



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Montgomery and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Liza Tamura, City Clerk
Terri Aliabadi, Senior Deputy City Clerk

DATE: October 7, 2008

SUBJECT: Approval of a Contract with Election Consultants Martin & Chapman for Election Services pertaining to the Tuesday, March 3, 2009 General Municipal Election

RECOMMENDATION:

It is recommended that the City Council: a) waive formal bidding per Municipal Code Section 2.36.130 (professional services) and b) authorize the City Manager to enter into the agreement between the City and Martin & Chapman Co., (see attachment) for Election Services pertaining to said Election.

FISCAL IMPLICATION:

Sufficient funds are budgeted by the City Clerk's office for this expense. We are requesting that Council authorize the agreement with an amount not-to-exceed \$55,000.

BACKGROUND:

Martin & Chapman have over 50 years of experience in working with cities, counties and districts by providing services, supplies and guidance for elections. They work closely with the Secretary of States Office, the Los Angeles County Board of Supervisors and the Los Angeles County Registrar/Recorders office in order to provide timely and accurate election materials to over 488 California Cities.

DISCUSSION:

Staff is requesting Council waive formal bidding and approve the agreement with Martin & Chapman. The City has utilized Martin and Chapman's professional election services for General and Special Municipal Elections since 1988. Entering into an agreement with Martin & Chapman for election services associated with the March 3, 2009 General Municipal Election will ensure a sense of continuity in the many aspects of the election process.

The proposed agreement with Martin & Chapman for the Tuesday, March 3, 2009 General Municipal Election, has been attached for Council's consideration. Services to be provided include:

- provision of a calendar listing election events, dates and requirements of the Elections Code;
- provision of sample forms, resolutions and notices required for the election;
- assistance of a qualified staff member, available by telephone or in person at all times, to assist the City Clerk;
- provision of pre-election, absentee ballot, precinct, and official ballot supplies; sample ballot/voter information pamphlets, voter identification reports and labels, and ballot counting/election night supplies;
- delivery of precinct supplies; and
- mailing services, etc.

Attachment: Agreement

AGREEMENT

THIS AGREEMENT is made this 7th day of October, 2008, by the CITY OF MANHATTAN BEACH, a municipal corporation, ("CITY"), and MARTIN & CHAPMAN COMPANY ("CONTRACTOR").

RECITALS

The following recitals are a substantive part of this Agreement:

1. City is desirous of obtaining election consulting services regarding the March 3, 2009 General Municipal Election;
2. CONTRACTOR is qualified by virtue of experience, training, education, and expertise to accomplish these services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This Agreement shall terminate on June 30, 2009, unless earlier terminated as provided below.

1.1 **Termination.** CITY and CONTRACTOR shall have the right to terminate this Agreement, without cause, by giving thirty (30) days written notice. Upon receipt of a termination notice, CONTRACTOR shall:

- (1) promptly discontinue all services affected (unless the notice directs otherwise); and
- (2) promptly deliver all data, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in performing the Agreement to CITY, whether completed or in progress. CONTRACTOR shall be entitled to reasonable compensation for the services it performs up to the date of termination.

2. **Services to be Provided.** The services to be performed by CONTRACTOR shall consist of the following:

CONTRACTOR agrees to provide all necessary election advice, supplies and services for the CITY'S March 3, 2009 General Municipal Election.

3. **Compensation.** CONTRACTOR shall be compensated as follows:

3.1 **Amount.** Compensation under this Agreement shall not exceed \$45,150.

3.2 **Payment.** For work under this Agreement, payment shall be made per monthly invoice. For extra work not a part of this Agreement, written authorization by CITY will be required.

3.3 **Expenses.** CONTRACTOR shall not be entitled to any additional compensation for expenses.

4. **Professional Standards.** CONTRACTOR shall maintain or exceed the level of competency presently maintained by other similar practitioners in the State of California, for professional and technical soundness, accuracy and adequacy of all work, advice, and materials furnished under this Agreement.

5. **Time of Performance.** CONTRACTOR shall complete all services required hereunder as and when directed by CITY. However, CITY in its sole discretion may extend the time for performance of any service. CONTRACTOR shall have all votes counted by twelve midnight (12:00 A.M.) on Election Day. If CONTRACTOR fails to do so it shall waive all charges to CITY for ballot counter rental.

6. **Employees and Subcontractors.** CONTRACTOR may, at CONTRACTOR'S sole cost and expense, employ such other person(s) as may, in the opinion of CONTRACTOR, be needed to comply with the terms of this Agreement, if such person(s) possess(es) the necessary qualifications to perform such services. If such person(s) is/are employed to perform a portion of the scope of work, the engagement of such person(s) shall be subject to the prior approval of the CITY.

7. **Insurance Requirements.**

7.1 **Commencement of Work.** CONTRACTOR shall not commence work under this Agreement until it has obtained CITY approved insurance. Before beginning work hereunder, during the entire period of this Agreement, for any extensions hereto, and for periods after the end of this Agreement as indicated below, CONTRACTOR must have and maintain in place, all of the insurance coverages required in this Section 7. CONTRACTOR'S insurance shall comply with all items specified by this Agreement. Any subcontractors shall be subject to all of the requirements of this Section 7 and CONTRACTOR shall be responsible to obtain evidence of insurance from each subcontractor and provide it to CITY before the subcontractor commences work.

All insurance policies used to satisfy the requirements imposed hereunder shall be issued by insurers authorized to do business in the State of California. Insurers shall have a current A.M. Best's rating of not less than A-:VII unless otherwise approved by CITY.

7.2 **Coverages, Limits and Policy Requirements.** CONTRACTOR shall maintain the types of coverages and limits indicated below:

(1) COMMERCIAL GENERAL LIABILITY INSURANCE - a policy for occurrence coverage, including all coverages provided by and to the extent afforded by Insurance Services Office Form CG 0001 ed. 11/88 or 11/85, with no special limitations affecting CITY. The limit for all coverages under this policy shall be no less than one million dollars (\$1,000,000.00) per occurrence. CITY, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by CITY. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 1 (General Liability) must be executed by the applicable insurance underwriters.

(2) COMMERCIAL AUTO LIABILITY INSURANCE - a policy including all coverages provided by and to the extent afforded by Insurance Services Office form CA 0001, ed. 12/93, including Symbol 1 (any auto) with no special limitations affecting the CITY. The limit for bodily injury and property damage liability shall be no less than one million dollars (\$1,000,000) per accident. CITY, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by CITY. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 2 (Auto) must be executed by the applicable insurance underwriters.

(3) WORKERS' COMPENSATION INSURANCE - a policy which meets all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. The minimum coverage limits for said insurance shall be no less than one million dollars (\$1,000,000) per claim. The policy shall contain, or be endorsed to include, a waiver of subrogation in favor of CITY.

7.3 Additional Requirements. The procuring of such required policies of insurance shall not be construed to limit CONTRACTOR'S liability hereunder, or to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against CITY for payment of premiums or other amounts with respect thereto. CITY shall notify CONTRACTOR in writing of changes in the insurance requirements. If CONTRACTOR does not deposit copies of acceptable insurance policies with CITY incorporating such changes within sixty (60) days of receipt of such notice, CONTRACTOR shall be deemed in default hereunder.

Any deductibles or self-insured retentions must be declared to and approved by CITY. Any deductible exceeding an amount acceptable to CITY shall be subject to the following changes:

- (1) either the insurer shall eliminate, or reduce, such deductibles or self-insured retentions with respect to CITY and its officials, employees and agents (with additional premium, if any, to be paid by CONTRACTOR) ; or
- (2) CONTRACTOR shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration, and defense expenses.

7.4 Verification of Compliance. CONTRACTOR shall furnish CITY with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by CITY before work commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, CONTRACTOR shall deliver to CITY a binder or certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefor, or accompanied by other proof of payment satisfactory to CITY.

8. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

9. **Non-Discrimination.** CONTRACTOR covenants there shall be no discrimination based upon race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.

10. **Independent Contractor.** It is agreed that CONTRACTOR shall act and be an independent contractor and not an agent or employee of CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.

11. **Compliance with Law.** CONTRACTOR shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

12. **Ownership of Work Product.** All documents or other information created, developed or received by CONTRACTOR shall, for purposes of copyright law, be deemed works made for hire for CITY by CONTRACTOR as CITY'S employee(s) for hire and shall be the sole property of CITY. CONTRACTOR shall provide CITY with copies of these items upon demand and in any event, upon termination or expiration of the term of this Agreement.

13. **Conflict of Interest and Reporting.** CONTRACTOR shall at all times avoid conflict of interest, or appearance of conflict of interest, in performance of this Agreement.

14. **Notices.** All notices shall be personally delivered or mailed to the below listed addresses. These addresses shall be used for delivery of service of process.

a. Address of CONTRACTOR is as follows:
Scott Martin
Martin & Chapman Co.
1951 Wright Circle, Anaheim, CA 92806

b. Address of CITY is as follows:
City Clerk
City of Manhattan Beach
1400 Highland Ave
Manhattan Beach, CA 90266

(with a copy to):

City Attorney
City of Manhattan Beach
1400 Highland Ave
Manhattan Beach, CA 90266

15. **Licenses, Permits, and Fees.** CONTRACTOR shall obtain a Manhattan Beach Business License, all permits, and licenses as may be required by this Agreement.

16. **Familiarity with Work.** By executing this Agreement, CONTRACTOR warrants that:

- (1) it has investigated the work to be performed;
- (2) it has investigated the site of the work and is aware of all conditions there; and

- (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONTRACTOR discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONTRACTOR's risk, until written instructions are received from CITY.

17. **Time of Essence.** Time is of the essence in the performance of this Agreement.

18. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement, nor any portion, shall be assigned by CONTRACTOR without prior written consent of CITY.

19. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

20. **Indemnification.** CONTRACTOR agrees to indemnify, defend, and hold harmless CITY and its elective or appointive boards, officers, agents, attorneys and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees arising out of, or in any way connected with performance of, the Agreement by CONTRACTOR, CONTRACTOR'S agents, officers, employees, subcontractors, or independent contractor(s) hired by CONTRACTOR. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR.

21. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any other agreements, oral or written. No promises, other than those included in this Agreement, shall be valid. This Agreement may be modified only by a written agreement executed by CITY and CONTRACTOR.

22. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the appropriate branch of the Los Angeles County Municipal or Superior Court.

23. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.

24. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

25. **Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that representations by any party not embodied herein, and any other agreements, statements, or promises concerning the subject matter of this Agreement, not contained in this Agreement, shall not be valid and binding. Any modification of this Agreement will be effective only if it is in writing signed by the parties. Any issue with respect to the interpretation or construction of this Agreement is to be resolved without resorting to the presumption that ambiguities should be construed against the drafter.

26. **Attorneys' Fees.** In the event that legal action is necessary to enforce the provisions of the Agreement, or to declare the rights of the parties hereunder, the parties agree that the prevailing party in the legal action shall be entitled to recover attorneys' fees and court costs from the opposing party.

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IN WITNESS THEREOF, the parties hereto have executed this Agreement on the day and year first shown above.

MARTIN & CHAPMAN COMPANY

CITY OF MANHATTAN BEACH

By: Scott Martin, President & Owner

By: Geoff Dolan, City Manager

ATTEST:

APPROVED AS TO FORM:

Liza Tamura, City Clerk

Robert V. Wadden, Jr., City Attorney