



TOWN OF FAIRFAX

STAFF REPORT

April 6, 2022

TO: Mayor and Town Council

FROM: Heather Abrams, Town Manager

SUBJECT: Approve and Ratify Amended and Restated Agreement with Muchmore Than Consulting in an amount not to exceed \$48,500 for Labor Negotiations and Human Resources Consulting

RECOMMENDATION

Approve, ratify and authorize the Town Manager to execute the Amended and Restated Agreement with Muchmore Than Consulting (MTC) for Human Resources Consulting and now, including Labor Negotiation Services, for a total not-to-exceed contract amount of \$48,500.

BACKGROUND

In July 2021, the Town contracted with Deborah Muchmore of Muchmore Than Consulting for Human Resources (HR) Consulting Services with a not-to-exceed amount of \$18,500. This has been valuable in on-boarding new staff, providing expert HR advice, and preparing HR documents as required by law.

DISCUSSION

Negotiations with Fairfax's Police Officer Association (POA) and SEIU labor groups are anticipated this year, and it is a recommended best practice to hire an experienced labor negotiator for this process. Deborah Muchmore is a very experienced labor negotiator, who is already familiar with Fairfax's Town processes and staff. The attached Amended and Restated Agreement now includes the original \$18,500 for HR Consulting Services, an increase of \$10,000 for additional HR Consulting Services, as well as an additional \$20,000 for Labor Negotiation Services.

Having access to Ms. Muchmore, a trained and experienced HR professional, on an as needed basis is critical to protecting the Town from liability. This also relieves some of the pressure on the Town's finance and management staff whose primary focus is elsewhere.

FISCAL IMPACT

There are sufficient funds to cover the \$48,500 total cost within the General Fund. Through the month of February, 2022, The Town has paid MTC a total of \$12,387.95.

ATTACHMENT

Amended and Restated Agreement for Consulting Services with Muchmore Than Consulting

AMENDED AND RESTATED AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT is made and entered into on this _____ day of _____, 2022 by and between Muchmore Than Consulting, LLC an organizational development and automated systems implementation organization and limited liability corporation (“Consultant”) and the Town of Fairfax, a general law city organized under the laws of the State of California (“Town”), collectively referred to herein as (“Parties”).

RECITALS

A. The Town desires to retain Consultant to provide the Services set forth in detail in Exhibit A hereto (the “Services”) subject to the terms and conditions of this Agreement.

B. Consultant is duly licensed and sufficiently experienced to undertake and perform the Services in a skilled and professional manner in accordance with the standard of quality delineated in Section 4, and desires to do so in accordance with the terms and conditions of this Agreement.

Now, therefore, in consideration of the mutual covenants, promises and conditions set forth in this Agreement, the Town and Consultant agree as follows:

Section 1. Services.

Subject to the terms and conditions set forth in this Agreement, Consultant shall furnish and perform all the Services described in detail in Exhibit A hereto and incorporated herein by this reference (the “Services”) to the reasonable satisfaction of the Town. Consultant shall not perform any work exceeding the scope of the Services described in Exhibit A without prior written authorization from the Town. The Town shall complete assessments and furnish Consultant available studies, reports and other data pertinent to the Services. Consultant shall be entitled to use and rely upon all such information provided by the Town or others in performing the Services under this Agreement. The Town shall arrange for access to and make all provisions for Consultant to enter upon the Town’s property as may be reasonably necessary for Consultant to perform the Services.

Section 2. Time of Completion.

If a schedule of performance is applicable, Consultant’s schedule for performance of the Services is set forth in Exhibit A hereto which is incorporated herein by this reference. Consultant will commence performance of the Services promptly upon receipt of notice from the Town to proceed. Performance of the Services shall progress and conclude in accordance with the schedule as set forth in Exhibit A.

Section 3. Compensation.

A. Except as may otherwise be provided in Exhibit A or elsewhere in this Agreement or its exhibits, Consultant shall invoice the Town once each month for the Services performed during the preceding month. Such invoices shall itemize all charges in such detail as may reasonably be required by Town in the usual course of Town business but shall include at least (i) the date of

performance of each of the Services, (iii) a description of the Services performed, (iv) if applicable, the dates services were performed and the hourly rate at which the Services are charged, (v) an itemization of all costs incurred and (vi) the total charges for the Services for the month invoiced. As long as the Consultant performs the Services to the satisfaction of the Town, the Town must pay the Consultant compensation as itemized on the invoice(s). Unless agreed upon in writing and in advance by the Town and the consultant and except for services or direct expenditures, as shown in Exhibit A, compensation will not exceed the hourly amount as detailed in Exhibit A. Town shall pay Consultant no later than thirty (30) days after approval of the monthly invoice by Town's staff.

B. The Consultant's compensation for the Services shall be full compensation for all indirect and direct personnel, materials, supplies, equipment and services incurred by the Consultant and used in carrying out or completing the Services. Payments shall be in accordance with the payment schedule established in Exhibit A or elsewhere in this Agreement or its exhibits.

C. The Town shall have the right to receive, upon request, documentation substantiating charges billed to the Town pursuant to this Agreement. The Town shall have the right to perform an audit of the Consultant's relevant records pertaining to the charges.

D. Any Services performed more than sixty (60) days prior to the date upon which they are invoiced to the Town shall not be compensable.

Section 4. Professional Ability; Standard of Quality.

Town has relied upon the professional training and ability of Consultant to perform the Services described in Exhibit A as a material inducement to enter into this Agreement. Consultant shall therefore provide properly skilled professional and technical personnel to perform all Services under this Agreement. All Services performed by Consultant under this Agreement shall be in a skillful, professional manner in accordance with applicable legal requirements and meet the standard of quality expected of competent professionals in Consultant's field of expertise.

Section 5. Indemnification.

A. Consultant shall indemnify, defend with legal counsel approved by Town, and hold harmless Town, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Consultant's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of the Town. Should conflict of interest principles preclude a single legal counsel from representing both Town and Consultant, or should Town otherwise find Consultant's legal counsel unacceptable, then Consultant shall reimburse the Town its costs of defense, including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation. The Consultant shall promptly pay any final judgment rendered against the Town (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the Consultant's

negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

- B. Consultant's obligations under this section apply regardless of whether such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnatee. However, without affecting the rights of the Town under any provision of this agreement, Consultant shall not be required to indemnify and hold harmless Town for liability attributable to the active negligence of the Town, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where Town is shown to have been actively negligent and where Town's active negligence accounts for only a percentage of the liability involved, the obligation of Consultant will be for that entire portion or percentage of liability not attributable to the active negligence of the Town.
- C. If Consultant should subcontract all or any portion of the services to be performed under this Agreement, Consultant shall require each subcontractor to indemnify, hold harmless and defend Town and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This Section 5 shall survive termination or expiration of this Agreement.

Section 6. Safety.

The Consultant is required to comply with all applicable Town ordinances, policies and procedures, including but not limited to those pertaining to safety in the workplace. This Section 6 shall survive termination or expiration of this Agreement.

Section 7. Insurance.

Without limiting Consultant's indemnification obligations provided for above, Consultant shall take out before beginning performance of the Services and maintain at all times during the life of this Agreement the following policies of insurance with insurers possessing not less than "A-VII" in the Best Insurance Rating Guide or as may be authorized by Town in writing. Consultant shall not allow any subcontractor, professional or otherwise, to commence work on any subcontract until all insurance required of the Consultant has also been obtained by the subcontractor.

- A. Workers' Compensation Coverage. Consultant will provide proof of a current worker's compensation insurance policy, if Consultant will be using any employees to provide the Services (either in whole or in part).
- B. General Liability Coverage. Consultant will provide proof of a general liability insurance policy that is acceptable to the Town. The insurance shall be in an amount of not less than \$1 million combined single limit personal injury and property damage for each occurrence.
- C. Automobile Liability Coverage. Automobile liability insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with this

- D. Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than \$1 million combined single limit for each occurrence.
- E. Professional Liability Coverage. If required by the Town, Consultant shall also take out and maintain professional liability, errors and omissions insurance in an amount not less than \$1 million. The professional liability insurance policy shall be endorsed with a provision stating that it shall not be suspended, voided, cancelled, or reduced in coverage or in limits except after thirty (30) days written notice has been provided to the Town.
- F. Insurance Certificates and Endorsements. Prior to commencing the Services under this Agreement, Consultant will submit to the Town documentation evidencing the required insurance signed by the insurance agent and the companies named. This documentation shall be on forms which are acceptable to the Town and shall include all required endorsements and verify that coverage is in effect.
- H. Termination of Insurance. If the Town receives notification that Consultant's insurance will be suspended, voided, cancelled or reduced in coverage or in limits, and if the Consultant does not provide for either the reinstatement of that insurance or for the furnishing of alternate insurance containing all of the terms and provisions specified above prior to the termination of that insurance, Town may either terminate this Agreement for that breach, or Town may secure the required insurance to satisfy the conditions of this Agreement and deduct the cost thereof from compensation which would otherwise be due and payable to the Consultant for Services rendered under the terms of this Agreement.

Section 8. Subcontracts.

Consultant may not subcontract any portion of the Services without the written authorization of Town. If Town consents to a subcontract, Consultant shall be fully responsible to the Town and third parties for all acts or omissions of the subcontractor to which the Services or any portion thereof are subcontracted. Nothing in this Agreement shall create any contractual relationship between Town and any subcontractor, nor shall it create any obligation on the part of the Town to pay or cause the payment of any monies due to any such subcontractor except as otherwise is required by law.

Section 9. Assignment.

Consultant shall not assign any right or obligation under this Agreement without the Town's prior written consent. Any attempted assignment of any right or obligation under this Agreement without the Town's prior written consent shall be void.

Section 10. Entire Agreement.

This Agreement represents the entire understanding of Town and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Agreement may not be modified or altered except in writing signed by both parties.

Section 11. Jurisdiction.

This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction over any litigation arising from this Agreement shall be in the Superior Court of the State of California with venue in San Joaquin County, California.

Section 12. Suspension of Services.

Upon written request by Consultant, Town may suspend, in writing, all or any portion of the Services if unforeseen circumstances beyond the control of the Town or Consultant make normal progress of the Services impossible, impractical or infeasible. Upon written Town approval to suspend performance of the Services, the time for completion of the Services shall be extended by the number of days performance of the Services is suspended.

Section 13. Termination of Services.

Either Town or Consultant may at any time, at their sole discretion, terminate all or any portion of the Services and this Agreement upon ten (10) days written notice to the other party. Upon receipt of notice of termination, Consultant shall stop performance of the Services at the stage communicated by the Consultant or directed by Town. Consultant shall be entitled to payment within thirty (30) days for Services performed and completed up to the date of receipt of the written notice of termination. Consultant shall not be entitled to payment for any Services performed after the receipt of the notice of termination unless such payment is authorized in advance in writing by the Town.

Should Consultant fail to perform any of the obligations required of Consultant within the time and in the manner provided for under the terms of this Agreement, or should Consultant violate any of the material terms and conditions of this Agreement, Town may terminate this Agreement by providing Consultant with written notice of such termination. The Consultant shall be compensated for all Services performed prior to the date of receipt of the notice of termination. However, the Town may deduct from the compensation which may be owed to Consultant the amount of damage sustained or estimated by Town resulting from Consultant's breach of this Agreement.

Consultant's obligations pursuant to Sections 5 and 6 of this Agreement shall survive termination and continue in effect for as long as necessary to fulfill the purposes of Sections 5 and 6.

Section 14. Independent Contractor.

Consultant shall in all respects be an independent contractor and not an agent or employee of Town. Consultant has and shall retain the right to exercise full control and supervision of the means and methods of performing the Services. Consultant shall receive no premium or enhanced pay for Services normally understood as overtime; nor shall Consultant receive holiday pay, sick leave, administrative leave or pay for any other time not actually expended in the performance of the Services. It is intended by the parties that Consultant shall not be eligible for benefits and shall receive no compensation from the Town, except as expressly set forth in this Agreement. Consultant shall submit completed W-9 and Report of Independent Contractor forms upon execution of this Agreement and prior to the payment of any compensation hereunder.

Section 16. Changes and/or Extra Work.

Only the Town Manager, may authorize extra and/or changed Services, modification of the time of completion of the Services, or additional compensation for the tasks to be performed by Consultant. Consultant expressly recognizes that other Town personnel are without authorization to order extra and/or changed Services or to obligate the Town to the payment of additional compensation. The failure of Consultant to secure the prior written authorization for such extra and/or changed Services shall constitute a waiver of any and all right to adjustment in the contract price due to such unauthorized Services, and Consultant thereafter shall not be entitled to any compensation whatsoever for the performance of such extra or changed Services. In the event Consultant and Town agree that extra and/or changed Services are required, or that additional compensation shall be awarded to Consultant for performance of the Services under this Agreement, an amendment to this Agreement shall be entered into by the Parties, providing for such compensation and shall be prepared and executed by the Consultant and Town Manager before the extra and/or changed Services are provided.

Section 17. Compliance with Federal, State and Local Laws.

Consultant shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations affecting the Services, including without limitation laws requiring licensing and prohibiting discrimination in employment because of race, creed, color, sex, age, marital status, physical or mental disability, national origin or other prohibited bases. Town shall not be responsible or liable for Consultant's failure to comply with applicable laws, statutes, ordinances, rules or regulations.

Section 18. Retention of Records.

Consultant and any subconsultants authorized by the terms of this Agreement shall keep and maintain full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to the Services, and Consultant shall make such documents available for review and/or audit by Town and Town's representatives at all reasonable times during performance of the Services and for at least two (2) years after completion of the Services and/or termination of this Agreement.

Section 20. Severability.

The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by an arbitrator or by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by the mutual written consent of the parties.

Section 21. Entire Agreement; Amendment.

This Agreement, including all exhibits hereto, constitutes the complete and exclusive expression of the understanding and agreement between the parties with respect to the subject matter hereof. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement. This Agreement may be amended or

extended from time to time only by written agreement of the Parties hereto.

Section 22. Time of the Essence.

Time is of the essence in the performance of the Services. The Consultant will perform its Services with due and reasonable diligence consistent with sound professional practices and shall devote such time to the performance of the Services as may be necessary for their timely completion.

Section 23. Written Notification.

Except as otherwise specified in this Agreement, any notice, demand, request, consent, approval or communications that either party desires or is required to give to the other party shall be in writing and either served personally or sent by first class mail, postage prepaid and addressed as follows. Either party may change its address by notifying the other party in writing of the change of address. Notice shall be deemed communicated within two business days from the time of mailing if mailed within the State of California as provided in this Section.

If to Town: Town of Fairfax
 142 Bolinas Road
 Fairfax, CA 94930
 Attn: Heather Abrams, Town Manager

If to Consultant: Muchmore Than Consulting, LLC
 PO Box 2318
 Rohnert Park, CA 94927
 ATTN: Deborah Muchmore

Section 24. Execution.

This Agreement may be executed in original counterparts, via DocuSign, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one original counterpart is signed by both parties hereto. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Section 25. Successors. This Agreement shall be binding on and inure to the benefit of the respective parties hereto except to the extent of any contrary provision in this Agreement.

Section 26. Third Parties. The Services are intended solely for the benefit of the Town. No person or entity not a signatory to this Agreement shall be entitled to rely on Consultant's performance of the Services, and no right to assert a claim against Consultant by assignment of indemnity rights or otherwise shall accrue to a third party as a result of this Agreement or Consultant's performance of the Services.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement on the day first above written:

TOWN

CONSULTANT

Signature _____

Signature _____

Printed Name Heather Abrams

Printed Name Deborah A. Muchmore

Title Town Manager

Title Manager

Date _____

Date _____

AS TO FORM

City Attorney _____

EXHIBIT A

SCOPE AND FEES

Scope of Work – Human Resources Consulting

Provide ad hoc professional human resources advisory, consulting, coaching, and project-based services, and organizational development and workforce development services, as requested.

The provision of these duties, within the approved budget, in addition to the above, may include work in one or more of the following areas:

- a. Assessment, development, or provision of Human Resources systems and services.
- b. Provision of organizational development assessments, program change analysis, and staffing projections, including updates to classifications and compensation recommendations.
- c. Development, review, and revision of human resources policies, procedures, codes, forms and templates, as needed as part of an integrated, effective, and compliant system of human resources management practices and personnel transactions.
- d. Review and revision of employee relations resolution, temporary agreements, and memorandums of agreement between the Town and labor organizations, as requested.
- e. Assessment, and provision of recommendations related to human resources and organizational development systems and processes.
- f. Provision of personal and team development processes, workshops, assessments, and coaching, including individual and team assessment materials for workforce and team development through Everything DiSC™ and Five Behaviors™ products.
- g. Confer with staff as requested to obtain input and/or feedback regarding policy and procedure recommendations; or to obtain information relevant to the resolution of personnel issues.
- h. Provide support and guidance for the creation of policy implementation plans and timelines.
- i. Discussions with staff as requested to obtain input or feedback regarding the provision of the above services or to obtain information relevant to the resolution of personnel issues.
- j. Provision of support and guidance for the creation of human resources systems, processes, documents, forms, plans, and procedures.

Projects and services may be modified on request of the Town. Wherever possible, Consultant will endeavor to complete work for the City at the most efficient and cost-effective level. The Town will be invoiced on an hourly basis at the rates and titles in the table below based on Consultant performing the work or type of workshop delivered, if requested and applicable.

Fee Schedule

Human Resources Director/ Organizational Development Coach	\$125.00 per hour
Human Resources Advisor/ Workshop Facilitator	\$85.00 per hour
Human Resources Specialist/Workshop Scheduler	\$52.00 per hour
Human Resources Technician/Organization and File Specialist	\$40.00 per hour

Workshop Facilitation – (Includes course prep, pre-and post-workshop communications, and facilitator-led in person or virtual classroom)	90 min-\$495 ½ Day \$1,075 Full Day \$2,750	2 hours \$695 ¾ Day \$2,050
Online Assessments, includes enrollment in an online resource, comparison, and continuing user exploration platform	Vary depending on type of assessment \$72-\$168 per person \$240 for Leader 363 assessment	

*Travel, if requested and mutually agreed upon in writing, may be billed at ½ the billable rate of the team member providing the service per the above schedule and titles. Rarely, and upon advance mutual agreement in writing, lodging may be obtained and reimbursed at an agreed upon rate.

SCOPE OF WORK - CHIEF LABOR NEGOTIATOR

PRE-NEGOTIATIONS

- Review materials and work with the Finance and executives to develop a financial strategy based on data that is defensible.
- Meet with the executives as appropriate to review options and identify any administrative, operational and other non-financial issues for negotiation.
- Meet with the governing body to gain advance authorization on negotiation limits, identify priorities, and review the role of governing body members during negotiations.
- Draft proposals and language for contract article changes.

DURING NEGOTIATIONS

- Utilize interest-based negotiations wherever possible. The goal will be to come to an agreement that is fair for all parties.
- Negotiations team will consist of an MTC Chief Labor Negotiator, a note-taker and appropriate agency executives as assigned/needed. The Town Finance Director will provide a cost analysis for all proposals. Town’s labor attorney and MTC Human Resources Advisors may be utilized as needed.
- The MTC Chief Labor Negotiator will compile records of negotiations.
- The Town Manager will be updated after each negotiations meeting. The governing body will be updated as needed or when/if the Town management negotiating team needs a change in authority.

POST-NEGOTIATIONS

- Issues will be determined for follow-up and action plans will be created to ensure agreement and accountability.
- Record of negotiations will be transferred to Town.
- Changes to the labor contract will be completed, and a cover document for governing body approval prepared.
- MTC Chief Labor Negotiator will be available to attend the public meeting at which labor contract approval is scheduled.

Wherever possible, work for the Town will be completed at the most efficient and cost-effective level. The Town will be invoiced, monthly, on a time and materials basis at the rates and titles in the table below based on Consultant performing the work or type of workshop delivered, if requested and applicable.

COST OF SERVICES

The cost of services for two units and six to eight meetings a unit is estimated at no more than \$20,000 including a notetaker and one or two hours a week of a fiscal analyst. Should negotiations become protracted, escalate to fact finding and impasse, or develop in other unplanned directions, the total cost may need to increase. The Town will be invoiced only as charges are incurred and hours worked at the rates below.

Director/ Labor Negotiator	\$130.00 per hour
Sr. Finance & Budget Analyst	\$115.00 per hour
HR Advisor/ Workshop Facilitator	\$85.00 per hour
HR Specialist/Workshop Scheduler	\$65.00 per hour
Admin Technician/Organization and File Specialist	\$52.00 per hour

*Town may be billed 1/2 cost per hour for travel time and reasonable expenditures as required to attend in person meetings or assess on-site conditions and program. Requests for reimbursement must be discussed ahead of time and agreed upon mutually in writing.