

RESOLUTION NO. 2018-150

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
APPROVING AGREEMENT BETWEEN CITY OF MARINA AND WRA
ENVIRONMENTAL CONSULTANTS FOR PEER REVIEW SERVICES TO
THE CITY OF MARINA TO ASSIST THE CITY IN ITS REVIEW OF THE
COASTAL DEVELOPMENT PERMIT APPLICATION SUBMITTED BY THE
CALIFORNIA AMERICAN WATER COMPANY (CALAM) FOR THE
MONTEREY PENINSULA WATER SUPPLY PROJECT, AND;
AUTHORIZING CITY MANAGER TO EXECUTE AGREEMENT ON
BEHALF OF CITY, SUBJECT TO FINAL REVIEW AND APPROVAL BY
CITY ATTORNEY

WHEREAS, on June 22, 2018 the California American Water Company (CalAm) submitted an application for a Coastal Development Permit (CDP) for the Monterey Peninsula Water Supply Project (MPWSP);

WHEREAS, Cal-Am's application for a CDP from the City for the MPWSP has been deemed complete upon certification of required environmental documentation by the California Environmental Quality Act (CEQA) by the lead agency California Public Utilities Commission (CPUC);

WHEREAS, the City, as a responsible agency, is tasked with considering Cal-Am's CDP application for the portion of the project that is within City limits;

WHEREAS, the Environmental Impact Report (EIR) for the project was certified by the CPUC in September of 2018;

WHEREAS, as a responsible agency, the City of Marina has the responsibility to rely on the EIR to assist in determining the potential environmental impacts resulting from the overall project, and how those potential impacts, and any associated mitigation measure and/or significant unmitigable impacts may affect and/or apply to the lands under the jurisdiction of the City of Marina;

WHEREAS, in order for the City to make an informed decision on the project's environmental impacts, the City will be conducting a peer review of the EIR with the assistance of WRA Environmental Consultants;

WHEREAS, a draft Agreement for services with a Scope of Services for peer review services to assist the City through the CDP and environmental review process is attached ("EXHIBIT A");

WHEREAS, this contract for services will allow for continuity of qualified personnel familiar with the project and with specific environmental expertise to assist the City during the permitting process;

WHEREAS, should the Council approve this request, the total estimated costs for the peer review is up to \$43,000. The costs are comprised of a peer review of application materials (up to \$18,000), Draft and written report of findings (up to \$11,000) and meetings (up to \$14,000);

WHEREAS, the cost for the peer review will be paid in the FY 2018-19 General Fund 100-120, City Manager/Human Resources/ Risk Management Department, Professional Services Legal – Special Counsel Account No 6300.465 and City costs could potentially be offset if the City is successful in entering into a Reimbursement Agreement with CalAm; and,

WHEREAS, these expenditures have been included in the FY 2018-19 Budget.

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

1. Approve Agreement between City of Marina and WRA Environmental Consultants for peer review services to the City of Marina to assist the City in its review of the Coastal Development Permit Application submitted by the California American Water Company (CalAm) for the Monterey Peninsula Water Supply Project; and,
2. Authorize the City Manager to execute Agreement on behalf of City, subject to final review and approval by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 4th day of December 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

CITY OF MARINA
AGREEMENT WITH CITY OF MARINA AND WRA
ENVIRONMENTAL CONSULTANTS FOR PEER REVIEW
SERVICES TO THE CITY OF MARINA TO ASSIST THE CITY IN
ITS REVIEW OF THE COASTAL DEVELOPMENT PERMIT
APPLICATION SUBMITTED BY THE CALIFORNIA AMERICAN
WATER COMPANY (CALAM) FOR THE MONTEREY
PENINSULA WATER SUPPLY PROJECT

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

Recitals

1. City desires to retain Contractor to provide peer review services hereinafter referred to as the "Project."
2. Contractor represents and warrants that it has the qualifications, experience and personnel necessary to properly perform the services as set forth herein.
3. City desires to retain Contractor to provide such services.

TERMS AND CONDITIONS

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 Estimated Cost") and by this reference made a part hereof. With prior written notice to Contractor, City may elect to delete certain tasks of the Scope of Work at its sole discretion.

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

(c) 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**".

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 continue month-to-month until and upon 30-days prior written notice to terminate is

given by either party or the Agreement is terminated earlier as provided herein. The date of full execution is defined as the date when all of the following events have occurred:

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

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

(iii) 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.

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

(b) Contractor shall commence work on the Project on or by December 10, 2018. This Agreement may be extended upon written agreement of both parties. Contractor may be required to prepare a written schedule for the work to be performed, which schedule shall be approved by the City and made a part of "**Exhibit A**", and to perform the work in accordance with the approved schedule.

3. Compensation.

(a) City liability for compensation to Contractor under this Agreement shall only be to the extent of the present appropriation to fund this Agreement. For services to be provided under this Agreement City shall compensate Contractor as outlined in "**Exhibit A**".

(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 Finance Department for payment. City shall notify Contractor of exceptions or disputed items and their dollar value within fifteen days of receipt. Payment of the undisputed amount of the invoice will typically be made approximately thirty (30) 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 for a period of three 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 City to be necessary for the proper completion of the Project but which is not included within the Scope of Work and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with "**Exhibit A**".

(e) Expenses incurred by Contractor in performing services under this Agreement, including: Telephone, Fax, Printing, Reproduction, Mail Service and Blueprinting will be charged at cost plus 10% and reimbursed to Contractor.

(f) There shall be no charge for transportation within Monterey, Santa Cruz and San Benito Counties required for the performance of the services under this Agreement. Travel to other locations must be approved in writing and in advance by the City and mileage will be charged at the then current standard rate for business travel as set by the U.S. Internal Revenue Service for such approved travel.

4. Termination or Suspension.

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

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

(c) The City may terminate or suspend this Agreement at any time for its convenience upon not less than thirty (30) days' prior written notice to Contractor. Not later than the effective date of such termination or suspension, Contractor shall discontinue all affected work and deliver all work product and other documents, whether completed or in process, to the City.

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

5. Project Administrator, Project Manager & Key Personnel.

(a) City designates as its Project Administrator Christy Hopper, Planning Services Manager, 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 Mike Josselyn as its Project Manager who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term.

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

6. Delegation of Work. If Contractor utilizes any additional consultants, persons, employees or firms having applicable expertise to assist Contractor in performing the services under this Agreement, Contractor shall obtain City's prior written approval to such employment. Contractor's contract with any

subcontractor, if any, 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. If such persons are utilized, they shall be charged at cost. City reserves its right to employ other contractors in connection with this Project or to contract with subcontractors directly.

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 shall provide the number of sets of reproducible of the above-cited items as described in the Scope of Work ("**Exhibit A**"), 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 shall be permitted to maintain copies of all such data for its' own files. 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 shall have no liability or responsibility whatsoever in connection with such use.

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 with General Contractors, and as such, may not accept compensation, commission or payment of any type from any General Contractors or Material Supplier or such party's agent.

(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, 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) Except for the active or sole negligence or willful misconduct of City, or any of its elected or appointed Councils, Boards and Commissions, Officials, Officers and Employees, Agents, Assigns and Successors in Interest (collectively "Indemnitees"), Contractor undertakes and agrees to defend, indemnify and hold harmless Indemnitees from and against all suits and causes of actions, claims, losses, demands or expenses, including but not limited to attorney's fees and costs of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including Contractor's employees and agents, or damage of or destruction to any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of Contractor or its subcontractors of any tier. The provisions of this Section shall survive termination of this Agreement. The Contractor's obligation to indemnify applies unless it is adjudicated that its liability was caused by the active or sole negligence or misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence, sole negligence or willful misconduct of an indemnified party, the Contractor's indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

(b) With respect to professional services, if any, performed, Contractor shall indemnify and hold harmless the Indemnitees from and against all claims, damages, costs, losses, demands or expenses, including but not limited to attorney's fees, (collectively "Claims") to the extent caused by Contractor's negligence, error or omission, its partners, officers or employees, in the performance or furnishing of professional services under this Agreement. In the event that any claim, action or proceeding is brought against Indemnitees relating to the professional services performed under this Agreement, Contractor shall fully cooperate in the defense thereof.

(c) If any action or proceeding is brought against Indemnitees by reason of any of the matters against which Contractor has agreed to defend Indemnitees as provided above, Contractor, upon notice from the City, shall defend Indemnitees at Contractor's expense by counsel acceptable to the City, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to indemnification in order to be so defended. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

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 B**" "Insurance" which is attached hereto and made a part hereof. All insurance policies shall be subject to approval by the City Attorney as to form and content. Specifically, such insurance shall: (1) protect City as an Additional Insured; (2) provide City at least thirty days advance notice of cancellation, material reduction in coverage or reduction in limits; and (3) be primary with respect to City's insurance program. Contractor's insurance is not expected to respond to claims which 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 by the City Attorney prior to the inception of any operations by Contractor. The required coverages 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.

(d) 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. A waiver of subrogation in favor of the City will be required when work is performed on City premises under hazardous conditions.

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 (30) 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 and/or procedures that apply to the performance of this Agreement.

(b) 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 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, or sent by 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 Consultant: WRA Environmental Consultants
 2169-G East San Francisco Blvd.
 San Rafael, CA 94901
 Phone: (415) 454-8868
 Fax: (415) 454-0129

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of same 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 Majuere.** 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: strikes, fire, flood, civil disorders, acts of God or of the public enemy, acts of the federal government, or any unit of state or local government in either sovereign or contractual capacity, epidemics, quarantine restrictions, or delays 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 hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns provided, however, that no assignment shall be made without written consent of the parties to this Agreement as required under Section 21.

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

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

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

CITY OF MARINA

WRA ENVIRONMENTAL CONSULTANTS

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

By: _____
Name: Mike Josselyn
Its: _____
Date: _____

Attest: (Pursuant to Resolution No. 2012 - _____)

By: _____
City Clerk

Approved as to form:

By: _____
City Attorney

“Exhibit B” (to Contract)
Insurance

Insurance Requirements. Consultant agrees to provide insurance acceptable to the City’s Risk Manager and the City Attorney and in accordance with the requirements set forth in this Section. Unless otherwise approved, all insurance is to be placed with insurers authorized to do business in the State of California and with a minimum A.M. Best’s Insurance Guide rating of A:VII. If Consultant uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein, Consultant agrees to amend, supplement or endorse the existing coverage to do so. Self-insurance will not be considered to comply with these requirements. The following coverages will be provided by Consultant and maintained on behalf of the City:

Commercial General Liability/Umbrella Insurance. Primary insurance will be provided on ISO-GCL form No. CG 00 01 11 85 or 88. Total limits will be no less than one million dollars per occurrence for all coverages and two million dollars general aggregate. City, its elected and appointed Council, boards and commissions, employees and agents, and each of them, will be added as additional insureds using ISO additional insured endorsement form CG 20 10 11 85 (in no event will the City accept an endorsement form with an edition date later than 1990). Coverage will 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 employee or agent of the City. Coverage will not be limited to the vicarious liability or supervisory role of any additional insured. Umbrella Liability Insurance (over primary) will apply to bodily injury/property damage, personal injury/advertising injury, at a minimum, and will include a "drop down" provision providing primary coverage above a maximum of \$25,000 self-insured retention for liability not covered by primary policies but covered by the umbrella policy. Coverage will be following form to any underlying coverage. Coverage will be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There will be no cross liability exclusion. Policies will have concurrent starting and ending dates.

Business Auto/Umbrella Liability Insurance. Primary coverage will be written on ISO Business Auto Coverage form CA 00 01 06 92 including symbol 1 (Any Auto). Limits shall be no less than one million dollars per accident. Starting and ending dates shall be concurrent. If Consultant owns no autos, a non-owned auto endorsement to the General Liability policy described above in acceptable.

Workers' Compensation/Employer's Liability. Will be written on a policy form providing workers' compensation statutory benefits as required by law. Employer's liability limits shall be no less than one million dollars per accident or disease. Employer's liability coverage shall be scheduled under any umbrella policy described above. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects the City, its employees or agents.

Professional Liability/Errors and Omissions. Professional Liability Insurance (Errors & Omissions) covering the professional acts of the Consultant in the amount of one million dollars with evidence of coverage of each of the principals of Consultant. This insurance shall be kept in force for not less than one year after completion of the work provided for herein.

Other Provisions. Consultant and City further agree as follows:

This Section 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 Section.

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

All insurance coverage and limits provided pursuant to this Section 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.

For purpose 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.

Requirements of specific coverage features or limits contained in this Section 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.

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

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

Consultant agrees to provide evidence of the insurance required herein, satisfactory to the City, prior to taking any steps in furtherance of this Agreement consisting of certificate(s) of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability and umbrella policies using ISO form CG 20 10 11 85. Certificate(s) are to reflect that the insurer will provide 30-days notice of any cancellation of coverage. Consultant 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. Consultant agrees to provide complete certified copies of policies to City within 10-days of City's request for said copies.

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

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.

Consultant agrees to provide immediate notice to City of any claim or loss against Consultant 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.

Consultant agrees to require all subcontractors or other parties hired for this project to provide general liability insurance naming as additional insureds all parties to this Agreement. Consultant agrees to obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required herein.

If Consultant 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.

November 29, 2018

Item No. **8g(7)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of December 4, 2018

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2018- ,
APPROVING AGREEMENT BETWEEN CITY OF MARINA AND WRA
ENVIRONMENTAL CONSULTANTS FOR PEER REVIEW SERVICES
TO ASSIST THE CITY OF MARINA IN ITS REVIEW OF THE
COASTAL DEVELOPMENT PERMIT APPLICATION SUBMITTED BY
THE CALIFORNIA AMERICAN WATER COMPANY (CAL-AM) FOR
THE MONTEREY PENINSULA WATER SUPPLY PROJECT, AND;
AUTHORIZING CITY MANAGER TO EXECUTE AGREEMENT ON
BEHALF OF CITY, SUBJECT TO FINAL REVIEW AND APPROVAL
BY CITY ATTORNEY**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2018- , approving agreement between City of Marina and WRA Environmental Consultants for peer review services to the City of Marina to assist the City in its review of the Coastal Development Permit Application submitted by the California American Water Company (CalAm) for the Monterey Peninsula Water Supply Project; and,
2. Authorizing City Manager to execute Agreement on behalf of City, subject to final review and approval by the City Attorney.

BACKGROUND:

On June 22, 2018 the California American Water Company (CalAm) submitted an application for a Coastal Development Permit (CDP) for the Monterey Peninsula Water Supply Project (MPWSP). Cal-Am's application for a CDP from the City for the MPWSP has been deemed complete upon certification of required environmental documentation by the California Environmental Quality Act (CEQA) by the lead agency California Public Utilities Commission (CPUC). The City, as a responsible agency, is tasked with considering Cal-Am's CDP application for the portion of the project that is within City limits.

The Environmental Impact Report (EIR) for the project was certified by the CPUC in September of 2018. As a responsible agency, the City of Marina has the responsibility to rely on the EIR to assist in determining the potential environmental impacts resulting from the overall project, and how those potential impacts, and any associated mitigation measure and/or significant unmitigable impacts may affect and/or apply to the lands under the jurisdiction of the City of Marina.

In order for the City to make an informed decision on the project's environmental impacts, the City will be conducting a peer review of the EIR with the assistance of WRA Environmental Consultants.

ANALYSIS:

A draft Agreement for services with a Scope of Services for peer review services to assist the City through the CDP and environmental review process is attached (“**EXHIBIT A**” to the Resolution).

This contract for services will allow for continuity of qualified personnel familiar with the project and with specific environmental expertise to assist the City during the permitting process.

FISCAL IMPACT:

Should the Council approve this request, the total estimated costs for the peer review is up to \$43,000. The costs are comprised of a peer review of application materials (up to \$18,000), Draft and written report of findings (up to \$11,000) and meetings (up to \$14,000).

The cost for the peer review will be paid in the FY 2018-19 General Fund 100-120, City Manager/Human Resources/ Risk Management Department, Professional Services Legal – Special Counsel Account No 6300.465. City costs could potentially be offset if the City is successful in entering into a Reimbursement Agreement with CalAm.

These expenditures have been included in the FY 2018-19 Budget.

CONCLUSION:

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

Respectfully submitted,

Christy Hopper
Planning Services Manager, Planning Division
Community Development Department
City of Marina

REVIEWED/CONCUR:

J. Fred Aegerter, AICP
Community Development Director
City of Marina

Layne P. Long
City Manager
City of Marina