

RESOLUTION NO. 2022-147

A RESOLUTION OF THE CITY COUNCIL/AIRPORT COMMISSION
APPROVING AN AGREEMENT FOR PROFESSIONAL RESTORATION &
CLEANING SERVICES BETWEEN THE CITY OF MARINA AND BELFOR
USA GROUP, INC FOR THE CITY OWNED BUILDING LOCATED AT 3200
IMJIN ROAD (BUILDING 507), AUTHORIZING FINANCE DIRECTOR TO
MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES, AND
AUTHORIZING CITY MANAGER TO EXECUTE THE AGREEMENT ON
BEHALF OF THE CITY, SUBJECT TO FINAL REVIEW AND APPROVAL
BY CITY ATTORNEY

WHEREAS, the City leases the 62,000 square foot building located at 3200 Imjin Road to two tenants, Joby Aviation and CIRPAS (U.S. Naval Post Graduate School contractor). Joby has the northern half of the building and CIRPAS has the southern portion; and

WHEREAS, on August 4, 2022, an equipment fire occurred at the north end of the approximate 42,000 square foot hangar space; and

WHEREAS, Joby Aviation is provided insurance by the Hartford and has made a claim to clean and restore their leased portion of the building. The Hartford has denied the work to complete the cleaning and restoration of the CIRPAS leased portion of the structure. The City also made a claim with its Insurance provider, Lexington Insurance Company, for the cleaning of the CIRPAS side of the hangar; and

WHEREAS, Lexington has authorized the City to proceed with an work outlined in **EXHIBIT A** for a professional restoration and cleaning services to remove the smoke, soot and water damage to the structure on the CIRPAS side of the hangar; and

WHEREAS, the total costs for the work is estimated to be \$550,000 including a 10% contingency. The costs will be reimbursed from the Lexington Insurance Company with no net fiscal impact to the Airport Operating Fund; and

WHEREAS, initial funds are required to be transferred from the Airport Operating Fund to the Airport Capital Projects Fund where project expenses will be tracked. As reimbursement funds are received, they will be recorded within the Airport Operating Fund.

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

1. Approve an Agreement for Professional Restoration & Cleaning Services between the City of Marina and Belfor USA Group, Inc for the City owned building located at 3200 Imjin Road (Building 507) at the Marina Municipal Airport; and
2. Authorizing Finance Director to make necessary accounting and budgetary entries; and
3. Authorizing City Manager/Airport Manager to execute the Agreement on behalf of the City, subject to final review and approval by City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 6th day of December 2022, by the following vote:

AYES, COUNCIL MEMBERS: McCarthy, Visscher, Medina Dirksen, Biala, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

ATTEST:

Bruce C. Delgado, Mayor

Anita Sharp, Deputy City Clerk

**CITY OF
MARINA
AGREEMENT FOR PROFESSIONAL SERVICES**

Restoration & Cleaning Services

THIS AGREEMENT (“Agreement”) is made and entered into on _____, 2022, by and between the City of Marina, a California charter city, hereinafter referred to as the “City,” and BELFOR USA Group, Inc, a privately owned subsidiary of BELFOR Holdings Inc, 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 perform certain restoration services and work (“Services”) necessary to clean the structure of smoke and soot residue resulting from an equipment fire within the hangar space of the building at 3200 Imjin Road, Marina, CA, 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. Contractor represents that it has the degree of specialized expertise contemplated within California Government Code §§37103 and 53060 and holds all necessary licenses to practice and perform the Services herein contemplated.
- D. 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 Preliminary Budget”) 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 Services 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 that 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

30919\000\1669986.1:102622 1

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.

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

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

2. Term of Agreement & Commencement of Work.

(a) Unless otherwise provided, the term of this Agreement shall begin on the date of its full execution and shall expire on June 30, 2023, unless extended by amendment or terminated earlier as provided herein. The date of full execution is defined as the date when all of the following events have occurred:

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

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

(iii) This Agreement has been signed on behalf of 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 Agreement and is attested to by the City Clerk.

(b) Contractor shall commence Services for the Project on or by January 2, 2022. This Agreement may be extended upon written agreement of both parties. Contractor may be required to prepare a written schedule for the Services to be performed, which schedule shall be approved by the City and made a part of **Exhibit "A"**, and to perform the Services 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 five-hundred--thousand dollars (\$500,000) in accordance with the provisions of this Section and the Preliminary Budget attached hereto as **Exhibit "A"** 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 dispute 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 the prior written authorization.

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

4. Termination 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 Assistant City Manager who shall have the authority to act for the City under this Agreement. The Project Administrator or their authorized representative shall represent the City in all matters pertaining to the Services to be performed pursuant to this Agreement.

(b) Contractor designates Chris Castro 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 Services under this Agreement. Should one or more of such personnel become unavailable, Contractor may substitute other personnel of at least equal competence upon written approval of the City. In the event that City and Contractor cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause.

6. Delegation of Work.

(a) If Contractor utilizes any subcontractors other than set forth in **Exhibit "A"** 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 the payment, administration, completion, presentation and quality of all Services performed. City reserves its right to employ other contractors in connection with this Project.

(b) If the Services hereunder re 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 Services on behalf of other agencies, entities, firms or persons relating to the matters described in the Scope of Work, it is expressly agreed by Contractor that any such confidential or proprietary information or materials shall not be provided or disclosed in any manner to any of Contractor's other clients, or to any other third party, without the City's prior express written consent.

9. Ownership of Data.

Unless otherwise provided for herein, all documents, material, data, drawings, plans, specifications, computer data files, basis for design calculations, engineering notes, and reports originated and prepared by Contractor, or any subcontractor of any tier, under this Agreement shall be and remain the property of the City for its use in any manner it deems appropriate. Contractor agrees that all copyrights which arise from creation of the work pursuant to this Agreement shall be vested in the City and waives and relinquishes all claims to copyright or intellectual property rights in favor of the City. Contractor shall provide two (2) sets of reproducible of the above-cited items, except for the computer data files which shall consist of one (1) set. Contractor shall use all reasonable efforts to ensure that any electronic files provided to the City will be compatible with the City's computer hardware and software. Contractor makes no representation as to long-term compatibility, usability or readability of the format resulting from the use of software application packages, operating systems or computer hardware differing from those in use by the City at the commencement of this Agreement. Contractor shall be permitted to maintain copies of all such data for its files. City acknowledges that its use of the work product is limited to the purposes contemplated by the Scope of Work and, should City use these products or data in connection with additions to the work required under this Agreement or for new work without consultation with and without additional compensation to Contractor, Contractor makes no representation as to the suitability of the work product for use in or application to circumstances not contemplated by the Scope of Work and shall have no liability or responsibility whatsoever in connection with such use which shall be at the City's sole risk. Any and all liability arising out of changes made by the City to Contractor's deliverables is waived against Contractor unless City has given Contractor prior written notice of the changes and has received Contractor's written consent to such changes.

10. Conflict of Interest.

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

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

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

11. Disclosure. Contractor may be subject to the appropriate disclosure requirements of the California Fair Political Practices Act, as determined by the City Manager.

12. Non-Discrimination.

(a) During the performance of this Agreement the Contractor shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California and the City. In performing this Agreement, Contractor shall not discriminate, harass, or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), medical condition (including cancer), age, marital status, denial of family and medical care leave and denial of pregnancy disability leave. Contractor shall give written notice of its obligations under this clause to labor organizations with which it has a collective bargaining or other agreement.

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

13. Indemnification & Hold Harmless.

(a) Other than in the performance of professional services by a design professional, which shall be solely as addressed by subsection (b) below, and to the full extent permitted by law, Contractor shall indemnify, defend (with independent counsel reasonably acceptable to the City) and hold harmless City, its Council, boards, commissions, employees, officials and agents ("Indemnified Parties" or in the singular "Indemnified Party") from and against any claims, losses, damages, penalties, fines and judgments, associated investigation and administrative expenses, and defense costs including but not limited to reasonable attorney's fees, court costs, expert witness fees and costs of alternate dispute resolution (collectively "Liabilities"), where same arise out of the performance of this Agreement by Contractor, its officers, employees, agents and sub-contractors. The Contractor's obligation to indemnify applies unless it is adjudicated that its liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, the Contractor's obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

(b) To the fullest extent permitted by law (including without limitation California Civil Code Sections 2782.8), when the services to be provided under this Agreement are design professional services to be performed by a design professional, as that term is defined under said section 2782.8, Contractor shall indemnify, protect, defend (with independent counsel reasonably acceptable to the City) and hold harmless City and any Indemnified Party for all Liabilities regardless of nature or type that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor, or the acts or omissions of an officer, employee, agent or subcontractor of the Contractor. The Contractor's obligation to indemnify applies unless it is adjudicated that its liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, the Contractor's obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

(b) All obligations under this section are to be paid by Contractor as incurred by City. The provisions of this Section are not limited by the provisions of sections relating to insurance including provisions of any worker's compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes 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.

(c) If any action or proceeding is brought against any Indemnified Party by reason of any of the matters against which the Contractor has agreed to defend the Indemnified Party, as provided above, Contractor, upon notice from the City, shall defend any Indemnified Party at Contractor's expense by counsel reasonably acceptable to the City. An Indemnified Party need not have first paid for any of the matters to which it is entitled to indemnification in order to be so defended.

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

14. Insurance.

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

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

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

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

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

waiver of subrogation in favor of the City is required.

15. Independent Contractor. The parties have reviewed and considered the principal test and secondary factors herein and 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. City agrees that Contractor shall have the right to control the manner and means of accomplishing the result contracted for herein.

Principal Test: Contractor rather than the City has the right to control the manner and means of accomplishing the result contracted for.

Secondary Factors: (a) The extent of control which, by agreement, City may exercise over the details of the work is slight rather than substantial; (b) Contractor is engaged in a distinct occupation or business; (c) in the locality, the work to be done by Contractor is usually done by a specialist without supervision, rather than under the direction of an employer; (d) the skill required in the particular occupation is substantial rather than slight; (e) the Contractor rather than the City supplies the instrumentalities, tools and work place; (f) the length of time for which Contractor is engaged is of limited duration rather than indefinite; (g) the method of payment of Contractor is by the job rather than by time; (h) the work is part of a special or permissive activity, program, or project, rather than part of the regular business of the City; (i) Contractor and City believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (j) the City conducts public business.

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

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

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

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

20. Compliance With Laws.

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

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

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

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

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

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

To Contractor: Ed Melgoza
General Manager
Belfor Property Restoration
2297 Ringwood Avenue, San Jose, CA 95131
Fax: 408-929-3477

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. It is understood and agreed to by the Contractor and the City that they cannot, and will not, claim Force Majeure based on an economic downturn of any type. Such causes include but are not limited to: strike, fire, flood, civil disorder, act of God or of the public enemy, act of the federal government, or any unit of state or local government in either sovereign or contractual capacity, epidemic, quarantine restriction, or delay in transportation to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

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

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

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

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

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

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

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

32. **Counterparts.** This Agreement may be signed in counterparts, each of which shall constitute an original, but both of which together shall constitute one and the same instrument. Counterparts may be delivered by facsimile, electronic mail (including pdf. Or any electronic signature complying with the U.S. ESIGN Act of 2000, California Uniform Electronic Transactions Act (Cal. Civil Code §1633.1 et seq.) or other applicable law) or other transmission method and any counterpart so delivered shall be deemed to have been validly delivered and be valid and effective for all purposes.

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

34. **Exhibits.** In the event of any conflict between the Terms and Conditions and any terms or conditions of any document prepared or provided by the Contractor and made a part of this Agreement, including without limitation any document relating to the scope of Services or payment therefore, the Terms and Conditions of this Agreement shall control over those terms and conditions.

35. **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: _____
Name: Layne Long
Its: City Manager
Date:

By: _____
Name:
Its:_____
Date:

Attest: (Per Resolution 20__-__)

Deputy City Clerk

Approved as to form:

By: _____
City Attorney

EXHIBIT A

SCOPE OF WORK

Exhibit B - Insurance

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

MINIMUM SCOPE 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 \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 05 09 or 25 04 05 09) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, covering hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** 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.
4. **Professional Liability (Errors and Omissions):** Insurance appropriate to Contractor's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or higher limits maintained by the contractor.

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 Agreement, 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 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 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 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 City has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by City. 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 Named Insured. 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 City.

Claims Made Policies (note – should be applicable only to professional liability, see below)

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 Agreement or the beginning of Agreement Services.
2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the Agreement of Services.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement 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 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 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. 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.

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.

EXHIBIT A TO AGREEMENT



License #801553

September 13, 2022

City of Marina
3200 Imjin Rd.
Marina, CA 93933
002.058242.mi

Submitted to: Diane Gordon
Scope and Preliminary Budget

The following is a preliminary scope and budget for the above referenced property as a result of a fire incident that occurred on August, 4, 2022. This budget is based on our direct physical observation. As with any budget, these projections are not absolute. Methods may change due to efficiency of work or job site considerations. However, actual invoicing will be produced based on a Rate & Materials basis from the schedule provided by BELFOR USA Group, Inc. to the City of Marina.

Areas Affected: Hangar, Rooms #100 - #116 plus hallways and common areas on the main level. Upper Deck Rooms #200 - #210 plus hallways and common areas.

● Mobilization of Equipment and Crews for Emergency Response

- Belfor will clean all horizontal structural affected surfaces, we will clean the rafters, all interior affected surfaces. We would also clean under the horizontal reachable surfaces. We would clean starting from the top, walls, surfaces and complete the clean up by cleaning the flooring. We would clean all affixed wall items that were not tenant improvements. We would then mark these areas as cleaned, seal these areas and scrub the air for 24 hours in order to keep them clean. We would then move to the next affected areas until we complete the entire affected areas.
- We would be using 4 scissor lifts and 1 boom lift to reach the hangar's roof in order to hand damp wipe all of the surfaces. We would protect all of the contents in the garage by using plastic sheeting.
- Due to the driving time, we would recommend to pay the crew for per diem lodging for the duration of the project.
- This project would take us from 2-3 weeks, regular time. There was no overtime estimated.
- Pending Asbestos and Lead testing.

BELFOR Property Restoration 2297 Ringwood Avenue, CA 95131
Ph. (408) 929-3473 - Fx. (408) 929-3477 - CA Lic. 810553

EXHIBIT A TO AGREEMENT



License #801553

● Temporary Services Needed on Site

- Sink Portable/Wash stations
- Portable Restrooms
- 4 Scissor Lifts
- 1 Boom Lift (for those hard to reach areas)

● Emergency Services and Mitigation includes Labor, Equipment, Consumables, Vehicles, Lodging/Travel time, Temporary Services,

Clean all interior surfaces, walls, pipes, horizontal surfaces and fixtures, carpet clean the upstairs affected flooring and tear out downstairs carpet. We would then clean all non-porous flooring. We foresee this work to take 10-15 business days or to be determined per needs of the customer as they would like to keep using the hangar if possible.

Budget Trend – Equipment, Consumables & Labor
\$475,000 - \$500,000

By: Chris Castro
Project Manager/Estimator
● BELFOR Property Restoration
2297 Ringwood Ave
San Jose, CA 95131
Cell: 408.314.9990

November 30, 2022

Item No: **10g(3)**

Honorable Mayor and Members
of the Marina City Council/Airport Commission

City Council Meeting
of December 6, 2022

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-,
APPROVAL OF AN AGREEMENT FOR PROFESSIONAL RESTORATION &
CLEANING SERVICES BETWEEN THE CITY OF MARINA AND BELFOR
USA GROUP, INC FOR THE CITY OWNED BUILDING LOCATED AT 3200
IMJIN ROAD (BUILDING 507)**

REQUEST:

It is requested that the City Council/Airport Commission consider:

1. Adopting Resolution No. 2022- , approving an Agreement for Professional Restoration & Cleaning Services between the City of Marina and Belfor USA Group, Inc for the City owned building located at 3200 Imjin Road (Building 507) at the Marina Municipal Airport; and
2. Authorizing Finance Director to make necessary accounting and budgetary entries; and
3. Authorizing City Manager/Airport Manager to execute the Agreement on behalf of the City, subject to final review and approval by City Attorney.

BACKGROUND:

The City leases the 62,000 square foot building located at 3200 Imjin Road to two tenants, Joby Aviation and CIRPAS (U.S. Naval Post Graduate School contractor). Joby has the northern half of the building and CIRPAS has the southern portion. On August 4, 2022, at approximately 5:00 a.m., an equipment fire occurred at the north end of the approximate 42,000 square foot hangar space. The fire was limited to a router machine that was running over night without personnel present. Based on the attached Marina Fire Department Report, the fire was believed to be caused by friction heat from the unattended operating router that ignited an excessive accumulation of dust particles on the material being cut. The fire was put out quickly, but smoke, soot and water damage resulted throughout the entire structure.

ANALYSIS:

Joby Aviation is provided insurance by the Hartford and has made a claim through the Hartford to clean and restore their leased portion of the building. The Hartford has denied the work to complete the cleaning and restoration of the CIRPAS leased portion of the structure, indicated they feel it is the City's requirement of the terms of its lease with CIRPAS. Because of this complication, the City also made a claim with its Insurance provider, Lexington Insurance Company, for the cleaning of the CIRPAS side of the hangar. McLarens is the claims adjuster for Lexington. The City's claim has been accepted based on the terms of the City's lease with CIRPAS that does require the City to maintain the structure. Lexington has authorized the City to proceed with work outlined in **EXHIBIT A** for a professional restoration and cleaning services to remove the smoke, soot and water damage to the structure on the CIRPAS side of the hangar. Lexington will reimburse the City for the costs the City incurs. The total costs include an estimated \$500,000.

The work will take approximately 2-3 weeks and consist of cleaning all interior surfaces, walls, pipes, horizontal surfaces and fixtures, carpet clean the upstairs affected flooring and tear out downstairs carpet. They will also clean all non-porous flooring.

FISCAL IMPACT:

The expenses incurred for this project, not expected to exceed \$550,000 (with 10% contingency), will ultimately be reimbursed from the City's insurance company (Lexington Insurance Company) with no net fiscal impact to the Airport Operating Fund. Initially, funds will be transferred from the Airport Operating Fund to the Airport Capital Projects Fund where project expenses will be tracked. As reimbursement funds are received, they will be recorded within the Airport Operating Fund.

CONCLUSION:

This request is submitted for the City Council/Airport Commission consideration and approval.

Respectfully submitted,

Matt Mogensen
Assistant City Manager
City of Marina

REVIEWED/CONCUR:

Layne Long
City Manager/Airport Manager
City of Marina