring long term.		ECS	Step 1: Discuss with CC RWQCB to propose simply documenting City's current efforts which meet Track 1 requirements via the Percolation Ponds. Then develop a Plan (Written Document) that simply documents current efforts, plus long term tracking of waste collected during annual cleanings of the Percolation Ponds. Annual monitoring and reporting is a City obligation. Note, the time and cost estimate assumes that the CC RWQCB will agree to this proposal, if not then we will have to explore other options with the City.	45	86	3870
35	E.12.g.ii.(c/d)	Winter	5	PCR Outreach: The City of Marina is unique in that it requires 100% infiltration which far exceeds the requirements of the Central Coast PCRs. Thus, all necessary outreach materials developed will need to stipulate 100% infiltration in relation to Permittee's efforts in education and outreach supporting implementation of LID requirements for new and redevelopment projects. However, the City already has developed and is using numerous forms and informational handouts that achieve this Permit requirement. It is Respondent's position that a simple fact sheet directing interested parties, builders, contractors and developers is necessary at this juncture		ECS / STW	Develop informational handout that outlines City's PCRs and includes links to useful documents found on-line. A draft will be prepared and sent to the City Representative for review and approval. Upon City approval it will be emailed out to all project LRPs that currently have an active WDID # / SWPPP project. An overview of this task will be provided to the City in the Annual Report.	45	86	3870



Reference				Permit Element / Time Schedule / BMP Classification		Scope of Services By	Anticipated Deliverables	Revised Fee Proposal		
Ref No.	Permit	ETA Date	Permit Year	Task / Recommendation - Respondent Shall:				Est Hrs	Rate	PY-4 2016/17
n/a	n/a	(RFP # 2 / D1)		(RFP # 4 - D3)		(#3 RFP/D2)	(RFP # 5 / D4)	(RFP # 8 / E1)		
37	E.14.a-b	Summer-fall	4&5	PEAIP: As applicable to the scope of work expressed within the RFP, specifically in regards to Public Education and Outreach Respondent will annually prepare and submit an effectiveness assessment analysis with recommendations based upon the iterative process to the MEP principle to City.		ECS / STW	The PEAIP will be submitted annually to the City for review and consideration.	65	86	5590
Incurred in FY 17/18 Budget										
38	E.15	n/a	n/a	Not applicable to this RFP, nor to the City of Marina.		n/a	n/a			
39	All	As needed	4 & 5	Print cost shall be at actual cost, plus 20% administrative overhead. Estimate of total print cost at 6,000 materials per year.		ECS / STW	Updates will be provided in Monthly billings to City.			4680
41	E.14	Spring	2016	13267 Notice - 6/13/16: Prior to commencing with the work task in items 42-47 Respondent recommends discussing the applicability of the 13267 Notice to the City, since the focus is pollutant loads discharging to waters of the US and nearly all of City's outfalls discharge to "Percolation Ponds" and there are no WOTUS in the City (Note, caveat on Vernal Pools). Thus, this line item includes roughly 50 hours of dedicated discussion time with the Central Coast RWQCB.		ECS	Upon City approval coordinate joint meeting with Central Coast RWQCB. Demonstrate non-applicability to City and as a last effort discuss option other options. City Representative will be updated routinely for input and direction as this task item proceeds. In addition, an overview of this task item will be provided in the Annual Report. For additional details refer to cell to left.	50	86	4300
48	Task 1: Subtotal								\$	57,914
49										
50	Task 2: Reports									
Incurred in FY 17/18 Budget										
51	E.7 / E.8	fall	4&5	Annual Reports: Respondent shall prepare and submit all applicable Annual Report sections related to Public Education / Outreach (E.7) and Public Involvement / Participation (E.8) deliverables		ECS / STW	These documents will be prepared Annually and submitted to the City Representative prior to the SMARTS Annual Report submission due date to allow ample opportunity for input and direction with City Representative.	80	86	6880
52	All	Throughout	4&5	Extra Reports: Respondent shall prepare and submit all other Annual Report Sections as directed by the CITY in compliance with the existing PERMIT at an hourly rate of:		All	These documents will be prepared Annually and submitted to the City Representative prior to the SMARTS Annual Report submission due date to allow ample opportunity for input and direction with City Representative.			
53	Task 2 Subtotal:								\$	6,880



55 Task 3: Project Coordination Meetings and Project Management										
56	All	Throughout	4&5	Meetings - Client: Respondent shall meet with client monthly at dates and times designated by Client as needed. It is estimated that 16 meetings will take place each calendar year. As noted in the RFP project meetings shall include a manager for a half day, with meeting minutes and other associated costs, such as travel expenses included.	All	Annual overview to be provided in Annual Report with highlights.	54	86	4644	
57	All	Throughout	4&5	Meetings - RWQCB: Respondent shall meet with RWQCB as needed to ensure program compliance. At this time, Respondents estimates a total of 6 meetings, plus attending 6 regional training workshops on both the new Trash TMDL Policy and the 13267 Notification program requirements. Thus, it is estimated that 12 meetings / workshops will be attended at 3 hours each.	ECS / STW	As needed and an overview to be provided in Annual Report with highlights.	11	86	946	
58	All	Throughout	4 & 5	Project Management: Respondent shall provide effective Project Management throughout the entire project to ensure that quality programs are developed, implemented and managed, along with associated necessary quality documents on time and within budget. Program management and overall overhead related to this RFP is estimated .08% of the total cost above and adjusted to account for a 4 month period apx. This line item also covers providing updates on other relevant permits	ECS / STW	As needed and an overview to be provided in Annual Report with highlights.			3346	
59 Task 3 Subtotal:									\$	8,936
TOTAL									\$	73,730
Key: Con = Construction, IDDE = Illicit Discharge Detection and Elimination, MO/GH = Municipal Operations and Good Housekeeping, PE/PO = Public Education / Public Outreach, PP/PI = Public Participation and Public Involvement & PCR = Post Construction Requirements. Key: ECS = Environmental Compliance Specialist, 2ND = 2ND Nature, STW = Save the Whales Revised Fee Schedule - Reflects a postponement of various task to the next Permit Term (Year 5 - 2017-2018) and / or a reduced workload to account for a 4 - 5 month schedule. Note: For 13267 requirements note estimated fee assumes that all necessary data has already been gathered and organized for preparing appropriate responses. If all necessary data is not already gathered and organized Respondent will discuss next reasonable steps with City. Note: Since the 6/13/16 "13267 Notice" focus is discharges to WOTUS which technically is not applicable to the City of Marina since all outfalls discharge to either privately and / or publicly owned "Percolation Ponds". Thus, the City achieves 100% capture and 100% percolation, excluding evaporation of all storm water within the City, thus it is reasonable to assume that pollutant load reductions will be 100% which is the ultimate goal of any stormwater / water quality program. Thus, these requirements may not completely apply beyond mapping the system with defensible data reflecting 100% capture. This position will need to be discussed with the Central Coast RWQCB. However, if the Central Coast RWQCB disagrees with this position, then the estimates provided are to fulfill the requirements of the 13267 Notice. If the Central Coast RWQCB agrees with this position, then a huge savings to the City. Note: This is a "Not to Exceed" Fee based proposal. As always, the approach is time and materials and if the total estimated amount is not utilized than those remaining funds will be available for other program element assistance at the discretion of Client's representative or simply will not be used.										

EXHIBIT B

COSTS

Proposed costs are provided below.

Permit Year 4	\$73,730.00
Program Contract Budget	\$73,730.00

Environmental Compliance Specialist & Save The Whales Hourly Rate Structure 2017 (RFP #B3/G2)

<u>Title</u>	<u>Hourly Rate</u>
P.E. Services	\$ 135
Principal / Management Services	86
GIS Specialist	86
Grant Writer - Grant Writing Services	86
Plan Examiner - SWPPP Plan Review Services	86
Inspector - Site Inspection Services (Construction & Commercial / Industrial)	86
Administrative Support Services	55
Extra Meetings each at: 5 Hour Minimum	110 \$ 550
Print Cost Current rate \$0.65 per page	
Postage At current rate.	

2ND Nature, LLC Hourly Rate Structure 2017 (RFP #B3/G2)

<u>Title</u>	<u>Hourly Rate</u>
Principal	\$ 172
Senior Scientist III	140
Senior Scientist II	130
Senior Scientist I	110
Science Associate III	95
Science Associate II	85
Science Associate I	75
Software Programmer II	115
Software Programmer I	95
Administration	\$ 55

Exhibit C - Insurance

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

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

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

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

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

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

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

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

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

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

Contractor and City further agree as follows:

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

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

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

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

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

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

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

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

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

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

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

l) Contractor agrees to require all subcontractors or other parties hired for this Project to provide workers' compensation insurance as required herein and general liability insurance naming as additional insureds all parties to this Agreement. Contractor agrees to obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required here. Contractor agrees to require that no contract used by any subcontractor, or contracts Contractor enters into on behalf of City, will reserve the right to

charge back to City the cost of insurance required by this Agreement. Contractor agrees that upon request, all agreements with subcontractors or others with whom Contractor contracts with on behalf of City, will be submitted to City for review. Contractor acknowledges that such contracts or agreements may require modification if the insurance requirements do not reflect the requirements herein. Failure of City to request copies of such agreements will not impose any liability on City, its Council, boards and commissions, officers, employees, agents and volunteers.

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

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

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

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

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

s) Contractor shall maintain commercial general liability, and if necessary, commercial umbrella liability insurance, with a limit of not less than one million dollars (\$1,000,000) each occurrence for at least three years following substantial completion of the work.

EXHIBIT B TO STAFF REPORT

CITY OF MARINA AMENDMENT NO. 2 TO THE AGREEMENT FOR PROFESSIONAL SERVICES FOR THE CITY OF MARINA'S STORM WATER PROGRAM

THIS AMENDMENT NO. 1 ("Amendment No. 2") to the Agreement entered into between the City of Marina ("City"), and Save the Whales ("Contractor") on May 4, 2017 (the "Agreement") is made and entered into as of the _____ day of _____ 2018, by and between those Parties. City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Amendment No.2.

Recitals

- A. City desires to retain Contractor for professional services associated with the City of Marina's Storm Water Permit Program (Program) – Contractor shall provide general assistance as requested on issues pertaining to City Program and shall perform other support services for City as determined by the City Engineer, to assist the City in complying with State Water Resources Control Board Water Quality Order No. 2013-0001-DWQ National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000004 (hereafter, "Phase II Permit")
- B. Contractor represents and warrants that it has the qualifications, experience and personnel necessary to properly perform the services as set forth herein.
- C. City desires to retain Contractor to provide such services.

In consideration of the mutual promises contained herein, City and Contractor agree that the Terms and Conditions set forth herein are incorporated into the Agreement. Only the provisions of the numbered sections of the Agreement which are being amended hereby are included in this Amendment No. 2, and all other terms and conditions of the Agreement shall remain unchanged.

Section 1.(a) of the Agreement "Scope of Work" is hereby deleted in its entirety and replaced with the following:

"1.(a) 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", Exhibit "A.1" and Exhibit "A.2" attached hereto ("Scope of Work") and by this reference made a part hereof. The Scope of Work in Exhibit "A" "A.1" and "A.2" is referencing compliance requirements under the Phase II Permit. With thirty (30) days prior written notice to Contractor, City may elect to delete certain tasks of the Scope of Work at its sole discretion, as provided in Section 4 to this Agreement."

Section 2.(a) of the Agreement "Term of Agreement & Commencement of Work" is hereby deleted in its entirety and replaced with the following:

“2.(a) 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 upon the earlier of October 31, 2019 or thirty (30) days after the issuance of the City’s WDRs by the RWQCB. Upon the issuance of the WDRs to the City, the City may elect not to terminate this Agreement, and to otherwise have Contractor continue with all or parts of the Scope of Work in order for the City to comply with certain elements of the issued WDRs, but in no event shall this Agreement extend beyond October 31, 2019, unless extended by written amendment by the parties hereto. In the event the City determines to continue with all or certain elements of the Scope of Work to comply with its WDRs, the City, within fifteen (15) days from the date of the issuance of the WDRs, shall provide written notice to Contractor of those services under the Scope of Work the City has determined to continue to have Contractor provide. The date of full execution is defined as the date when all of the following events have occurred:”

Section 3.(a) of the Agreement “Compensation” is hereby deleted in its entirety and replaced with the follow:

“3.(a) Compensation

- (a) City liability for compensation to Contractor under this Agreement shall only be to the extent of the present appropriation to fund this Agreement. For services to be provided under this Agreement City shall compensate Contractor in an amount not to exceed three hundred three thousand eight hundred fourteen dollars (\$457,200.00), in accordance with the provisions of this Section and the Cost Estimate attached hereto as Exhibit B and incorporated herein by this reference.”

In all other respect the Agreement remains enforceable in accordance with its terms and in full force effect.

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

CITY OF MARINA

CONTRACTOR

By: _____ By: _____
Name: Layne P. Long Name: Maris Sidenstecker
Its: City Manager Its: Project Manager

Date: _____ Date: _____

Approved as to form:

By: _____
City Attorney

Attest: _____
Deputy City Clerk

Resolution No. 2018-

City of Marina Stormwater Program										EXHIBIT A.2		
Detailed Scope of Work - Stormwater Program Services (PE/PO)												
Year 7 (2018 - 2019) Proposed Task to Complete Revised (Includes Postponed and Final Tasks From Permit Year 6)												
Reference				Permit Element / Time Schedule / BMP Classification			Scope of Services By	Anticipated Deliverables		Revised Fee Proposal		
Ref No.	Permit	ETA Date	Permit Year	Task / Recommendation - Respondent Shall:						Est Hrs	Rate	PY7 2018-19
n/a	n/a	(RFP # 2 / D1)		(RFP # 4 - D3)			(#3 RFP/D2)	(RFP # 5 / D4)		(RFP # 8 / E1)		
1	Task 1: Provide Program Outline to meet NPDES Permit Requirements											
3	E.7.a.i/ii.(c,d,e,g,h,I,k,l,m)	Throughout	6	Internet Updates: Provide as needed updates for City's stormwater public education and outreach program website, facebook and etcetera.			ECS / STW	Updates provided to City representative as needed and overview in Annual Report.		20	86	1720
4	E.7.a.i/ii.(c,d,e,g,h,I,k,l,m)	Throughout	6	Print Ads: Develop and run print ads with impressions on various program topics targeting specific audiences and specific pollutants of concern. This task line item is specifically a MRSWMP carry-over item.			STW	Updates provided to City representative as needed and overview in Annual Report.		20	86	1720
5	E.7.a.i/ii.(c,d,e,g,h,i);	Winter	6	Multi-Languages: Expand at least 2 existing outreach materials (Type To Be Determined) per year to Spanish & an Asian dialect (i.e. Korean) to meet the goals of council (2015) and community needs. Messaging to include at a minimum how to report illicit discharges, water efficient landscaping items, water conservation ideas, proper pesticide / fertilizer and herbicide application, solid waste - litter control (Trash TMDL requirement) and additional items as directed and/or as necessary.			ECS / STW	Translate two brochures per year, update City accordingly and provide overview in Annual Report.		n/a	n/a	n/a
6	E.7.a.i/ii.(d); E.8.i/ii.c/etc	Spring	6	Storm Drain Labeling: Continue City's existing storm drain inlet labeling program and litter cleanup of inlets to engage public participation.			STW	Label storm drains and provide details in Annual Report to City.		30	86	2580
7	E.7.a.i/ii.(d); E.8.i/ii.c/etc	Spring	6	Storm Drain Emblems: Supplies for storm drain emblems per year.			STW	n/a			200	250
8	E.7.a.i/ii.(f)/(c,d,e,g,h,i)	Winter	6	Distribute educational materials determined by City. Recommend distribution at City Hall, library, community centers, public events (i.e. farmers market, Marina Earth Day, Labor Day, Veteran's Day Celebration, Marina Tree and Garden events, etc.) participate in four (4) events a year. Also, recommend distribution via regulatory compliance actions.			STW	Distribute materials to select facilities 4 times year and at noted events annually. Provide results to City in Annual Report and updates as necessary.		48	86	4128
11	E.7.a.ii.(c,d,f)	Winter	6	Restaurants: Visit 10-12 restaurants, distribute proportional number of pieces of bilingual educational materials (posters, brochures, and link to online BMP in English and Spanish).			STW	Implement annually, and provide list of restaurants visited to City in Annual Report and updates as necessary.		4	86	344
12	E.7.a.i/ii.(i)	Spring - Fall	6	IPM: Continue distribution of "Our Water Our World" Integrated Pest Management materials through public events, and partner with MRWMD workshops, participate in at least 1 event at Last Chance Mercantile. The focus is to show examples of alternatives to pesticides. The goal is to reach 20-40 people through events; report on increase/decrease in sales of “natural insecticides” from box store corporate headquarters.			STW	Implement annually, and provide list of restaurants visited to City in Annual Report and updates as necessary.		8	86	688

Reference					Scope of Services By	Anticipated Deliverables	Revised Fee Proposal		
Ref No.	Permit	ETA Date	Permit Year	Task / Recommendation - Respondent Shall:			Est Hrs	Rate	PY7 2018-19
n/a	n/a	(RFP # 2 / D1)		(RFP # 4 - D3)	(#3 RFP/D2)	(RFP # 5 / D4)			(RFP # 8 / E1)
1	Task 1: Provide Program Outline to meet NPDES Permit Requirements								
13	E.7.a.i/ii.(j)	Spring - Fall	6	Schools: Provide environmental place-based learning in schools with hands-on presentations for grades K-3 and 4-12, with materials to effectively educate school-age children about storm water runoff, marine life in the MBNMS, and how they can help protect the environment (<i>groundwater and coastal areas</i>) . Partner with MRWMD to provide an assembly on protecting wildlife, recycling, and litter issues. Contact schools and principals for programs. For grades 4-12, pre-and post-student evaluations will be collected, tabulated, and analyzed for effectiveness in the annual report. All teachers who receive a program for their students will be asked to evaluate the presentation.	STW	Implement annually, and provide list of restaurants visited to City in Annual Report and updates as necessary.	40	86	3440
14	E.7.a.ii.j.4	Spring - Fall	6	Schools: Provide environmental place-based learning workshop to educators (<i>i.e. train the traine r</i>) per Permit.	STW	Develop workshop, outreach to educators, conduct workshop. Update City when workshop will be and report on annually.	20	86	1720
15	E.7.a.i/ii.(k)/(m)	Spring	6	Target Audiences: Distribute existing materials to local churches (<i>deliver to est. 6 sites</i>) and school clubs via direct mailers about stormwater pollution and organized car washes and direct mailers to all local mobile cleaning and pressure washing operations, and landscapers in town about stormwater pollution. The distribution list will be based upon local business licensing and an internet search. Price includes printing and all mailing cost.	ECS	Implement annually, and provide list of restaurants visited to City in Annual Report and updates as necessary.	54	86	4644
17	E.7.a.ii.d	Throughout	6	Movie, Radio, Print: Continue existing PE / PO messaging using a multi-pronged approach (<i>print, radio, movie ad</i>) in applicable languages. Recommend substituting TV ad approach (<i>from MRSWMP</i>) to radio ads (<i>English and Spanish</i>) and digital movie ad (<i>already produced</i>) at local theater to run during blockbuster movie season in winter or summer. Number of patrons reached via radio and movie ads to be reported annually.	STW	Throughout the Contract Term, and provide overview and results to City in Annual Report, and updates as necessary.	40	86	3440
18	E.7.a.ii.e	Spring - Fall	6	Workshops: The Permit requires the Permittee to hold public meetings to elicit public input. The recommendation is to change this approach to seeking public input through the website / Facebook & brochures. This approach will include routine updates as appropriate.	ECS / STW	As needed, and provide overview and results to City in Annual Report, and updates as necessary.	6	86	516
19	E.7.a.ii.e	fall	5	Workshops: Recommend changing this to Annual Council presentation - program updates and a look ahead approach.	ECS / STW	Annually, and provide overview and results to City in Annual Report.	12	86	1032

Reference					Scope of Services By	Anticipated Deliverables	Revised Fee Proposal		
Ref No.	Permit	ETA Date	Permit Year	Task / Recommendation - Respondent Shall:			Est Hrs	Rate	PY7 2018-19
n/a	n/a	(RFP # 2 / D1)		(RFP # 4 - D3)	(#3 RFP/D2)	(RFP # 5 / D4)	(RFP # 8 / E1)		
20*	E.7.b.1.i/ii.(a-e) E.7.b.3.i/ii E.11.g	Spring	6	IDDE / MO/GH & IPM Training: Combine 20, 24, and #30 training for year 6. Simply this will be an overview addressing deficiencies and updates for all staff on Illicit Discharge Detection and Elimination, Municipal Operations and Good Housekeeping and Integrated Pest Management topics.	ECS	Implement annually, and as needed provide overview of results to the City and in Annual Report.	50	86	4300
22	E.7.b.2.b.i/ii.a	Spring - Fall	6	Construction Site Operator Education: Develop and distribute educational materials to construction site operators. Recommend notice to all operators working in town on WDID # / SWPPP projects be emailed a notice on trainings locally on stormwater construction site BMPs, post notice on City's website and make notice available at Permit Counter twice a year.	ECS	Implement annually, and as needed provide overview of results to the City and in Annual Report.	18	86	1548
23	E.7.b.2.b.i/ii.b d	Spring - Fall	6	Construction Operator Outreach Recommendations: (b) Distribute outreach tools aimed at educating construction site operators on appropriate selection, installation, implementation, and maintenance of storm water BMPs, as well as overall program compliance. (c) Distribute appropriate outreach materials to all construction operators who will be disturbing land within the MS4 boundary. The Permittee's contact information and website shall be included in these materials. (d) Update the existing stormwater website as necessary, to include information on appropriate selection, installation, implementation, and maintenance of BMPs. Replace with debriefing / training notices on a near monthly basis	ECS	Implement annually, and as needed provide overview of results to the City and in Annual Report.	45	86	3870
24*	E.7.b.3.i/ii	fall	6	MO/GH Training: See item 20 herein - IDDE / MO/GH & IPM Training: Combine 20, 24, and #34 training for year 6.	ECS	Implement annually, and as needed provide overview of results to the City and in Annual Report. See item 20 for joint cost	0	0	0
25	E.8.i.ii.(a-d)	Throughout	6	Event: As required public participation and involvement program shall encourage volunteerism, public comment and input on policy, and activism in the community. With this in mind Respondent shall coordinate, engage and lead the public in numerous events and/or sponsor partner events; such as coastal clean-up, pet poo markers installation, clean-up of debris and trash at local parks (<i>at least 4 events annually</i>), dune plant restoration, bi-annual Marina tree and garden club garden tour. Respondent shall engage the public via existing well established contacts with CSUMB and local environmental groups through Respondent's website, facebook, the City's website and via word of mouth recruitment at local community events, such as, farmers markets and etcetera. Respondent routinely solicits public input on program materials via each and every outreach material. Note: Some aspects of these tasks are carry-overs from the MRSWMP program.	ECS / STW	Throughout the year, and provide overview of results to the City as needed and in Annual Report.	65	86	5590

Reference					Scope of Services By	Anticipated Deliverables	Revised Fee Proposal		
Ref No.	Permit	ETA Date	Permit Year	Task / Recommendation - Respondent Shall:			Est Hrs	Rate	PY7 2018-19
n/a	n/a	(RFP # 2 / D1)		(RFP # 4 - D3)	(#3 RFP/D2)	(RFP # 5 / D4)	(RFP # 8 / E1)		
26	E.8.i/ii.(e)	Throughout	6	Integrated Regional Water Managemen Program (IRWMP): Respondent shall participate on behalf of client in monthly and / or quarterly IRWMP meetings and associated watershed-level planning efforts, if applicable. The time provided is just an estimate	ECS	As needed, and provide updates to City as needed and overview in Annual Report.	65	86	5590
29	E.10.a	Throughout	6	Construction Outreach: Update existing construction site related education materials as needed based upon changing regulations, standards and ASTM standards.	ECS	Throughout as needed, and provide updates to the City as needed and overview in the Annual Report of updates / modifications made.	0	86	0
32*	E.11.e.	Throughout	6	MO/GH Inspections: Respondent shall inspect municipally owned facilities as follows: (a) Quarterly visual hotspot inspections, (b) Annual Hotspot comprehensive inspections, (c) Quarterly Hotspot visual observation of storm water and non-storm water discharges, (d) Non-Hotspot Inspection once per Permit term vs. E.11.c.ii - annual assessment. Respondent will make assessments of the sites risk to water quality and make recommendations for remedial adjustments / actions as necessary. Respondent estimates that 8 sites in town will need quarterly inspections for various reasons, and 20 non-hotspot sites will be inspected annually.	ECS	Conduct inspections as specified and provide updates to City as needed and overview in Annual Report.	50	86	4300
33	E.11.G		6	Trash Pollicy - Develop Plan that documents City efforts to capture all trash - Perc Lots	ECS		45	86	3870
34	E.11.j.ii	fall	6	IPM Training: See item 20 herein - IDDE / MO/GH & IPM Training: Combine 20, 24, and #34 training for year 6.	ECS / STW	Annually, provide training opportunities to City applicators and distributors, update City as needed and an overview will be provided in the Annual Report. See item 20 for joint cost.			0
36	E.13	n/a	n/a	N/A: Since the City does not have any outfalls that discharge to a US waterway (Note caveat regarding vernal pools), but which instead discharge to percolation ponds it is Respondent's position that this Permit element is not applicable at this time, unless the Central Coast RWQCB directs otherwise.	n/a	n/a			
37	E.14.a-b	Summer-fall	5	PEAIP: As applicable to the scope of work expressed within the RFP, specifically in regards to Public Education and Outreach Respondent will annually prepare and submit an effectiveness assessment analysis with recommendations based upon the iterative process to the MEP principle to City.	ECS / STW	The PEAIP will be submitted annually to the City for review and consideration.	65	86	5590

Reference					Scope of Services By	Anticipated Deliverables	Revised Fee Proposal		
Ref No.	Permit	ETA Date	Permit Year	Task / Recommendation - Respondent Shall:			Est Hrs	Rate	PY7 2018-19
n/a	n/a	(RFP # 2 / D1)		(RFP # 4 - D3)	(#3 RFP/D2)	(RFP # 5 / D4)	(RFP # 8 / E1)		
38	E.15	n/a	n/a	Not applicable to this RFP, nor to the City of Marina.	n/a	n/a			
39	All	As needed	6	Print cost shall be at actual cost, plus 20% administrative overhead. Estimate of total print cost at 6,000 materials per year.	ECS / STW	Updates will be provided in Monthly billings to City.			2340
40	All	As needed	6	Postage cost shall be at actual cost, plus 20% administrative overhead. Estimate of total of 4,000 mailings per year.	ECS / STW	Updates will be provided in Monthly billings to City.			3720
41	E.14	Spring	2016	13267 Notice - 6/13/16: Prior to commencing with the work task in items 42-47 Respondent recommends discussing the applicability of the 13267 Notice to the City, since the focus is pollutant loads discharging to waters of the US and nearly all of City's outfalls discharge to "Percolation Ponds" and there are no WOTUS in the City (<i>Note, caveat on Vernal Pools</i>). Thus, this line item includes roughly 50 hours of dedicated discussion time with the Central Coast RWQCB.	ECS	Upon City approval coordinate joint meeting with Central Coast RWQCB. Demonstrate non-applicability to City and as a last effort discuss option other options. City Representative will be updated routinely for input and direction as this task item proceeds. In addition, an overview of this task item will be provided in the Annual Report. For additional details refer to cell to left.	n/a	n/a	n/a
43	E.14	Fall-Winter	5	Technical Report # 2: Respondent's Team (2nd Nature) will collaborate with the City to obtain and compile all relevant existing structural BMP data and information available (i.e. location, type, ownership, as-built specifications to quantify pollutant load reductions) which complies with Inventory Option 1 of the 13267 Notice. Following this, BMP data gaps will be determined and used to guide efforts to complete the necessary BMP inventory requirements using the customized BMP RAM. This estimate is based upon a maximum of 200 existing structural BMPs.	2ND*	Permit Year Carry Over. See item 41 41 for reference and details			7378

Reference					Scope of Services By	Anticipated Deliverables	Revised Fee Proposal		
Ref No.	Permit	ETA Date	Permit Year	Permit Element / Time Schedule / BMP Classification Task / Recommendation - Respondent Shall:			Est Hrs	Rate	PY7 2018-19
n/a	n/a	(RFP # 2 / D1)		(RFP # 4 - D3)	(#3 RFP/D2)	(RFP # 5 / D4)	(RFP # 8 / E1)		
44	E.14	Winter - Spring	6	Technical Report # 3: Respondent's Team (<i>2nd Nature</i>) following Option 1 in the 13267 Notice will assess the effectiveness of all BMPs inventoried in Task 2 using the BMP RAM. Assessments will begin as soon as possible. BMPs requiring maintenance will be documented and provided to the City with recommended maintenance requirements. BMP assessments will be repeated in the Summer 2017. Completion of the BMP effectiveness assessments using BMP RAM will generate the necessary data for stormwater TELR to generate associated load reductions achieved in each urban catchment as a result of BMP presence and associated performance. Pollutant load reductions estimates and catchment prioritization maps for current conditions will be generated automatically. Part of the leg work for this project was completed during the last Contract Term.	2ND*	See item 41 for details.			24104
45	E.14	Winter Spring	6	Technical Report #4: Phase II MS4's are required to demonstrate compliance with PCRs (<i>Section E.12. i</i>), as well, as include the effectiveness of street sweeping programs in overall Program Effectiveness Assessment and Tracking (<i>Section E.14.a- b</i>) which Parcel RAM was developed to achieve. Respondent will collaborate with the City to obtain and compile all relevant PCR information and records available and translate existing data into Parcel RAM, and integrate this tool into the City's PCR parcel assessments and associated documentation per the PCR requirements. Similarly, Respondent with the City will characterize the spatial distribution and effectiveness of current street sweeping program and identify recommendations to increase pollutant load reduction opportunities through cost effective program improvements. The end result is that City will be well positioned to meet the requirements of Task 5 of the 13267 Notice.	2ND*	See item 41 for details.			12525
46	E.14	fall	6	Task 5 -Memorandum: Develop a stormwater program technical memorandum with recommendations that will set the City up to effectively use available resources to reduce urban storm water volumes and pollutant loads.	2ND*	See item 41 for details.			6112
47	E.14	Throughout	6	13267 Notice Software: Software user license agreement for 13267 Requirements	2ND*	See item 41 for details.			6864

48	Task 1: Subtotal								\$	123,923
49										
50	Task 2: Reports									
51	E.7 / E.8	fall	5	Annual Reports: Respondent shall prepare and submit all applicable Annual Report sections related to Public Education / Outreach (E.7) and Public Involvement / Participation (E.8) deliverables	ECS / STW	These documents will be prepared Annually and submitted to the City Representative prior to the SMARTS Annual Report submission due date to allow ample opportunity for input and direction with City Representative.	115	86	9890	
52	All	Throughout	6	Extra Reports: Respondent shall prepare and submit all other Annual Report Sections as directed by the CITY in compliance with the existing PERMIT at an hourly rate of:	All	These documents will be prepared Annually and submitted to the City Representative prior to the SMARTS Annual Report submission due date to allow ample opportunity for input and direction with City Representative.			0	
53	Task 2 Subtotal:								\$	9,890
54										
Reference					Scope of Services By	Anticipated Deliverables	Revised Fee Proposal			
Ref No.	Permit	ETA Date	Permit Year	Task / Recommendation - Respondent Shall:			Est Hrs	Rate	PY6 2018-19	
n/a	n/a	(RFP # 2 / D1)		(RFP # 4 - D3)	(#3 RFP/D2)	(RFP # 5 / D4)			(RFP # 8 / E1)	
55	Task 3: Project Coordination Meetings and Project Management									
56	All	Throughout	6	Meetings - Client: Respondent shall meet with client monthly at dates and times designated by Client as needed. It is estimated that 16 meetings will take place each calendar year. As noted in the RFP project meetings shall include a manager for a half day, with meeting minutes and other associated costs, such as travel expenses included.	All	Annual overview to be provided in Annual Report with highlights.	140	86	12040	
57	All	Throughout	6	Meetings - RWQCB: Respondent shall meet with RWQCB as needed to ensure program compliance. At this time, Respondents estimates a total of 6 meetings, plus attending 6 regional training workshops on both the new Trash TMDL Policy and the 13267 Notification program requirements. Thus, it is estimated that 12 meetings / workshops will be attended at 3 hours each.	ECS / STW	As needed and an overview to be provided in Annual Report with highlights.	30	86	2580	
58	All	Throughout	6	Project Management: Respondent shall provide effective Project Management throughout the entire project to ensure that quality programs are developed, implemented and managed, along with associated necessary quality documents on time and within budget. Program management and overall overhead related to this RFP is estimated 10% of the total cost above. This line item also covers providing updates on other relevant permits	ECS / STW	As needed and an overview to be provided in Annual Report with highlights.			14843	

59	Task 3 Subtotal:	\$	29,463
TOTAL		\$	163,276
Key: Con = Construction, IDDE = Illicit Discharge Detection and Elimination, MO/GH = Municipal Operations and Good Housekeeping, PE/PO = Public Education / Public Outreach, PP/PI = Public Participation and Public Involvement & PCR = Post Construction Requirements.			
Key: ECS = Environmental Compliance Specialist, 2ND = 2ND Nature, STW = Save the Whales			
Note: For 13267 requirements note estimated fee assumes that all necessary data has already been gathered and organized for preparing appropriate responses. If all necessary data is not already gathered and organized Respondent will discuss next reasonable steps with City.			
Note: Various Tasks from Permit Year 4 (2016-2017) were postponed until the Permit Year 5 period which are included herein.			
Note: Since the 6/13/16 "13267 Notice" focus is discharges to WOTUS which technically is not applicable to the City of Marina since all outfalls discharge to either privately and / or publicly owned "Percolation Ponds". Thus, the City achieves 100% capture and 100% percolation, excluding evaporation of all storm water within the City, thus it is reasonable to assume that pollutant load reductions will be 100% which is the ultimate goal of any stormwater / water quality program. Thus, these requirements may not completely apply beyond mapping the system with defensible data reflecting 100% capture. This position will need to be discussed with the Central Coast RWQCB. However, if the Central Coast RWQCB disagrees with this position, then the estimates provided are to fulfill the requirements of the 13267 Notice. If the Central Coast RWQCB agrees with this position, then a huge savings to the City.			
Note: This is a "Not to Exceed" Fee based proposal. As always, the approach is time and materials and if the total estimated amount is not utilized than those remaining funds will be available for other program element assistance at the discretion of Client's representative or simply will not be used.			

EXHIBIT B

COSTS

Proposed costs are provided below.

Original Contract (Partial Permit Year 4)	\$ 73,730.00
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Amendment No. 1 (Permit Year 5)	\$230,084.00
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Amendment No. 2 (Permit Year 6)	\$153,386.00
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Program Contract Budget	\$457,200.00
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Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of October 16, 2018

CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2018-, APPROVING AMENDMENT NO. 2 TO THE AGREEMENT BETWEEN CITY OF MARINA AND SAVE THE WHALES OF SEASIDE, CALIFORNIA, TO PROVIDE PROFESSIONAL SERVICES FOR THE CITY OF MARINA'S STORM WATER PROGRAM, AUTHORIZING THE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY.

REQUEST:

It is requested that City Council consider:

1. Adopting Resolution No. 2018-, approving Amendment No. 2 to the agreement between the City of Marina and Save the Whales of Seaside, California, to provide professional services for the City of Marina's Storm Water Permit Program, and;
2. Authorizing the Finance Director to make necessary accounting and budgetary entries, and;
3. Authorizing the City Manager to execute the agreement on behalf of the City subject to final review and approval by the City Attorney.

BACKGROUND:

On February 5, 2013, the State Water Quality Control Board adopted new National Pollutant Discharge Elimination System (NPDES) Phase II Stormwater permit requirements, requiring the City to submit a Notice of Intent for coverage under the new permit by July 1, 2013. The Permit term is five years ending on June 30, 2018.

At the regular meeting on October 15, 2013, the City Council adopted Resolution No. 2013-149, approving termination of the City of Marina's participation in the Memorandum of Agreement (MOA) with the Monterey Regional Water Pollution Control Agency (MRWPCA) effective November 1, 2013.

To fulfill the City's Program Management requirements, including its needed Public Education & Outreach (PE/PO) program under the current NPDES Phase II permit, the City contracted program support for the first two permit years with Save the Whales of Seaside, California.

At the regular meeting on December 15, 2015, the City Council adopted Resolution No. 2015-148, approving a one-year agreement between the City of Marina and Save the Whales of Seaside, California, to provide professional services for the City of Marina's Storm Water Program Permit Year 3.

At the regular meeting on October 18, 2016, the City Council received a presentation on the City's Stormwater Program accomplishments for Permit Year 3 as well as a summary for new required activities for Permit Year 4.

With the additive general Permit supplemental reporting to the expanding Stormwater Program requirements, staff sought to better evaluate the scope and value of the program's consultant support provided for the City's Stormwater Program. On November 2, 2016 staff issued a request for proposals (RFP) for Public Education and Outreach as well as Program Support for the additional permit elements.

At the regular meeting on March 7, 2017, the City Council adopted Resolution No. 2017-21, approving a one-year agreement between the City of Marina and Save the Whales of Seaside, California, to provide professional services for the City of Marina's Storm Water Program Permit Year 4.

At the regular meeting on November 7, 2018, the City Council adopted Resolution No. 2018-100, approving Amendment No. 1 to the agreement between the City of Marina and Save the Whales of Seaside, California, to provide professional services for the City of Marina's Storm Water Permit Program.

ANALYSIS:

Since the adoption of the new Phase II Stormwater Permit in 2013, the permit requirements outline a steady increase in permit regulations per year. The City's Stormwater program has complied with the escalating permit requirements through a joint effort of City staffing and consulting services.

As summarized to the City Council at the December 15th, 2015 meeting, the Regional Water Board who regulates local agency's compliance to the Permit has enacted three additional provisions that effect local agencies during Permit Year 4 and 5: Industrial General Permit Requirements, the New Statewide Trash Policy Amendment, and Water Code Section 13267 Technical Report Order dated June 13, 2016.

The Industrial General Permit (IGP), enacted by Order 2015-0057-DWQ, implements the federally required storm water regulations in California for storm water associated with industrial activities. The IGP requires the implementation of best management practices, a site-specific Storm Water Pollution Prevention Plan (SWPPP), and monitoring plan for each of the 18 industrial businesses within the City's jurisdiction. The Phase II Permit for the City requires tracking and enforcement to local industrial facilities for compliance to the IGP along with reporting to the Regional Water Board in Permit Year 5.

The State Water Resources Control Board and Regional Water Quality Control Boards are controlling trash primarily through Total Maximum Daily Loads (TMDLs) established in permits. On April 7, 2015, the State Water Resources Control Board adopted Resolution 2015-0019, an Amendment to the Water Quality Control Plan for Ocean Waters of California to Control Trash and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California (collectively known as "Amendment 1"). The Amendment requires agencies to implement and report on capture systems from priority facilities and sites within their jurisdiction, such as corporation yards and percolation basins. Reporting requirements will be further detailed in an upcoming Water Code Section 13267 Technical Report Order.

On June 13, 2016, the City received a Water Code Section 13267 Technical Report Order for an assessment on Stormwater pollutant load reduction practices and their effectiveness. The Order requires the planning, implementation, and reporting on best management practices in reducing storm water pollutants in the City's drainage system as well as quantifying the amount of reduction the best management practices produce. As the Order has a very large area of effect in an agency's program, the Requirements' deliverables span until the expiration of the current permit life cycle.

With the additive general Permit requirements as well as the supplementary requirements detailed above, staff has found Save the Whales as the most qualified consultant to manage the City's Phase II permit program for the remainder of Permit Year 6 (October – June 2018). The Regional Board allows approximately 4 months to produce the reporting requirements after each permit year. This means that the report-production period for Permit Year 6 will overlap activities for the next Fiscal Year from July through October 2019.

For a list of permit requirements, see "Scope of Work" in the draft Amendment No. 2 to the Professional Services Agreement (**"EXHIBIT B"**).

City staff will oversee the amended scope to the agreement with Save the Whales to fulfill the requirements of the remaining Permit term, by providing, among other things, the necessary information needed for preparation of the annual report, and by ensuring compliance with the required staff training as part of the requirements of the new Phase II permit.

FISCAL IMPACT:

The total program costs for the professional services contract with Save the Whales for Permit Year 6 is \$163,276.00. The breakdown in the program budget is as follows:

Fiscal Year 18/19 Stormwater Program Budget

Permit Year 6, Program Costs	\$ 153,386.00
FY 18/19 Program Budget	\$ 153,386.00

Fiscal Year 19/20 Stormwater Program Budget

Permit Year 6, Program Reports & Presentation Requirements	\$ 9,890.00
FY 19/20 Program Budget	\$ 9,890.00

Permit Year 6 Program Budget \$ 163,276.00

Should the City Council approve this request, adequate funds are available in the approved budget for Fiscal Year 2018/19 activities in NPDES account No. 100.420.000.00-6370.540.

The remainder of the Program professional services costs of \$9,890 will need to be appropriated during the budget approval process for a distribution into Fiscal Year 2019/20 and is not a part of Contract Amendment No.2 at this time.

CONCLUSION:

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

Respectfully submitted,

Edrie Delos Santos, P.E.
Senior Engineer, Engineering Division
City of Marina

REVIEWED/CONCUR:

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

Layne P. Long
City Manager
City of Marina