

MEMORANDUM OF UNDERSTANDING
Between
SAN MATEO COUNTY PLANNING AND BUILDING DEPARTMENT
and
TOWN OF ATHERTON
for the
MULTIJURISDICTIONAL SAFETY ELEMENT PROJECT

This Memorandum of Understanding (“MOU”), effective the 15th day of June, 2023 is entered into by and between the County of San Mateo (“County”) and the Town of Atherton (“Agency”), together referred to herein as the “Parties.”

WHEREAS, the County and cities and towns in San Mateo County have a strong history of collaboration and resource sharing on various planning studies and initiatives, including a new initiative to participate in the Multijurisdictional Safety Element Project (“Project”); and

WHEREAS, recent changes to State law require local jurisdictions to review and update the safety elements of their general plans to address climate adaptation and resiliency strategies, fire hazards, flood hazards, and evacuation routes; and

WHEREAS, nine (9) jurisdictions in San Mateo County have formed a Safety Element Collaborative (“Collaborative” and “Collaborative Partners”) to address the legal requirement to update safety elements and to share analysis and resources for greater efficiency for the jurisdictions participating in this collaborative effort; and

WHEREAS, seven (7) jurisdictions will participate in the full project scope of work (Atherton, Belmont, Burlingame, East Palo Alto, Half Moon Bay, San Bruno, San Mateo County), and two (2) jurisdictions will only participate in certain tasks (Brisbane, Pacifica); and

WHEREAS, for those agencies participating in the Collaborative’s full scope of work, a legally compliant safety element will be produced; and

WHEREAS, through a competitive RFP process facilitated by San Mateo County, PlaceWorks (“Contractor”) was identified as the preferred firm to provide consulting services for the Project for tasks such as community engagement, the vulnerability assessment, and drafting updated safety elements; and

WHEREAS, Community Planning Collaborative, the consulting firm for the 21 Elements Project, has served as the project manager (“Project Manager”) for the Safety Element Collaborative through the Collaboratives’ initial formation and the RFP process to ensure the voice of each participating agency is heard and their needs addressed; and

WHEREAS, Community Planning Collaborative will continue to serve as the Project Manager for the Safety Element Collaborative for the duration of the Project; and

WHEREAS, the County will serve as the fiscal agent for the Project; and

WHEREAS, the total cost of the Project is \$1,316,416 and the Agency’s contribution is \$105,169; and

WHEREAS, the County and Agency desire to enter into this MOU to memorialize the understanding that the Parties will work cooperatively to implement and fund the Project in accordance with the Parties will work cooperatively to implement and fund the Project in accordance with Exhibits A, B & C.

NOW, THEREFORE, BE IT RESOLVED that the County and Agency agree as follows:

I. PURPOSE

The purpose of this MOU is to memorialize the understanding between the County and Agency that (1) the Agency wishes to participate in the Multi-Jurisdictional Safety Element Project, (2) the Agency wishes to utilize the Contractor and the Project Manager as the consulting team, and (3) the County will serve as the fiscal agent to facilitate the Project.

II. EXHIBITS

The following exhibits are attached to this MOU and incorporated into this MOU by this reference:

Exhibit A – Project Contributions by Agency

Exhibit B – PlaceWorks - Scope of Work and Fee Proposals

Exhibit C – Community Planning Collaborative – Scope of Work and Fee Proposal

III. ROLES AND RESPONSIBILITIES

- a. The County will serve as the Fiscal Agent for the Project and will enter into separate agreements with Contractor and Project Manager. The County will review and

process payments and invoices on behalf of the Collaborative Partners to the consultants pursuant to the terms of the relevant consulting agreements.

- b. The Agency will provide funding as set forth in Exhibit A for the Project and will participate in obligations identified in the Scope of Work in Exhibit B, including participating in the overall plan development and implementation.
- c. Community Planning Collaborative will serve as Project Manager and will manage and implement all aspects of the Project, in accordance with the Scope of Work set forth in Exhibit C.
- d. PlaceWorks will serve as Contractor and will carry out the tasks described in the Scope of Work set forth in Exhibit B.

IV. FUNDING AND METHOD OF PAYMENT

- a. Agency agrees to pay the County for the Agency contribution identified in Exhibit A of this MOU. The Agency agrees to pay the County either (1) 100% of its contribution by July 15, 2023, (2) 50% of its contribution by July 15, 2023 and the remaining 50% by September 15, 2023, or (3) 20% of its contribution by July 15, 2023, 60% by September 15, 2023, and the remaining 20% by August 1, 2024. The Agency will notify the County of its payment selection upon execution of this MOU.
 - 1. The Contractor will submit invoices to the Project Manager on a monthly basis for Project activities. A brief narrative progress report shall be included with each invoice. The Project Manager will review the Contractor's invoices and submit the invoices to the County for payment.
 - 2. The Project Manager will submit the Project Manager's invoices and brief narrative progress reports to the County on a monthly basis for review and payment.
 - 3. The Contractor and Project Manager will provide a quarterly accounting of invoices, charged and remaining funds for each Collaborative Partner to the County and Agency.
- b. The County and Agency each agree they are not entitled to reimbursement of costs incurred while performing obligations as set forth in Section III, Scope of Work Responsibilities.
- c. In the event that the actual costs of completing the scopes of work, as set forth in Exhibits B and C, exceed the budgets set forth in Exhibits B or C, respectively, the Collaborative Partners, including the County and Agency, will confer and agree either to reduce the relevant scope of work and/or to provide additional funding subject to further written mutual agreement of the Parties. The Collaborative Partners agree to use best efforts in such case to reach resolution without causing a Project delay.
- d. At the conclusion of the Project, the Project Manager will submit a final accounting to each Collaborative Partner with any remaining funds returned to each Collaborative Partner or a final invoice if required.

V. TERM

This MOU shall be effective from June 15, 2023 to June 15, 2026, unless terminated sooner pursuant to Section XIV.

VI. AMENDMENTS

The Agency contact, or designee, is authorized to make minor modifications to the scopes of work in Exhibits B and C, in consultation with the Project Manager and County, to respond to necessary changes as the Project evolves as long as the Project cost does not exceed the total approved cost estimate in Exhibit A. Such minor modifications to the scopes of work shall be documented in writing, but shall not require an amendment to this MOU.

This MOU can be amended, modified, or supplemented only in writing(s) signed by both Parties. No oral understanding or agreement not incorporated herein will be binding on either of the Parties.

VII. INDEMNIFICATION

- a. It is agreed that Agency shall defend, hold harmless, and indemnify County and its officers, employees, agents, and servants from any and all claims, suits, or actions of every name, kind, and description brought by a third party which arise out of the terms and conditions of this MOU (collectively, "Claims"); provided that such Claims are the direct result from the acts or omissions of Agency and/or its officers, employees, agents, and servants.
- b. Agency shall defend, hold harmless, and indemnify County from and against any and all claims for wages, salaries, benefits, taxes, and all other withholdings and charges payable to, or in respect to, Agency's representatives for services provided under this MOU.
- c. It is agreed that County shall defend, save harmless, and indemnify Agency and its officers, employees, agents, and servants from any and all claims, suits, or actions of every name, kind, and description brought by a third party which arise out of the terms and conditions of this MOU and which result from the acts or omissions of County and/or its officers and employees.
- d. The duty of each party to defend, hold harmless, and indemnify the other as set forth herein shall include the duty to defend as set forth in Section 2778 of the California Civil Code.
- e. In the event of concurrent negligence (or intentional/reckless acts) of County and/or its officers and employees, on the one hand, and Agency and/or its officers, employees, agents, and servants, on the other hand, then the liability for any and all claims for injuries or damage to persons and/or property which arise out of terms and conditions of this MOU shall be apportioned according to the California theory of comparative fault.
- f. This indemnification will survive termination or expiration of this MOU.

VIII. NOTICES

- a. All notices and communications deemed by either party to be necessary or desirable must be in writing and may be given by personal delivery to a representative of the

other party or by mailing the same, postage prepaid, addressed as follows:

If to the County:

San Mateo County Planning & Building Department
455 County Center
2nd Floor
Redwood City, CA 94063
Steve Monowitz, Director of Community Development
650/363-1861; smonowitz@smcgov.org

If to the Agency:

Town of Atherton
80 Fair Oaks Lane
Atherton, CA 94027
George Rodericks
City Manager
Phone: (650) 752-0504
Email: grodericks@ci.atherton.ca.us

- b. The address to which mailings may be made may be changed from time to time by notice mailed as described above. Any notice given by mail will be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

IX. INDEPENDENT CONTRACTOR

The Parties agree and understand that the work/services performed by either of the Parties or any consultant retained by either of the Parties under this MOU are performed as independent contractors and not as employees or agents of the other party. Nothing herein will be deemed to create any joint venture between the County and Agency.

X. SUCCESSORS AND ASSIGNS

Neither party will assign, transfer, or otherwise substitute its interest in this MOU, nor its obligations, without the prior written consent of the other party. All obligations created under this MOU will be binding on, and the rights established herein will inure to the benefit of, any successors or assigns of the Parties.

XI. COMPLIANCE

The Parties must comply with any and all laws, statutes, ordinances, rules, regulations, or requirements of the federal, state, and local governments, and any agency thereof, which relate to or in any manner affect the performance of this MOU.

XII. DISPUTE RESOLUTION

The Parties agree to work together in good faith to resolve any dispute arising from this MOU and agree to refer any dispute not resolved within 30 days to the County's Community Development Director and Agency's Planning Director for resolution. In the event resolution cannot be reached, the Parties may submit the dispute to mediation by a neutral party mutually agreed to by the Parties prior to initiating any formal action in court.

XIII. TERMINATION

Either Party may terminate this MOU with or without cause upon 30 days' prior written notice. If either Party terminates this MOU with or without cause, the Agency will be responsible for its pro rata share of costs incurred by the County or the County's Project consultants up through the effective date of termination.

XIV. SEVERABILITY

If any provision of this MOU is be deemed invalid or unenforceable by a court of competent jurisdiction, that provision will be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this MOU; and in any event, the remaining provisions of this MOU will remain in full force and effect.

XV. GOVERNING LAW

This MOU will be governed by the laws of the State of California as applied to contracts that are made and performed entirely in California.

XVI. NO WAIVER

No waiver of any default or breach of any covenant of this MOU by either party will be implied from any omission by either party to take action on account of such default if such default persists or is repeated. No express waiver will affect any default not specified in the waiver, and the waiver will be operative only for the time or extent stated. The consent or approval by either party to or of any act by either party requiring further consent or approval will not be deemed to waive or render necessary consent or approval to any subsequent, similar acts.

IN WITNESS WHEREOF, the Parties have executed this MOU as follows:

TOWN OF ATHERTON

By: _____
Bill Widmer, Mayor

SAN MATEO COUNTY

By: _____
David Pine, President, Board of
Supervisors, County of San Mateo

ATTEST:

By: _____
Anthony Suber, Town Clerk

ATTEST:

By: _____
Michael Callagy, Clerk of Said Board

APPROVED AS TO FORM:

By: _____
Mona Ebrahimi, City Attorney

APPROVED AS TO FORM:

By: _____
Melissa Andrikopoulous, County Attorney

EXHIBIT A
PROJECT CONTRIBUTIONS BY AGENCY

EXHIBIT B

PLACEWORKS SCOPE OF WORK & FEE PROPOSALS

EXHIBIT C

COMMUNITY PLANNING COLLABORATIVE SCOPE OF WORK AND FEE PROPOSAL