

RESOLUTION NO. 2025-58

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING NEW CONTRACTS WITH DENISE DUFFY AND ASSOCIATES TO CONTINUE PROVIDING BIOLOGICAL CONSULTING SERVICES TO THE CITY OF MARINA IN SUPPORT OF THE CITY'S INCIDENTAL TAKE PERMIT FOR MONTEREY GILIA AND OTHER PROTECTED SPECIES IN AN AMOUNT NOT TO EXCEED \$176,107 AND IN SUPPORT OF THE CITY'S FORT ORD HABITAT MANAGEMENT COMPLIANCE IN AN AMOUNT NOT TO EXCEED \$204,170 AND FIND THIS ACTION IS EXEMPT FROM CEQA.

WHEREAS, the U.S. Army's decision to close and dispose of the Fort Ord military base was considered a major federal action that could affect listed species under the federal Endangered Species Act (ESA). In 1993, the U.S. Fish and Wildlife Service (USFWS) issued a biological opinion in accordance with Section 7 of the ESA requiring that a habitat management plan be developed and implemented to reduce the incidental take of listed species and loss of habitat that supports these species. The Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord (HMP) was prepared to assess impacts on vegetation and wildlife resources, and provide mitigation for their loss associated with the remediation, disposal, and reuse of former Fort Ord; and,

WHEREAS, with the closure of FORA the City is responsible for four Habitat Management Areas (HMAs) including the Salinas River, Airport, Northwest Corner, and Landfill HMAs. In accordance with the requirements described in the Fort Ord HMP and the deed restrictions for the parcels, a Resource Management Plan (RMP) must be prepared and implemented by the City; and,

WHEREAS, on December 15, 2020, the City Council adopted Resolution No. 2020-157 approving Agreements with Denise Duffy & Associates (DD&A), Inc to provide biological consulting services to develop an RMP and to assist the city in acquiring a city-wide incidental take permit to mitigate for future planned development; and,

WHEREAS, on April 6, 2021, the City Council adopted Resolution No. 2020-26 approving change orders to each Agreement for additional biological services;

WHEREAS, to facilitate the completion of the projects referenced above, two new contracts are for Denise Duffy & Associates (DD&A); and

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

1. Adopt Resolution No. 2025- approving two new contracts with Denise Duffy and Associates in an amount not to exceed \$176,107 for the City's ITP Project(Exhibit A) and \$204,170 for the Fort Ord Habitat Management Compliance Project (Exhibit B); and
2. Find this action is exempt from the California Environmental Quality Act (CEQA) pursuant to section 15061(b)(3) of the CEQA Guidelines; and
3. Authorizing the Finance Director to make necessary accounting and budgetary entries; and
4. Direct the City Manager to execute the agreements on behalf of the city, subject to final review and approval by the City Attorney.

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PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 3rd day of June 2025, by the following vote:

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

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

Liesbeth Visscher, Mayor Pro Tem

ATTEST:

Anita Sharp, Deputy City Clerk

**CITY OF MARINA
AGREEMENT FOR BIOLOGICAL CONSULTING SERVICES**

THIS AGREEMENT is made and entered into on _____, 20____, by and between the City of Marina, a California charter city, hereinafter referred to as the "City," and Denise Duffy & Associates, Inc., a California Corporation, hereinafter referred to as the "Contractor." City and Contractor are sometimes individually referred to as "party" and collectively as "parties" in this Agreement.

Recitals

- A. City desires to retain Contractor to:
- Provide continuing assistance to the City in acquiring a City-Wide 2081 Incidental Take Permit (ITP) of the California Endangered Species Act (CESA) to mitigate for the future take of Monterey Gilia that may result from planned development, hereinafter referred to as the "Project."
- B. Contractor represents that it has the qualifications, experience and personnel necessary to properly perform the services as set forth herein.
- C. City desires to retain Contractor to provide such services.

Terms and Conditions

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

1. Scope of Work.

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

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

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

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

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

2. Term of Agreement & Commencement of Work.

(a) Unless otherwise provided, the term of this Agreement shall begin on the date of its full execution and shall expire on **June 30, 2027** 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 Contract and is attested to by the Marina City Clerk.

(b) Contractor shall commence work on the Project on or by **June 1, 2025**. This Agreement may be extended upon written agreement of both parties. Contractor may be required to prepare a written schedule for the work to be performed, which schedule shall be approved by the City and made a part of Exhibit A, and to perform the work in accordance with the approved schedule.

3. Compensation.

(a) City liability for compensation to Contractor under this Agreement shall only be to the extent of the present appropriation to fund this Agreement. For services to be provided under this Agreement City shall compensate Contractor in an amount not to exceed One-Hundred Seventy-Six Thousand One-Hundred Seven dollars (\$176,107.00) in accordance with the provisions of this Section and the Fee Schedule attached hereto as Exhibit B and incorporated herein by this reference.

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

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

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

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

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

4. Termination or Suspension.

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

(b) If termination for default is 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 **Layne Long or his designee** 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 **Erin Harwayne, AICP** as its Project Manager who shall coordinate all phases of the Project. The Project manager shall be available to City at all reasonable times during the Agreement term.

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

6. Delegation of Work.

(a) If Contractor utilizes any subcontractors, consultants, persons, employees or firms having applicable expertise to assist Contractor in performing the services under this Agreement, Contractor shall obtain City's prior written approval to such employment. Contractor's contract with any subcontractor shall contain a provision making the subcontract subject to all provisions of this Agreement. Contractor will be fully responsible and liable for payment for administration, completion, presentation, and

quality of all work performed. If such persons are utilized, they shall be charged at cost. City reserves the right to employ other contractors in connection with this Project.

(b) If the work hereunder is performed by a design professional, design professional shall be directly involved with performing the work or shall work through his, her or its employees. The design professional's responsibilities under this Agreement shall not be delegated. The design professional shall be responsible to the City for acts, errors or omissions of his, her or its subcontractors. Negligence of subcontractors or agents retained by the design professional is conclusively deemed to be the negligence of the design professional if not adequately corrected by the design professional. Use of the term subcontractor in any other provision of this Agreement shall not be construed to imply authorization for a design professional to use subcontractors for performance of any professional service under this Agreement.

(c) The City is an intended beneficiary of any work performed by a subcontractor for purposes of establishing a duty of care between the subcontractor and the City.

7. Skill of Employees. Contractor shall ensure that any employees or agents providing services under this Agreement possess the requisite skill, training and experience to properly perform such services.

8. Confidential and Proprietary Information. In the course of performing services under this Agreement Contractor may obtain, receive, and review confidential or proprietary documents, information or materials that are and shall remain the exclusive property of the City. Should Contractor undertake the work on behalf of other agencies, entities, firms or persons relating to the matters described in the Scope of Work, it is expressly agreed by Contractor that any such confidential or proprietary information or materials shall not be provided or disclosed in any manner to any of Contractor's other clients, or to any other third party, without the City's prior express written consent.

9. Ownership of Data. Unless otherwise provided for herein, all documents, material, data, drawings, plans, specifications, computer data files, basis for design calculations, engineering notes, and reports originated and prepared by Contractor, or any subcontractor of any tier, under this Agreement shall be and remain the property of the City for its use in any manner it deems appropriate. Contractor agrees that all copyrights 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.

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

12. Non-Discrimination.

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

13. Indemnification.

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

(b) To the fullest extent permitted by law (including without limitation California Civil Code Sections 2782.8), when the services to be provided under this Agreement are design professional services to be performed by a design professional, as that term is defined by said section 2782.8(c)(2) ("Design Professional") Design Professional shall indemnify, protect and hold harmless any Indemnified Party for all Liabilities regardless of nature or type that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Design Professional, or such acts or omissions of an officer, employee, agent or subcontractor of the Design Professional. Design Professional shall not have an immediate duty to defend an Indemnified Party, however, Design Professional's obligation to indemnify (including reimbursing the cost to defend) and hold the Indemnified Parties harmless applies unless it is finally determined that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally determined that liability was caused by the comparative active negligence or willful misconduct of an Indemnified Party the Design Professional's indemnification obligation shall be reduced in direct proportion to the indemnified party's proportionate percentage of fault. Within 30 days following Design Professional's receipt of a properly presented written invoice, Design Professional shall satisfy its indemnification obligations and reimburse the Indemnified Party for the cost of reasonable attorney's fees and defense costs incurred by the Indemnified Party to the same extent of Design Professional's indemnity obligation herein. In no event shall the cost to defend charged to the Design Professional exceed the Design Professional's proportionate percentage of fault.

(c) The provisions of this Section are not limited by the provisions of sections relating to insurance including provisions of any worker's compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its employees and officials. An allegation or determination of comparative active negligence or willful misconduct by an Indemnified Party unrelated to design professional services does not relieve Contractor from its separate and distinct obligation to defend City. Contractor agrees to obtain executed indemnity agreements with provisions identical

to those set forth here in this section from each and every subcontractor, sub tier contractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance or subject matter of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

(d) If any action or proceeding is brought against any Indemnified Party by reason of any of the matters against which the Contractor has agreed to provide an immediate defense to any Indemnified Party, as provided above, Contractor, upon notice from the City, shall defend the Indemnified Party at Contractor's expense by independent counsel reasonably acceptable to the City. Unless otherwise provided above, an Indemnified Party need not have first paid for any of the matters to which it is entitled to indemnification in order to be so defended. Contractor may submit a claim to the City for reasonable defense costs (including attorney's and expert fees) incurred in providing a defense of any Indemnified Party to the extent such defense costs arise under principals of comparative fault from the Indemnified Party's active negligence, recklessness or willful misconduct.

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

14. Insurance.

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

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

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

The required coverage and limits are subject to availability on the open market at reasonable cost as determined by the City. Non availability or non affordability must be

documented by a letter from Contractor's insurance broker or agency indicating a good faith effort to place the required insurance and showing as a minimum the names of the insurance carriers and the declinations or quotations received from each. Within the foregoing constraints, Contractor's failure to procure or maintain required insurance during the entire term of this Agreement shall constitute a material breach of this Agreement under which City may immediately suspend or terminate this Agreement or, at its discretion, procure or renew such insurance to protect City's interests and pay any and all premium in connection therewith and recover all monies so paid from Contractor.

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

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

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

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

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

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

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

20. Compliance with Laws.

(a) Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California and the City including but not limited to laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This Agreement shall be governed by, enforced and interpreted under the laws of the State of California. Contractor must be in good standing and registered with the California Department of Industrial Relations in accordance with California labor Code section 1725.5 and shall comply with new, amended or revised laws, regulations or procedures that apply to the performance of this Agreement.

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

(c) Contractor represents that it has obtained and presently holds all permits and licenses necessary for performance hereunder, including a Business License required by the City's Business License Ordinance (Title 5 of the Marina Municipal Code) for which a business license tax is prescribed and assessed at the rate of two-tenths percent of gross receipts, in accordance with the provisions therein. For the term covered by this Agreement, the Contractor shall maintain or obtain as necessary, such permits and licenses and shall not allow them to lapse, be revoked or suspended.

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

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

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

To Contractor: Erin Harwayne, AICP
Denise Duffy & Associates, Inc.
947 Cass St, Suite 5
Monterey, CA 93940
Fax (831) 373-1417

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DENISE DUFFY & ASSOCIATES, INC.

By: _____
 Name: _____
 Its: _____
 Date: _____

By: _____
 Name: Denise Duffy
 Its: President
 Date: _____

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

By: _____
 City Clerk

Approved as to form:

By: _____
 City Attorney

INSERT EXHIBIT A

Section 1 (a)

- SCOPE OF WORK -

[Include Work Schedule if required.]

INSERT EXHIBIT B

Section 3 (a)

- FEE SCHEDULE -

EXHIBIT C - INSURANCE

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

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

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

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

Other Insurance Provisions

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

Additional Insured Status

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

Primary Coverage

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

Umbrella or Excess Policy

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

Notice of Cancellation

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

Waiver of Subrogation

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

Self-Insured Retentions

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

Acceptability of Insurers

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

Claims Made Policies

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

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

Verification of Coverage

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

Subcontractors

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

Duration of Coverage

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

Special Risks or Circumstances

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



Exhibit "A"
City of Marina
City-Wide Section 2081 ITP
Revised Scope of Work

To: Layne Long, City Manager, City of Marina

Date: May 27, 2025

From: Erin Harwayne, AICP, DD&A

Ref: **City-Wide Section 2081 ITP**

INTRODUCTION

Denise Duffy & Associates, Inc. (DD&A) was contracted with the City of Marina (City) for the above-referenced project, which has expired. DD&A is providing this revised scope of work to establish a new agreement with the City to:

- extend the expiration of the contract,
- correct a clerical error related to the total budget stated in Change Order No. 1 issued April 9, 2021, and
- increase the budget to include additional services.

The details of the revised scope of work are provided below.

AMENDMENT REQUEST

Extend Contract

Through efforts in Task 1, it became evident that additional tasks were necessary to adequately complete the work efforts identified in the task, and as a result, Task 1 has taken more time than anticipated. The agreement expired on June 30, 2022. Therefore, this document requests a new expiration date of June 30, 2027.

Correct Budget Total in Change Order No. 1

Change Order No. 1 was issued on April 9, 2021, and authorized DD&A to complete additional surveys for Monterey gilia for a not-to-exceed cost of \$10,000. However, the amount of the contracted budget was stated incorrectly in the staff report and the amendment. The approved budget for the contract is \$48,944.50 (as approved by City Council on December 15, 2020, and agreement executed on December 18, 2020, per Resolution 2020-157). Change Order No. 1 incorrectly states the approved budget is \$28,989 (which was the draft budget prior to Council requesting additional tasks at the December 15, 2020, meeting). Change Order No. 1 should have stated the correct total budget of \$58,944.50. Therefore, DD&A is requesting that the difference of \$19,956.00 be included in the new agreement to cover the out-of-scope services described below.

Additional Services

Completed Tasks December 2020 to May 2025

During Task 1 of our scope of work, additional out-of-scope tasks were identified to be necessary and completed utilizing the existing budget. The following is a summary of the approved and out-of-scope tasks:

- **Scope:** Identify potential future development areas that contain or may contain Monterey gilia, compile data, prepare draft mitigation strategy, three virtual meetings with City and working group
 - **Additional Out-of-Scope Tasks:**
 - Additional coordination with working group regarding data collection
 - Additional surveys within Marina Northwest Corner, Cypress Knolls, Preston Park, and Marina Equestrian Center (in addition to the surveys authorized by Change Order No. 1)
 - Additional meetings (bi-monthly meetings with City for two years, monthly meetings with CDFW and USFWS)
- **Scope:** Revise draft mitigation strategy incorporating comments from City and working group and resubmit to team for comments (assumes one round of comments)
 - **Additional Out-of-Scope Tasks:**
 - Responded to multiple rounds of comments
 - Additional meetings with City and working group to discuss revisions
- **Scope:** Incorporate comments on the revised draft mitigation strategy and prepare draft proposal to present to public at community workshop (virtual) to solicit input. The City and DD&A held a public information meeting soliciting input on the draft mitigation strategy at City Council meeting (December 7, 2021)
 - **Additional Out-of-Scope Tasks:**
 - In response to Council request, prepared multiple options for the mitigation strategy and presented at community workshop on December 11, 2022, requiring multiple meetings and rounds of comments from City and working group and posterboards and other meeting materials to facilitate in-person meeting
 - Held Study Session at a Special City Council meeting to discuss the options on December 13, 2022
 - Facilitated a public field meeting in April 2023
 - Presented update at City Council in December 2024
 - Participated in General Plan 2045 Update meetings and coordinated with City and consultant team
- **Scope:** Incorporate public comments and submit to CDFW and present at virtual meeting, including two virtual meetings with team and two with CDFW
 - **Additional Out-of-Scope Tasks:**
 - Facilitated an in-person resource agency field meeting in December 2024
 - Facilitated and coordinated 2nd Avenue/Del Monte Blvd Extension Alternative Alignment Study

Proposed Revised Scope of Work

Task 1. Mitigation Strategy Proposal

At the field meeting with the resource agencies in December 2024, the resource agencies strongly encouraged the inclusion of additional listed and candidate species due to their known and potential presence on City-owned lands within the former Fort Ord, including the identified Study Sites. In discussions with City staff, it was determined that it would be beneficial to include additional species in the ITP application to avoid having to undergo the ITP process again in the future. Therefore, this task is amended to include the following listed and candidate species in the ITP process, in addition to Monterey gilia (hereafter referred to as “Covered Species”):

- burrowing owl (*Athene cunicularia*), candidate species for listing under CESA
- Crotch bumble bee (*Bombus crotchii*, CBB), candidate species for listing under CESA
- western bumble bee (*Bombus occidentalis*, WBB), candidate species for listing under CESA
- seaside bird's-beak (*Cordylanthus rigidus* ssp. *littoralis*), state endangered species

In addition, this task will include conducting a site assessment in accordance with the “Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander” issued by the USFWS and CDFW in October 2003. California tiger salamander (*Ambystoma californiense*, CTS) is a federal threatened species and state threatened species. If it is determined that CTS has the potential to occur on City-owned lands within the former Fort Ord, the City may be required to obtain a federal and state ITP for impacts to this species. If it is determined a federal and state ITP will be required by the resource agencies, an amendment to the Agreement will be requested for the additional work required to add this species to the state ITP as well as obtain a federal ITP.

DD&A will coordinate with the City to identify and define the proposed projects that may result in take of the Covered Species. Based on the data collected to date and description of the proposed projects, DD&A will calculate the anticipated impacts to the Covered Species that may result from project implementation. As part of the impact assessment, DD&A will coordinate with the City and engineers to reassess the potential impacts to Monterey gilia that may result from a realignment of Del Monte Boulevard/2nd Avenue Extension. This scope of work assumes that the alignment will be relocated to minimize impacts to Monterey gilia, as encouraged by the resource agencies.

DD&A will coordinate with the City to prepare a mitigation strategy proposal to present and discuss with the California Department of Fish and Wildlife (CDFW) in order to obtain an ITP in accordance with Section 2081 of the CESA. DD&A will coordinate with local experts in the development of the mitigation strategy. It is important to note that the mitigation strategy for each of the Covered Species may be different, may overlap with other Covered Species, and may involve different options.

First, DD&A will calculate the estimated acreage of impacts to the Covered Species that would be impacted by the proposed projects, identify an appropriate mitigation ratio and strategy, and describe the potential mitigation sites in a brief letter format. This will serve as an administrative draft mitigation strategy. DD&A will submit the administrative draft mitigation strategy to the City and local experts (hereafter “working group”) for review and comment. This scope of work assumes that the focused development areas previously identified during public outreach will continue to be the Airport Business Park Area, Future Cypress Knolls Development Area, and Del Monte Boulevard/2nd Avenue Extension (realigned). This scope of work assumes two rounds of comments on the administrative draft mitigation strategy and two virtual meetings.

Second, DD&A will incorporate comments from the City and working group, and submit a draft mitigation strategy to the City and working group for review and comment. This scope of work assumes one round of comments on the draft mitigation strategy and one virtual meeting.

Third, DD&A will then incorporate final comments on the draft mitigation strategy, and prepare a public draft mitigation strategy to present to the public as part of a community workshop with the purpose of soliciting input on the public draft mitigation strategy. DD&A will facilitate the community workshop (assumed to be virtual) and provide all necessary meeting materials, including, but not limited to, agendas, meeting notes, PowerPoint presentations, etc. DD&A will submit drafts of all meeting materials to the City and working group, as determined necessary, for review and comment prior to the workshop.

Lastly, DD&A will incorporate input from the public and prepare and submit the revised public draft mitigation strategy to the CDFW. The revised public draft mitigation strategy will be presented to CDFW at a virtual meeting for discussion and consideration. DD&A will work closely with the City, working group, and CDFW to respond to information requests and finalize the terms of the mitigation strategy. This task includes an estimated amount of project management time to coordinate with the City, working group, and CDFW.

This task will also include continued coordination related to the potential realignment of Del Monte Boulevard/2nd Avenue Extension, FORTAG, and General Plan 2045 Update. DD&A will coordinate with the City and engineers to prepare a draft and final memorandum describing the Del Monte Boulevard/2nd Avenue Extension Alignment Alternative Analysis completed by Kimley-Horn and recommendations from City Council and public, which will be submitted to the CDFW and U.S. Fish and Wildlife (USFWS). DD&A will participate in two virtual meetings with the Transportation Agency for Monterey County (TAMC) regarding potential mitigation opportunities related to the Fort Ord Regional Trail and Greenway Project. This task also includes participation in the General Plan 2045 Update process as related to biological resources within the City, zoning and land use designations, and policy development, including four virtual meetings.

In addition to the meetings identified above, this task assumes bi-monthly meetings with the City and monthly meetings with CDFW (as well as the USFWS, as determined appropriate) for the duration of this task, which is assumed to be six months. DD&A will facilitate the meetings (assumed to be virtual) and provide all necessary meeting materials, including, but not limited to, agendas, meeting notes, PowerPoint presentations, etc. DD&A will submit drafts of all meeting materials to the City and working group, as determined necessary, for review and comment prior to the meetings.

This scope of work assumes that the data collected and available to date for all Covered Species will be sufficient to support the issuance of the ITP.

Deliverable(s): Administrative Draft, Draft, Public Draft, and Revised Public Draft Mitigation Strategy; Draft and Final Del Monte Boulevard/2nd Avenue Extension Alignment Alternative Analysis Memorandum; Draft and Final Meeting Materials

Task 2. Prepare ITP Application

Based on the terms of the agreed-upon mitigation strategy, DD&A will work closely with the City, working group, and CDFW to prepare and submit a Section 2081 ITP application. The application will include all the required information, including, but not limited to, a description of the extent of take, proposed measures to minimize and fully mitigate the impacts of the proposed take, proposed plan to monitor compliance with the proposed measures, and a description of the funding sources and level of funding available to implement the proposed measures. The CDFW ITP application will require a Mitigation and Monitoring Plan.

DD&A will coordinate with the City and working group in the development of the application and Mitigation and Monitoring Plan. This task assumes three meetings with the City and working group, and DD&A will facilitate the meetings (assumed to be virtual) and provide all necessary meeting materials, including, but not limited to, agendas,

meeting notes, PowerPoint presentations, etc. DD&A will submit drafts of all meeting materials to the City and working group, as determined necessary, for review and comment prior to the meetings.

DD&A will incorporate input from the City and working group and prepare and submit an administrative draft application and Mitigation and Monitoring Plan to the City and working group for review and comment. This scope of work assumes two rounds of comments from the City and working group.

DD&A will incorporate comments and prepare a draft application and Mitigation and Monitoring Plan to present to the public as part of a community workshop with the purpose of soliciting input on the documents. DD&A will facilitate the community workshop (assumed to be virtual) and provide all necessary meeting materials, including, but not limited to, agendas, meeting notes, PowerPoint presentations, etc. DD&A will submit drafts of all meeting materials to the City and working group, as determined necessary, for review and comment prior to the workshop.

DD&A will incorporate input from the public and prepare and submit the final ITP application and Mitigation and Monitoring Plan to the CDFW. The ITP application and Mitigation and Monitoring Plan will be presented to CDFW at a virtual meeting for discussion. DD&A will work closely with the City, working group, and CDFW to respond to information requests and questions to facilitate permit issuance. This task includes an estimated amount of project management time to coordinate with the City, working group, and CDFW. This scope of work assumes that the application will be deemed incomplete twice and supplemental information will be required each time in order to be deemed complete.

In addition to the meetings identified above, this task assumes bi-monthly meetings with the City and monthly meetings with CDFW (as well as the USFWS, as determined appropriate) for the duration of this task, which is assumed to be six months. DD&A will facilitate the meetings (assumed to be virtual) and provide all necessary meeting materials, including, but not limited to, agendas, meeting notes, PowerPoint presentations, etc. DD&A will submit drafts of all meeting materials to the City and working group, as determined necessary, for review and comment prior to the meetings.

Deliverable: Administrative Draft, Draft, and Final CDFW ITP Application, Mitigation Monitoring Plan, and supporting information, as requested; Draft and Final Meeting Materials

Task 3. ITP Conditions

The ITP issued by CDFW will contain various conditions that will likely be required before the proposed take can occur. These requirements include, but are not limited to, acquisition of mitigation land, conservation of mitigation land in the form of deed restrictions or conservation easement, creation of security and endowment funding, execution of any required agreements, Phase 1 Environmental Site Assessment, preliminary title report(s), policy of title insurance, biological report, and final habitat management plan. The extent of these requirements will vary and depend on whether existing information is sufficient. DD&A will coordinate with the City, working group, and CDFW to identify, compile, and submit all requested documents in a timely manner.

This task assumes bi-monthly meetings with the City and bi-monthly meetings with CDFW (as well as the USFWS, as determined appropriate) for the duration of this task, which is assumed to be six months. DD&A will facilitate the meetings (assumed to be virtual) and provide all necessary meeting materials, including, but not limited to, agendas, meeting notes, PowerPoint presentations, etc. DD&A will submit drafts of all meeting materials to the City and working group, as determined necessary, for review and comment prior to the meetings.

Deliverables: Various/TBD; Draft and Final Meeting Materials

Task 4. City Council Meetings

In addition to the City Council meetings identified in Tasks 1-3, DD&A will participate in two additional City Council meetings (assumed to be virtual) to provide updates and input on the permit process. DD&A will coordinate with the City to provide all necessary meeting materials, including, but not limited to, staff reports and PowerPoint presentations. DD&A will submit drafts of all requested meeting materials to the City for review and comment prior to the meetings.

Deliverables: Draft and Final Meeting Materials

Budget

DD&A has exhausted the existing budget by completing the tasks identified above (please refer to *Completed Tasks December 2020 to May 2025*). In addition, due to the error in Change Order No. 1, DD&A is requesting that the difference of \$19,956.00 be included in the new agreement to cover the out-of-scope services described above. DD&A is also requesting additional funds to complete the ITP process and include the additional services described herein.

DD&A will invoice on a time-and-material basis, with an initial not-to-exceed (NTE) amount of \$176,107.00 as shown in the attached spreadsheet. The attached budget does not include the application fee. It is assumed the City will be required to pay the maximum total fee due to the cost of the projects and complexity of the ITP, which is \$47,012.50.

Schedule

It is anticipated that the scope of work identified above will be completed by June 30, 2027.

Submitted by:		5/27/2025
	_____	_____
	DD&A Principal	Date
Accepted by:	_____	_____
	City of Marina	Date

DD&A Cost Estimate - City-Wide Section 2081 ITP Revised Scope of Work
EXHIBIT "B"

Task		Principal	Senior Project Manager	Senior Planner/Scientist	Assoc Planner/Scientist	Asst Planner/Scientist	GIS/Computer Specialist	Admin/Editing	Hours Per Task	Expenses	Admin Fee	Cost Per Task
	Out-of-Scope Services											19,956
1	Mitigation Strategy Proposal	8	60	80	100	140	60	18	466	10	\$ 2	71,212
2	Prepare ITP Application	4	40	80	60	48	32	10	274	10	\$ 2	44,020
3	ITP Conditions	8	20	40	60	24	12	8	172	10	\$ 2	27,580
4	City Council Meetings	8	20	10	10	8	8	20	84		\$ -	13,340
	Total Hours	28	140	210	230	220	112	56	996			
	Hourly Rate	\$278.00	\$202.00	\$185.00	\$141.00	\$127.00	\$145.00	\$82.00				
	Total Labor	\$ 7,784	\$ 28,280	\$ 38,850	\$ 32,430	\$ 27,940	\$ 16,240	\$ 4,592				176,107
Total Budget												176,107

**CITY OF MARINA
AGREEMENT FOR BIOLOGICAL CONSULTING SERVICES**

THIS AGREEMENT is made and entered into on _____, 20____, by and between the City of Marina, a California charter city, hereinafter referred to as the "City," and Denise Duffy & Associates, Inc., a California Corporation, hereinafter referred to as the "Contractor." City and Contractor are sometimes individually referred to as "party" and collectively as "parties" in this Agreement.

Recitals

- A. City desires to retain Contractor to:

Provide continuing biological consulting services to develop a Resource Management Plan (RMP) for Fort Ord HMP compliance hereinafter referred to as the "Project."
- B. Contractor represents that it has the qualifications, experience and personnel necessary to properly perform the services as set forth herein.
- C. City desires to retain Contractor to provide such services.

Terms and Conditions

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

1. Scope of Work.

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

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

(c) If services under this Agreement are to be performed by a design professional, as that term is defined in California Civil Code §2782.8(b)(2), design professional certifies that all design professional services shall be provided by a person

or persons duly licensed by the State of California to provide the type of services described in Section 1(a). By delivery of completed work, design professional certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws, and the professional standard of care in California.

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

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

2. Term of Agreement & Commencement of Work.

(a) Unless otherwise provided, the term of this Agreement shall begin on shall begin on the date of its full execution and shall expire on **June 30, 2027** 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 Contract and is attested to by the Marina City Clerk.

(b) Contractor shall commence work on the Project on or by **June 1, 2025**. This Agreement may be extended upon written agreement of both parties. Contractor may be required to prepare a written schedule for the work to be performed, which schedule shall be approved by the City and made a part of Exhibit A, and to perform the work in accordance with the approved schedule.

3. Compensation.

(a) City liability for compensation to Contractor under this Agreement shall only be to the extent of the present appropriation to fund this Agreement. For services to be provided under this Agreement City shall compensate Contractor in an amount not to

exceed Two-Hundred Four Thousand One-Hundred-Seventy dollars (\$204,170.00) in accordance with the provisions of this Section and the Fee Schedule attached hereto as Exhibit B and incorporated herein by this reference.

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

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

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

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

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

4. Termination or Suspension.

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

(b) If termination for default is 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 **Layne Long or his designee** 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 **Erin Harwayne, AICP** as its Project Manager who shall coordinate all phases of the Project. The Project manager shall be available to City at all reasonable times during the Agreement term.

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

6. Delegation of Work.

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

(b) If the work hereunder is performed by a design professional, design professional shall be directly involved with performing the work or shall work through his, her or its employees. The design professional's responsibilities under this Agreement shall not be delegated. The design professional shall be responsible to the City for acts, errors or omissions of his, her or its subcontractors. Negligence of subcontractors or agents retained by the design professional is conclusively deemed to be the negligence of the design professional if not adequately corrected by the design professional. Use of the term subcontractor in any other provision of this Agreement shall not be construed to imply authorization for a design professional to use subcontractors for performance of any professional service under this Agreement.

(c) The City is an intended beneficiary of any work performed by a subcontractor for purposes of establishing a duty of care between the subcontractor and the City.

7. Skill of Employees. Contractor shall ensure that any employees or agents providing services under this Agreement possess the requisite skill, training and experience to properly perform such services.

8. Confidential and Proprietary Information. In the course of performing services under this Agreement Contractor may obtain, receive, and review confidential or proprietary documents, information or materials that are and shall remain the exclusive property of the City. Should Contractor undertake the work on behalf of other agencies, entities, firms or persons relating to the matters described in the Scope of Work, it is expressly agreed by Contractor that any such confidential or proprietary information or materials shall not be provided or disclosed in any manner to any of Contractor's other clients, or to any other third party, without the City's prior express written consent.

9. Ownership of Data. Unless otherwise provided for herein, all documents, material, data, drawings, plans, specifications, computer data files, basis for design calculations, engineering notes, and reports originated and prepared by Contractor, or any subcontractor of any tier, under this Agreement shall be and remain the property of the City for its use in any manner it deems appropriate. Contractor agrees that all copyrights 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.

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

12. Non-Discrimination.

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

13. Indemnification.

(a) Other than in the performance of design professional services by a design professional, which shall be solely as addressed by subsection (b) below, and to the full extent permitted by law, Contractor shall indemnify, immediately defend (with independent

counsel reasonably acceptable to the City) and hold harmless the City, its Council, boards, commissions, employees, officials and agents (collectively "Indemnified Parties" or in the singular "Indemnified Party") from and against any claims, losses, damages, penalties, fines and judgments, associated investigation and administrative expenses, and defense costs including but not limited to reasonable attorney's fees, court costs, expert witness fees and costs of alternate dispute resolution (collectively "Liabilities"), where same arise out of the performance of this Agreement by Contractor, its officers, employees, agents and sub-contractors. The duty to defend is a separate and distinct obligation from the Contractor's duty to indemnify and Contractor shall be obligated to defend in all legal, equitable, administrative or special proceedings upon tender to the Contractor of any claim in any form or at any stage of an action or proceeding, whether or not liability is established and the obligation extends through final judgment including exhaustion of any appeals.. The Contractor's obligation to indemnify applies unless it is finally determined that the liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally determined that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, the Contractor's indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

(b) To the fullest extent permitted by law (including without limitation California Civil Code Sections 2782.8), when the services to be provided under this Agreement are design professional services to be performed by a design professional, as that term is defined by said section 2782.8(c)(2) ("Design Professional") Design Professional shall indemnify, protect and hold harmless any Indemnified Party for all Liabilities regardless of nature or type that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Design Professional, or such acts or omissions of an officer, employee, agent or subcontractor of the Design Professional. Design Professional shall not have an immediate duty to defend an Indemnified Party, however, Design Professional's obligation to indemnify (including reimbursing the cost to defend) and hold the Indemnified Parties harmless applies unless it is finally determined that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally determined that liability was caused by the comparative active negligence or willful misconduct of an Indemnified Party the Design Professional's indemnification obligation shall be reduced in direct proportion to the indemnified party's proportionate percentage of fault. Within 30 days following Design Professional's receipt of a properly presented written invoice, Design Professional shall satisfy its indemnification obligations and reimburse the Indemnified Party for the cost of reasonable attorney's fees and defense costs incurred by the Indemnified Party to the same extent of Design Professional's indemnity obligation herein. In no event shall the cost to defend charged to the Design Professional exceed the Design Professional's proportionate percentage of fault.

(c) The provisions of this Section are not limited by the provisions of sections relating to insurance including provisions of any worker's compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its employees and officials. An allegation or determination of comparative active negligence or willful misconduct by an Indemnified Party unrelated to design professional services does not relieve Contractor from its separate and distinct obligation to defend City. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor, sub tier contractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance or subject matter of this Agreement. In the event Contractor fails to obtain

such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

(d) If any action or proceeding is brought against any Indemnified Party by reason of any of the matters against which the Contractor has agreed to provide an immediate defense to any Indemnified Party, as provided above, Contractor, upon notice from the City, shall defend the Indemnified Party at Contractor's expense by independent counsel reasonably acceptable to the City. Unless otherwise provided above, an Indemnified Party need not have first paid for any of the matters to which it is entitled to indemnification in order to be so defended. Contractor may submit a claim to the City for reasonable defense costs (including attorney's and expert fees) incurred in providing a defense of any Indemnified Party to the extent such defense costs arise under principals of comparative fault from the Indemnified Party's active negligence, recklessness or willful misconduct.

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

14. Insurance.

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

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

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

The required coverage and limits are subject to availability on the open market at reasonable cost as determined by the City. Non availability or non affordability must be documented by a letter from Contractor's insurance broker or agency indicating a good faith effort to place the required insurance and showing as a minimum the names of the insurance carriers and the declinations or quotations received from each. Within the

foregoing constraints, Contractor's failure to procure or maintain required insurance during the entire term of this Agreement shall constitute a material breach of this Agreement under which City may immediately suspend or terminate this Agreement or, at its discretion, procure or renew such insurance to protect City's interests and pay any and all premium in connection therewith and recover all monies so paid from Contractor.

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

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

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

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

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

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

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

20. Compliance with Laws.

(a) Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California and the City including but not limited to laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This Agreement shall be governed by, enforced and interpreted under the laws of the State of California. Contractor must be in good standing and registered with the California Department of Industrial Relations in accordance with California labor Code section 1725.5 and shall comply with new, amended or revised laws, regulations or procedures that apply to the performance of this Agreement.

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

(c) Contractor represents that it has obtained and presently holds all permits and licenses necessary for performance hereunder, including a Business License required by the City's Business License Ordinance (Title 5 of the Marina Municipal Code) for which a business license tax is prescribed and assessed at the rate of two-tenths percent of gross receipts, in accordance with the provisions therein. For the term covered by this Agreement, the Contractor shall maintain or obtain as necessary, such permits and licenses and shall not allow them to lapse, be revoked or suspended.

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

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

To City: City Manager
 City of Marina City Hall

211 Hillcrest Avenue
 Marina, California 93933
 Fax: (831) 384-9148

To Contractor: Erin Harwayne, AICP
 Denise Duffy & Associates, Inc.
 947 Cass St, Suite 5
 Monterey, CA 93940
 Fax (831) 373-1417

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

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

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

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

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

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

28. **Waiver.** A waiver of a default of any term of this Agreement shall not be construed as a waiver of any succeeding default or as a waiver of the provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.
29. **Severability.** Should any portion of this Agreement be determined to be void or unenforceable, such shall be severed from the whole and the Agreement will continue as modified.
30. **Construction, References, Captions.** Since the parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party. Any term referencing time, days or period for performance shall be deemed calendar days and not workdays. The captions of the various sections are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, content or intent of this Agreement.
31. **Advice of Counsel.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor or against either party by reason of the extent to which each party participated in the drafting of this Agreement.
32. **Counterparts.** This Agreement may be signed in counterparts, each of which shall constitute an original.
33. **Time.** Time is of the essence in this contract.

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

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

DENISE DUFFY & ASSOCIATES, INC.

By: _____
 Name: _____
 Its: _____

By: _____
 Name: Denise Duffy
 Its: President

Date: _____

Date: _____

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

By: _____
 City Clerk

Approved as to form:

By: _____
 City Attorney

INSERT EXHIBIT A

Section 1 (a)

- SCOPE OF WORK -

[Include Work Schedule if required.]

INSERT EXHIBIT B

Section 3 (a)

- FEE SCHEDULE -

EXHIBIT C - INSURANCE

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

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

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

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

Other Insurance Provisions

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

Additional Insured Status

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

Primary Coverage

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

Umbrella or Excess Policy

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

Notice of Cancellation

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

Waiver of Subrogation

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

Self-Insured Retentions

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

Acceptability of Insurers

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

Claims Made Policies

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

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

Verification of Coverage

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

Subcontractors

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

Duration of Coverage

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

Special Risks or Circumstances

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



EXHIBIT "A"

Denise Duffy & Associates, Inc.

PLANNING AND ENVIRONMENTAL CONSULTING

November 16, 2020

Layne Long, City Manager
City of Marina
211 Hillcrest Avenue
Marina, CA 93933

Subject: Proposal to Provide Biological Consulting Services for Fort Ord HMP Compliance

Dear Mr. Long:

Based on discussions with the City of Marina (City), Denise Duffy & Associates, Inc. (DD&A) is submitting this proposal to provide biological consulting services to facilitate the City's compliance with the *Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord, California* (April 1997) (HMP). The U.S. Fish and Wildlife Service (USFWS) has requested that the local jurisdictions initiate the steps necessary to comply with the HMP now that the Fort Ord Habitat Conservation Plan (HCP) and base-wide incidental take permits are no longer proposed. Based on DD&A's comprehensive understanding of the HMP and extensive knowledge of the biological resources on the former Fort Ord, the enclosed proposal identifies the tasks necessary for the City to comply with the requirements of the HMP.

DD&A is uniquely qualified to provide these services to the City. DD&A has expert knowledge of the biological resources and complex regulatory requirements on the former Fort Ord as a result of completing over a hundred projects over the last 25 years on the former military base. Specifically, DD&A is intimately familiar with the biological resources on the former Fort Ord through our work on the Fort Ord HCP and several other large, pivotal Fort Ord projects, including but not limited to:

- annual surveys and habitat management monitoring for the East Garrison California Tiger Salamander Interim Habitat Management Plan;
- a long-term contract to provide biological support to Kemron Environmental Services, Inc. for the cleanup of the former Fort Ord inland ranges;
- a Draft Oak Woodland Conservation Area Map and a Draft Oak Woodland Area Management and Monitoring Plan for the City of Seaside and Monterey County;
- environmental review and planning for the Fort Ord Dunes State Park Campground Project;
- annual surveys and mapping of rare plants as part of the Operating Unit-1 cleanup effort on the Fort Ord Natural Reserve (FONR); and
- environmental compliance, including biological assessment, of the California Central Coast Veterans Cemetery.



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Some additional projects on the former Fort Ord include:

- Fort Ord Recreational Habitat Area Trail Master Plan (Monterey County)
- Joby Aviation Manufacturing Facility (Joby Aero, Inc. and City of Marina)
- Del Monte Boulevard Extension (City of Marina)
- Imjin Parkway Improvements Section 2081 Incidental Take Permit (City of Marina)
- Patton Parkway Biological Assessment (City of Marina)
- 12th Street/Imjin Parkway IS/EA (Fort Ord Reuse Authority and Caltrans)
- The Dunes of Monterey Bay/University Villages Specific Plan (City of Marina and Marina Community Partners)
- Marina Heights Specific Plan/Sea Haven Section 2081 Incidental Take Permit (The Chadmar Group and Assemi Group, Inc.)
- South Boundary Road and General Jim Moore Boulevard Intersection (Fort Ord Reuse Authority/City of Del Rey Oaks)
- Water Storage Tanks Design and Improvements Project IS/EA (Marina Coast Water District)
- Marina Airport Recycled Water Pipeline EIR/EA (Marina Coast Water District)
- Monterey Peninsula Light Rail Project EIR/EA (Transportation Agency for Monterey County and Federal Transit Administration)
- Regional Water Regional Water Augmentation/Recycled Water Project EIR and EA (Marina Coast Water District and U.S. Bureau of Reclamation)
- Del Rey Oaks Resort EIR (City of Del Rey Oaks)
- Seaside Main Gate/The Projects at Main Gate Specific Plan EIR (City of Seaside)
- Laguna Seca Ticketing Area IS/EA (Monterey County and U.S. Army Corps of Engineers)
- Monterey Downs Specific Plan Biological Resources Study (Monterey Downs, LLC)
- Habitat Restoration Plan Site 39 Inland Ranges Former Fort Ord (Shaw Environmental, Inc. and U.S. Army Corps of Engineers)



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- Whispering Oaks Business Park Biological Resources Study (Monterey-Salinas Transit and Monterey County)
- Fort Ord Reuse Plan Reassessment (Fort Ord Reuse Authority)
- The First Tee Project EIR (City of Seaside)
- Monterey Bay Regional Water Supply (Desalination) Project and Coastal Water Project EA (Marina Costa Water District, Cal-Am Water, and U.S. Bureau of Reclamation)
- North-South Road (General Jim Moore Boulevard) Widening Project IS/EA (Fort Ord Reuse Authority)
- Highway 218 Widening Project IS/EA (Fort Ord Reuse Authority and City of Del Rey Oaks)
- CSUMB 2004 and 2007 Master Plan Project and over 25 individual campus projects (California State University Monterey Bay/CSU Board of Trustees)
- 8th Avenue and Inter-Garrison Road Roundabout and 8th Street/7th Avenue/Inter-Garrison Road Realignment Projects (California State University Monterey Bay)
- Habitat Restoration Plan Site 39 Inland Ranges (Shaw Environmental, Inc. and U.S. Army Corps of Engineers)
- Monterey Bay Charter School – CSUMB Campus (Monterey Bay Charter School)
- CSUMB 2016 Master Plan Update Biological Resources Analysis (California State University Monterey Bay)
- Baseline Aquatic Sampling for Soil Remediation Areas (Shaw Environmental, Inc. and U.S. Army Corps of Engineers)
- Eastside Parkway Biological Study and Preliminary Environmental Analysis (Fort Ord Reuse Authority)
- Seaside Resort (City of Seaside)
- Seaside Highlands Housing Subdivision (City of Seaside)
- Pure Water Monterey Groundwater Replenishment Project (Monterey Regional Water Pollution Control Agency and Monterey Peninsula Water Management District)

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DD&A is extremely well-versed in the habitat management requirements for all of the habitat management areas and associated land recipients, as approved by the HMP. As a result of our work on the Fort Ord HCP Impact Analysis, DD&A has compiled an extensive Geographic Information System (GIS) database of natural resources and infrastructure within the former Fort Ord, including, but not limited to, the following:

- Special-status plant and wildlife species occurrences and potential habitat distribution data (including HMP covered species, as well as other species typically considered sensitive under CEQA and NEPA);
- Updated habitat mapping, including developed areas and natural communities; and
- Existing and proposed roads, trails, fuelbreaks, water facilities, land uses, and zoning.

DD&A's Natural Resources Division (NRD) consists of Environmental Scientists, Botanists, and Wildlife Biologists, Certified Arborists, and a Certified Drone Pilot with over 70 combined years of experience. DD&A's NRD is qualified at all levels of biological resource analysis, including protocol-level wildlife and botanical surveys, habitat assessment and mapping, wetland delineation and assessment, biological impact evaluation, mitigation monitoring compliance, and permit preparation and acquisition. DD&A biologists hold current federal recovery permits for both the California red-legged frog and the California tiger salamander, and state Scientific Collection Permits authorizing handling (capture and release) of all mammals, reptiles, amphibians, and freshwater/terrestrial invertebrates.

As summarized above, DD&A's staff has the necessary combination of professional skills, hands-on experience, and expert knowledge required to work effectively with the City, regulatory agencies, as well as others involved in this project.

If you have any questions concerning the enclosed information, please do not hesitate to contact me at (831) 915-0604 or eharwayne@ddaplanning.com. We appreciate this opportunity to continue providing environmental consulting services to the City.

Sincerely,

Erin Harwayne, AICP
Project Manager/Senior Planner
Denise Duffy & Associates, Inc.

SCOPE OF WORK TO PROVIDE BIOLOGICAL CONSULTING SERVICES FOR CITY OF MARINA HABITAT MANAGEMENT PLAN COMPLIANCE

Task 1. Project Initiation

DD&A will initiate the project by coordinating with the City to obtain pertinent project information, including GIS data, parcel deeds, agreements, and other background documentation associated with the project. Project initiation will include the following tasks:

- Review available background information,
- Attend a kick-off meeting with the City to discuss the project approach and finalize the scope of work,
- Identify data and documentation needs,
- Confirm format and quantities of deliverables, and
- Establish the project schedule and protocol for communication.

During this task, DD&A will complete a review and assessment of the information already available and identify any outstanding data needs. This task will also include a meeting with USFWS staff to confirm the HMP compliance approach, identify deliverables, obtain project-related information, and establish review timelines.

*Deliverable(s): Final Scope and Budget, Draft and Final Schedule, Information Needs Request (if required)*¹

Task 2. Public Outreach and Early Coordination with Interested Parties

Public outreach and early coordination with interested parties will be an important part of the development of the proposed Resource Management Plan (RMP). In coordination with the City and USFWS, DD&A will prepare a mailing/email list of stakeholders and public agencies based on its existing database from previous projects. This contact database will be used and updated, as needed, throughout the duration of the project. It is recommended that a Public Participation Plan be developed to outline a process to solicit public input regarding the proposed RMP. DD&A will prepare a draft plan, which will be clear, concise, and contain a detailed description of milestones. The plan will identify outreach strategies for the key stakeholders, including regulatory agencies, non-governmental organizations, interest groups, recreational users, local municipalities, and the general public. It will outline the public outreach methods that may be considered, including potential meeting types (i.e., site visits/field visits, workshops, small group, one-on-one²), periodic project updates for the public, and providing a project website. It will also include outreach methods for low-income and minority

¹ This scope of work assumes all meetings will be virtual and all deliverables will be electronically submitted due to the COVID-19 pandemic.

² Any proposed meeting types will be conducted in compliance with public health and safety guidelines related to COVID-19 (e.g., virtual and/or small, socially distanced site visits).

populations, including multi-lingual noticing and translators at public meetings. DD&A will submit a Draft Public Participation Plan to the City and USFWS for review and comment. Upon receipt of comments, DD&A will revise accordingly and finalize the plan. This scope of work assumes one round of comments from the City and USFWS.

In addition, the development of the proposed RMP will require coordination with agencies and stakeholders, which may include but are not limited to, the following:

- California Department of Fish and Wildlife (CDFW)
- Bureau of Land Management (BLM)
- Fort Ord Coordinated Resource Management Planning team (CRMP)
- Adjacent property owners
- Keep Fort Ord Wild
- California Native Plant Society
- Transportation Agency for Monterey County (TAMC) (as related to the Fort Ord Regional Trail and Greenway Project)

This scope of work assumes two (2) community workshops, two (2) stakeholder meetings, one (1) Planning Commission presentation, and one (1) City Council presentation.

This scope of work assumes DD&A will facilitate the meetings (assumed to be virtual) and provide all necessary meeting materials, including, but not limited to, agendas, meeting notes, PowerPoint presentations, etc. DD&A will submit drafts of all meeting materials to the City and USFWS, as determined necessary, for review and comment prior to public meeting distribution.

Deliverable(s): Draft and Final Public Participation Plan, Contact Database, Draft and Final Meeting Materials

Task 3. Prepare Resource Management Plan

In accordance with the requirements described in the HMP and the deed restrictions for the parcels, DD&A will prepare a Resource Management Plan (RMP) for the City's Habitat Management Areas (HMAs³), including the Salinas River, Airport, Northwest Corner, and Landfill HMAs.

DD&A proposes to prepare one (1) RMP to address the City's HMP responsibilities for all four HMAs. The RMP will address HMP requirements for habitat management activities within the HMAs. The RMP will include the HMA development allowances, as designated in the HMP and describe any proposed development activities within the HMAs in accordance with the HMP. The preparation of the RMP will include the tasks outlined below.

³ The HMP identifies what type of activities can occur on each parcel at former Fort Ord; parcels are designated as "development," "habitat reserve," "habitat corridor," and "development with reserve areas or development with restrictions." Development parcels do not have any habitat management requirements, while the remaining categories do have varying habitat management requirements. As a result, the remaining categories are collectively referred to as "Habitat Management Areas" or "HMAs."

Task 3.1. Data Collection/Baseline Inventory and Mapping

DD&A will utilize our existing database of the resources on the former Fort Ord to the greatest extent feasible to serve as the foundation of the RMP. DD&A will coordinate with the City and surrounding jurisdictions, and conduct research and surveys to update the database, as necessary. During this task, DD&A will perform the following:

- Conduct research utilizing available resources including the CDFW California Natural Diversity Database (CNDDDB), CNPS inventories, information from local experts, and other published and unpublished materials, including recent biological studies and environmental documents;
- Conduct desktop reviews and reconnaissance-level surveys of the HMAs to assess the environmental conditions of the HMAs and their surroundings; and
- Prepare narratives and provide figures of the following:
 - HMP species and habitats, as well as other special-status species and sensitive habitats known, or with the potential to occur within and adjacent to the HMAs
 - Natural vegetative communities
 - Wildlife species and habitat
 - Physical conditions including,
 - soil erosion, noting the extent and location
 - non-native invasive plant species, noting extent and location
 - natural disturbances, such as fire or significant soil shifts
 - areas exhibiting potential erosion control issues (along trails and fuelbreaks)
 - areas with populations of invasive non-native plant species potentially in need of removal, focusing on jubata/pampas grass, iceplant, French broom, (along trails and fuelbreaks)
 - volunteer trails that should be signed and monitored for trespass and erosion issues
 - Conditions and locations of existing barriers and signage and identify locations for future installation to restrict access by off-road vehicles and pedestrians
 - conditions and locations of existing fuelbreaks and access roads.

DD&A will prepare a draft set of baseline narratives and inventory maps to the City for review and comment. Based on comments from the City, DD&A will finalize the baseline narratives and inventory maps for inclusion in the RMP. This scope of work assumes one round of comments.

This scope of work assumes that existing data will be sufficient for the RMP and that any protocol-level botanical and wildlife surveys, if required, will be conducted during the RMP implementation phase. However, if the USFWS requires any protocol-level surveys (e.g., rare plant surveys, California tiger salamander upland surveys, etc.) prior to RMP approval, DD&A can provide a proposal for the requested services and this scope of work can be amended.

Deliverable(s): Draft and Final Baseline Narratives and Inventory Maps

Task 3.2. Identify and Define Potential Future Development Projects within HMAs

As discussed above, this scope of work assumes the incorporation of potential future development projects within the HMAs, where allowed under the HMP, into the RMP. During this task, DD&A will work with the City to identify and define the potential future projects that may occur within the HMAs. DD&A will prepare a brief project description and figures for each project for inclusion in the RMP. This scope of work assumes one round of comments on the descriptions and figures.

Deliverable(s): Draft and Final Project Descriptions and Figures

Task 3.3. Prepare Administrative Draft RMP

DD&A will prepare an Administrative Draft RMP and submit to the City for review and comment. The results from the baseline inventory and descriptions of the potential future development projects will provide the information necessary to develop the RMP. The RMP will include the following:

- baseline inventory
- description of potential future development projects within HMAs
- goals and objectives
- habitat management activities, including
 - erosion control
 - restoration/enhancement
 - non-native species control
 - prescribed burns/alternative vegetative treatments
 - security/patrols
 - vehicle access controls
 - signage/displays
 - trash/debris maintenance
 - road/trail maintenance
 - fuelbreak construction and maintenance
 - preservation
- avoidance and minimization measures, and mitigation measures (if required)
- monitoring program
- implementation plan (including two scenarios: entire plan implementation and phased implementation)
- adaptive management strategies

Please note that the cost estimate for RMP implementation described in Task 4 will be completed and included as part of the 2nd Administrative Draft RMP (please see Task 3.4).

DD&A will submit the Administrative Draft RMP to the City for review and comment. This scope of work assumes one round of comments. This task includes two (2) meetings with the City to discuss the plan and City comments.

Deliverable(s): Administrative Draft RMP

Task 3.4. Prepare 2nd Administrative Draft RMP

Based on comments received from the City, DD&A will revise the RMP and prepare a 2nd Administrative Draft RMP. The 2nd Administrative Draft RMP will include a cost estimate for RMP implementation under the two proposed implementation plan scenarios, as described in Task 4.

DD&A will submit the 2nd Administrative Draft RMP to USFWS for review and comment. This scope of work assumes one round of comments. This task includes two (2) meetings with the City and USFWS to discuss the plan and USFWS comments.

Deliverable(s): 2nd Administrative Draft RMP

Task 3.5. Prepare Public Draft RMP

Based on comments received from the USFWS, DD&A will prepare a Public Draft RMP to support and facilitate the various public outreach efforts, as defined and determined during Task 2.

Deliverable(s): Public Draft RMP

Task 3.6. Prepare Final RMP and CEQA Determination

Based on comments received from the public, Planning Commission, City Council, and others (as defined during Task 2), DD&A will prepare a Final RMP, in coordination with the City and USFWS staff. The Final RMP will be submitted to the USFWS and the City for approval.

This scope of work assumes that any approval or related actions by the USFWS will not require additional environmental review under the National Environmental Policy Act (NEPA). It is anticipated that the RMP will include habitat management activities consistent with the HMP and, therefore, any potential environmental impacts from implementing the RMP will have been previously analyzed in the NEPA documentation prepared for the closure, disposal, and reuse of the former Fort Ord. In addition, for the purposes of this proposal, it is assumed that the implementation of the RMP will not result in the incidental take of federally listed species, and, therefore, the approval and implementation of the RMP will not required an incidental take permit under Section 10 of the federal Endangered Species Act. If the USFWS determines that incidental take may occur and a permit is required, DD&A can amend this scope of work to include permit acquisition.

Similarly, for the purposes of this proposal, it is assumed that any approval and/or adoption actions by the City will not require additional environmental review under the California Environmental Quality Act (CEQA). It is anticipated that the RMP will include habitat management activities consistent with the HMP and, therefore, any potential environmental impacts from implementing the RMP will have been previously analyzed in the NEPA documentation prepared for the closure, disposal, and reuse of the former Fort Ord. In addition, there are potentially a number of existing CEQA documents prepared for the Base Reuse Plan, City of Marina General Plan, Former Fort Ord Habitat Conservation Plan, and other related projects that have adequately analyzed the potential impacts of the habitat management activities proposed in the RMP. It is assumed that the City will be able to rely on the findings from existing CEQA documents, as well as make findings based on the existing NEPA documentation, to support any approval and/or adoption actions.

DD&A will review existing NEPA and CEQA documents to confirm this approach to CEQA compliance for the RMP approval. DD&A will consult with the City and counsel on this approach, and prepare and submit a memorandum to the City documenting the CEQA determination. DD&A will submit a draft memorandum electronically to the City for review and comment. Based on comments received, DD&A will finalize the memorandum and submit to the City. This scope of work assumes one round of comments on the memorandum. This task includes one (1) meeting to collaborate with the City on the CEQA determination. If it is determined that the approval of the RMP will require additional environmental review, the memorandum will recommend the appropriate level of CEQA review. If requested by the City, DD&A can amend this scope of work to include additional CEQA review.

Deliverable(s): Final Public Draft RMP, Draft and Final CEQA Determination Memorandum

Task 3.7. Hearing Attendance

This scope of work assumes that DD&A will attend two (2) public hearings (Planning Commission and City Council) and assist with preparing associated materials, including the staff report, CEQA findings, and presentation. DD&A will be available at the hearings to present the project and answer any questions.

Deliverable(s): Assist with Hearing Materials

Task 4. Cost Estimate for RMP Implementation

DD&A will prepare a cost estimate for implementation of the proposed RMP based on the 2nd Administrative Draft RMP and will update the estimate as needed through plan development (one cost estimate and two updates). The cost estimate will outline the proposed habitat management activities and assumptions in a Microsoft Excel spreadsheet, which will be an appendix to the RMP. The cost estimate will include costs under two scenarios: implementation of the entire plan and phased implementation of the plan. DD&A will coordinate closely with the City on the assumptions.

Deliverable(s): Cost Estimate, including two updates

EXHIBIT B

EXHIBIT "B"

DD&A Cost Estimate - City of Marina HMP Compliance

Task		Principal	Senior Project Manager	Senior Planner/Scientist	Assoc Planner/Scientist	Asst Planner/Scientist	GIS/Computer Specialist	Admin/Editing	Hours Per Task	Expenses	Admin Fee	Cost Per Task
1	Project Initiation		8			2	4	2	16	50	\$ 8	2,187.50
2	Public Outreach											
	Contact Database		2			2		4	8		\$ -	800.00
	Draft and Final PPP		4	6	6	16		2	34		\$ -	3,982.00
	Public Meetings (6)	4	48		36	48	36	36	208		\$ -	24,020.00
3	Prepare Resource Management Plan											
3.1	Data Collection/Baseline Inventory and Mapping		24	60	120	120	40	8	372	400	\$ 60	43,584.00
3.2	Identify and Define Potential Future Projects		10	12	14	28	34	8	106		\$ -	11,960.00
3.3	Prepare Administrative Draft RMP	2	28	28	80	120	40	16	314		\$ -	35,492.00
3.4	Prepare 2nd Administrative Draft RMP		22	20	20	60	20	14	156		\$ -	18,002.00
3.5	Prepare Public Draft RMP		20	14	26	40	16	10	126		\$ -	14,742.00
3.6	Prepare Final Public Draft RMP and CEQA Determination	10	22	14	18	36	14	10	124		\$ -	15,902.00
3.7	Hearing Attendance	4	20	10	6	10	6	10	66		\$ -	8,830.00
4	Cost Estimate for RMP Implementation		20	32	60	80		28	220		\$ -	24,668.00
	Total Hours	20	228	196	386	562	210	148	1,750			
	Hourly Rate	\$230.00	\$173.00	\$153.00	\$110.00	\$99.00	\$105.00	\$64.00				
	Total Labor	\$ 4,600	\$ 39,444	\$ 29,988	\$ 42,460	\$ 55,638	\$ 22,050	\$ 9,472				\$ 204,170
Total Budget												\$ 204,170

May 27, 2025

Item No: **10g(2)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of June 3, 2025

**THE CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2025-,
APPROVING TWO NEW NEW CONTRACTS WITH DENISE DUFFY AND
ASSOCIATES TO CONTINUE PROVIDING BIOLOGICAL
CONSULTING SERVICES TO THE CITY OF MARINA IN SUPPORT OF
THE CITY'S INCIDENTAL TAKE PERMIT FOR MONTEREY GILIA
AND OTHER PROTECTED SPECIES AND IN SUPPORT OF THE
CITY'S FORT ORD HABITAT MANAGEMENT COMPLIANCE AND
FIND THESE ACTIONS ARE EXEMPT FROM CEQA.**

REQUEST

It is requested that the City Council:

1. Adopt Resolution No. 2025-, approving two new contracts with Denise Duffy and Associates in an amount not to exceed \$176,107 for the City's ITP Project (**EXHIBIT A**) and \$204,170 for the Fort Ord Habitat Management Compliance Project (**EXHIBIT B**).
2. Find this action is exempt from the California Environmental Quality Act (CEQA) pursuant to section 15061(b)(3) of the CEQA Guidelines.
3. Authorizing the Finance Director to make necessary accounting and budgetary entries,
4. Direct the City Manager to execute the agreements on behalf of the city, subject to final review and approval by the City Attorney.

BACKGROUND

On December 15, 2020, the City Council adopted Resolution No. 2020-157 approving an Agreement with Denise Duffy & Associates, Inc. (DD&A) to provide biological consulting services to develop a Resource Management Plan (RMP). The RMP will bring the City to compliance with deed restrictions and federal agency requirements to manage the City's Habitat Management Plans (HMAs) to mitigate for development on former Fort Ord.

On April 6, 2021, the City Council adopted Resolution No. 2021-26 approving Amendment No. 1 to the DD&A Agreement, which provided focused botanical surveys within the four habitat management areas to better inform management recommendations from the initial scope of work.

On December 7, 2021, the City Council held an informational and public input session regarding the prioritization of conservation and development areas to inform the mitigation strategy for the City-Wide Incidental Take Permit (ITP) for Monterey gilia. The City Council requested that options be prepared and brought back to the council and public for discussion.

On December 11 and 13 of 2022, City staff and DD&A held an in-person community workshop presenting the data and various options to the public and held a study session at a special City Council meeting

At the City Council meeting on December 17, 2024, DD&A presented an update on the status of the habitat management project, including an updated timeline for completion.

On May 20, 2025 the City Council received a presentation from Erin Harwayne from Denise Duffy and Associates regarding the City's ongoing efforts to prepare an Incidental Take Permit (ITP) for the Monterey Gilia and to potentially increase the scope of the review to include other protected species and plants.¹ After publication of the May 20, 2025 staff report, city staff discovered that the original contract with Denise Duffy and Associates had expired. The details of the technical work being proposed by the consultant can be found in the May 20, 2025 staff report and in the summary of the work orders included as Attachment 1 (Draft ITP Contract) to this report. The request from City staff for the June 3, 2025 City Council meeting is to approve a new contract with Denise Duffy and Associates in an amount not to exceed \$176,107.

In addition, the agreement with Denise Duffy and Associates to provide biological consulting services for the Fort Ord Habitat Management Compliance project has expired. The request from City staff for the June 3, 2025 City Council meeting is to approve a new contract in an amount not to exceed \$204,170, reinstating the original scope of work included as Attachment 2 (Draft HMP Contract) to this report.

FISCAL IMPACT:

When the Fort Ord Reuse Authority (FORA) closed its doors on June 30, 2020, funding that had been dedicated to habitat conservation planning efforts were divided and transferred to the land use jurisdictions with HMP responsibilities. Fund 223 currently contains a balance of approximately \$1,300,000. This fund balance is sufficient to cover the contract extension and the CDFW ITP application fee, which is anticipated to be \$47,102.50

ENVIROMENTAL REVIEW

The proposed action is exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the CEQA Guidelines as there is no reasonable possibility that entering these contracts will impact the environment. No further environmental review is necessary

CONCLUSION

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

Respectfully submitted,

Guido Persicone, AICP
Community Development Director
City of Marina

REVIEWED/CONCUR

Layne Long
City Manager
City of Marina

¹ Burrowing owl (*Athene cunicularia*), candidate species for listing under CESA
Crotch bumble bee (*Bombus crotchii*, CBB), candidate species for listing under CESA
western bumble bee (*Bombus occidentalis*, WBB), candidate species for listing under CESA
seaside bird's-beak (*Cordylanthus rigidus* ssp. *littoralis*), state endangered species