

RESOLUTION NO. 2016-38

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA AUTHORIZING AND AWARING BID TO JOHNSON ENGINEERED SYSTEMS, INC. OF SALINAS CALIFORNIA, DOING BUSINESS AS JOHNSON ELECTRONICS FOR THE NETWORK CABLING UPGRADE PROJECT, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY SUBJECT TO APPROVAL BY THE CITY ATTORNEY

WHEREAS, the current network cabling is in need of an upgrade; and

WHEREAS, a call for bids was advertised; and

WHEREAS, the City received no bids for this project; and

WHEREAS, the City contacted Johnson Engineered Systems, Inc. doing business as Johnson Electronics who had not bid the project based on scheduling at the time the bid was due; and

WHEREAS, Johnson Electronics has the time, qualifications and experience to satisfactorily complete the work; and

WHEREAS, Johnson Electronics has previously completed the Public Safety Building Cabling Upgrade; and

WHEREAS, funding would be paid from the \$100,000 previously appropriated by City Council for "Information Technical Stabilization Project; and

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

1. Authorize the Agreement with Johnson Engineered Systems, Inc., dba Johnson Electronics of Salinas California for the Network Cabling Upgrade Project on three City owned buildings: City Hall, the Council Chambers and Community Development Building; and
2. Authorize the City Manager to execute the Agreement on behalf of the City subject to final review and approval by the City Attorney.

PASSED AND ADOPTED, at a regular meeting of the City Council of the City of Marina, duly held on the 5th day of April 2016, by the following vote:

AYES: COUNCIL MEMBERS: Amadeo, Brown, Morton, O'Connell Delgado

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

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Frank O'Connell, Mayor Pro-Tem

ATTEST:

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Anita Sharp, Deputy City Clerk

**City of Marina**  
**AGREEMENT FOR THE NETWORK CABLING UPGRADE PROJECT**  
**CITY HALL, COUNCIL CHAMBERS, COMMUNITY DEVELOPMENT**  
**BUILDINGS**  
**Marina, California 93933**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, between the City of Marina, a California charter city, hereinafter called "City," and **JOHNSON ENGINEERED SYSTEMS, INC. of Salinas, California, a California corporation doing business as JOHNSON ELECTRONICS** hereinafter called "Contractor,"

W I T N E S S E T H:

**FIRST:** Contractor hereby covenants and agrees to furnish and provide all labor, materials, tools, appliances, equipment, plant and transportation, and all other things required or necessary to be furnished, provided or done, and build, erect, deconstruct and complete the work at the time and in the manner provided, and in strict accordance with the plans and specifications therefore, for the **NETWORK CABLING UPGRADE PROJECT**, for the City.

**SECOND:** It is expressly understood and agreed that this contract consists of the following documents, all of which are incorporated into this agreement and made a part hereof as fully and completely as if set forth herein verbatim, to wit:

- a. Notice Inviting Sealed Proposals;
- b. Instructions to Bidders and General Conditions;
- c. Signed and executed Bid and Proposal of Contractor, as accepted by City;
- d. Plans and Specifications for the project;
- e. Standard Plans and Standard Specifications, City of Marina, and State of California - Standard Specifications Standard Plans – 2006 Edition
- f. Special Provisions of the Contract
- g. The Contractor's insurance
- h. Labor & Materials and Performance Bonds
- i. and this Agreement.

**THIRD:** That said Contractor agrees to receive and accept the following price as full compensation for furnishing all materials, including but not limited to high performance "Cat6A" Ethernet cabling, and for doing all the work embraced and contemplated in this Agreement and as set forth in the Proposal adopted by the City, a true copy thereof hereto attached, also, for all loss or damage arising out of the nature of said work, or from the action of the elements or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until the acceptance thereof by the City and for all risk connected with the work including, but not necessarily limited to, work occasioned or required by the condition or configuration of the exterior or interior of the buildings and structures which are the subject of the work, and for well and faithfully completing the work, and the whole thereof, in the manner and according to the said Plans and Specifications and the provisions of this Agreement, and the requirements of the Engineer under them, to wit: The price as set forth in the Proposal of said Contractor for the work to be constructed and

completed under this Agreement, which price shall not be exceeded except by a prior written amendment or change order signed by both parties to this Agreement and is repeated herein.

**\$37,922.00**

**THIRTY-SEVEN THOUSAND NINE HUNDRED AND TWENTY-TWO DOLLARS**

The undersigned Contractor further agrees to so plan the work and to prosecute it with such diligence that said work, and all of it, shall be completed on or before the expiration of the time specified in the Special Provisions after execution of the contract on behalf of the City and the receipt from the City of a notice to proceed with the work.

**FOURTH:** The City hereby promises and agrees with said Contractor to employ, and does hereby employ, said Contractor to provide the materials and to do the work according to the terms and conditions herein contained and referred to, for the price aforesaid, and hereby contracts to pay the same at the time, in the manner and upon the conditions set forth in the Specifications; and the said parties, for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

**FIFTH:** No interest in this agreement shall be transferred by the Contractor to any other party, and any such transfer shall cause the annulment of this contract, so far as the City is concerned. All rights of action, however, for any breach of this contract are reserved to City.

**SIXTH:** Contractor shall keep harmless and indemnify the City, its officers and employees and agents, from all loss, damage, cost or expense that arises or is set up for infringement of patent rights of anyone for use by the City, its officers, employees or agents, of articles supplied by the Contractor under this contract, of which he is not entitled to use or sell. Contractor agrees to, at his own cost and expense, defend in court the City, its officers, agents and employees, in any action which may be commenced or maintained against them or any of them, on account of any claimed infringement of patent rights, arising out of this agreement.

**SEVENTH:** The Contractor agrees to immediately repair and replace all defective material and workmanship discovered within one year after acceptance of final payment by Contractor and to indemnify said City against all loss and damage occasioned by any such defect, discovered within said year, even though the damage or loss may not be ascertained until after the expiration thereof. Provided, however, that if such failure of the Contractor to perform should not, by reasonable diligence, be discoverable or discovered within said one year, then the obligation of the Contractor to repair and replace said defective material or workmanship shall continue until one year after the actual discovery thereof.

**EIGHTH:** The Contractor agrees at all times during the progress of the work to carry with insurance carriers approved by the City full coverage workmen's compensation and public liability insurance. Such insurance policy shall contain an endorsement that the same shall not be canceled nor the amount of coverage be reduced until at least 30 days after receipt by the City by certified or registered mail of a written notice of such cancellation or reduction in coverage.

**NINTH:** Contractor agrees to comply with all applicable federal, state and municipal laws and regulations, including but not limited to California Labor Code Division 2, Part 7 Chapter 1.

**TENTH:**

(a) The City is subject to laws relating to public agencies which are part of this Contract as though fully set forth herein.

(b) Contractor shall comply with City of Marina Municipal Code Chapter 13.02 Local Hiring for Public Works.

(c) ) Contractor shall comply with laws relating to the work.

**ELEVENTH:**

(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, excepting only to the extent same result from the sole negligence, active negligence or willful misconduct of City, its employees, officials, or agents.

(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, excepting only to the extent liability arises from the sole negligence, active negligence or willful misconduct of City.

(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 statutes or laws as to City, its employees and officials. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor, sub tier contractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance or subject matter of this Agreement. In the event Contractor fails to obtain such indemnity obligations

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

(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.

**TWELFTH:** 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.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the year and date first above written.

**CONTRACTOR**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF MARINA**

By: \_\_\_\_\_

Layne P. Long, City Manager

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

City Attorney

Date: \_\_\_\_\_

**ATTESTED:**

By: \_\_\_\_\_  
Anita Sharp, Deputy City Clerk

Date: \_\_\_\_\_

Resolution No. **2016**

March 29, 2016

Item No. **8d(1)**

Honorable Mayor and Members  
of the Marina City Council

City Council Meeting of  
April 5, 2016

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2016-,  
AWARDING BID AND APPROVING AGREEMENT BETWEEN JOHNSON  
ELECTRONICS OF SALINAS CALIFORNIA AND THE CITY OF  
MARINA FOR THE COMPLETION OF THE NETWORK CABLING  
UPGRADE FOR THREE CITY OWNED BUILDINGS, WHICH INCLUDE  
THE COUNCIL CHAMBERS, CITY HALL AND COMMUNITY  
DEVELOPMENT DEPARTMENT BUILDINGS AND AUTHORIZE THE  
CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF  
THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE  
CITY ATTORNEY.**

**REQUEST:**

It is requested that the City Council consider:

1. Adopting Resolution No. 2016-, authorizing and awarding bid proposal to Johnson Engineering Systems, Inc. of Salinas, California, doing business as Johnson Electronics, to complete the work for the Network Cabling Upgrade Project.
2. Authorizing the City Manager to execute all contract documents on behalf of the City subject to final review and approval by the City Attorney.

**BACKGROUND:**

There are three City of Marina owned buildings, the Council Chambers, City Hall and Community Development Department which are in need of data network cabling upgrades. At this time there are not enough data ports to support the number of devices on the network. This situation is more prone to failure and slows network performance. Also, the cabling between City Hall and Public Safety is old and no longer up to the standard to perform at speeds of current networks. The cabling between City Hall and Council Chambers is old and not rated for outdoor use or direct burial.

This project was advertised and called for bids as required for public works projects. Bid opening date was scheduled for February 4, 2016. No bids were received. In accordance with Public Contract Code §20166 when no bids are received the City may proceed to done by negotiated agreement without further competitive bidding.

**ANALYSIS:**

The immediate attention to the data network cabling upgrade will ensure the City's data and

communication connections will not be lost. The new network cabling will allow for all systems to be controlled through one central building switch which will decrease failure opportunity, increase speed and allow greater management of the devices that are plugged in.

Being that no bids were received for this project, Johnson Electronics was called for a job specific proposal. Johnson Electronics had not bid the project based on scheduling at the time the bid was due.

**FISCAL IMPACT:**

The fiscal impact is \$37,922 and will be paid from the \$100,000 previously appropriated by the City Council for the “Information Technical Stabilization Project”. A Draft for Contract services is attached (**EXHIBIT A**).

**CONCLUSION:**

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

Respectfully submitted,

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Daniel Paolini, CBO  
Chief Building Official  
City of Marina

**REVIEWED/CONCUR:**

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Taven Kinison Brown,  
Acting Director, Community Development Department  
City of Marina

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Layne P. Long  
City Manager  
City of Marina