

RESOLUTION NO. 2024-114

APPROVING AGREEMENTS BETWEEN THE CITY OF MARINA AND M3 ENVIRONMENTAL, LLC. FOR ON-CALL PROFESSIONAL SERVICES IN THE DISCIPLINE OF HAZARDOUS MATERIALS TESTING AND MONITORING, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

WHEREAS, the City has a need to contract with consulting firms for professional services to support the delivery of capital improvement projects and the review and approval of proposed developments; and

WHEREAS, the selection process for professional services can be efficiently accomplished by establishing a number of on-call professional services contracts with various consulting firms; and

WHEREAS, on May 7, 2024, the City Council adopted resolution 2024-39 authorizing staff to solicit proposals for on-call professional services; and

WHEREAS, on May 16, 2024, staff advertised a Request for Statement of Qualifications (RFQ) for on-call professional services in the areas of hazardous materials testing and monitoring; and

WHEREAS, on June 14, 2024, the City received one proposals for the hazardous materials testing and monitoring service area from M3 Environmental, LLC. in response to the RFQ; and

WHEREAS, City staff from the Engineering Division and Planning Division reviewed the proposal and selected M3 Environmental, LLC. based on their local familiarity, example projects, expertise, and proposal; and

WHEREAS, staff recommends approving the consulting services agreements for M3 Environmental, LLC.; and

WHEREAS, consultant contract will be set to expire on June 30, 2027 with the option to extend the period of the contract by one year, and the contract limit for each consultant agreement will be \$300,000 per fiscal year; and

WHEREAS, the City has determined this is not a project under CEQA per Article 20 Section 15378 and under General Rule Article 5 Section 15061.

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

1. Approves agreements between the City of Marina and M3 Environmental, LLC. for on-call professional services in the disciplines of hazardous materials testing and monitoring; and
2. Authorizes the City Manager to execute the agreements with the selected firms substantially in the form in Attachment 2 on behalf of the City, subject to final review and approval by the City's Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 15<sup>th</sup> day of October 2024, by the following vote:

AYES: COUNCIL MEMBERS: McAdams, McCarthy, Biala, Delgado, Visscher

NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

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Liesbeth Visscher, Mayor Pro Tem

ATTEST:

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Anita Sharp, Deputy City Clerk

**CITY OF MARINA  
AGREEMENT FOR ON-CALL [REDACTED] SERVICES**

**THIS AGREEMENT** is made and entered into on [REDACTED], 2022, by and between the City of Marina, a California charter city, hereinafter referred to as the "City," and [REDACTED], a California [REDACTED], hereinafter referred to as the "Contractor." City and Contractor are sometimes individually referred to as "party" and collectively as "parties" in this Agreement.

**Recitals**

- A. City desires to retain Contractor for on-call [REDACTED] services associated with various City projects described generally by Exhibit A – Contractor shall provide services pertaining to City projects and shall perform standby and support services for City as determined by the City Engineer.
- B. Contractor represents and warrants that it has the qualifications, experience and personnel necessary to properly perform the services in accordance with the terms of individual service orders as set forth herein.
- C. City desires to retain Contractor to provide such services.

**Terms and Conditions**

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

**1. Scope of Work.**

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

(b) All work performed under this Agreement shall be authorized in advance and in writing by a specific Service Order prior to the commencement of services. Each Service Order given by the City shall describe the nature of the specific task or service to be performed by the Contractor, the time limit or estimated number of hours within which such task or service must be completed and the compensation for such task or service. Details shall include a description of the task or service which Contractor shall perform, the geographic limits, if any, the type and scope of task or services to be performed, the format and schedule for deliverables, the schedule of performance, and the schedule of compensation. Contractor shall not perform any task or service unless authorized by a fully executed Service Order. Contractor shall advise the Project Administrator in writing immediately of any anticipated change in any task or service, fee or time schedule, and shall obtain the Project Administrator's prior written consent to the change prior to making any changes. In no event shall the Project Administrator's consent be construed to

relieve the Contractor from its duty to render all services or perform all tasks in accordance with applicable law and accepted industry standards.

(c) Contractor shall begin work under the Service Order only after receipt of the Service Order bearing the approval signature of the City Engineer. Each authorized Service Order issued under this Agreement by City shall be incorporated by reference as an integral part of Exhibit A and into the terms and conditions of this Agreement.

(d) The City's Project Administrator may, without invalidating this Agreement, order changes in any tasks or service to be performed pursuant to a Service Order by altering, adding to or deducting from the task or services to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Agreement. If any such change causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any of the tasks or services, the Contractor shall so notify the Project Administrator. If appropriate an equitable adjustment to the Contractor's compensation may be made, provided that any adjustment must be pre-approved by the parties in writing; with the City's approval coming from the Project Administrator.

(e) 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.

(f) If services under this Agreement are to be performed by a design professional, as that term is defined in California Civil Code §2782.8(c)(1-4), 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.

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

(h) 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 described in Exhibit "A" and the executed Service Orders. Contractor shall be entitled to reasonably rely on information, data, records and reports furnished by the City, however, the City makes no warranty as to the accuracy or completeness of any such information, data, records or reports available to it and provided to Contractor which were furnished to the City by a third party. Contractor shall have a duty to bring to the City's attention any deficiency or error it may discover in any information provided to the Contractor by the City or a third party.

## **2. Term of Agreement & Commencement of Work.**

(a) Unless otherwise provided, the term of this Agreement shall begin on the date of its full execution and shall expire on [REDACTED], 2024, unless extended by amendment or terminated earlier as provided herein. The date of full execution is defined as the date when all of the following events have occurred:

(i) This Agreement has been approved by the City's Council or by the 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) This Agreement may be extended up to one (1) year upon written agreement of both parties. Contractor may be required to prepare a written schedule for the work to be performed under any Service Order, which schedule shall be approved by the City's Project Administrator 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 accordance with the provisions of this Section and the hourly rates attached hereto as Exhibit B and incorporated herein by this reference. The total annual compensation under this agreement shall be limited to [REDACTED] per fiscal year, which runs from July 1 to June 30, and the remainder of the first fiscal year of the Agreement.

(b) The City will pay the Contractor under Service Orders on a time and materials/reimbursable expenses (T&M) basis. The hourly rate and reimbursable schedule in Exhibit B applies to all Service Orders.

(c) This Agreement is for Contractor to perform "on call" services or tasks and as such it is a standby Agreement to assign work to the Contractor from time-to-time as needed and as appropriate. There is no minimum compensation for this engagement or for any work assigned pursuant to this On-Call Agreement and no guarantee that any work will be assigned to Contractor during its term.

(d) 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)) not more frequently than once during every month 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.

(e) 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.

(f) 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 a Service Order but which is not included within the Service Order and which the parties did not reasonably anticipate would be necessary at the execution of the Service Order.

(f) Expenses not otherwise addressed in the Service Order 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)) and reimbursed to Contractor.

#### **4. Termination or Suspension.**

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

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

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

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

#### **5. Project Administrator, Project Manager & Key Personnel.**

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

(b) Contractor designates [REDACTED], 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 as designated in Service Orders.

(c) Contractor warrants that it will continuously furnish the necessary personnel to complete each Service Order on a timely basis as contemplated by this Agreement. Contractor, at the sole discretion of City, shall remove from the task or service any of its personnel assigned to the performance of services upon written request of City. Contractor may be required to represent to City that certain key personnel will perform and coordinate the work under a Service Order. 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 Administrator. In the event that City Administrator and Project Manager cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause.

**6. Delegation of Work.**

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

(b) If 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 any Service Order, it is expressly agreed by Contractor that any such confidential or proprietary information or materials shall not be provided or disclosed in any manner to any of Contractor's other clients, or to any other third party, without the City's prior express written consent.

9. **Ownership of Data.** Unless otherwise provided for herein, all documents, material, data, drawings, plans, specifications, computer data files, basis for design calculations, engineering notes, and reports originated and prepared by Contractor, or any subcontractor of any tier, under this Agreement shall be and remain the property of the City for its use in any manner it deems appropriate. Contractor agrees that all copyrights which arise from creation of the work pursuant to this Agreement shall be vested in the City and waives and relinquishes all claims to copyright or intellectual property rights in favor of the City. Contractor shall provide two (2) sets of reproducible of the above-cited items, except for the computer data files which shall consist of one (1) set. Contractor shall use all reasonable efforts to ensure that any electronic files provided to the City will be compatible with the City's computer hardware and software. Contractor makes no representation as to long-term compatibility, usability or readability of the format resulting from the use of software application packages, operating systems or computer hardware differing from those in use by the City at the commencement of this Agreement. Contractor shall be permitted to maintain copies of all such data for its files. City acknowledges that its use of the work product is limited to the purposes contemplated by the Scope of Work and the applicable Service Order, 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 the applicable Service Order and shall have no liability or responsibility whatsoever in connection with such use which shall be at the City's sole risk. Any and all liability arising out of changes made by the City to Contractor's deliverables is waived against Contractor unless City has given Contractor prior written notice of the changes and has received Contractor's written consent to such changes.

10. **Conflict of Interest.**

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

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

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

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) The Contractor's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the Contractor has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.

(b) During the performance of this Agreement, Contractor and its sub-contractors shall not deny the Agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor and sub-contractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

(c) Contractor and sub-contractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by CITY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

(d) Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the City upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or City shall require to ascertain compliance with this clause.

(e) Contractor and its sub-contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

13. **Indemnification & Hold Harmless.**

(a) Other than in the performance of professional services by a design professional, which shall be solely as addressed by subsection (b) below, and to the full extent permitted by law, Contractor shall indemnify, 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 proportion to the established comparative liability. Within 30 days following Design Professional's receipt of a properly presented written invoice Design Profession shall 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 statues or laws as to City, its employees and officials. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor, sub tier contractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance or subject matter of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

(d) If any action or proceeding is brought against any Indemnified Party by reason of any of the matters against which the Contractor has agreed to 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. If it is finally adjudicated that liability for which Contractor has provided an immediate defense was caused by the sole active negligence or sole willful misconduct of an Indemnified Party, Contractor may submit a claim to the City for reimbursement of reasonable attorney's fees and defense costs.

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

#### **14. Insurance.**

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

(b) City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required for any Service Order issued as provided herein by giving Contractor ten days advance written notice of such change.

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

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

(e) By signing this Agreement, Contractor hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provision of that Code, and that it will comply with such provisions at all such times as they may

apply during the performance of the work pursuant to this Contract. Unless otherwise agreed, a waiver of subrogation in favor of the City is required.

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

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

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

**18. Cooperation; Further Acts.** The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement, including, without affecting Contractor's cost or compensation, advancing their mutual commitment to and recognition of the value of diversity and inclusion in the workforce.

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

**20. Compliance with Laws.**

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

(b) Contractor shall conduct all work in strict accordance with applicable regulations and guidelines adopted by the California Department of Public Health (CDPH) and the California Department of Industrial Relations (DIR), Division of Occupational Safety and Health, Safety for the prevention of COVID-19 and the regulations and guidelines for the prevention of COVID - 19 adopted by the County of Monterey and by the City.

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

(d) This Agreement is not intended and shall not be utilized for a public work as that term is used in California Labor Code Section 1720 *et seq.*

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

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

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

To Contractor:           

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

**23. Amendments, Changes or Modifications.** This Agreement and any Service Order are 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 and any Service Order if such failure shall be due to causes beyond Contractor's or the City's control. Such causes include but are not limited to: strike, fire, flood, civil disorder, act of God or of the public enemy, act of the federal government, or any unit of state or local government in either sovereign or contractual capacity, epidemic, quarantine restriction, or delay in transportation to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

25. **Attorney's Fees.** In the event of any controversy, claim or dispute relating to this Agreement, any Service Order, 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 and any Service Order. Each party warrants that the individuals who have signed this Agreement and shall sign Service Orders 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 or the terms and conditions of any Service Order 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 or any Service Order be determined to be void or unenforceable, such shall be severed from the whole and the Agreement will continue as modified.

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

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

32. **Counterparts.** This Agreement and any Service Order 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 together with the Service Orders to be issued hereunder contains the entire agreement of the parties with respect to the matters as set forth in this Agreement, and no other agreement, statement or promise made by or to any party or by or to any employee, officer or agent of any party, which is not contained in this Agreement shall be binding or valid. . The exhibits attached hereto and the Service Orders to be attached as part of Exhibit A are incorporated into this Agreement. In the event of a conflict between the terms of this Agreement and any exhibit of Service Order, the terms of this Agreement shall control.

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

**CITY OF MARINA**

By: \_\_\_\_\_  
Name: Layne P. Long  
Its: City Manager  
Date: \_\_\_\_\_

Attest:  
Per Resolution 2022 -     

By: \_\_\_\_\_  
Anita Shepherd-Sharp  
Deputy City Clerk

Approved as to form:

By: \_\_\_\_\_  
City Attorney

**CONTRACTOR**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A**

**GENERAL DESCRIPTION OF SERVICES**

**[Individual Service Orders to be attached as executed and are incorporated herein and made a part of this Agreement.]**

**EXHIBIT B**  
**HOURLY RATE AND REIMBURSABLE SCHEDULE**

**Exhibit C - Insurance**

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

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

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

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

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

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

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

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

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

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

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

**Contractor and City further agree as follows:**

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

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

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

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

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

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

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

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

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

the word “endeavor” with regard to any notice provisions. Contractor agrees to provide complete copies of policies to City within ten days of City's request for said copies.

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

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

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

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

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

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

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

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

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

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

October 15, 2024

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

Honorable Mayor and Members  
of the Marina City Council

City Council Meeting  
of October 15, 2024

**CITY COUNCIL TO CONSIDER ADOPTING RESOLUTION NO. 2024-,  
APPROVING AN AGREEMENT BETWEEN THE CITY OF MARINA  
AND M3 ENVIRONMENTAL, LLC FOR ON-CALL PROFESSIONAL  
SERVICES IN THE DISCIPLINES OF HAZARDOUS MATERIALS  
TESTING AND MONITORING, AND AUTHORIZING THE CITY  
MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE  
CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY  
ATTORNEY.**

**REQUEST:**

It is requested that the City Council:

1. Adopt Resolution No. 2024-, approving an agreement between the City of Marina and M3 Environmental LLC for on-call professional services in the discipline of Hazardous Materials Testing and Monitoring, and;
2. Authorizing the City Manager to execute the agreement on behalf of the City subject to final review and approval by the City Attorney.

**BACKGROUND:**

The City regularly enters into various professional services contracts to support development approvals and delivery of capital improvements. Examples of professional services that have been used in the past and are anticipated in the future are environmental and traffic studies of the impacts of proposed developments that are paid for through fee agreements with developers. Professional design and testing services also support the delivery of projects within the capital improvement program. This process was effectively used over the past six years to provide the various professional services required for City business.

On May 7, 2024, the City Council approved the recommendation to solicit proposals for on-call professional services to streamline the contracting process and allow staff to focus limited staff hours on project delivery and development review.

On May 16, 2024, staff advertised a Request for Statement of Qualifications (RFQ) for on-call professional services. The City asked for Statements of Qualifications (SOQs) from consulting firms for nine service areas, including Hazardous Materials Testing and Monitoring Services. On June 14, 2024, the City received one proposal for the Hazardous Materials Testing and Monitoring Services from M3 Environmental, LLC. An initial screening of the proposals determined that proposal from M3 was a responsive submittal and eligible for evaluation.

City staff from the Engineering Division and Planning Division reviewed and rated the proposals.

**ANALYSIS:**

The use of on-call services has been effectively used to streamline the development approval process and delivery of capital improvement projects. Many of the professional service agreements the City enters into are under \$25,000 and involve seeking proposals from firms specializing within their respective fields of service. This results in a repetitive process to qualify firms for professional service agreements with the City. Use of on-call professional service contracts reduces the staff time needed to contract for services.

The total amount of consultant work to be requested and performed during each fiscal year term for each consultant cannot be well defined at the outset. However, the consultants will work on an on-call basis as defined by the City on a project-by-project basis. Accordingly, all work performed under the agreements will be pursuant to individual service orders that will have a specifically defined scope and schedule that will be negotiated on a project-by-project basis. Further, the individual agreements will acknowledge that the individual service orders will dictate the work done under each agreement, up to the not to exceed amount.

Staff recommends that the contract term be set to expire on June 30, 2027, with the option to extend for one additional year. The contract limit would be \$300,000 per fiscal year, per consultant agreement, although the limit is not anticipated to be reached. **EXHIBIT A** is a copy of the draft consultant services agreement for the selected consultant.

**FISCAL IMPACT:**

This action only addresses the contracting process. The work to be performed under these on-call agreements has been budgeted for various projects in the Capital Improvement Program. There is no City obligation to expend any funds under these agreements. Staff will expend funds under these agreements to the extent authorized via City Council approved budget appropriations.

**CEQA Findings:**

The City has determined this is not a project under CEQA per Article 20 Section 15378 and under General Rule Article 5 Section 15061.

**CONCLUSION:**

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

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Nourdin Khayata, P.E.  
Interim Public Works Director/City Engineer  
City of Marina

**REVIEWED/CONCUR:**

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Layne P. Long  
City Manager  
City of Marina