



TOWN OF FAIRFAX

STAFF REPORT

November 5, 2014

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager *GT*
Jim Moore, Director of Planning and Building Services

SUBJECT: Approve an agreement with LAK Associates, LLC in an amount not-to-exceed \$70,000 for services related to contract planning, General Plan, Housing Element, and zoning

RECOMMENDATION

Authorize the Town Manager to execute an agreement with LAK Associates in an amount not-to-exceed \$70,000 for services related to contract planning, General Plan, Housing Element, and zoning

BACKGROUND

The Town has been using LAK Associates since 2001 to assist with and augment the operations of the Planning Division. Staff continues to use LAK for historical continuity and their familiarity with the General Plan and Housing Element.

For FY14-15, LAK is needed to:

- Continue the staff's effort to implement Town of Fairfax 2010-30 General Plan (GP), including assisting with the staffing of the monthly GPIC and/or subcommittee meetings and updating the Zoning Ordinance to bring it into compliance with the 2010-30 GP
- Prepare the next Housing Element (RHNA cycle 5); LAK will use PMC as a subconsultant
- Assist with future Town forums on land use issues
- Provide contract planner services, as needed, on specific permit applications submitted for Town review.

LAK scope work can be generally divided into 3 major cost components:

<u>General Plan Implementation/Land Use/Zoning Update-</u>	up to \$25,000
<u>Housing Element Update (Cycle 5) -</u>	up to \$30,000
<u>Contract planning services-</u>	up to \$15,000

It should be noted that these are rough estimates and the costs can be reallocated among tasks. The use of LAK is critical to the Town's operation as it allows staff to process permit applications in a timely manner and farm out more time-consuming specialized/technical work such as CEQA review. In addition, LAK's assistance on the GP and HE increases staff "bandwidth" to complete long range planning issues in a more timely manner as well as provide technical expertise. Application fees collected offset some of the cost of contract planning services.

FISCAL IMPACT

Included in the Planning and Building Services FY 2014/15 budget.

ATTACHMENT

Consultant Services Agreement

AGENDA ITEM # 5

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made at Fairfax, California, as of November 7, 2014, by and between the Town of Fairfax, a municipal corporation (the "TOWN") and LAK Associates, a Limited Liability Corporation ("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," which consists of the proposal submitted by CONSULTANT. 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. TERM. This Agreement shall be in effect from July 1, 2014 thru June 30, 2015. The Town Manager has the authority to extend the term of this Agreement by 12 months.
7. 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: _____
Garrett Toy, Town Manager

CONSULTANT

By: _____
Larry Kennings, LAK Associates, LLC

EXHIBIT "A"

SCOPE OF SERVICES

LAK Associates, LLC will provide the follow professional consulting services to the Town of Fairfax, under the direct supervision of the Director of Planning and Building Services and/or his or her designee.

LAK Associates, LLC consulting services to the Town will include the following:

- A. Assisting with the implementation of the 2010-30 General Plan; including staffing the General Plan Implementation Committee (GPIC) on an as needed basis, and assisting staff with the production of affordable housing units as prescribed in the adopted 2010 Housing Element.
- B. Updating the Town of Fairfax Zoning Ordinance in order to bring in into compliance with the adopted 2010-30 General Plan – as required by law. This work includes retaining and managing sub-consultants if necessary to complete the update.
- C. Assist with developing the next Housing Element, addressing the "Cycle 5" Regional Housing Needs Allocation (RHNA) for years 2015 thru 2023. This work includes retaining and managing sub-consultants, if necessary, to complete the update and prepare the California Environmental Quality Act (CEQA) review.
- D. Providing contract planner services for processing specific applications for the Town on a case by case basis. Fees for such work will be invoiced to applicants by the Town on a monthly basis.
- E. Providing contract planning services per subsequent task orders approved in writing by the town manager. Task orders shall include a description of the work to be provided, the project schedule, an estimate of the number of Consultant hours, a fee budget for the task and a payment schedule.

If there are any inconsistencies between CONSULTANT's proposal and this Agreement, the provisions of this Agreement shall control.

EXHIBIT “B”

PAYMENT

1) The total contract price for services rendered by CONSULTANT under this Agreement shall not exceed \$70,000, which shall be paid on a time and materials basis, as specified below:

PERSONNEL

Project Manager / Senior Planner	\$150/hour
Associate Planner	\$125/hour
Drafting / AutoCAD / Graphic	\$85/hour
Administration	\$75/hour
Miscellaneous Labor	\$60/hour

REIMBURSABLES

The following are reimbursable expenses in addition to the consultant's compensation that include actual expenditures made by the consultants for the project:

- Cost of printing or duplication of drawings, specifications, reports, and cost estimates.
- Postage and delivery charges.
- Fees for local licenses and permits required to perform professional services.
- Fees for consultant services and subcontractors retained with approval of client.

TRAVEL

Travel, lodging, and out of pocket expenses for authorized travel that is part of the contract. Vehicle travel will be billed at \$0.55 per mile, plus tolls and parking fees. Travel time billed at hourly “administration” rate.

Other fees, costs, expenses and rates as described in the PROPOSAL (Exhibit A). In the event of any inconsistency between the terms of this Exhibit “B” and the PROPOSAL, the terms of this Exhibit “B” shall control.

2) Payment shall be made to CONSULTANT on a time and materials basis, and CONSULTANT shall submit monthly invoices to the Department of Planning & Building Services, Attention: James Moore, Director of Planning & Building Services, 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, and shall be billed on a time and materials basis to the Department of Planning & Building Services, Attention: James Moore, Director of Planning & Building Services.

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 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.

a) If this AGREEMENT is an agreement for design professional services subject to California Civil Code § 2782.8(a) and CONSULTANT is a design professional, as defined in California Civil Code § 2782.8(b)(2), CONSULTANT shall hold harmless, defend and indemnify the TOWN, its officers, agents, employees, and volunteers from and against all claims, damages, losses, and expenses including attorneys' fees arising out of, or pertaining to, or relating to the negligence, recklessness, or willful misconduct of the CONSULTANT, except where caused by the active negligence, sole negligence, or willful misconduct of the TOWN.

b) If this AGREEMENT is not an agreement for design professional services subject to California Civil Code § 2782.8(a) or CONSULTANT is not a design professional as defined in subsection (a) above, CONSULTANT shall indemnify, defend, and hold harmless the TOWN, its officers, agents, employees and volunteers from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by CONSULTANT or any person directly or indirectly employed by or acting as agent for CONSULTANT in the performance of this Agreement, including the concurrent or successive passive negligence of the TOWN, its officers, agents, employees or volunteers.

c) It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

d) Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies are determined to be applicable to any such damages or claims for damages.

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) Commercial General Liability coverage (occurrence Form CG 00 01) with minimum limits of \$1,000,000 per occurrence for bodily injury, personal injury, products and completed operations, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b) Automobile Liability coverage (Form CA 00 01 with Code 1 – any auto) with minimum limits of \$1,000,000 per accident for bodily injury and property damage.

c) Workers' Compensation insurance as required by the State of California and Employers' Liability insurance, each in the amount of \$1,000,000 per accident for bodily injury or disease.

2) INDUSTRY SPECIFIC COVERAGES

The following insurance is also required:

- Professional Liability Insurance / Errors and Omissions Liability in the minimum amount of \$1,000,000 per occurrence.

3) INSURANCE PROVISIONS

a) DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to and approved by the TOWN. At the option of the TOWN, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the TOWN, its officers, officials, employees and volunteers; or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

b) The general and automobile liability policies (and if applicable, pollution liability, garage keepers liability and builder's risk policies) are to contain, or be endorsed to contain, the following provisions:

- i) The TOWN, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, occupied or used by the CONSULTANT; or

automobiles owned, leased, hired or borrowed by the CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the TOWN, its officers, officials, employees or volunteers.

- ii) For any claims related to this project, the CONSULTANT's insurance coverage shall be primary insurance as respects the TOWN, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the TOWN, its officers, officials, employees or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.
- iii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the TOWN, its officers, officials, employees or volunteers.
- iv) The CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- v) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the TOWN.
- vi) The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the CONSULTANT's policy limits of coverage.

c) ACCEPTABILITY OF INSURER. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the TOWN.

d) VERIFICATION OF COVERAGE. CONSULTANT shall furnish the TOWN with original endorsements effecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the TOWN or on forms equivalent to CG 20 10 11 85 subject to TOWN approval. All insurance certificates and endorsements are to be received and approved by the TOWN before work commences. At the request of the TOWN, CONSULTANT shall provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

e) SUB-CONTRACTORS. CONSULTANT shall require all subcontractors to procure and maintain insurance policies subject to the requirements of Exhibit D. Failure of CONSULTANT to verify existence of sub-contractor's insurance shall not relieve CONSULTANT from any claim arising from sub-contractors work on behalf of CONSULTANT.