



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
June 19, 2013**

TO: Mayor and City Council
FROM: Philip Vince, City Manager
SUBJECT: Agreement for Marina Consultant Services
DATE: June 12, 2013

RECOMMENDATION:

Approve agreement with Mitch Austin (Michelle Wierschem) for consultant services on the Marina project for the period of July 1, 2013 to December 31, 2013.

BACKGROUND:

The project to rehabilitate and develop the marina and the waterfront area continues and requires dedicated personnel to manage it as it enters a critical phase. Due to previous work with the City and the marina, Mitch Austin is very familiar with the project and its related challenges. Per the terms of the attached agreement and scope of services, Consultant shall perform the following:

1. Manage marina project and marina related upland conceptual planning:
 - a. Coordinate with Department of Boating and Waterways and related agencies in developing a conceptual plan for the marina waterside recreational boating and related upland activities as needed.
 - b. Coordinate with City Staff to work with Senator Wolk's Office and related agencies to create a legislative bill granting marina lands to the City.
 - c. Spearhead Dredge Pond Mitigation Plan development to be completed by September 15, 2013.
 - d. Provide analysis and review of operational statements submitted to the City from the marina operator on a quarterly basis.
 - e. Organize and coordinate Marina Subcommittees as needed.

2. City Council meeting support:
 - a. Develop and present reports as needed.
 - b. Provide weekly updates to City Manager for notable activities.
 - c. Attend closed session meetings when appropriate.

FISCAL IMPACT:

The agreement is for a not-to-exceed amount of \$29,500. On October 17, 2012, the City Council allocated \$125,000 for a Marina Land Master Plan. The funding for this agreement shall be paid from the remaining amount of \$84,530.

ACTION:

Motion to approve agreement with Mitch Austin for consultant services on the Marina project.

Attachment:

Agreement for Consultant Services

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT, made and entered into this 1st day of July, 2013 by and between the CITY OF MARTINEZ, hereinafter referred to as CITY, and Michelle Wierschem hereinafter referred to as CONSULTANT, whose address is 3113 Churchhill Road, Sacramento, CA 95864. The CITY and CONSULTANT hereby agree as follows:

SPECIFIC PROVISIONS

1. **DESCRIPTION OF PROJECT**

Manage marina project and upland conceptual planning, grant development and City Council meeting support.

2. **SCOPE OF SERVICES TO BE PROVIDED BY CONSULTANT**

The services provided by Consultant shall include project management support for the marina, including operational and conceptual plan development; coordination with City staff and external agencies; grant development and management; and City Council meeting support. The complete scope of services is incorporated herein by reference as Exhibit "A."

3. **PAYMENT**

a. **Compensation:**

CITY hereby agrees to pay Consultant a total sum not to exceed Twenty-Nine Thousand Five Hundred Dollars (\$29,500.00), notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable expenses incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's Proposal to CITY, attached as Exhibit A, regarding the amount of compensation, this Agreement shall prevail. CITY shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth below. The payments specified below shall be the only payments from to CITY to consultant for services rendered pursuant to this Agreement. Except as specifically authorized by CITY, Consultant shall not bill CITY for duplicate services performed by more than one person.

Consultant and CITY acknowledge and agree that compensation paid by CITY to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its

employees, agents, and subcontractors may be eligible. CITY therefore has no responsibility for such contributions beyond compensation required under this Agreement.

b. Time of Payment

Provided CONSULTANT is not otherwise in default under this Agreement, and subject to the maximum compensation set forth in paragraph (a) above, CONSULTANT shall be compensated monthly based on the time spent during the previous month for which an itemized invoice shall have been submitted. CITY agrees to pay Consultant within thirty (30) days of receipt of monthly invoices.

Consultant shall submit invoices, not more often than twice a month during the term of this Agreement, based on the cost for services performed and reimbursable expenses incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, and the balance available under the Agreement;
- At the option of the CITY, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services.
- The Consultant's signature.

CITY shall make incremental payments, based on invoices received, at the rates specified within the attached Exhibit B, for services satisfactorily performed, and for authorized reimbursable expenses incurred. CITY shall have 30 days from the receipt of an invoice that complies with all of the requirements of Section 2.1 to pay Consultant.

CITY shall pay the last 10% of the total sum due pursuant to this Agreement within thirty (30) days after completion of the services and submittal of a final invoice, if all services required have been satisfactorily performed. CITY shall pay for the services to be rendered by Consultant pursuant to this Agreement. CITY shall not pay any additional sum for any expense whatsoever incurred by Consultant in rendering services pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

4. INTENTIONALLY OMITTED

5. TIME OF COMPLETION

The CONSULTANT shall perform the work described in paragraph 2 in accordance with the project period contained in Exhibit A, attached hereto and incorporated herein, commencing upon execution of this contract and continuing until December 31, 2013, or project completion. CONSULTANT project time allocation is estimated to be approximately 15-18 hours per week.

6. CONSULTANT and the CITY agree the schedule in Paragraph 5 above represents their best estimates with respect to completion dates and both CONSULTANT and CITY acknowledge that departures from the schedule may occur. Therefore, both CONSULTANT and CITY will use reasonable efforts to notify one another of changes to the schedule. Any proposed change in the schedule, including a change based on the events described in Section 7, immediately below, shall be delivered to the other party in writing. Any such proposed change by one party shall be subject to the approval of the other party; provided, however, that any such approval may not be withheld unreasonably. The person executing this Agreement on behalf of the CITY shall have the authority to agree to extensions proposed by the CONSULTANT.

7. CONSULTANT shall not be responsible for performance delays caused by others, or delays beyond CONSULTANT'S control, and such delays shall extend the times for performance of the work by CONSULTANT.

GENERAL PROVISIONS

1. The status of CONSULTANT is that of an independent contractor operating having control of his/her work and the manner in which it is performed. CONSULTANT is not considered to be an officer, an employee, or an agent of CITY, nor shall he/she hold him/herself out as or represent that he/she is an officer, employee, or agent of the CITY. CONSULTANT is required to obtain a business license with the CITY. A copy of the business license application is included as Exhibit D.

2. The CONSULTANT agrees that he/she/it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement, and that he/she/it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts, or any other

considerations, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the CITY shall have the right to annul and cancel this Agreement without liability of any sort and/or, in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage brokerage fee, gift, or contingent fee.

All reports, drawings, calculations, plans, specifications, and other documents prepared or obtained pursuant to the terms of this Agreement shall be endorsed by Consultant and delivered to and become the property of the CITY with the exception of proprietary/copyrighted information (as in agreements or software services). In addition, data prepared or obtained under this Agreement shall be made available, upon request, to the CITY. The foregoing notwithstanding, said documents, plans, etc. which are site specific for the subject project, shall not be used for any other work without the consent of Consultant, which consent shall not be unreasonably withheld.

Consultant and his/her/its subconsultants shall keep and maintain full and complete documentation and accounting records, including all records, employees' time sheets and correspondence pertaining to this Agreement. The Consultant shall make such documents and records available for review and/or audit evaluation by representatives of the CITY at all reasonable times during the contract period and for at least four (4) years from the date of final payment. Upon written request by the CITY, the Consultant shall provide the CITY with copies of all pertinent reports and correspondence.

3. CONSULTANT shall provide properly skilled professional and technical personnel to perform all services under this contract. The CONSULTANT shall not engage the services of any person or persons now employed by the CITY, except with the written permission of the CITY. Except as otherwise herein provided, the CONSULTANT shall not assign or sublet any portion of the services to be performed under this Agreement without the prior written consent of the CITY. Said consent may be withheld with or without reasons. In the event that the CITY, in writing, approves any assignment or subletting of this Agreement or the retention of sub-consultants by CONSULTANT, the CONSULTANT shall provide to the CITY copies of each and every sub-consultant contract prior to the execution thereof by the CONSULTANT and sub-consultant.
4. CONSULTANT shall comply with all Federal, State and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement, including without limitation laws requiring licensing and non-discrimination in employment because of race, creed, color, sex, age, marital status, physical or mental disability, national origin or other prohibited bases.
5. All changes and/or extra work shall be performed and paid for in accordance with the following:
 - a. Only the CITY Manager may authorize extra and/or changed work. CONSULTANT expressly recognizes that other CITY personnel are without authorization to either order extra and/or changed work or waive contract

requirements. Failure of CONSULTANT to secure the CITY Manager's prior, written authorization for such extra and/or changed work shall constitute a waiver of any and all right to adjustment in contract price due to such unauthorized work and CONSULTANT thereafter shall be entitled to no compensation whatsoever for performance of such work.

- b. If the CONSULTANT is of the opinion that any work he has been directed to perform is beyond the scope of this Agreement and constitutes extra work, he shall promptly notify the CITY Manager of the fact. The CITY Manager shall make a determination as to whether or not such work is, in fact, beyond the scope of this Agreement and constitutes extra work. In the event that the CITY Manager determines that such work does constitute extra work, the CITY shall provide compensation to the CONSULTANT on a fair and equitable basis. A Supplemental Agreement providing for such compensation for extra work shall be negotiated between the CITY and the CONSULTANT. Such Supplemental Agreement shall be executed by the CONSULTANT and be approved by the necessary CITY officials.
 - c. In the event the CITY Manager determines that such work does not constitute extra work, CONSULTANT shall not be paid extra compensation above that provided herein. The determination of the CITY Manager may be appealed to the City Council as long as a written appeal is submitted to the CITY Manager within five (5) days after the date of the CITY Manager's determination. Said written appeal shall include a description of each and every ground upon which CONSULTANT challenges the CITY Manager's determination.
6. CITY has relied upon the professional ability and training of CONSULTANT as a material inducement to enter into this Agreement. Consultant shall perform in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that payment for or acceptance of CONSULTANT'S work by CITY shall not operate as a waiver or release. CONSULTANT shall indemnify and hold harmless the CITY from and against any and all claims or expenses caused or occasioned directly or indirectly by CONSULTANT'S failure to so perform.
7. CONSULTANT assumes all responsibility for damages to property or injury or death to persons caused by the negligent performance errors or omissions of CONSULTANT and/or his/her agents or employees. To the extent permitted by law, CONSULTANT shall indemnify, hold harmless, release and defend CITY, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, failure to comply with any current or prospective laws, and expenses including attorneys' fees and other defense costs or liabilities of any nature that may be asserted by any person or entity including CONSULTANT from any cause whatsoever including another's concurrent negligence arising out of or in any way connected with the activities of CONSULTANT, his employees and agents hereunder and regardless of CITY'S passive negligence. CITY agrees to provide CONSULTANT with reasonable notification of legal claims and/or lawsuits which CITY may receive and for which CITY will request indemnification under this paragraph.

This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for CONSULTANT under Workers' Compensation, disability or other employee benefits acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitations of any insurance held by CONSULTANT.

8. Without limiting CONSULTANT'S indemnification provided hereunder, CONSULTANT shall take out and maintain at all times during the life of this contract, up to the date of acceptance of the work by the CITY, the following policies of insurance:

Automobile liability coverage in an amount no less than \$1 million dollars combined, single limit personal injury and property damage for each occurrence. CONSULTANT shall submit to CITY documentation evidencing its required insurance, a copy of which is attached as Exhibit "C".

9. The CITY shall furnish the CONSULTANT, to the extent that they are available, CITY standards, details, specifications, and regulations applying to the Project and other such information which may be helpful to the CONSULTANT in performance of its service. Any and all additional data necessary for design shall be the responsibility of the CONSULTANT.

10. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the CITY within its sole discretion upon written notice to CONSULTANT. CONSULTANT may terminate this Agreement upon thirty (30) days' written notice to the CITY only for good cause, including without limitation, CONSULTANT'S serious illness or material breach of this Agreement by the CITY. CONSULTANT'S written notice of termination shall contain a full explanation of the facts and circumstances constituting good cause. Upon termination, all finished and unfinished documents, project data and reports shall, at the option of the CITY, become its sole property and shall, at CONSULTANTS' expense, be delivered to the CITY or to any party the CITY may so designate. In the event of termination by CONSULTANT, CONSULTANT shall only be compensated for all work CONSULTANT satisfactorily performs prior to the time CONSULTANT delivers to the CITY the termination notice, unless other arrangements are agreed to by the CITY. In the event of termination by the CITY, CONSULTANT shall be compensated for all work satisfactorily performed prior to the time CONSULTANT receives the termination notice, and shall be compensated for all materials ordered by CONSULTANT, and services of others ordered by CONSULTANT prior to receipt of the CITY'S termination notice, whether or not such materials or instruments of services of others have actually been delivered to CONSULTANT or to the CITY, provided that CONSULTANT is not able to cancel such orders for materials or services of others. In the event this Agreement is terminated pursuant to this section, CONSULTANT shall not be entitled to any additional compensation over that provided herein; nor shall CONSULTANT be entitled to payment for alleged damages or injuries (including lost opportunity damages) purportedly caused by the termination of this Agreement by the CITY pursuant to this section.

11. Should the CONSULTANT fail to perform any of its obligations hereunder, within the time and in the manner provided or otherwise violate any of the terms of this Agreement, the CITY may terminate this Agreement by giving written notice of such termination, stating the reasons for such termination in such event. CONSULTANT shall be compensated as above, provided, however, there shall be deducted from such amount the amount of damage, if any, sustained by CITY by virtue of the CONSULTANT'S breach of this Agreement.
12. This Agreement shall inure to the benefit of, and be binding upon, the successors in interest, legal representatives, trustees, and permitted assigns of either party.
13. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to included terms and a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure, section 1856. No modification hereof shall be effective unless and until such modification is evidenced by a writing signed by parties to this Agreement.
14. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed **return** has not been received. After receipt of a demand for assurance, either party's failure to provide within a reasonable time but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances is a breach of this Agreement by that party. Acceptance of any improper delivery of service or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.
15. All notices permitted or required hereunder shall be addressed as follows:

If to the CITY:	Philip Vince CITY Manager CITY of Martinez 525 Henrietta Street Martinez, CA 94553
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16. This Agreement shall be construed in accordance with the law of the State of California. Venue shall be in the County of Contra Costa.

If to the CONSULTANT:	Michelle Wierschem 3113 Churchill Road Sacramento, CA 95864
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IN WITNESS WHEREOF, the parties hereby have executed this Agreement on the day first above written in the CITY OF MARTINEZ, California.

CITY OF MARTINEZ
A Municipal Corporation

Date: _____

By: _____
Philip Vince, City Manager

CONSULTANT is a corporation duly organized and validly existing and in good standing under the laws of the State of California, and is authorized to perform the services under this agreement. The corporate officer executing this agreement has been authorized and directed to do so by corporate resolution.

Date: _____

By: _____
Consultant

Attachments:

- Exhibit A: Scope of Services
- Exhibit B: Terms of Payment
- Exhibit C: Business License Application

Exhibit A

Consultant: Michelle Wierschem

Scope of Services – Manage marina project and upland conceptual planning and City Council meeting support.

Project Period -- July 1, 2013 – December 31, 2013

Project Estimated Time Allocation – approximately 15 – 18 hours per week

Michelle Wierschem provides the following services:

1. Manage marina project and marina related upland conceptual planning
 - a. Coordinate with Department of Boating and Waterways and related agencies in developing a conceptual plan for the marina waterside recreational boating and related upland activities as needed
 - b. Coordinate with City Staff to work with Senator Wolk's Office and related agencies to create a legislative bill granting marina lands to the City.
 - c. Spearhead Dredge Pond Mitigation Plan development to be completed by September 15, 2013
 - d. Provide analysis and review of operational statements submitted to the City from the marina operator on a quarterly basis
 - e. Organize and coordinate Marina Subcommittees as needed

2. City Council meeting support
 - a. Develop and present reports as needed
 - b. Provide weekly updates to City Manager for notable activities
 - c. Attend closed session meetings when appropriate

Exhibit B

Consultant: Michelle Wierschem

- Hourly Rate: \$70.00
- Services billed on the ½ hour
- Travel to meetings outside of Martinez shall be billed at the hourly rate
- Paid per the City of Martinez Accounts Payable Schedule

Exhibit C



2013 Business License Application

CITY OF MARTINEZ

Professional (03)

525 Henrietta St, Martinez, CA 94553

(925) 372-3576 or Fax (925) 372-3480 email: businesslicense@cityofmartinez.org

Business Name _____

Sole Partnership Corporation Other: _____

(OWNERSHIP – circle one)

Business Location _____

Business Start Date: _____

Describe Business

Activity _____

Business Tax Payer Identification Number _____

(SSN OR FEIN THAT WILL BE USED FOR STATE & FEDERAL TAX FILINGS)

Fictitious File # _____

Seller's Permit # _____

State Tax ID _____

Owner/Officer 1 Name _____

Title _____

Home Address _____

(NOT A P O BOX)

City _____ State _____ Zip Code _____

Bus. Phone _____ Alt. Phone _____

Email _____

I declare under penalty of perjury that I am authorized to make this application and that to the best of my knowledge and belief, all the information given is true, accurate, and complete. I also fully understand that the filing of this application and the payment of a tax does NOT constitute the issuance of a business license and does NOT entitle me to commence or carry on any business in the City of Martinez.

Applicant's signature

Date

*****2013 TAX CALCULATION*****

TAXES ARE VALID FROM JANUARY 1, 2013 TO DECEMBER 31, 2013

Business (includes one principal/associate).....\$ 321.00

plus (+) ____ additional associates or principals at \$135.00 each \$_____

plus (+) ____ employees** working in the City at \$32.00 each.....\$_____

ANNUAL TAX (add all lines)\$_____ (A)

PENALTY, if applicable\$_____

(10% Penalty if paid after 1/31/2013; 20% Penalty if paid after 2/28/2013; 25% Penalty if paid after 3/31/2013).

TOTAL TAX with penalty\$_____

AMOUNT TO PAY - from (A)\$_____

California SB 1186 State Mandated Fee *\$ 1.00

TOTAL AMOUNT DUE\$

*On September 19, 2012, Governor Brown signed into law Senate Bill 1186 which adds a state fee of \$1.00 on any applicant for a local business license or renewal. Effective January 1, 2013 this fee will be required from all new business licenses or renewals. The purpose of the fee is to provide a funding source for increased disability access and compliance with construction-related accessibility requirements and to develop educational resources for businesses in order to facilitate compliance with the federal and state disability laws.

Under federal and state law, compliance with disability access laws is a serious and significant responsibility that applies to all California building owners and tenants with buildings open to the public. You may obtain information about your legal obligations and how to comply with disability access laws at the following agencies:

- The Division of the State Architect at www.dgs.ca.gov/dsa/Home.aspx.
- The Department of Rehabilitation at www.rehab.cahwnet.gov.
- The California Commission on Disability Access at www.cdda.ca.gov.