



Town of Atherton

CITY COUNCIL STAFF REPORT – CONSENT AGENDA

TO: HONORABLE MAYOR AND CITY COUNCIL

**FROM: GEORGE RODERICKS, CITY MANAGER
THERESA DELLASANTA, CITY CLERK**

DATE: JUNE 18, 2014

SUBJECT: NEAL MARTIN & ASSOCIATES CONTRACT

RECOMMENDATION

Approve contract with Neal Martin & Associates and authorize the City Manager to execute the contract on behalf of the Town.

BACKGROUND

The Town contracts with Neal Martin & Associates for professional planning services. The services include assistance with public inquiries, review of building permit plans for conformity with the zoning code, preparation of staff reports and minutes for the Planning Commission and Environmental Programs Committee, preparation of staff reports for the City Council, preparation of environmental review documents and periodic updates to the zoning code and general plan (including housing element).

To assist the Town with planning functions, the firm provides employees on an as-needed basis under the direction of the City Manager. Neal Martin previously served as the Town Planner. Lisa Costa Sanders previously served as the Deputy Town Planner, averaging 54 hours/per month. Andrea Mardesich currently serves as an Associate Planner, averaging 100 hours/per month. The firm also provides an additional Assistant Planner on an as-needed basis who is available during peak workload periods and vacation coverage rather than utilize the services of the Town Planner for these functions.

In an attempt to provide more cost effective services, the Associate Planner is trained to prepare and present staff reports before the Planning Commission as well as research and survey assistance. The Associate Planner duties have evolved over the last year to include recycle liaison and assist the public works department with storm water reporting and inspections.

The firm bills based on actual hours worked under the direction of the City Manager. Reimbursable materials are billed at actual cost. The City Council last approved a 4% rate increase in 2008.

FINDINGS

The current contract with Neal Martin & Associates was outdated (2004) and in need of modernization. It was a contract of indefinite term with a 30-day termination clause. The City Attorney reviewed the contract and updated it. The attached contract provides for a 3-year term with a year-to-year renewal unless either party provides a notice of intent not to renew with at least 90 days notice.

Staff also negotiated a more detailed and updated Scope of Services that includes a number of performance measures to address plan check reviews, active construction inspections for NPDES compliance, and public education.

Billing rates had not been adjusted since 2008. At that time, Neal Martin served as the Town's principal planner at \$150.50 per hour. The company transitioned to Lisa Costa Sanders who had previously served as the Town's Deputy Planner at \$102.50 per hour. Currently, Lisa serves as the Town's primary contact and planner.

The billing rates have been adjusted by 5%. Neal has been transitioned to Planner of Counsel with no change in rate. The services provided by Neal are Ad Hoc and primarily special project related. The rates for the two primary positions now used by the Town – Town Planner (Lisa) and Associate Planner (Andrea) have also been adjusted. It is not anticipated that there will be any significant increase in planning costs for the Town. The Deputy Town Planner position has been eliminated.

Staff conducted an informal survey to benchmark the rates against a couple of planning firms actively working in San Mateo County. Rates for comparable relevant positions range as follows:

Position	Hourly Rate Range
Town Planner	\$130 to \$175 per hour
Senior Planner	\$120 to \$150 per hour
Associate Planner	\$75 to \$100 per hour

In 2012, staff personally contacted two firms to benchmark the cost of services. Both firms advised that they could not provide the coverage or service levels at similar costs. Staff believes the revised contract, rates, and scope of services is reasonable and provides the community with continued quality service.

ATTACHMENT

Neal Martin & Associates Contract

**AGREEMENT WITH NEAL MARTIN & ASSOCIATES
FOR CONTRACT PLANNING SERVICES**

This Agreement, made and entered into this __ day of _____, 2014, by and between the TOWN OF ATHERTON, a municipal corporation existing under the laws of the State of California ("TOWN"), and, NEAL J. MARTIN & ASSOCIATES, ("CONTRACTOR") for provision of certain municipal planning services.

RECITALS:

- A. TOWN desires certain contract planning services hereinafter described.
- B. TOWN desires to engage CONTRACTOR to provide these contract services by reason of its qualifications and experience for performing such services and CONTRACTOR has offered to provide the required services on the terms and in the manner set forth herein.
- C. CONTRACTOR has provided such services to TOWN since at least 1989 and desires to continue provision of such services as outlined herein.

NOW, THEREFORE, IT IS AGREED as follows:

SECTION 1 - SCOPE OF SERVICES

CONTRACTOR is retained to provide basic planning services for TOWN including, but not limited generally to, current and long-term planning, zoning, general plan development and maintenance, regulation of existing and future development, and regulations and permitting related to land use. A more specific scope of services, including a fee schedule, to be performed by CONTRACTOR under this Agreement is as described in Exhibit A to this Agreement, which is attached and incorporated by reference.

SECTION 2 - DUTIES OF CONTRACTOR

CONTRACTOR shall be responsible for the professional quality, technical accuracy and coordination of all work furnished by CONTRACTOR under this Agreement and attached as Exhibit A.

CONTRACTOR shall, without additional compensation, correct or revise any errors or deficiencies in its work.

CONTRACTOR shall be responsible for maintaining files and planning documents in appropriate storage provided by TOWN.

CONTRACTOR represents that it is qualified to furnish the services described under this Agreement.

CONTRACTOR shall be responsible for employing or engaging all persons necessary to

perform the services of CONTRACTOR.

CONTRACTOR shall not change primary personnel as identified within the Scope of Work without written consent of TOWN.

CONTRACTOR shall be responsible for compliance with the performance measures set forth in Exhibit A, scope of services.

SECTION 3 - DUTIES OF TOWN

TOWN shall provide pertinent information regarding its requirements for services.

TOWN shall examine documents submitted by CONTRACTOR and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of CONTRACTOR'S work.

TOWN shall furnish adequate work space and facilities for CONTRACTOR'S use, including adequate storage for records and documents.

SECTION 4 - TERM

A. The term of this Agreement shall begin on _____, and shall remain in effect for three (3) years, however, it shall continue in effect indefinitely from year-to-year thereafter unless either party gives written notice of its intention not to renew at least 90 days before expiration of the current term. A request by either party to revise specific terms or provisions of the Agreement shall not serve as intention to not renew, and either party may seek revisions at any time upon 90 days written notice to the other.

B. Either party may terminate this Agreement at any time by providing 90 days written notice to the other party, except that such termination may not be terminated by Town within 120 days following any municipal election at which any seat on the Council is changed. The purpose of this provision is to allow the Council adequate time to objectively evaluate CONTRACTOR'S performance.

SECTION 5 - PAYMENT

Payment shall be made by TOWN for services rendered upon submission of a monthly invoice for payment and TOWN approval of the work performed. In consideration for the full performance of the services set forth in Exhibit C, TOWN agrees to pay CONSULTANT a fee pursuant to rates stated in Exhibit C, attached and incorporated by reference.

SECTION 6 – TERMINATION

Without limitation to such rights or remedies as TOWN shall otherwise have by law, TOWN shall have the right to terminate this Agreement or suspend work on the Project for any reason, upon ninety (90) days' written notice to CONTRACTOR. CONTRACTOR agrees to cease all work under this Agreement upon receipt of said written notice. Upon termination of the Agreement, including at the end of the term, CONTRACTOR shall turn over to TOWN any and

all documents related to the provision of services and planning activities under this Agreement in a timely and cooperative manner.

SECTION 7 - OWNERSHIP OF DOCUMENTS

All documents prepared by CONTRACTOR in the performance of this Agreement are and shall be the property of TOWN, whether the project for which they are made is executed or not.

SECTION 8 - CONFIDENTIALITY

All reports and documents prepared by CONTRACTOR in connection with the performance of this Agreement are and shall be confidential until released by TOWN to the public. CONTRACTOR shall not make any such documents or information available to any individual or organization not employed by CONTRACTOR or TOWN without the written consent of TOWN before any such release.

SECTION 9 - INTEREST OF CONTRACTOR

CONTRACTOR covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services under this Agreement.

SECTION 10 - CONTRACTOR'S STATUS

It is expressly agreed that in the performance of the services required under this Agreement, CONTRACTOR shall at all times be considered an independent contractor as defined in Labor Code Section 3353, under control of the TOWN as to the areas and results of the work, but not the means by which the result is accomplished. Nothing herein shall be construed to make CONTRACTOR an agent or employee of TOWN while providing services under this Agreement, except in the provision of opinions and advice to the public about the planning and zoning rules, regulations, and procedures of TOWN.

SECTION 11 - INDEMNITY

CONTRACTOR agrees to hold harmless and indemnify TOWN, its elected and appointed officials, employees, and agents from and against any and all claims, loss, liability, damage, and expense arising out of CONTRACTOR's negligent or willfully inappropriate performance of this Agreement, except for those claims arising out of TOWN's sole negligence or willful misconduct. CONTRACTOR agrees to defend TOWN, its elected and appointed officials, employees, and agents against any such claims.

TOWN agrees to indemnify, defend, and hold harmless CONTRACTOR from and against any and all claims, loss, liability, damage, and expense arising out of CONTRACTOR's performance of planning services operations under this Agreement, or arising out of use of facilities owned or used by TOWN in the performance of this Agreement.

SECTION 12 - INSURANCE

CONTRACTOR agrees to obtain and maintain in full force and effect during the term of this AGREEMENT insurance policies in the amounts and type set forth in EXHIBIT "B," "INSURANCE," and made a part of this AGREEMENT. All insurance policies shall be subject to approval by TOWN as to form and content. These requirements are subject to amendment or waiver if so approved in writing by TOWN Manager. CONTRACTOR agrees to provide TOWN with copies of required policies upon request.

SECTION 13 - NONASSIGNABILITY

Both parties hereto recognize that this Agreement is for the personal services of CONTRACTOR and cannot be transferred, assigned, or subcontracted by CONTRACTOR without the prior written consent of TOWN.

SECTION 14 - RELIANCE UPON SKILL OF CONTRACTOR

It is mutually understood and agreed by and between the parties hereto that CONTRACTOR is uniquely skilled in the performance of the work agreed to be done under this Agreement and that TOWN relies upon the skill of CONTRACTOR to do and perform the work in the most professional and correct manner, and CONTRACTOR agrees to thus perform the work. The acceptance of CONTRACTOR's work by TOWN does not operate as a release of CONTRACTOR from said obligation.

SECTION 15 - WAIVERS

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions of any ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

SECTION 16 - COSTS AND ATTORNEY FEES

In the event litigation or other proceeding is required to enforce or interpret any provision of this AGREEMENT, the prevailing party in such litigation shall be entitled to an award of reasonable attorneys' fees, costs and expenses, in addition to any other relief to which it may be entitled.

SECTION 17 - NON-DISCRIMINATION

CONTRACTOR warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal employment opportunity. Neither CONTRACTOR nor

any of its subcontractors shall discriminate in the employment of any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act.

SECTION 18 - MEDIATION

Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an agreement, the parties shall each submit one name from mediators listed by the American Arbitration Association, the California State Board of Mediation and Conciliation, or other agreed-upon service. The mediator shall be selected by a blind draw process.

The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

SECTION 19 - LITIGATION

CONTRACTOR shall testify at TOWN'S request if litigation regarding any planning or zoning matter is brought against TOWN or in connection with CONTRACTOR'S services under this Agreement. Unless the action is brought by CONTRACTOR, or is based upon CONTRACTOR'S wrongdoing, TOWN shall compensate CONTRACTOR for preparation for testimony, testimony, and travel at CONTRACTOR'S standard hourly rates.

SECTION 20 - NOTICES

All notices hereunder shall be given in writing and mailed, postage prepaid, addressed as follows:

To TOWN: Town of Atherton – City Manager
91 Ashfield Road
Atherton, CA 94027

Direct Invoices to:
Finance Director
91 Ashfield Road
Atherton, CA 94027

To CONTRACTOR: Neal Martin & Associates
751 Laurel Street, Suite 622
San Carlos, CA 94070
Attn: Lisa Costa Sanders

**SECTION 21 - AGREEMENT CONTAINS ALL
UNDERSTANDINGS; AMENDMENT**

This document represents the entire and integrated agreement between TOWN and CONTRACTOR and supersedes all prior negotiations, representations, and agreements, either written or oral.

This document may be amended only by written instrument, signed by both TOWN and CONTRACTOR.

SECTION 22 - GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of California and in the event of litigation, venue will be in the County of San Mateo.

IN WITNESS WHEREOF, TOWN and CONTRACTOR have executed this Agreement the day and year first above written.

TOWN OF ATHERTON

CONTRACTOR

George Rodericks
City Manager

Lisa Costa Sanders
Principal

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

SCOPE OF SERVICES

Neal Martin & Associates will provide current and long range planning services to the Town of Atherton under the direction of the City Manager. In general, those services include the following:

- Basic Planning Administration Services
 - Provide staff to respond to all public inquiries relating to planning division over the phone, via email and at the Town's permit counter.
 - *Performance Measure: Staff shall be available for office hours at least 16 hours per business week. All inquiries shall be responded to within one business day.*
 - Review plans for conformance with the Town of Atherton Zoning Code. Coordinate review and comments with other departments.
 - *Performance Measure: Initial plan check reviews shall be completed within 10 working days. Review of resubmittals shall be completed within 5 working days.*
 - Review projects for conformance with the California Environmental Quality Act (CEQA). Prepare or manage the preparation of Initial Studies, Mitigated Negative Declarations and Environmental Impact Reports.
 - Prepare necessary information and participate in the Town's annual budget process.
- Regional Planning Support
 - Provide staff support to the Town for regional projects. Support shall include, but not be limited to, regional project analysis for local impacts, drafting related correspondence, coordinating and participating in regional meetings where necessary.
- National Pollution Discharge and Elimination Systems Implementation
 - Assist with the NPDES program implementation. Attend county-wide meetings and workshops. Assist with preparation of the annual report to the Regional Water Quality Control Board. Conduct wet weather inspections of active construction sites.
 - *Performance Measure: Conduct at least 20 inspections of active construction sites per month during the wet season (October – April).*

- Local Land Use Support
 - Prepare updates to the Zoning Code and General Plan as needed under the direction of the City Manager.
 - Identify and recommend updates to the Zoning Code in support of local issues.
- Public Engagement and Education
 - Participate in local public education and outreach sponsored by the Town.
 - Maintain current information on the Town’s website.
 - Prepare and distribute informational materials.
 - *Performance Measure: publish at least three informational items per quarter.*
- Commission, Committee and Council
 - Planning Commission – Serve as staff liaison to the Town’s Planning Commission. Work shall include but not be limited to: review projects for conformance with Town codes, prepare and present staff reports for all applications to the Planning Commission, attending the Planning commission meetings, preparation and distribution of public notices, preparation and distribution of agendas, packet distribution and case documentation after Planning Commission action. Staff will also prepare meeting minutes.
 - City Council – prepare and present staff reports on Planning related projects or other projects at the request of the City Manager.
 - Environmental Programs Committee – Serve as staff liaison to the Town’s Environmental Programs Committee. Work shall include but not be limited to: prepare and present staff report, coordinate programs and projects.
- Reporting
 - Prepare regular monthly statistical reports on application reviews, Commission level reviews, and project statuses.
- Evaluation
 - Assist in the coordination of a regular customer satisfaction survey at least once per year as part of an annual departmental performance review by the City Manager’s Office.

EXHIBIT B

Insurance Requirements

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of this Agreement, a General Liability insurance policy insuring it and its firm to an amount not less than \$2,000,000 (Two Million Dollars) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage.

(2) Consultant agrees to have and maintain, for the duration of this Agreement, an Automobile Liability insurance policy insuring it and its staff to an amount not less than \$1,000,000 (One Million Dollars) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than \$1,000,000 (One Million Dollars) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall provide required coverage for Employers' Liability (Coverage B).

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The Town of Atherton, its officials, officers, agents, employees, and volunteers are hereby added as additional insureds, but only as respect to work done by, for, or on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respect to any other valid and collectible insurance Town may possess, including any self-insured retention Town may have, and any other insurance Town possesses shall be considered excess insurance only and shall not contribute to it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to Town all certificates of insurance with original endorsements effecting coverage required by this section. Certificates of such insurance shall be filed with Town on or before commencement of performance of this Agreement. Town reserves the right to require complete, certified copies of all required insurance policies at any time.

(7) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Town, its officials, officers, agents, employees, and volunteers.

(8) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

B. All Coverages. Each insurance policy required shall provide that coverage shall not be canceled, except after 30-days' prior written notice by certified mail, return receipt requested, has been given to Town. Current certification of such insurance shall be kept on file with the City Manager at all times during the term of this Agreement.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by Town. At Town's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

E. Verification of Coverage. Consultant shall furnish Town with original Certificate(s) of Insurance verifying Consultant's receipt of the insurance coverage required herein.

EXHIBIT C

BILLING RATES

Effective July 1, 2014

Town Planner	\$120.00
Senior Planner	\$98.00
Associate Planner	\$82.00
Assistant Planner	\$63.00
Administrative Assistant	\$47.00
Planner of Counsel *	\$150.50
Mileage	town rate

The billing rates shall increase on July 1 of each contract year per CPI. The Planner of Counsel rate shall remain at \$150.50 per hour for the duration of the contract term.

* The Planner of Counsel rate is for the services of Neal Martin. This rate will no longer be in effect at the termination of Mr. Martin's services.