

CITY OF MARINA
REQUEST FOR QUALIFICATIONS
FOR
GATEWAY SIGNAGE DESIGN SERVICES



APPROVED BY:

A handwritten signature in blue ink, appearing to read "Brian McMinn".

Brian McMinn, P.E., P.L.S.
Public Works Director/City Engineer

1. INTRODUCTION

The City of Marina is seeking submittal of qualifications and fees for the purpose of selecting a consultant for providing gateway signage design services. Ultimately these services will support construction contracts to be awarded by the City Council for furnishing and construction of gateway signage.

The services to be provided by the selected consultant will be design services including but not limited to: project sites review; landscape design; sign design; construction cost estimating; bid document preparation; public outreach and notification; meeting with city staff and stakeholders; and design support during construction.

The Request for Qualifications and any future addenda, if issued, will be posted on the City of Marina's website at:

<https://www.cityofmarina.org/bids.aspx>

2. PROGRAM DESCRIPTION

The services requested is to provide gateway entry signs at four (4) primary entry points into the City and the entrance to the municipal airport. The City is seeking a qualified firm ("Consultant") that has experience in conducting public meetings and preparing plans for the construction of Gateway Signs. In addition, the Consultant must be familiar with innovative public participation techniques to maximize public input within the decision-making process. The proposed scope of work is intended to be a general outline of the work anticipated to be included in the process. It is not an all-inclusive description of the elements to be included in the plan or associated activities.

3. GENERAL SCOPE OF SERVICES

1. **Develop Gateway Signage Design Concepts**

- The City of Marina is looking for gateway sign designs to mark primary entry points into the City.
- The selected consultant will create and present a minimum of three schematic design concepts from which the final design concept will be selected.
- The selected consultant will develop a preliminary implementation plan for three gateways to the City and entry to the airport. The three gateways to the City are located at:
 - Blanco Road at Reservation Road
 - Reservation Road at Highway 1
 - Del Monte Blvd. at Reindollar Avenue
 - Imjin Parkway at Highway 1

The entry sign to the airport would be located at Reservation Road and Imjin Road. The design concept should incorporate airport theme.

2. **Bid Specifications**

- Coordinate with the City's Planning Department and Public Works Department to develop bid specifications for the approved plans and designs.
- Work with city staff to obtain necessary reviews and approvals.
- Bid specifications should include specific placement information and clear instruction for manufacture and installation.
- Should include specific color information (paint, Pantone, or other color systems, as applicable), brand elements, materials, etc.
- Should include finishes and general mounting methods.
- Must conform to all local, state, and federal laws and regulations.
- Create a cost estimate for plan implementation.

3. **Engagement**

The selected consultant will work with city staff in the development of the design plan. A minimum of four (4) meetings are necessary.

- An on-site meeting with city staff for an overview of the project and to gather information. A City tour will be included.
- A meeting with the Planning Commission to review the design concepts and locations.
- A community meeting to present the design concepts and receive input.
- City Council

4. **Consultant Responsibilities**

- Provide maps, GIS information and data, as needed.
- Coordinate and advertise the public events and provide recommendations as to how the events should be structured.
- Provide materials for meetings, as needed.

5. **Bid Assistance**

- Conduct a pre-bid meeting.
- Provide answers to RFIs.
- Review bids to provide recommendation of award.

6. **Design Support During Construction**

- Attend a project kick-off.

- Review submittals, including shop drawings and samples.
- Respond to RFIs.
- Prepare post-installation punch list.

4. MINIMUM CONTENT FOR SUBMITTAL OF QUALIFICATIONS

Proposers shall submit the following for the consultant and each subconsultant:

A. Technical Qualifications

1. Relevant experience, both of the consulting firm and the personnel assigned to the project management; communication and public outreach; design; and design support during construction. List each field of expertise possessed by your firm and the depth of experience as demonstrated by past contracts with other public agencies. Emphasis should be placed upon the proposed Project Manager.
2. Specific gateway entry services contracts that the consulting firm and assigned personnel have worked on within the past three years, with contact names and phone numbers of the clients.
3. A list of subconsultants to be used, if any, and their expertise as called for in paragraphs (1) and (2) above.
4. Submit at least one sample of gateway entry sign design documents.
5. A description of methodology, techniques, procedures, and equipment that will be implemented to deliver the project. The selection committee will be especially interested in how the candidate will be able to provide high quality output and experience with community and stakeholder outreach.
6. Responding firms are asked to review the attached draft forms of agreement to be entered into and include in the sealed envelope any exceptions to the proposed language for consideration during negotiations.

B. Fee Schedule

1. Provide an **hourly rate for** each category of employee (i.e., principal, project manager, etc.) and fee for related support costs (mileage, blueprint, reproduction, etc.).
2. Provide an **hourly rate for** each category of employee for **_____**

all subconsultants (i.e., principal, project manager, etc.) and fee for related support costs (mileage, blueprint, reproduction, etc.).

3. A not-to-exceed cost proposal will be developed for the gateway entry design services during negotiations as the program delivery scope and methodology is refined. A not-to-exceed cost proposal should not be included with the Statement of Qualifications.

5. SUBMITTAL

A. Submittal contents

1. One envelope or package clearly marked on the exterior the name of the Proposer and the title of this solicitation, "Gateway Entry Sign Technical Qualifications Proposal", and due date/time.

Contents:

- a. Each firm must submit five hard copies of the SOQ plus one electronic copy of SOQ in a PDF format provided in a USB drive.
- b. A separate sealed envelope clearly marked on the exterior the name of the Proposer and "Gateway Entry Sign Fee Schedule" with the due date/time, containing two copies of the fee schedule for the Proposer and any team members.

B. Submittal Instruction

1. Each firm must submit five (5) hard copies of SOQ submittal plus one (1) electronic copy of their SOQ submittal in a PDF format provided in a USB drive.
2. Each firm must submit two (2) hard copies of fee schedule submittal in a separate sealed envelope.
3. Every copy must be individually bound.
4. Typing should be in 10 or 12-point font size, using fonts such as Times New Roman, Arial, or Courier. Tabs or separator sheets, if

used, may use larger font size.

5. Each firm must provide a cover letter identifying the service area and the name of firm in which includes the following items:
 - a. Whether the firm has an office in the City of Marina.
 - b. Whether a majority of the work will be performed locally.
 - c. The name of a local or regional office representative who can legally execute agreements and amendments with the City of Marina.

6. The narrative portion of the proposal shall be limited to 10 pages.
 - a. Double sided copies are acceptable. One sheet with written narrative on both sides will be counted as two pages of written narrative.
 - b. If an 11×17 page is formatted to contain the equivalent of 1, 2, 3, or 4 pages of narrative text they will be counted as their equivalent number of pages.
 - c. Resumes and examples of gateway entry sign documents should follow the narrative portion of the statement of qualification and will not be counted in the 10 page limit.

7. Include at least 3 references from past projects of similar nature.

8. Firms may use electronic signature.

C. Due Date/Time

Proposals will be received by the City's Public Works Department, until **5:00 p.m., Wednesday October 5, 2022.**
Submit RFQ packet to:

Brian McMinn
City of Marina, Public Works Department
211 Hillcrest Avenue
Marina, CA 93933

6. PROCEDURES AND EVALUATION OF QUALIFICATIONS

A. Evaluation Criteria

An evaluation committee comprised of City staff and other stakeholders will review and evaluate technical qualifications against the following criteria:

1. Understanding of the City's Goals (5% of selection consideration): Based on the information provided by the City and past experience in Marina, does the consultant understand the City's goals and unique nature of Marina?
2. Project Manager (30% of selection consideration): Do the qualifications of the Project Manager to be assigned to work on this project have experience in successfully delivering a design project for a public agency that has gone through public outreach and community input? Does assigned person have the requisite education, experience, and professional qualifications?
3. Familiarity with Locality (5% of selection consideration): Does the consultant have familiarity with the City? How close are the consultant's permanent offices to the Marina? (Preference is to local or near-local consultants).
4. Specific Management Approach (10% of selection consideration): How does the consultant intend to achieve the City's budget and time goals for projects? How will the consultant apply its management techniques and resources?
5. Experience (30% of selection consideration): Has the firm or team demonstrated the ability to successfully provide services for projects of a similar complexity and nature as described herein? Do team members have experience working together?
6. Organization (10% of selection consideration): Are the qualifications of the consultant's personnel suitable for the execution of programs; and, does the consultant's organizational structure show sufficient depth for its present workload?
7. Reputation (10% of selection consideration): Are the consultant's references from past clients and associates favorable; and, does the consultant show financial and operational stability?

B. Procedures

1. At completion of the review process, consultants will be ranked, and the most highly qualified ones will be placed on a short list for further evaluation.
2. The consultants on the short list shall be invited for an interview and presentation process that will aid in making a final selection, as the City deems necessary. The presentation and interview session will not exceed one hour per proposer.
3. Following presentations/interviews, the evaluation committee will complete its ranking. Fee negotiations will then begin with the highest ranked consultant. The schedule of fees shall be established by mutual agreement between the City and the consultant. If no agreement can be reached, the first ranked consultant will be excused, and fee negotiations will begin with the second ranked consultant. This procedure will be followed until a proposer is selected.
4. Once a final selection is made, staff may elect to refine the scope of services and the fees with the selected consultant.
5. As the scope of services are refined and established the consultant shall submit a not to exceed cost proposal to execute the program. Cost proposals shall be based on the fee schedule submitted with the statement of qualification or as modified during negotiations.
6. The City Council may approve a contract with the most qualified consultant at a not to exceed cost mutually agreed upon by the City and consultant, and a formal contract will be entered into by the consultant and the City.
7. The City of Marina reserves the right to reject any and all submittals and to reissue its request for qualifications. The City reserves the right to cancel resulting contracts at any point and pay the consultant only for costs incurred to that point and for work completed which is usable by the City as determined by the City.

8. POINT OF CONTACT

Interested consultants desiring additional information are asked to submit emails requesting clarifications until 5:00 p.m., Wednesday September 21, 2022 to:

City of Marina's Public Works Office,
211 Hillcrest Avenue, Marina, CA 93933

Attn: Rick Riedl, Email: rickr@wallacegroup.us

Copy: Michaelle Mowery, Email: mmowery@cityofmarina.org

9. GENERAL

- A. The period of service required will be three years from the date of contract execution. The period of service can be amended for time extension, if the City deems necessary.
- B. The draft form of contract is attached as Exhibit A. Review the attached draft form of agreement to be entered into and include in the sealed envelope any exceptions to the proposed language for consideration during negotiations.
- C. The draft form of contract for On-Call Services is attached as Exhibit B. Review the attached draft form of agreement to be entered into and include in the sealed envelope any exceptions to the proposed language for consideration during negotiations.

EXHIBIT A

EXAMPLE
CONTRACT

**CITY OF MARINA
AGREEMENT FOR GATEWAY SIGNAGE DESIGN SERVICES**

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

Recitals

- A. City desires to retain Contractor for [REDACTED] services for the [REDACTED], hereinafter referred to as the "Project."
- B. Contractor represents and warrants that it has the qualifications, experience and personnel necessary to properly perform the services as set forth herein.
- C. Consultant represents that it has the degree of specialized expertise contemplated within California Government Codes §§37103 and 53060 and holds all necessary licenses to practice and perform the services herein contemplated.
- D. City desires to retain Contractor to provide such services.

Terms and Conditions

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

1. Scope of Work.

(a) Contractor is hereby hired and retained by the City to work in a cooperative manner with the City to fully and adequately perform those services set forth in Exhibit "A" attached hereto ("Scope of Work") and 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, 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 [REDACTED], 2024, unless extended by amendment or terminated earlier as provided herein. The date of full execution is defined as the date when all of the following events have occurred:

(i) This Agreement has been approved by the City's Council or by the 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 [REDACTED], 2022. 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 [REDACTED] in accordance with the provisions of this Section and the Cost Estimate 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 dispute items and their dollar value within fifteen days of receipt. Payment of the undisputed amount of the invoice will typically be made approximately thirty days after the invoice is submitted to the

Finance Department.

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

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

(e) Expenses not otherwise addressed in the Scope 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.

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 Public Works Director/City Engineer Mr. Brian McMinn who shall have the authority to act for the City under this Agreement. The Project Administrator or his/her authorized representative shall represent the City in all matters

pertaining to the work to be performed pursuant to this Agreement.

(b) Contractor designates [REDACTED] as its Project Manager who shall coordinate all phases of the Project. The Project manager shall be available to City at all reasonable times during the Agreement term.

(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: [REDACTED]

6. Delegation of Work.

(a) If Contractor utilizes any subcontractors other than those set forth in Exhibit A section 2, consultants, persons, employees or firms having applicable expertise to assist Contractor in performing the services under this Agreement, Contractor shall obtain City's prior written approval to such employment. Contractor's contract with any subcontractor shall contain a provision making the subcontract subject to all provisions of this Agreement. Contractor will be fully responsible and liable for the payment, administration, completion, presentation and quality of all work performed. City reserves its right to employ other contractors in connection with this Project.

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

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

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

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

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

10. Conflict of Interest.

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

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

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

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

12. Non-Discrimination.

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

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

13. Indemnification & Hold Harmless.

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

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

(c) All obligations under this section are to be paid by Contractor as incurred by City. The provisions of this Section are not limited by the provisions of sections relating to insurance including provisions of any worker's compensation act or similar act. Contractor expressly waives its statutory immunity under such statues or laws as to City, its employees and officials. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor, sub tier contractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance or subject matter of this Agreement. In the event Contractor fails to obtain such indemnity obligations from

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

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

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

14. Insurance.

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

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

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

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

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

waiver of subrogation in favor of the City is required.

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

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

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

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

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

20. **Compliance With Laws.**

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

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

(c) Contractor represents that it has obtained and presently holds all permits and licenses necessary for performance hereunder, including a Business License required by the City's

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

CONTRACTOR

By: _____
Name: Layne Long
Its: City Manager
Date: _____

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

Approved as to form:

By: _____
City Attorney

Exhibit C - Insurance

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

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

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

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

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

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

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

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

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

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

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

Contractor and City further agree as follows:

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

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

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

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

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

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

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

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

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

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

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

l) Contractor agrees to require all subcontractors or other parties hired for this Project to provide workers' compensation insurance as required herein and general liability insurance naming as additional insureds all parties to this Agreement. Contractor agrees to obtain certificates evidencing such coverage

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

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

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

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

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

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

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

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