

RESOLUTION NO. 2016-78

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING RENEWAL AND AMENDMENT NO. 2 OF AGREEMENT BETWEEN CITY OF MARINA AND KEYSER MARSTON ASSOCIATES, INC. (KMA) OF SAN FRANCISCO, CALIFORNIA, FOR DEVELOPMENT SERVICES, AUTHORIZING FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES AND AUTHORIZING CITY MANAGER TO EXECUTE AMENDMENT ON BEHALF OF CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

WHEREAS, Keyser Marston Associates, Inc. (KMA) has been working with the City and former Redevelopment Agency of the City of Marina (MRA) since 2005 providing general redevelopment, housing and financial advisory services. KMA has gained specialized knowledge and has developed and maintains fiscal models pertaining to Marina in regards to the services provided, and;

WHEREAS, at a regular meeting of July 17, 2007, the City Council and former MRA Board adopted Resolution No. 2007-163 and Resolution No. 2007-23 (MRA), authorizing execution of a multi-year agreement between City, MRA and KMA for general redevelopment, housing and financial advisory services. This agreement was a multi-year agreement with a term of July 18, 2007, to June 30, 2011. The multi-year agreement required annual amendments to establish the scope of work and estimated budget for each fiscal year, and;

WHEREAS, at a regular meeting of September 20, 2011, the City Council adopted Resolution No 2011-165, approving an Agreement between City and KMA, establishing the FY 2011-12 Work Plan for general redevelopment, housing and financial advisory services. The term of this one-year agreement was July 1, 2011 to June 30, 2012, and;

WHEREAS, at a regular meeting of October 2, 2012, the City Council adopted Resolution No. 2012-148, approving Agreement between City and KMA, establishing the FY 2012-13 Work Plan for redevelopment, housing and financial advisory services. The term of this one-year agreement was July 1, 2012 to June 30, 2013, and;

WHEREAS, at a regular meeting of September 4, 2013, the City Council adopted Resolution No. 2013-125, approving an Agreement between City and KMA for Development Services (Agreement). The term of this one-year agreement was July 1, 2013 to June 30, 2014. The Agreement was entered into on October 1, 2013, and is attached to the Amendment as **Exhibit A-1** and made a part thereof, and;

WHEREAS, at a regular meeting of May 5, 2015, the City Council adopted Resolution No. 2015-50, approving Renewal and Amendment No. 1 of agreement between the City of Marina and KMA for Development Services. The term of this two-year amendment was retroactive to July 1, 2014 and to extend the term of the renewed Agreement through and including June 30, 2016, and;

WHEREAS, the proposed consultant services are essential to the City for a clear and precise understanding of business terms, financial resources, policy alternatives and obligations related to Below Market Rate (BMR) Housing Program, Strategic Development Projects and development proposals for Catalyst/Infill Projects, and;

WHEREAS, KMA is recognized as a leading firm of development services, general redevelopment/post redevelopment, housing and financial advisory services, and;

WHEREAS, the proposed Amendment No. 2 for City of Marina development services has been prepared for consideration (“**EXHIBIT A**”). KMA has provided a FY 2016-17 and 2017-18 scope of work and fee schedule and are included in the Amendment (“**ATTACHMENT A-2**”, “**ATTACHMENT B-2**”), and;

WHEREAS, services will be provided and costs incurred on an “as requested” basis. Billing for services is on a “time-and-materials basis”, and;

WHEREAS, funding for FY 2016-17 and 2017-18 costs of services is expected to be from appropriations in the General Fund 100, Economic Development Department 440 Budget, General Fund 100, Conveyance (Preston Park) Department 195 Budget and/or appropriations for Exclusive Negotiating Agreements (ENA) , Development Disposition Agreement (DDA or DA) or Fee Agreements, and;

WHEREAS, funding for FY 2016-17 and 2017-18 costs of services is expected to be from appropriations in the future FY 2016-17 and 2017-18 adopted budget in the various General Fund Division/Department budget listed and/or future appropriations for Exclusive Negotiating Agreements (ENA), Development Disposition Agreement (DDA or DA) or Fee Agreements established in FY 2016-17 and 2017-18, and;

WHEREAS, staff will submit requests for service(s); receive an estimate of cost for the requested service(s) and verify sufficient appropriations and funds are available before authorizing work to proceed, and;

WHEREAS, costs of invoices submitted by KMA will be based on actual services requested and will determine exact cost account distribution.

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

1. Approve Renewal and Amendment No. 2 of Agreement between City of Marina and Keyser Marston Associates, Inc. (KMA) of San Francisco, California, for Development Services, and;
2. Authorize Finance Director to make necessary accounting and budgetary entries, and;
3. Authorize City Manager to execute Amendment on behalf of the City subject to final review and approval by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 7th day of June 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

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

**RENEWAL AND AMENDMENT NO. 2 OF AGREEMENT
WITH KEYSER MARSTON ASSOCIATES, INC. FOR
DEVELOPMENT SERVICES**

This Amendment No. 2 ("Amendment No. 2") to the Agreement with Keyser Marston Associates for Development Services is made and entered into by and between the City of Marina, a California charter city hereinafter referred to as "City," and Keyser Marston Associates, Inc., a California corporation hereinafter referred to as the "Consultant" or "KMA," as of the ___ day of June, 2016. The City and Consultant are sometimes referred to herein singularly as a Party or collectively as the Parties. Only the numbered paragraphs of said Agreement which are being amended are set forth in this Amendment.

Recitals

- A. Consultant has been working with the City and the former Redevelopment Agency of the City of Marina ("MRA") since 2005 providing general redevelopment, housing, and financial advisory services. KMA has gained specialized knowledge and has developed and maintains financial models pertaining to the City in regards to the services provided since 2005.
- B. At a regular meeting of July 17, 2007, the City Council and MRA Board adopted Resolution No. 2007-163 and Resolution No. 2007-23 (MRA), authorizing execution of a multi-year agreement between City, the MRA, and Consultant for general redevelopment, housing and financial advisory services. The multi-year agreement required annual amendments to establish the scope of work and estimated budget for each fiscal year. This agreement was a multi-year agreement with a term of July 18, 2007, to June 30, 2011.
- C. At a regular meeting of September 20, 2011, the City Council adopted Resolution No. 2011-165, approving an Agreement between City and KMA establishing the FY 2011-12 Work Plan for general redevelopment, housing and financial advisory services. The term of this one-year agreement was July 1, 2011 to June 30, 2012.
- D. At a regular meeting on October 2, 2012, City Council adopted Resolution No. 2012-148, approving an Agreement between City and KMA establishing the FY 2012-13 Work Plan for redevelopment, housing and financial advisory services. The term of this one-year agreement was July 1, 2012 to June 30, 2013.
- E. At a regular meeting of September 4, 2013, City Council adopted Resolution No. 2013-125, approving an Agreement between City and KMA for Development Services (hereinafter referred to as the "Agreement"). The term of this one-year agreement was July 1, 2013 to June 30, 2014. The Agreement was entered into on October 1, 2013, and is attached hereto as **Exhibit A-1** and made a part hereof.
- F. At a regular meeting of May 5, 2015, the City Council adopted Resolution No. 2015-50, approving Renewal and Amendment No. 1 of agreement between the City of Marina and Keyser Marston Associates, Inc. (KMA) of San Francisco, California, for Development Services. The term of this two-year amendment was retroactive to July 1, 2014 and to extend the term of the renewed Agreement through and including June 30, 2016

- G. The Parties renewed the Agreement retroactive to July 1, 2014, and extended the term of the renewed Agreement through and including June 30, 2016 as amended by Amendment No. 1 to the Agreement.
- H. The Parties wish to further amend the renewed Agreement to provide for financial compensation to Consultant in order to continue services provided under the Agreement as amended by Amendment No. 2 for FY 2016/-17 and FY 2017-18.

Terms & Conditions

For valuable consideration, the sufficiency of which is hereby acknowledged, City and Consultant agree that the Agreement is renewed and amended on the terms and conditions set forth herein which are incorporated into the Agreement.

1. Section 1. (a-2) Added. Consultant shall fully and adequately perform, on an “as-requested basis”, services set forth in **Attachment “A-2”** attached hereto (“Scope of Work for Fiscal Year 2016-17 and 2017-18 - Annual Work Plan”) and by this reference made a part hereof. With prior written notice to the Consultant, the City may elect to authorize additional requests for services not included in Attachment A-2.
2. Section 2. (a-2) Added. The term of the Agreement is extended from July 1, 2016 until June 30, 2018 unless further extended by prior written amendment or terminated earlier as provided in the Agreement.
3. Section 3. (a-2) Added. For services to be provided under this Amendment during the period of July 1, 2016 to June 30, 2018, the City shall compensate Consultant for services rendered as-requested by the City in a writing signed by both Parties in accordance with the provisions of this Section and the Fee Schedule attached hereto as **Attachment “B-2.”**
4. Expressly as amended herein, all other provisions of the Agreement shall remain unmodified and in full force and effect.
5. The persons executing this Amendment No. 2 on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing; (ii) they are duly authorized to execute and deliver this Amendment No. 1 on behalf of said Party; (iii) by executing this Amendment No. 1, such party is formally bound to the provisions of this Amendment No. 1; and (iv) the entering into this Amendment No. 2 does not violate any provision of any other agreement to which said Party is bound.

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

CITY OF MARINA

CONSULTANT

By: _____

By: _____

Name: Layne P. Long

Name: _____

Its: City Manager

Its: _____

Date: _____

Date: _____

Attest Pursuant to Resolution No. 2016-

By: _____

Anita Sharp, Acting Deputy City Clerk

Approved as to form:

By: _____

City Attorney

ATTACHMENT A-2

Section 1 (a)

- SCOPE OF WORK -

FOR FISCAL YEAR 2016-17 and 2017-18

ANNUAL WORK PLAN

Proposed Scope of Services/Assignments:

Keyser Marston Associates, Inc. (KMA) will provide services on an “as-requested” basis. It is anticipated that the types of services may include the following:

- Assisting City staff with implementing executed Disposition and Development Agreements (DDAs);
- Evaluating the market and/or financial feasibility of proposed real estate projects;
- Assisting City staff with soliciting and/or selecting development teams for future real estate projects;
- Assisting City staff with implementing the City’s Below Market Rate (BMR) Housing Program;
- Preparing Summary Reports in accordance with Section 33433 of the California Health and Safety Code for real estate transactions;
- Assisting City staff with the negotiation of business terms related to real estate transactions;
- Evaluating the fiscal and economic impacts of proposed real estate projects;
- Assisting City staff with evaluating potential financial tools for attracting and/or retaining key businesses; and
- Assisting City staff in managing the City’s real estate assets, including reviewing the values of assets and considering disposition/management alternatives.

ATTACHMENT B-2

Fee Schedule

Consultant proposes to provide the services described in the SCOPE OF WORK on a time-and-materials basis for services rendered. All documents will be provided to the Agency in a draft and final form with a reproducible original.

**MASTER CONTRACT HOURLY FEE SCHEDULE
KEYSER MARSTON ASSOCIATES, INC.
FY 2016-17, 2017-18**

A. Jerry Keyser*	\$280.00
Managing Principals*	\$280.00
Senior Principals*	\$270.00
Principals*	\$250.00
Managers*	\$225.00
Senior Associates	\$187.50
Associates	\$167.50
Senior Analysts	\$150.00
Analysts	\$130.00
Technical Staff	\$ 95.00
Administrative Staff	\$ 80.00

Directly related job expenses not included in the above rates are: auto mileage, air fares, hotels and motels, meals, car rentals, taxis, telephone calls, delivery, electronic data processing, graphics and printing. Directly related job expenses will be billed at 110% of cost. Monthly billings for staff time and expenses incurred during the period will be payable within thirty (30) days of invoice date.

* Rates for individuals in these categories will be increased by 50% for time spent in court testimony.

**CITY OF MARINA
AGREEMENT WITH KEYSER MARSTON ASSOCIATES
FOR DEVELOPMENT SERVICES**

THIS AGREEMENT is made and entered into on October 1, 2013, by and between the City of Marina, a California charter city, hereinafter referred to as the "City" and Keyser Marston Associates, Inc. a California corporation, hereinafter referred to as the "Consultant" or "KMA". City and Consultant are sometimes individually referred to as "party" and collectively as "parties" in this Agreement.

Recitals

- A. Consultant has been working with the City and Redevelopment Agency since 2005 providing general redevelopment, housing and financial advisory services. KMA has gained specialized knowledge and has developed and maintains fiscal models pertaining to Marina in regards to the services they have provided since 2005.

At a regular meeting of July 17, 2007, the City Council and Agency Board adopted Resolution No. 2007-163 and Resolution No. 2007-23 (MRA), authorizing execution of a multi-year agreement between City of Marina, Marina Redevelopment Agency (MRA) and Keyser Marston Associates (KMA) of San Francisco, California, for general redevelopment, housing and financial advisory services. The multi-year agreement required annual amendments to establish the scope of work and estimated budget for each fiscal year. This agreement was a multi-year agreement with a term of July 18, 2007, to June 30, 2011. This multi-year agreement and any other previous agreements are now terminated in accordance with the expiration of the terms and replaced by this Agreement.

At a regular meeting of September 20, 2011, the City Council adopted Resolution No. 2011-165, approving Agreement between City of Marina and Keyser Marston Associates (KMA) of San Francisco, California, establishing the FY 2011-12 Work Plan for general redevelopment, housing and financial advisory services; authorizing the Finance Director to make necessary accounting and budgetary entries, and; authorizing the City Manager to execute the Agreement on behalf of the City subject to final review and approval by the City Attorney. The term of this one year agreement was July 1, 2011 to June 30, 2012.

At a regular meeting on October 2, 2012, City Council adopted Resolution No. 2012-148, approving Agreement between City of Marina and Keyser Marston Associates (KMA) of San Francisco, California, establishing the FY 2012-13 Work Plan for redevelopment, housing and financial advisory services, authorizing the Finance Director to make necessary accounting and budgetary entries, and; authorizing the City Manager to execute the Agreement on behalf of the City subject to final review and approval by the City Attorney. The term of this one year agreement was July 1, 2012 to June 30, 2013.

- B. City desires to retain Consultant to:

Provide redevelopment, housing and financial advisory services as set forth in the Scope of Services section of this agreement, hereinafter referred to as the "Project." The services requested of the Consultant are specialized and Consultant is an expert in the field of financial, housing, airport, and general redevelopment.

- C. Consultant represents and warrants that it has the professional qualifications, experience and personnel necessary to properly perform the services as set forth herein.
- D. City desires to retain Consultant to provide such professional 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, the City and Consultant agree to the following terms and conditions:

1. Scope of Work.

(a) Consultant is hereby hired and retained by the City to work in a cooperative manner with the City to fully and adequately perform, on an "as-requested basis", services set forth in Attachment "A" attached hereto ("Scope of Work for Fiscal Year 2013-14 Annual Work Plan") and by this reference made a part hereof. With prior written notice to the Consultant, the City may elect to authorize additional requests for services not included in Scope of Work..

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

(c) Consultant 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.

(d) The City shall cooperate with Consultant and will furnish all information data, records and reports existing and available to the City to enable Consultant to carry out work outlined in Attachment "A". Consultant 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 Consultant which were furnished to the City by a third party. Consultant shall have a duty to bring to the City's attention any deficiency or error it may discover in any information provided to the Consultant 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 July 1, 2013 and shall expire on June 30, 2014, 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, 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 Consultant by the person or persons authorized to bind the Consultant 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) Consultant commenced work on the Project on July 1, 2013. This Agreement may be extended upon written agreement of the parties. Consultant 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 Attachment A, and to perform the work in accordance with the approved schedule.

3. Compensation.

(a) The City's liability for compensation to Consultant under this Agreement shall be on a time and materials basis and only to the extent of appropriations to fund this Agreement. For services to be provided under this Agreement during Fiscal Year 2013/2014 the City shall compensate Consultant for services rendered as-requested in a writing signed by both parties in accordance with the provisions of this Section and the Fee Schedule attached hereto as Attachment "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) Consultant will maintain clearly identifiable, complete and accurate records with respect to all costs incurred under this Agreement on an industry recognized accounting basis. Consultant shall make available to the representative of the 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) Consultant shall not receive any compensation for Extra Work without the prior written authorization of the 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 (Attachment A) 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 Hourly Fee Schedule (Attachment B).

(e) Expenses not otherwise addressed in the Scope of Services or the Fee Schedule incurred by Consultant 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 Consultant.

(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 the parties 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 Consultant at the time of termination may be adjusted to cover any additional costs to the City because of the Consultant's default. If after the termination for failure of Consultant to fulfill its contractual obligations, it is determined that the Consultant 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 Consultant. Not later than the effective date of such termination or suspension, Consultant 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 Consultant 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 Consultant for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by Consultant relating to written commitments that were executed prior to the termination.

5. Project Administrator, Project Manager & Key Personnel.

(a) The City designate as their Project Administrator Christine di Iorio, Community Development Director 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) Consultant designates Ms. Debbie Kern as its Project Manager who shall coordinate all phases of the Project. The Project Manager shall be available to the City at all reasonable times during the Agreement term.

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

6. **Delegation of Work.**

(a) If Consultant utilizes any subcontractors, subconsultants, persons, employees or firms having applicable expertise to assist Consultant in performing the services under this Agreement, Consultant shall obtain the City's prior written approval to such employment. Consultant's contract with any subcontractor shall contain a provision making the subcontract subject to all provisions of this Agreement. Consultant will be fully responsible and liable for the administration, completion, presentation and quality of all work performed. If such persons are utilized, they shall be charged at cost. The City reserves the right to employ other consultants 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 subcontractor. Negligence of subcontractor 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 subcontractor 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.** Consultant 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 Consultant may obtain, receive, and review confidential or proprietary documents, information or materials that are and shall remain the exclusive property of the City. Should Consultant 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 Consultant that any such confidential or proprietary information or materials shall not be provided or disclosed in any manner to any of Consultant'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 Consultant, or any subcontractor of any tier, under this Agreement with the exception of computer models previously developed by Consultant shall be and remain the property of the City for its use in any manner they deem appropriate. Consultant 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. Consultant 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. Consultant 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. Consultant 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. Consultant shall be permitted to maintain copies of all such data for its files. The City acknowledge that their use of the work product is limited to the purposes contemplated by the Scope of Work and, should the 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 Consultant. Consultant 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 Consultant's deliverables is waived against Consultant unless the City has given Consultant prior written notice of the changes and has received Consultant's written consent to such changes.

10. Conflict of Interest.

(a) Consultant 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 Consultant's performance of services under this Agreement. Consultant 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 subconsultant without the express written consent of the City Manager. Consultant 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. Consultant shall represent the interest of the City in any discussion or negotiation with real estate brokers, sales persons, developers, property owners, retailers, and all other professionals in the real estate development field, and as such, may not accept compensation, commission or payment of any type from any such party or such party's agent.

(b) The City understand and acknowledge that Consultant 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. Consultant 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 the 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. Consultant 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 Consultant 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, Consultant 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. Consultant shall give written notice of its obligations under this clause to labor organizations with which it has a collective bargaining or other agreement.

(b) Consultant 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, Consultant shall indemnify, defend (with independent counsel reasonably acceptable to the City) and hold harmless the City, its Council, boards, commissions, employees, officials and agents ("Indemnified Parties" or in the singular "Indemnified Party") from and against all suits and causes of action, 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 negligence, recklessness, or willful misconduct in performance of this Agreement by Consultant, its officers, employees, agents and sub-consultants, excepting only and to the extent that resulting from the sole negligence, active negligence or willful misconduct of the 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, Consultant shall indemnify, protect, defend (with independent counsel reasonably acceptable to the City) and hold harmless the 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 Consultant, or the acts or omissions of an officer, employee, agent or subconsultant of the Consultant, excepting only and to the extent liability arising from the sole negligence, active negligence or willful misconduct of the City.

(c) All obligations under this section are to be paid by Consultant as incurred by the 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. Consultant expressly waives its statutory immunity under such statutes or laws as to the City, its employees and officials. Consultant 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 Consultant in the performance or subject matter of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this section. Failure of the City to monitor compliance with these requirements imposes no additional obligations on the 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 Consultant has agreed to defend the Indemnified Party, as provided above, Consultant, upon notice from the City, shall defend any Indemnified Party at Consultant'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 the City, as set forth herein, is binding on the successors, assigns, or heirs of Consultant 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 Consultant's indemnification of the City, Consultant agrees to obtain and maintain in full force and effect at its own expense the insurance policies set forth in Attachment "C" "Insurance" attached hereto and made a part hereof. Consultant 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 as to form and content as to form and content. Specifically, such insurance shall: (1) protect the City as an additional insured for commercial general and business auto liability; (2) provide the 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 the City's insurance program. Consultant'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 Consultant ninety days advance written notice of such change. If such change should result in substantial additional cost of the Consultant, the City agrees to negotiate additional compensation proportional to the increased benefit to the City.

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

(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 Consultant'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, Consultant'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 the City may immediately suspend or terminate this Agreement or, at its discretion, procure or renew such insurance to protect the City's interests and pay any and all premium in connection therewith and recover all monies so paid from Consultant.

(e) By signing this Agreement, Consultant 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 Consultant, its officers, employees and agents, if any, shall be independent contractors with regard to the providing of services under this Agreement, and that Consultant'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 the City provides for their employees. The City shall make no deductions for payroll taxes or Social Security from amounts due Consultant for work or services provided under this Agreement.

16. Claims for Labor and Materials. Consultant 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 Consultant hereunder), against the Consultant'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. Consultant 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 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. Consultant 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, Consultant 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.

(c) Consultant represents that it has obtained and presently holds all permits and licenses necessary for performance hereunder, including a Business License required by the City's Business License Ordinance. For the term covered by this Agreement, the Consultant 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 Consultant: Ms. Debbie Kern
 Keyser Marston Associates, Inc.
 ~~55 Pacific Avenue Mall~~ 160 PACIFIC AVENUE, SUITE 204
 San Francisco, CA 94111
 Fax (415) 397-5065

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 the City and Consultant.

24. Force Majeure. Notwithstanding any other provisions hereof, neither Consultant nor the 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 Consultant's or the City's control. Such causes include but are not limited to: strike, fire, flood, civil disorder, act of God or of the public enemy, act of the federal government, or any unit of state or local government in either sovereign or contractual capacity, epidemic, quarantine restriction, or delay in transportation to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

25. Attorney's Fees. In the event of any controversy, claim or dispute relating to this Agreement, 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. Consultant 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 work days. 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, Consultant and City by their duly authorized representatives, have executed this Agreement, on the date first set forth above, at Marina, California.

"CITY"
CITY OF MARINA

By: 
Layne P. Long
Its: City Manager _____
Date: 10/1/13

Attest: (Pursuant to Reso: 2013-125)

By: 
Acting Deputy City Clerk

Approved as to form:

By: 
for the City Attorney

"CONSULTANT"
KEYSER MARSTON ASSOCIATES, INC.

By: 
Name: DEBBIE M. KERN
Date: 9/9/13

ATTACHMENT A

Section 1 (a)

- SCOPE OF WORK -

FOR FISCAL YEAR 2013-14

ANNUAL WORK PLAN

Proposed Scope of Services/Assignments:

Keyser Marston Associates, Inc. (KMA) will provide services on an "as-requested" basis. It is anticipated that the types of services may include the following:

- Assisting City staff with implementing executed Disposition and Development Agreements (DDAs);
- Evaluating the market and/or financial feasibility of proposed real estate projects;
- Assisting City staff with soliciting and/or selecting development teams for future real estate projects;
- Assisting City staff with implementing the City's Below Market Rate (BMR) Housing Program;
- Preparing Summary Reports in accordance with Section 33433 of the California Health and Safety Code for real estate transactions;
- Assisting City staff with the negotiation of business terms related to real estate transactions;
- Evaluating the fiscal and economic impacts of proposed real estate projects;
- Assisting City staff with evaluating potential financial tools for attracting and/or retaining key businesses; and
- Assisting City staff in managing the City's real estate assets, including reviewing the values of assets and considering disposition/management alternatives.

ATTACHMENT B

**Section 3 (a)
- Fee Schedule -**

Consultant proposes to provide the services described in the SCOPE OF WORK on a time-and-materials basis for services rendered. In appreciation of our long-term relationship with Marina, we will provide a 10% discount to the following standard rate schedule. All documents will be provided to the Agency in a draft and final form with a reproducible original.

**MASTER CONTRACT HOURLY FEE SCHEDULE
KEYSER MARSTON ASSOCIATES, INC.
2013/14**

A. Jerry Keyser*	\$280.00
Managing Principals*	\$280.00
Senior Principals*	\$270.00
Principals*	\$250.00
Managers*	\$225.00
Senior Associates	\$187.50
Associates	\$167.50
Senior Analysts	\$150.00
Analysts	\$130.00
Technical Staff	\$ 95.00
Administrative Staff	\$ 80.00

Directly related job expenses not included in the above rates are: auto mileage, air fares, hotels and motels, meals, car rentals, taxis, telephone calls, delivery, electronic data processing, graphics and printing. Directly related job expenses will be billed at 110% of cost. Monthly billings for staff time and expenses incurred during the period will be payable within thirty (30) days of invoice date.

* Rates for individuals in these categories will be increased by 50% for time spent in court testimony.

Consultant proposes to provide the services described in the SCOPE OF WORK on a time-and-materials basis for services rendered in accordance with the following rates. All documents will be provided to the Agency in a draft and final form with a reproducible original.

ATTACHMENT 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. 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.

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

Errors and Omissions/Professional Liability. Errors and Omissions or professional liability coverage appropriate to Contractor's profession, in a form and amount approved by the City Attorney, will be specified on a project-by-project basis if Contractor is working as a licensed professional. Contractor shall maintain such insurance for a period of five years following completion of the project. Such insurance shall be in an amount of not less than one million dollars (\$1,000,000) per claim and in annual aggregate. Design professionals shall maintain such insurance in place until the expiration of the warranty period of the Project.

Contractor and City further agree as follows:

a) This Attachment 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 Attachment.

b) Nothing contained in this Attachment is to be construed as affecting or altering the legal status of the parties to this Agreement. The insurance requirements set forth in this Attachment 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 Attachment 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, 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 one million dollars (\$1,000,000) each occurrence for at least three years following substantial completion of the work.

May 24, 2016

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

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of June 7, 2016

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2016-,
APPROVING RENEWAL AND AMENDMENT NO. 2 OF AGREEMENT
BETWEEN CITY OF MARINA AND KEYSER MARSTON ASSOCIATES, INC.
(KMA) OF SAN FRANCISCO, CALIFORNIA, FOR DEVELOPMENT
SERVICES, AUTHORIZING FINANCE DIRECTOR TO MAKE NECESSARY
ACCOUNTING AND BUDGETARY ENTRIES AND AUTHORIZING CITY
MANAGER TO EXECUTE AMENDMENT ON BEHALF OF 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-, approving Renewal and Amendment No.2 of Agreement between City of Marina and Keyser Marston Associates, Inc. (KMA) of San Francisco, California, for Development Services, and;
2. Authorizing Finance Director to make necessary accounting and budgetary entries, and;
3. Authorizing City Manager to execute Amendment on behalf of the City subject to final review and approval by the City Attorney.

BACKGROUND:

Keyser Marston Associates (KMA) has been working with the City and former Redevelopment Agency of the City of Marina (MRA) since 2005 providing general redevelopment, housing and financial advisory services. KMA has gained specialized knowledge and has developed and maintains fiscal models pertaining to the City in regards to the services provided.

At a regular meeting of July 17, 2007, the City Council and former MRA Board adopted Resolution No. 2007-163 and Resolution No. 2007-23 (MRA), authorizing execution of a multi-year agreement between City, MRA and KMA for general redevelopment, housing and financial advisory services. This agreement was a multi-year agreement with a term of July 18, 2007, to June 30, 2011. The multi-year agreement required annual amendments to establish the scope of work and estimated budget for each fiscal year.

At a regular meeting of September 20, 2011, the City Council adopted Resolution No 2011-165, approving an Agreement between City and KMA, establishing the FY 2011-12 Work Plan for general redevelopment, housing and financial advisory services. The term of this one-year agreement was July 1, 2011 to June 30, 2012.

At a regular meeting of October 2, 2012, the City Council adopted Resolution No. 2012-148, approving Agreement between City and KMA, establishing the FY 2012-13 Work Plan for redevelopment, housing and financial advisory services. The term of this one-year agreement was July 1, 2012 to June 30, 2013.

At a regular meeting of September 4, 2013, the City Council adopted Resolution No. 2013-125, approving an Agreement between City and KMA for Development Services (Agreement). The term of this one-year agreement was July 1, 2013 to June 30, 2014. The Agreement was entered into on October 1, 2013, and is attached to the Amendment as **Exhibit A-1** and made a part thereof.

At a regular meeting of May 5, 2015, the City Council adopted Resolution No. 2015-50, approving Renewal and Amendment No. 1 of agreement between the City of Marina and Keyser Marston Associates, Inc. (KMA) of San Francisco, California, for Development Services. The term of this two-year amendment was retroactive to July 1, 2014 and to extend the term of the renewed Agreement through and including June 30, 2016.

ANALYSIS:

The proposed consultant services are essential to the City for a clear and precise understanding of business terms, financial resources, policy alternatives and obligations related to real estate proposals, Preston Park negotiations, negotiations and implementation of Development Agreements and Below Market Rate (BMR) Housing Program.

KMA has gained specialized knowledge and has developed and maintains fiscal models pertaining to the City of Marina in regards to services provided since 2005. Therefore, the City desires to retain KMA for these services.

The proposed Amendment No. 2 for City of Marina development services has been prepared for consideration (“**EXHIBIT A**”). KMA has provided a FY 2016-17 and 2017-18 scope of work and proposed budget with fee schedule and are included in the Amendment (“**ATTACHMENT A-2**”, “**ATTACHMENT B-2**”).

Services will be provided and costs incurred on an “as requested” basis. Billing for services is on a “time-and-materials basis”.

FISCAL IMPACT:

Should the City Council approve this request, funding for FY 2016-17 and 2017-18 costs of services is expected to be from appropriations in the General Fund 100, Economic Development Department 440 Budget, General Fund 100, Conveyance (Preston Park) Department 195 Budget and/or appropriations for Exclusive Negotiating Agreements (ENA) , Development Disposition Agreement (DDA or DA) or Fee Agreements.

Funding for FY 2016-17 and 2017-18 costs of services is expected to be from appropriations in the future FY 2016-17 and 2017-18 adopted budgets in the various General Fund Division/Department budgets listed and/or future appropriations for Exclusive Negotiating Agreements (ENA), Development Disposition Agreement (DDA or DA) or Fee Agreements established in FY 2016-17 and 2017-18.

Staff will submit requests for service(s); receive an estimate of cost for the requested service(s) and verify sufficient appropriations and funds are available before authorizing work to proceed.

Costs of invoices submitted by KMA will be based on actual services requested and will determine exact cost account distribution.

CONCLUSION:

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

Respectfully submitted,

Layne P. Long
City Manager
City of Marina