



TOWN OF FAIRFAX

STAFF REPORT

September 4, 2013

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager *GT*

SUBJECT: Approval of agreement with Wayne Bush for project management services in an amount not to exceed \$45,000.

RECOMMENDATION

Authorize the Town Manager to execute an agreement with Wayne Bush for project management services in an amount not to exceed \$45,000.

DISCUSSION

Since August 2011, Wayne Bush has been helping the Town manage such capital projects as the Pavilion Seismic Retrofit grant, the Sir Francis Drake bike lane striping project, and Pastori Sidewalk. His project management services include the monitoring and preparation of federal/state/local paperwork necessary to secure initial funding and reimbursement of project expenses, coordination with other project consultants, interacting with CalTrans and Transportation Authority of Marin (TAM) on behalf of the TOWN, meeting with Town staff as needed, review of plans and specifications and other documents as requested, and overall project coordination and management. Mr. Bush is a licensed engineer and very familiar with Fairfax, Marin County, and TAM.

Staff recommends the Town continue to retain his services as there are several capital improvement projects/programs requiring his expertise. These projects/programs include the Highway Bridge Program and Bridge Preventive Maintenance Program, Pavilion Seismic Retrofit project, and general street paving projects. The Pavilion project has been managed by Mr. Bush since its inception and is in the design phase. From time to time, the Town Manager may assign other projects for Mr. Bush to work on.

FISCAL IMPACT

The FY13-14 Public Works Administration budget has sufficient funds allocated for such professional services (Fund 01-510-821). In FY11-12 and FY12-13, the Town spent less than \$40,000 each year for Mr. Bush's services.

Attachments: agreement

AGENDA ITEM # 10

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made at Fairfax, California, as of August 7, 2013, by and between the Town of Fairfax, a municipal corporation (the "TOWN") and Wayne Bush ("CONSULTANT"), who agree as follows:

1. **SERVICES.** Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to the TOWN the services described in Exhibit "A." CONSULTANT shall provide said services at the time, place, and in the manner specified in Exhibit "A."

2. **PAYMENT.** TOWN shall pay CONSULTANT for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit "B." The payments specified in Exhibit "B" shall be the only payments to be made to CONSULTANT for services rendered pursuant to this Agreement. CONSULTANT shall submit all billings for said services to the TOWN in the manner specified in Exhibit "B."

3. **FACILITIES AND EQUIPMENT.** CONSULTANT shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.

4. **GENERAL PROVISIONS.** The general provisions set forth in Exhibit "C" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the provisions set forth in Exhibit "C" shall control.

5. **INSURANCE REQUIREMENTS.** The insurance requirements set forth in Exhibit "D" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the requirements set forth in Exhibit "D" shall control.

6. **EXHIBITS.** All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

EXECUTED as of the day first above stated.

Town of Fairfax, a municipal corporation

By: _____

CONSULTANT

By: _____

EXHIBIT "A"

SCOPE OF SERVICES

CONSULTANT shall act as an independent project/program manager for specific projects designated in this Agreement or by the Town Manager. The projects/programs include the Highway Bridge Program and Bridge Preventive Maintenance Program, Pavilion Seismic Retrofit project, Pastori Sidewalk, general street paving projects and other public works projects/programs designated by the Town Manager. Project Management services shall include the monitoring and preparation of federal/state/local paperwork necessary to secure initial funding and reimbursement of project expenses, coordination with other project consultants, interacting with CalTrans and TAM on behalf of the TOWN, meeting with Town staff as needed, review of plans and specifications and other documents as requested, and overall project coordination and management.

CONSULTANT shall have no authority to act on behalf of the TOWN, but may make recommendations to the Town Manager or designate for that person's possible action. Likewise, CONSULTANT shall not delegate or assign tasks to TOWN staff, but may advise the Town Manager or designate of tasks to be completed which that person may assign as deemed appropriate. CONSULTANT has extensive experience in public works project and program management. CONSULTANT also has extensive experience and technical knowledge involving related grant program application, management and compliance. TOWN is relying on CONSULTANT's expertise and is not qualified to determine the methods and means to be used in providing such services. As a result, CONSULTANT will be responsible for determining how services will be performed, including the methods and means to be used. TOWN is only interested in the results to be achieved.

Unless sooner terminated, as provided in this AGREEMENT, This AGREEMENT shall commence on July 1, 2013 and continue until June 30, 2014.

EXHIBIT "B"

PAYMENT

1) The total contract price for services rendered by CONSULTANT under this Agreement shall not exceed \$45,000, which shall be paid on a time and materials basis, as specified below:

<u>Personnel</u>	<u>Hourly Rate</u>
Wayne Bush	\$150

2) Payment shall be made to CONSULTANT on a time and materials basis, and CONSULTANT shall submit monthly invoices to the Town of Fairfax, 142 Bolinas Road, Fairfax, CA 94930 Attention: Town Manager, for the same.

3) Any additional meetings or work required beyond that set forth in Exhibit "A" shall be mutually agreed to by the TOWN and CONSULTANT in writing, and shall be billed on a time and materials basis to the Town of Fairfax, Attention: Town Manager.

EXHIBIT "C"

GENERAL PROVISIONS

1) INDEPENDENT CONSULTANT. At all times during the term of this Agreement, CONSULTANT shall be an independent contractor and shall not be an employee of TOWN. TOWN shall have the right to control CONSULTANT only insofar as the results of CONSULTANT's services rendered pursuant to this Agreement; however, TOWN shall not have the right to control the means by which CONSULTANT accomplishes services rendered pursuant to this Agreement.

2) LICENSES; PERMITS; ETC. CONSULTANT represents and warrants to TOWN that CONSULTANT has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONSULTANT to practice CONSULTANT's profession. CONSULTANT represents and warrants to TOWN that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice his profession.

3) TIME. CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT's obligations pursuant to this Agreement.

4) CONSULTANT NOT AN AGENT. Except as TOWN may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of TOWN in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement, to bind TOWN to any obligation whatsoever.

5) ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

6) PERSONNEL. CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that TOWN, in its sole discretion, at anytime during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall remove any such person immediately upon receiving notice from TOWN of the desire of TOWN for the removal of such person or persons.

7) STANDARD OF PERFORMANCE. CONSULTANT shall perform all services required pursuant to this Agreement. Services shall be performed in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices its profession. All products which CONSULTANT delivers to TOWN pursuant to this Agreement shall be prepared in a workmanlike manner, and conform to the standards of quality normally observed by a person practicing in CONSULTANT's profession. TOWN shall be the sole judge as to whether the product and work of the CONSULTANT is satisfactory.

8) CANCELLATION OF AGREEMENT. This Agreement may be canceled at any time by the TOWN at its discretion upon written notification to CONSULTANT. CONSULTANT is entitled to receive full payment for all services performed and all costs incurred up to and including the date of receipt of written notice to cease work on the project. CONSULTANT shall be entitled to no further compensation for work performed after the date of receipt of written notice to cease work. All completed and incomplete products up to the date of receipt of written notice to cease work shall become the property of TOWN.

9) PRODUCTS OF CONSULTING. All products of the CONSULTANT provided under this Agreement shall be the property of the TOWN.

10) INDEMNIFY AND HOLD HARMLESS. TOWN shall defend, save harmless, and indemnify CONSULTANT against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of CONSULTANT's duties herein unless the act or omission involved illegal, willful or wanton misconduct. The TOWN shall indemnify CONSULTANT against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expense of legal proceedings including attorneys fees, and any other liabilities incurred by, imposed upon, or suffered by such CONSULTANT in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his duties, except for the CONSULTANT's illegal acts or acts of willful or wanton misconduct.

11) PROHIBITED INTERESTS. No employee of the TOWN shall have any direct financial interest in this Agreement. This Agreement shall be voidable at the option of the TOWN if this provision is violated.

12) LOCAL EMPLOYMENT POLICY. The TOWN desires wherever possible, to hire qualified local residents to work on Town projects. Local resident is defined as a person who resides in Marin County. The TOWN encourages an active affirmative action program on the part of its contractors, consultants, and developers. When local projects require, subcontractors, contractors, consultants and developers will solicit proposals from qualified local firms where possible.

13) FEDERAL REQUIREMENTS. If federal funds are involved in this Agreement, CONSULTANT shall comply with the federal requirements in Exhibit "E". As a way of responding to the provisions of the Davis-Bacon Act and this program, contractor, consultants, and developers will be asked, to provide no more frequently than monthly, a report which lists the employee's name, job class, hours worked, salary paid, city of residence, and ethnic origin.

14) CONSULTANT NOT A PUBLIC OFFICIAL. CONSULTANT is not a "public official" for purposes of Government Code §§ 87200 et seq. CONSULTANT conducts research and arrives at his or her conclusions, advice, recommendation, or counsel independent of the control and direction of the TOWN or any TOWN official, other than normal contract monitoring. In addition, CONSULTANT possesses no authority with respect to any TOWN decision beyond these conclusions, advice, recommendation, or counsel.

EXHIBIT "D"

INSURANCE REQUIREMENTS

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, or employees.

1) **MINIMUM SCOPE AND LIMITS OF INSURANCE**

a) Automobile Liability coverage with minimum limits of \$300,000 per accident for bodily injury and property damage.