

RESOLUTION NO. 2023-116

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH DESIGN PATH
STUDIO FOR THE DEVELOPMENT OF PRE-APPROVED ACCESSORY
DWELLING UNIT (ADU) BUILDING PLANS FOR AN AMOUNT NOT TO
EXCEED \$78,400; AND AUTHORIZE THE FINANCE DIRECTOR TO MAKE
NECESSARY ACCOUNTING AND BUDGETARY ENTRIES; AND AUTHORIZE
THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF CITY
WITH DESIGN PATH STUDIO SUBJECT TO FINAL REVIEW BY THE CITY
ATTORNEY.

WHEREAS, the City of Marina desires to develop pre-approved ADU building plans in an effort to comply with Program 2.1 of the City's 6th Cycle Housing Element update, and in an effort to forward the housing goals of the City and the State of California;

WHEREAS, the City conducted a competitive request for proposals and received proposals from five (5) qualified consultants. Each of the consultants were evaluated by staff using a rubric included in the request for proposals (RFP), and a successful candidate was selected;

WHEREAS, completion of the pre-approved ADU building plans requires a Professional Services Agreement with the selected consultant, Design Path Studio, a planning and architecture firm with local experience; and

WHEREAS, the approval of this Professional Services Agreement is not subject to California Environmental Quality Act (CEQA) pursuant to the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, Sections: 15060(c)(2), because the proposed ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment; and 15061(b)(3), because the proposed ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment.

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

1. Approving a Professional Services Agreement with Design Path Studio for the preparation of pre-approved ADU building plans for an amount not to exceed \$78,400;
2. Authorize the Finance Director to make necessary accounting and budgetary entries; and
3. Authorize the City Manager to execute the Agreement on behalf of City with Design Path Studio subject to final review by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 21st of November 2023, by the following vote:

AYES, COUNCIL MEMBERS: Visscher, McCarthy, Biala, Medina Dirksen, 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 FOR DRAFTING PRE-APPROVED ACCESSORY DWELLING UNIT
(ADU) CONCEPTS FOR THE CITY'S PRE-APPROVED ADU PROGRAM**

THIS AGREEMENT is made and entered into on _____, 2023, by and between the City of Marina, a California charter city, hereinafter referred to as the "City," and Design Path Studio, a California corporation, hereinafter referred to as the "Contractor." City and Contractor are sometimes individually referred to as "party" and collectively as "parties" in this Agreement.

Recitals

- A. City desires to retain Contractor to: collaborate with City staff to prepare a series of pre-approved, detached Accessory Dwelling Unit ("ADU") plans. The services identified in this scope of work include developing a set of three (3) detached ADU building plans that will each be of a different unit type (studio, one-bedroom, two-bedroom), with three (3) unique elevations for each building plan type, for a total of nine (9) elevations. Deliverables will include the plan sets/elevations, an overview of the Contractor's design types, and a short catalog of design features to accompany ADUs on the lot of a primary dwelling unit with unique or historic architecture. The aforementioned tasks are hereinafter referred to as the "Project."
- B. Contractor represents and warrants that it has the qualifications, experience, and personnel necessary to properly perform the services as set forth herein.
- C. City desires to retain Contractor to provide such services because of the Contractor's experience with the Project as the preparer of related documents for a range of local and regional jurisdictions, including Salinas, Encinitas, Chino, Temecula, Carlsbad, and Paradise, and because of their detailed response to the request for proposals (RFP) issued by the City.

Terms and Conditions

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

1. Scope of Work.

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

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

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

(d) Contractor is responsible for making an independent evaluation and judgment of all relevant City-wide conditions that could affect performance of the work.

(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 _____, 2023, and shall expire on _____, 2024, unless extended by amendment or terminated earlier as provided herein. The date of full execution is defined as the date when all 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 _____, 2023. 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 in an amount not to exceed seventy-eight thousand four hundred dollars (\$78,400.00) in accordance with the provisions of this Section and the Fee Schedule 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 fifteen days of receipt. Payment of the undisputed amount of the invoice will typically be made approximately thirty days after the invoice is submitted to the Finance Department.

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

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

(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.

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

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

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

5. Project Administrator, Project Manager & Key Personnel.

(a) City designates as its Project Administrator Alec Barton, 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 Geoffrey Plagemann as its Project Manager who shall coordinate all phases of the Project. The Project manager shall be available to City at all reasonable times during the Agreement term.

(c) Contractor warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement. Contractor, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of services upon written request of City. Contractor has represented to City that certain key personnel will perform and coordinate the work under this Agreement. Should one or more of such personnel become unavailable, Contractor may substitute other personnel of at least equal competence upon written approval of the City. In the event that City and Contractor cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement are as follows: Yvonne St. Pierre, AIA, LEED AP; Geoffrey Plagemann, AICP; Cody Purcell; Kristine Zayas; Jose de Jesus Garcia; and Marcus Israel.

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. 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 payment for, 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.

(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 that 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, except that Contractor may include the designs in its portfolio and use the designs as promotional material and procuring future business. Contractor shall provide reproducible copies of all the above-cited items, except for project CAD files, which can be obtained through a separate Electronic Files Agreement. 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.

(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.

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 and its subcontractors shall comply with the applicable laws of the United States of America, the State of California and the City prohibiting discrimination and harassment. In performing this Agreement, Contractor shall not discriminate, harass, or allow harassment, against any employee or applicant for employment because of gender, gender expression, gender identity, genetic characteristics, sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), medical condition (including cancer), mental disability, age, marital status, denial of family and medical care leave and denial of pregnancy disability leave, sexual orientation, military/veteran status and any other characteristics protected by state or federal law. 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 provisions of this Section 12(a) in all subcontracts related to this Agreement.

13. Indemnification.

(a) Other than in the performance of design 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, immediately defend (with independent counsel reasonably acceptable to the City) and hold harmless the City, its Council, boards, commissions, employees, officials and agents (collectively "Indemnified Parties" or in the singular "Indemnified Party") from and against any claims, losses, damages, penalties, fines and judgments, associated investigation and administrative expenses, and defense costs including but not limited to reasonable attorney's fees, court costs, expert witness fees and costs of alternate dispute resolution (collectively "Liabilities"), where same arise out of the performance of this Agreement by Contractor, its officers, employees, agents and sub-contractors. The duty to defend is a separate and distinct obligation from the Contractor's duty to indemnify and Contractor shall be obligated to defend in all legal, equitable, administrative or special proceedings upon tender to the Contractor of any claim in any form or at any stage of an action or proceeding, whether or not liability is established and the obligation extends through final judgment including exhaustion of any appeals. The Contractor's obligation to indemnify applies unless it is finally determined that the liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally determined that liability is caused by the comparative active 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) 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 by said section 2782.8(c)(2) ("Design Professional") Design Professional shall indemnify, protect and hold harmless 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 such acts or omissions of an officer, employee, agent or subcontractor of the Design Professional. Design Professional shall not have an immediate duty to defend an Indemnified Party, however, Design Professional's obligation to indemnify (including reimbursing the cost to defend) and hold the Indemnified Parties harmless applies unless it is finally determined that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally determined that liability was caused by the comparative active negligence or willful misconduct of an Indemnified Party the Design Professional's indemnification obligation shall be reduced in direct proportion to the indemnified party's proportionate percentage of fault. Within 30 days following Design Professional's receipt of a properly presented written invoice Design Professional shall satisfy its indemnification obligations and reimburse the Indemnified Party for the cost of reasonable attorney's fees and defense costs incurred by the Indemnified Party to the same extent of Design Professional's indemnity obligation herein. In no event shall the

cost to defend charged to the Design Professional exceed the Design Professional's proportionate percentage of fault.

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

(d) If any action or proceeding is brought against any Indemnified Party by reason of any of the matters against which the Contractor has agreed to provide an immediate defense to any Indemnified Party, as provided above, Contractor, upon notice from the City, shall defend the Indemnified Party at Contractor's expense by independent counsel reasonably acceptable to the City. Unless otherwise provided above, 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. Contractor may submit a claim to the City for reasonable defense costs (including attorney's and expert fees) incurred in providing a defense of any Indemnified Party to the extent such defense costs arise under principals of comparative fault from the Indemnified Party's active negligence, recklessness or willful misconduct.

(e) This obligation to indemnify and defend, 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" *[If there is no Exhibit B (Fee Schedule), see Sec. 3(a), above, Exhibit C may become Exhibit B]* attached hereto and made a part hereof. Contractor shall furnish the City with original certificates of insurance, executed 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) be endorsed to protect City as an additional insured for commercial general and business auto liability; (2) provide City prior notice of cancellation; 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.

This Agreement shall not constitute, and it is not intended to constitute, either party as an employer, employee, agent, partner or legal representative of the other party for any purpose, or give either party any right to supervise or direct the functions of the other party. Except as specifically provided herein, neither party shall have authority to act for or obligate the other party in any way or to extend any representation on behalf of the other party. Each party agrees to perform under this Agreement solely as an independent contractor and neither party shall have any right, power, or authority, nor shall they represent themselves as having any authority to assume, create, or incur any expense, liability or obligation, express or implied, on behalf of the other party for any purpose. Each party agrees not to permit its employees or agents to do anything that might be construed or interpreted as acts of the other party.

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 must be in good standing and registered with the California Department of Industrial Relations in accordance with California Labor Code section 1725.5 and 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 (Title 5 of the Marina Municipal Code) for which a business license tax is prescribed and assessed at the rate of two-tenths percent of gross receipts, in accordance with the provisions therein. 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: Design Path Studio
 c/o Geoffrey Plagemann
 P.O. Box 230165
 Encinitas, California 92023

The parties may agree in writing to receive notice by email. 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 except that an economic downturn of any type shall not be a justifiable cause for the failure to meet their respective obligations under this Agreement. 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 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. **Advice of Counsel.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor or against either party by reason of the extent to which each party participated in the drafting of this Agreement.

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

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

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

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

CITY OF MARINA

CONTRACTOR

By: _____

By: _____

EXHIBIT A

Name: _____
Its: _____
Date: _____

Name: _____
Its: _____
Date: _____

Attest: (Pursuant to Reso: 20____ - _____)

By: _____
City Clerk

Approved as to form:

By: _____
City Attorney

EXHIBIT A

Section 1 (a)

- SCOPE OF WORK -

SCOPE OF WORK

Design Path Studio (consultant) has prepared the proposed Scope of Services base on our understanding of the project description provided in the RFP. Based on our firm's experience with similar projects, we are confident that the proposed scope and time frame can be accomplished. Design Path's management team of Yvonne St. Pierre and Geoffrey Plagemann will oversee the work of all team members, including on in-house structural engineering and Title 24 calculations, to ensure a quality product that is delivered on time and on budget. Consultants will meet with City Staff on a monthly basis to track progress.

ADU Standard Design Plans

Task 1: Kick-off Meeting + Project Management

Deliverables: Schedules, Agendas, Minutes, and Findings

- A. Consultant shall attend a kick-off meeting with City Staff to refine the scope of services, timeline, steps for completion of ADU outreach materials and building plans. The kick-off meeting will establish protocols for communication, progress meetings, and clarify project objectives and deliverables.
- B. Consultant shall research and collect data to understand the City's vision and objectives for the program.
- C. Consultant will schedule, prepare agendas, and draft minutes for all team progress meetings (to be scheduled monthly or based on plan progression).

To be consistent with standard professional practice we propose the following design plan in order to refine the designs while working with City Staff. This allows Staff to think through the design and any factors impacting the integration of the permit ready design with existing conditions that cannot be predicted.

Task 2: Pre-Approved ADU Plans

A: Schematic Design

Deliverables: Floor Plans, Elevations

- a. Evaluate the minimum square footage requirements for each space in the proposed unit types including, kitchen, living room, bedroom(s), and bathroom(s), as applicable.
- b. Consult with Staff to develop an understanding of how homeowners can easily modify the plans to accommodate an ADU on their existing property. By identifying prominent architectural styles within the City, our goal is to provide options for incorporating the ADUs into various existing conditions while complying with current zoning and building codes.
- c. Create three to six conceptual floor plans, each with three or four corresponding architectural styles for Staff review and comment. We will present these designs in the form of sketches to help visualize the different concepts in an efficient manner, and then select which of these concepts will be developed into the final set of plans.

B: Design Development

Deliverables: Floor Plans, Elevations, and Building Sections

- a. Refine the selected floor plans and architectural styles in CAD with necessary clearances, dimensions, and life safety aspects required by the current codes.
- b. Generate building elevations and sections which correspond to each floor plan and architectural style.
- c. Evaluate and incorporate standard conventional framing details on a conceptual level for each ADU type. A conscious effort will be made to standardize the construction details for use by all residents.

C: Final Building Plan Sets

Deliverables: Final Set of Building Plans

- a. Cover Sheet in a fillable PDF format for users to input their site-specific information along with all relevant City information, plan notes, and sheet index.
- b. Site Plan Sheet with examples and guidance on what information is required for plan review.
- c. Dimensioned floor plans will be provided to indicate size of rooms, necessary clearances, door and window identification for corresponding schedules, room type identification, finish materials, and key notes for clarification and coordination with corresponding sheets in the plan set.
- d. Roof plans indicating overall design, direction of slope, roof pitch, various Class A roofing material options listed to integrate with the different site specific existing conditions, eave details, and venting calculations.
- e. Building Sections will indicate conventional framing methods and member sizes as determined in the design development phase and as shown in the structural framing plans. Building details and materials will be called out which will comply with minimum Title 24 energy standards.
- f. Exterior elevations will show proposed building materials, heights, door and window identification markers, key note and details call-outs for clarification and coordination with building section. Optional exterior finish material and details will be provided as a way to customize the exterior façade to express individual owners' tastes and integration with community character
- g. Foundation plan with conventional design for footings and slab construction.
- h. MEP Plans with service and panel information and required sizing diagrams.
- i. Title 24 energy calculations will be provided based on the size of the unit, door and window openings, roof overhangs, and thermal mass and insulation as designed for the final plans. Energy calculations will be generated using all cardinal points and will be modified by the consultant herein for a nominal fee for updates to site specific conditions or any changes to the fenestration (door and window) sizes.

D: Department Reviews and Revisions

Deliverables: Comprehensive Set of Building Plans

- a. Based on final Staff input, consultant will prepare a final set of building plans to be submitted to City Departments for review comments.
- b. Based on Department review comments, consultant shall make final revisions and submit final documentation for building plans.

Task 3: Publication Materials

Deliverables: High-resolution model and floor plan images

Renderings of concept design will be provided as part of the final building plan set as a way to clearly show the design intent. This will help the homeowner visualize what the completed ADU will look like and assist in making the decision to change any exterior materials to better integrate with their existing conditions. High-resolution images of the concept models and floor plans will be provided for promoting the ADU program.

EXHIBIT B

Section 3 (a)

- FEE SCHEDULE -

RFP - CITY OF MARINA PRE-APPROVED ACCESSORY DWELLING UNIT (ADU) PLANS
Design Path Studio Proposal

PROJECT SCHEDULE: City of Marina Pre-Approved ADU Plans

2023											
J J J A S O N D											
Deliverable											
Task	Estimated Consultant Hours		Estimated Consultant Cost								
1 Scope of Services + Project Schedule											
1.A	Project Kick-off Meeting with City/Consultant		City/Consultant		8	\$1,600		Agenda and Meeting Notes			
1.B	Project Schedule		Consultant/City		6	\$1,200		Updated Schedule			
1.C	Team Meetings (Monthly or Progress)		Consultant/City		14	\$2,800		Agenda and Meeting Minutes			
					Subtotal:		\$5,600				
2 Pre-Approved ADU Plans											
2.A	Schematic Design		Consultant		75	\$10,500		Schematic Floor Plans and Elevations			
2.B	Design Development		Consultant		150	\$21,000		Refined Floor Plans, Elevations, and Building Sections			
2.C	Final Building Plan Sets		Consultant		200	\$28,000		Final Set of Building Plans			
2.D	Department Reviews and Revisions		City/Consultant		75	\$10,500		Comprehensive Set of Building Plans			
					Subtotal:		\$70,000				
3 Publication Materials											
3.A	Publication ready floor plans and renderings		Consultant		20	\$2,800		Publication ready floor plans and renderings			
					Subtotal:		\$2,800				
					Total Cost:		\$78,400				

EXHIBIT C - INSURANCE

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. (Not required if Contractor provides written verification it has no employees)
4. **Professional Liability (Errors and Omissions):** Insurance appropriate to Contractor's profession, with limit no less than **\$2,000,000** per occurrence or claim, \$2,000,000 aggregate.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

Primary Coverage

For any claims related to this contract, Contractor's insurance coverage shall be primary and non-contributory and at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

Umbrella or Excess Policy

Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until Contractor's primary and excess liability policies are exhausted.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

Waiver of Subrogation

Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City. The City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000 unless approved in writing by City. Any and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the City. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City reserves the right to obtain a copy of any policies and endorsements for verification.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Claims Made Policies

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Duration of Coverage

CGL & Excess liability policies for any construction related work, including, but not limited to, maintenance, service, or repair work, shall continue coverage for a minimum of five (5) years for Completed Operations liability coverage. Such Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

November 9, 2023

Item No. **10g(1)**

Members of the Marina
City Council

City Council Meeting
of November 21, 2023

**THE CITY COUNCIL OF THE CITY OF MARINA CONSIDER ADOPTING
RESOLUTION NO. 2023, APPROVING A PROFESSIONAL SERVICES
AGREEMENT WITH DESIGN PATH STUDIO FOR THE DEVELOPMENT OF
PRE-APPROVED ACCESSORY DWELLING UNIT (ADU) BUILDING PLANS.
THIS ITEM IS EXEMPT FROM ENVIRONMENTAL REVIEW PER SECTIONS
15062(c)(2) AND 15061(b)(3) OF THE CEQA GUIDELINES.**

REQUEST: It is requested that the Marina City Council:

1. Adopt Resolution No. 2023, approving a Professional Services Agreement with Design Path Studio (Consultant) for the development of pre-approved accessory dwelling unit (ADU) building plans in compliance with the California Building Code (CBC) and Titles 15 and 17 of the Marina Municipal Code (MMC).

SUMMARY:

In an effort to meet Regional Housing Needs Allocation (RHNA) obligations, reduce costs and streamline the application process for prospective ADU owners, and achieve compliance with State law and the City's 6th Cycle Housing Element update, City staff conducted a competitive request for proposals (RFP) to qualified design firms for the submittal of proposals describing how their respective firms could provide this service.

BACKGROUND:

On January 18, 2023, the City Council authorized the City Manager to apply for the Permanent Local Housing Allocation (PLHA) grant to assist the City in meeting its RHNA obligations. The City was later awarded a PLHA grant in the amount of \$627,069.

In May 2023, the City issued a request for proposals (RFP) for a series of pre-approved, detached ADU plans. Several firms applied before the June 30 deadline, and staff evaluated each proposal for experience, approach to project, schedule, and cost. City staff selected Design Path Studio, a San Diego-area firm rich with experience in preparing similar plans for jurisdictions throughout the state, including the City of Salinas.

Under the Professional Services Agreement (**EXHIBIT A**), Design Path Studio would prepare three distinct elevations for each of three ADU design types (studio, one-bedroom, two-bedroom), resulting in nine unique floor plans that would be owned by the City. Following evaluation and pre-approval by Building and Planning staff, residents could use the plans at no cost, resulting in significant cost savings and streamlining the application process.

Design Path Studio proposes to complete this work in approximately five months at a total cost of \$78,400. The Professional Services Agreement authorizes staff to issue Design Path Studio a notice to proceed on work per the terms of the scope of work. The City would utilize PLHA funds to pay for this service.

Although this work represents only about 12 percent of the funding received through the PLHA grant, it is an important component of the City's effort to comply with State law, RHNA obligations, and the 6th Cycle Housing Element update. Program 2.1 of the Housing Element calls for the City to continue facilitating the development of ADUs, and one of the objectives of this program is developing incentives to encourage development of ADUs, including developing pre-approved plans, by the end of 2024.

FISCAL IMPACT:

Consultant fees (\$78,400) for the development of the pre-approved ADU concepts will be fully provided through the PLHA grant. The PLHA grant is provided by the State's Housing and Community Development Dept. (HCD) and administered by the City.

ENVIRONMENTAL REVIEW:

The approval of this Professional Services Agreement is not subject to California Environmental Quality Act (CEQA) pursuant to the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, Sections: 15060(c)(2), because the proposed ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment; and 15061(b)(3), because the proposed ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment.

CONCLUSION:

This request is submitted for City Council consideration.

Respectfully submitted,

Alec Barton, AICP
Contract, Community Development Dept.
City of Marina

REVIEWED/CONCUR:

Guido F. Persicone, AICP
Director, Community Development Dept.
City of Marina

Layne Long
City Manager
City of Marina