



ITEM 19

CITY COUNCIL STAFF REPORT – CONSENT AGENDA

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: LISA COSTA SANDERS, DEPUTY TOWN PLANNER

DATE: MAY 21, 2014

SUBJECT: AUTHORIZE THE RELEASE OF REQUEST FOR PROPOSALS FOR ENVIRONMENTAL DOCUMENT PREPARATION AND GEOTECHNICAL ENGINEERING SERVICES FOR THE CIVIC CENTER MASTER PLAN

RECOMMENDATION

Review the attached Request for Proposals (RFPs) for environmental document preparation and geotechnical engineering services for the Civic Center project and authorize their distribution.

BACKGROUND

In April the City Council accepted the Civic Center Master Plan and authorized staff to initiate the next steps of the environmental analysis and geotechnical investigation prior to design.

ANALYSIS

The Civic Center Master Plan includes the demolition of the existing Town Administrative building, Permit Center, Library and various outbuildings. The plan includes construction of a new City Administrative building, Police ancillary building and a new Library building within the Town-owned property along Ashfield Road and Dinkelspiel Station Lane. The Master Plan also includes reconfiguration of the roadway and removal of several heritage trees.

Environmental review is required for this project pursuant to the California Environmental Quality Act (CEQA). The Town's Civic Center Advisory Committee reviewed the RFP for Environmental Document Preparation for the Atherton Civic Center project and recommends the City Council authorize its distribution.

Staff also prepared the attached RFP for Geotechnical Engineering Services. The geotechnical engineering services are required to inform the environmental analysis on soil conditions and will

be utilized in the future during the design engineer phase. The work will include soil borings, laboratory reports and a written report summarizing the soil conditions and any recommendations for the building design. The Civic Center Advisory Committee also reviewed this RFP and recommended its distribution.

FISCAL IMPACT

The cost estimate for the Civic Center Master Plan provides \$200,000 for environmental work (including staff management). It is estimated that the environmental work for this project will be less given that some of the work has already been completed as part of the prior proposed project. Environmental and geotechnical work is considered pre-design and pre-construction. Funds will be allocated in proportion to project component size.

ATTACHMENTS:

1. Request for Proposals for Environmental Document Preparation
2. Request for Proposals for Geotechnical Engineering Services



Town of Atherton

Town Administrative Offices
91 Ashfield Road
Atherton, California 94027
650-752-0500
Fax 650-688-6528

May 2014

Request for Proposals for the Environmental Document Preparation For the Atherton Civic Center Master Plan

The Town of Atherton is seeking proposals from professional environmental planning consultants to prepare an initial study to identify and prepare either a Mitigated Negative Declaration (MND) or an Environmental Impact Report (EIR) and a Mitigation Monitoring Program for the Atherton Civic Center Project in the Town of Atherton.

The MND or EIR will be prepared and processed in accordance with the California Environmental Quality Act.

PROJECT OVERVIEW

Project Location:

The project site is the Town-owned property at Ashfield Road, Dinkelspiel Station Lane, Fair Oaks Lane and Maple Avenue. The property is bound by the Caltrain rail corridor to the east and surrounded by single family residences. Existing conditions include the Town Administrative Building, Council Chambers, Library, Permit Center trailers, Public Works office building and Corporation yard. The site is improved with large parking areas previously used for Caltrain commuter services. Several heritage trees are within the project site.

Project Description:

The Town of Atherton recently completed a comprehensive Civic Center Master Plan. The plan for the Civic Center groups buildings around a central pedestrian gathering space, provides vehicle connectivity between Ashfield, Fair Oaks and Maple, distributes parking throughout the site along the perimeter, and constructs a clear circulation pattern through the site for pedestrians and bicycles. New facilities are proposed that replace the existing City Administrative and Police Building, the Library and the Building and Planning and Public Works Department Buildings. The cost of the project is estimated at \$31.8 million.

A list of buildings proposed to be retained, demolished and newly constructed is as follows:

Demolished buildings:

Description	Address	Building size	Year built
Town Administration	91 Ashfield	3,000 sf	1965
Police Department	91 Ashfield	7,725 sf	1965
Police Garage		1,440 sf	
Permit Center	83 Ashfield	960 sf	1997
Library	2 Dinkelspiel Station Lane	5,058 sf	1927
Storage		720 sf	1985
Public Works Offices		1,250 sf	2003

Retained buildings:

Description	Address	Building size	Year built
Council Chambers	94 Ashfield	1,696 sf	1924
Public Works Yard	99 Dinkelspiel Station Lane	2,000 sf	1980

Proposed New buildings:

Description	Building size
City Administration	25,500 sf
Police ancillary building	1,300 sf
Library	9,000 sf

The project also includes the removal of several heritage trees and the reconfiguration of Ashfield Road and Dinkelspiel Station Lane around the new Civic Center.

Existing Reports:

- Master Plan and Appendices, April 2014
- Library Environmental Impact Report dated February 2012
- Tree Inventory Report

ENVIRONMENTAL OVERVIEW

The environmental document will identify environmental impacts that could result from development of the project as proposed. It is presently anticipated that the document will include at least the following specific environmental categories:

- Aesthetics – The project will include the construction of new one and two story buildings. The environmental document will describe the visual character of the existing project area and evaluate if the introduction of new buildings will have the potential to degrade the existing visual character or quality of the site and its surroundings. Identify mitigation measures for any significant aesthetic impact.

- Air Quality – the environmental document will evaluate potential air quality impacts to and from the proposed future development based on the criteria established by the Bay Area Air Quality Management District. Demolition of existing structures and construction of new structures may result in short-term air quality impacts and mitigation measures will be identified in the environmental document. The consultant will also address Global Warming to the degree required by the State.
- Biological Resources – The project will result in the removal of several heritage trees. The environmental document will describe the location and condition of existing heritage trees, including size, health and structure. Evaluate the biological conditions on the site, impacts of the future development and appropriate mitigations.
- Cultural Resources – The previously prepared Library EIR identified the current library building as a potential historical resource. The project proposes to demolish the existing library building. The new buildings are proposed near the historic Train Station as well as reconfiguration of the roadway layout. The environmental document will review the new buildings, street layout and demolition of the library building to determine if it will cause a substantial adverse change in the significance of a historical resource. Identify appropriate mitigation measures.
- Hazardous Materials – the environmental document will address the potential release and handling of hazardous materials during the demolition of existing structures on the site and if necessary, identify mitigation measures.
- Geology and Soils – the environmental document will describe the proximity of the project site to any known earthquake fault and evaluate the likelihood of exposing people or structures to potential adverse impacts related to ground shaking, ground failure or landslides.
- Hydrology and Water Quality – the environmental document will discuss the potential impacts of constructing the proposed structures on the site. The project will have to comply with the C.3 regulations of the NPDES (National Pollutant Discharge Elimination System). Identify mitigation measures for any significant impacts as necessary.
- Land Use and Planning – the environmental document will describe the existing land uses adjacent to the project site. Impacts that would occur due to the proposed change in building configuration will be described in the environmental document. Identify mitigation measures for any significant impacts.
- Noise - the environmental document will describe the existing noise levels and potential increases in noise levels resulting from the project. The environmental document will also evaluate the noise from the rail corridor and identify any necessary mitigation measures to protect the building occupants. Short-term construction noise impacts to adjacent properties will also be addressed.

- Transportation/Traffic – the project would reconfigure the existing roadway network at the project site. A traffic analysis shall be completed to analyze the new roadway design. The traffic study will include a discussion of any impacts on nearby intersections. The traffic analysis will describe the existing and proposed traffic circulation conditions for all modes of transportation, including automobiles, bicycles and pedestrians in the vicinity of the site. Appropriate mitigation will be identified to reduce any significant impacts.

SCOPE OF WORK

In general, the proposed scope of work should include or address the items listed below:

1. Kick off Meeting – meeting with staff from the Town of Atherton to discuss data needs and identify any preferences the Town may have regarding report format, organization and presentation
2. Schedule – based on the initial meeting with staff, the consultant will prepare a refined schedule for the preparation of the environmental document. Any changes to the schedule require approval from Town Staff.
3. Data Collection and Review of Existing Information – to avoid duplications and reduce costs, the consultants will rely on existing data whenever possible. An Environmental Impact Report for the Library project was completed in 2012 and includes analysis of the existing library building and the project site. The consultant will review documents related to the proposed project and existing conditions on the project site and in the vicinity.
4. NOI/NOP – the consultant will prepare either a Notice of Intent or a Notice of Preparation and distribute all necessary forms and maps to the State Clearinghouse and identified affected agencies.
5. Preparation of Initial Study – the project description will be prepared in accordance with CEQA guidelines and will include a description of the project's technical and environmental characteristics. The consultant shall make a recommendation to staff on the appropriate environmental document to be prepared based on the Initial Study (Mitigated Negative Declaration or Environmental Impact Report).
6. Prepare Administrative Environmental Document (MND or EIR) – prepare an Administrative Draft MND or EIR for Town Staff review. The document will focus on those environmental factors for which potentially significant impacts may result. Mitigation measures will be recommended for each identified significant impact.
7. Prepare Draft MND or DEIR – revise the Administrative Draft MND or EIR based on Town staff review. Depending upon the type of comments received from the Town, a second revised document may be required prior to the circulation.

8. Prepare Final MND or EIR (Response to Comments) and Mitigation Monitoring Reporting Plan (MMRP) – prepare written responses to the comments received on the Draft MND or EIR and incorporate these responses into an Administrative Final MND or EIR for Town review. An MMRP will be prepared that defines how, when and by whom mitigation measures are to be implemented. Prepare appropriate noticing, including a Notice of Determination following project decision.
9. Attend Public Meetings and Hearings – the consultant will attend up to four hearings including, scoping meeting (if necessary), Planning Commission and City Council hearings and will be available to answer questions. Key sub-consultants may also need to attend the meetings. In addition to the meetings referenced previously, the consultant shall be available to attend project status/problem-solving meetings as necessary.

SUBMISSION OF PROPOSALS

Proposals should contain at least the following information:

- A description of your firm's background, staffing and environmental planning capabilities.
- A description of the proposed Scope of Work by the consultant and understanding of the project. This will include the number and type of graphics to be provided in the environmental document.
- Estimated timeline for project.
- Total cost for the project and a breakdown of all costs of report preparation including professional staff allocation to specific tasks, clerical reproduction, mailing and cost for sub consultants.
- Identify and provide contact information for the project manager and names and resumes of all staff involved. The information will include names of staff members who will attend meetings/public hearing.
- A list of all sub-consultants and their background and staffing.
- The consultant team's relevant experience and a list of references.

Submit five (5) copies of the Proposal no later than **4:00pm on Thursday, July 10, 2014**

Proposals shall be sent to:

Lisa Costa Sanders, Deputy Town Planner
91 Ashfield Road
Atherton, CA 94027
lcostasanders@ci.atherton.ca.us

If you have questions please contact Lisa Costa Sanders at 650-333-0248 or lcostasanders@ci.atherton.ca.us . Thank you for your interest in this project.

Attachment: Professional Services Agreement

TOWN OF ATHERTON



Request for Proposals

for

**Civic Center Project
Geotechnical Engineering Services**

**City Clerk
91 Ashfield Road
Atherton, CA 94027**

Proposals due by 4:00 pm on July 10, 2014

- SECTION I** Overview
- SECTION II** Background
- SECTION III** Site Location and Description
- SECTION IV** Scope of Work
- SECTION V** Submittal and Review Process
- SECTION VI** Proposed Timeline
- SECTION VII** Proposal Content
- SECTION VIII** Evaluation Criteria
- SECTION IX** Appendices
 - 1. Exhibit 1 Master Plan Site Plan
 - 2. Exhibit 2 Master Plan (on Town Web site)
- SECTION X** Professional Services Agreement

I. Overview

The Town of Atherton seeks a proposal for professional engineering services to assist with the environmental assessment of the buildings and site improvements which will be designed and constructed to implement the Civic Center Master Plan. The Master Plan was prepared by HMC Architects and is available on the Town's Web site at <http://www.ci.atherton.ca.us> under Current Projects. It is generally described as construction on the Town's 4.4 acre site of the new City Hall as a two-story, 25,000 square foot building (Administration/Police/Community Services), a separate one-story 9,000 square foot Library and associated roads and site improvements (Exhibit 1). The Project Manager will assist the Town Engineer in selection and management of a design team which will be responsible for translating the Town's Master Plan into reality. Geotechnical engineering services at this phase of the project, including borings and logs, will be used to inform the environmental assessment, but should also be useful in and applicable to future phases as well.

Site and buildings' design must be consistent and compatible with Atherton's rural, residential character in massing and scale, reflecting the Town's building types rather than an urban civic center. The project should endeavor to mitigate adverse impacts on nearby residents. An Environmental Impact Report is being prepared under the direction of the Town Planning department and is expected to be available by the end of the calendar year.

II. Background

The Civic Center Project has a Master Plan consisting of the Town's Administrative Offices, Police Department, Public Works, Building and Planning Departments, Council Chambers, Library, Post Office, Caltrain station, community meeting rooms and other functional uses and associated outdoor facilities. The historic Town Hall is to be retained, although its renovation as well as a number of other features will be shown as Add Alternates, depending on funding. Circulation patterns have been changed to improve vehicular, cyclist and pedestrian safety and to create a central Town Green. The Master Plan has been developed to be consistent with the Town's General Plan by preserving the Town's character as a scenic, rural, thickly-wooded residential area with abundant open space.

III. Site Location and Description

The Civic Center site is located at 91 Ashfield Road. It is bordered on the west by Fair Oaks Lane, on the north by railroad tracks (also used by CalTrain), on the east by Maple Avenue and on the south by private properties. The parcels are generally bisected by Station Lane and Ashfield Road. Major buildings include the Administration Building/Police Station, original Town Hall (currently Council Chambers), Library, Corporation Yard Garage, Corporation Yard Office/Lockers, Police Garage and (modular) Permit Center. There are approximately 100 off-street parking spaces available to the public, plus a secured parking lots for Administration, Police and Public Works parking.

IV. Scope of Work

Reporting to the Town Engineer, the Geotechnical Engineering firm will be responsible for investigating, advising on and documenting the geotechnical elements of the Civic Center site. Potential environmental issues include foundation design, excavation, including the potential for an underground

garage with storage, storm drain retention and re-grading to preserve heritage trees. Proposals should include all required field work and site investigation, including soil borings and laboratory reports, as well as a written report suitable to be used for design. Future services including plan review and construction observation are not required at this time, although they may be included as optional services for future consideration.

V. Submittal and Review Process

1. Applicant questions: All questions regarding the RFP shall be submitted in writing to Gordon Siebert, Town Engineer, at gsiebert@ci.atherton.ca.us . Questions and responses will be posted on the Atherton Town website.
2. Submittal Deadline: Late submittals will not be accepted.
3. Format and Delivery: Submit ten (10) letter-sized copies with one (1) unbound copy of the technical proposal to:

City Clerk
Town of Atherton
91 Ashfield Road
Atherton, CA 94027

and e-mail a PDF copy to Gordon Siebert at gsiebert@ci.atherton.ca.us .

4. Submittals will not be returned.
5. One (1) copy of the cost proposal shall be submitted in a separate sealed envelope at the same time as submittal of the technical proposal. The Town expects compensation to be on a time and materials basis with a not-to-exceed limit.
6. The Town reserves the right to accept or reject any or all proposals, or to alter the selection process in any lawful way, to postpone the selection process for its own convenience at any time, and to waive any non-substantive defects in this RFP or the proposals.
7. The Town proposes to short list the most qualified firms for consideration during the RFP process, and to modify work plans and scope during negotiations. The Town reserves the right to negotiate with other qualified persons or firms, or to solicit additional statements of qualifications at any point in the project should it fail to negotiate a reasonable fee with the initially selected person or firm or should that firm fail to execute the Town's Agreement.

VI. Proposed Timeline

June 19, 2014	RFP available on Town of Atherton website
June 24, 2014, 11 am	Pre-proposal meeting (non-mandatory)
June 30, 2014, 4 pm	Submission deadline for written questions
July 3, 2014	Responses to written questions available on Town website
July 10, 2014, 4 pm	Technical and Cost Proposals due

Week of July 14, 2014

Interviews with highest ranked proposers (if necessary)

August 20, 2014

Recommendation to Town Council

VII. Proposal Content

The proposal should include the following:

1. **FIRM OR PERSON INTRODUCTION:** including information such as form of organization, length of time in business, office location(s), number of staff and a general summary of qualifications documenting the strengths of the firm or person, areas of expertise and licensing.
2. **APPROACH:** the person or firm's project management practices, methodologies and processes.
3. **PROJECT EXPERIENCE:** listing specific project management experience that is related to the type of service required by the Civic Center project. Project experience should list the type of work provided with the client contact information for each project. If sub-consultants are proposed, include information on joint work, if any, and their roles in those projects.
4. **WORK PLAN:** detailed work plans with estimated hours by task or project phase, including a project schedule.
5. **KEY STAFF:** including the identification of the Principal-in-Charge and key staff. This section should identify the qualifications and related experience of key staff assigned to the project; and includes their resume showing experience in project management services. Include an organizational chart for this project.
6. **REFERENCES:** Provide client references, for all similar projects in the past five (5) years, that have working experience with the project team and companies proposed for assignment to this project. Furnish the name, title, address and telephone number of the person(s) at the client reference who is most knowledgeable about the work performed and can comment on the professional qualifications/expertise of the staff.
7. **LITIGATION:** a list of any current litigation to which the firm or person are parties by virtue of their professional service, in addition to a list of any such litigation from the past ten years.
8. **DISCLOSURE:** of any past, ongoing, or potential conflicts of interest that the firm or person may have as a result of performing the anticipated work.
9. **COMMENTS OR REQUESTED CHANGES TO CONTRACT:** A typical Town of Atherton Consultant Services Agreement is included as an attachment to the RFP. The proposing person or firm shall identify any objections and/or requested changes to the Agreement. The Town reserves the right to accept or reject any proposed changes.
10. **PROFESSIONAL FEES:** Include standard hourly fees and charges. **One (1) copy of the cost proposal shall be submitted in a separate sealed envelope at the same time as submittal of the technical proposal.** The highest-ranked consultant's Fee Proposal shall be opened and will form the starting basis for fee negotiations with the consultant.

VIII. Evaluation Criteria

RFP Evaluation Criteria

The geotechnical engineering firm would ideally satisfy the following criteria:

- At least 5-years' experience performing geotechnical engineering for commercial or institutional development projects
- Experience with geotechnical conditions in Atherton or nearby vicinity
- Knowledge of California Building Codes
- Knowledge of California Environmental Quality Act requirements
- Large enough firm to provide all required services internally
- Business office location within 50 miles of Atherton, CA

Firm qualifications	10%
Project Team Members' Technical Experience	30%
Understanding of Project Issues and Expected Results	20%
Quality of Proposed Work Plan	30%
Quality of References	10%

IX. Appendix

- i) Site Plan
- ii) Master Plan Final Report (on Web)

X. Standard Form of Agreement

X. Professional Services Agreement

DESIGN PROFESSIONAL AGREEMENT

THIS AGREEMENT is entered into as of the ____ day of _____ 20__, by and between the TOWN OF ATHERTON, herein called the "Town" and _____, herein called the "Consultant."

Recitals

WHEREAS, Town desires to obtain professional land surveying services in connection with _____, and

WHEREAS, Consultant hereby represents to the Town that Consultant is skilled and able to provide such services described in Section 3 of this Agreement; and

WHEREAS, Town desires to retain Consultant pursuant to this Agreement to provide the services described in Section 3 of this Agreement.

Agreement

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Project Coordination.

A. Town. The City Manager or his/her designee, shall represent Town for all purposes under this Agreement. The City Manager or designee is hereby designated as the Project Manager. The Project Manager shall supervise the progress and execution of this Agreement.

B. Consultant. The Consultant shall assign _____, Project Manager, to have overall responsibility for the progress and execution of this Agreement for Consultant.

3. Scope and Performance of Services

A. Scope of Services. Subject to such policy direction and approvals as the Town through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by reference.

B. Time of Performance. The services of Consultant are to commence no sooner than _____, 20__, and be completed not later than _____, 20__. Consultant shall perform its services in accordance with the schedule attached hereto as Exhibit B, and incorporated herein by reference. Any changes to these dates in either this Section 3 or Exhibit B must be approved in writing by the Project Manager.

C. Standard of Quality. Town relies upon the professional ability of Consultant as a material inducement to entering into this Agreement. All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit C, and incorporated herein by reference. However, in no event shall the amount Town pays Consultant exceed _____ Dollars (\$_____.00). Payment by Town under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the Town at the time of payment.

B. Timing of Payment. Consultant shall submit itemized monthly statements for work performed. Town shall make payment, in full, within thirty (30) days after approval of the invoice by the Project Manager.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 4 (A) without prior written amendment to this Agreement.

D. Taxes. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

E. No Overtime or Premium Pay. Consultant shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Consultant shall not receive a premium or enhanced pay for work performed on a recognized holiday. Consultant shall not receive paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Consultant agrees to testify at Town's request if litigation is brought against Town in connection with Consultant's work product. Unless the action is brought by Consultant or is based upon Consultant's negligence, Town will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates, if requested by Town and not part of the litigation brought by Town against Consultant.

5. Amendment to Scope of Work. Town shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Consultant shall not commence any work exceeding the Scope of Work without prior written authorization from the Town. Failure of the Consultant to secure Town's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate Town authorization.

6. Term. This Agreement shall commence upon its execution and shall continue in full force and effect until completed, amended pursuant to Section 21, or otherwise terminated as provided herein.

7. Inspection. Consultant shall furnish Town with every reasonable opportunity for Town to ascertain that the services of Consultant are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Consultant of any of its obligations to fulfill the Agreement as prescribed.

8. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in Town, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the Town. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to Town without restriction or limitations on their use. Consultant may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of Town during the term of this Agreement, unless required by law.

9. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists, or experts for services in connection with this Agreement without the prior written approval of the Town.

10. Conflict of Interest.

A. Consultant covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of Town, hinder Consultant's performance of services under this Agreement, or be affected in any manner or degree by performance of Consultant's services hereunder. Consultant further covenants that in the performance of the Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the Town. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the Town in the performance of the Agreement.

B. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the Town or of any Town official, other than normal contract monitoring; and

(2) possesses no authority with respect to any Town decision beyond the rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

11. Liability of Members and Employees of Town. No member of the Town and no other officer, employee or agent of the Town shall be personally liable to Consultant or otherwise in the event of any default or breach of the Town, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

12. Indemnity. To the fullest extent permitted by law, Consultant hereby agrees to defend (by counsel reasonably satisfactory to the Town), indemnify, and hold harmless the Town, its officers, agents, employees, from and against any and all claims, damages, and liabilities, but only to the extent actually caused by the negligent acts, errors, or omissions of Consultant, its officers and employees undertaken pursuant to this Agreement excepting liabilities due to the negligence or willful misconduct of Town. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in California Civil Code § 2778. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Consultant under Workers' Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Consultant and shall continue to bind the parties after termination/completion of this agreement.

13. Consultant Not an Agent of Town. Consultant, its officers, employees and agents shall not have any power to bind or commit the Town to any decision.

14. Independent Contractor. It is expressly agreed that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of Town; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to Town's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

15. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Consultant represents and represents Town that it has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for

Consultant to practice its profession. Consultant shall maintain a Town business license. The Town is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. Prevailing Wage. Consultant and Consultant's subconsultants (if any) shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the Town's Public Works Department office.

D. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code § 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. Town Not Responsible. Town is not responsible or liable for Consultant's failure to comply with any and all of its requirements under this section and Agreement.

F. Waiver of Subrogation. Consultant and Consultant's insurance company agree to waive all rights of subrogation against Town, its elected or appointed officials, officers, agents, employees, and volunteers for losses paid under Consultant's workers' compensation insurance policy which arise from the work performed by Consultant for the Town.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by the Town, or as required by law.

17. Assignment; Subcontractors; Employees

A. Assignment. Consultant shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title,

obligation, or interest in or to the same or any part thereof without the Town's prior written consent. Any assignment without such approval shall be void and, at the Town's option, shall immediately cause this Agreement to terminate.

18. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of this Agreement, a General Liability insurance policy insuring it and its firm to an amount not less than \$2,000,000 (Two Million Dollars) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage.

(2) Consultant agrees to have and maintain, for the duration of this Agreement, an Automobile Liability insurance policy insuring it and its staff to an amount not less than \$1,000,000 (One Million Dollars) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than \$1,000,000 (One Million Dollars) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide required coverage for Employers' Liability (Coverage B).

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) The Town of Atherton, its officials, officers, agents, employees, and volunteers are hereby added as additional insureds, but only as respects work done by, for, or on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the Town may possess, including any self-insured retention the Town may have, and any other insurance the Town does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to Town all certificates of insurance with original endorsements effecting coverage required by this paragraph. Certificates of such insurance shall be filed with Town on or before commencement of performance of this Agreement. Town reserves the right to require complete, certified copies of all required insurance policies at any time.

(7) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Town, its officials, officers, agents, employees, and volunteers.

(8) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

B. All Coverages. Each insurance policy required shall provide that coverage shall not be canceled, except after 30-days' prior written notice by certified mail, return receipt requested, has been given to Town. Current certification of such insurance shall be kept on file with the City Manager at all times during the term of this Agreement.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Town. At the Town's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

E. Verification of Coverage. Consultant shall furnish the Town with original Certificate(s) of Insurance verifying Consultant's receipt of the insurance coverage required herein.

19. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the Town upon 5-days' written notice to Consultant.

B. If Consultant fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, in addition to all other remedies provided by law, Town may terminate this Agreement immediately upon written notice. In such event, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total fee.

C. In the event this Agreement is terminated by Town without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment.

D. Upon termination of this Agreement with or without cause, Consultant, after final payment, shall turn over to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by Consultant or its subcontractors, if any, or given to Consultant or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the Town. Consultant, however, shall not be liable for the Town's use of incomplete materials nor for the Town's use of complete documents if used for other than the project contemplated by this Agreement.

20. Suspension. The Town shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory Services performed through the date of temporary suspension.

21. Merger; Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between the Town and Consultant and shall supersede all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the Town and Consultant. All provisions of this Agreement are expressly made conditions.

22. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

23. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

24. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 72 hours from the time of mailing if mailed as provided in this section.

If to Town: City Clerk

 Town of Atherton - Town Hall

 91 Ashfield Road

 Atherton, CA 94027

If to Consultant:

25. Consultant's Books and Records.

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the Town and all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the Town for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

C. The Town may, by written request by any of the above-named officers, require that custody of the records be given to the Town and that the records and documents be maintained in the City Manager's office.

26. Agreement Binding. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

27. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

28. Town Not Obligated to Third Parties. The Town shall not be obligated or liable for payment hereunder to any party other than the Consultant.

29. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

30. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

31. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

- A. Exhibit A: Scope of Work
- B. Exhibit B: Schedule of Performance
- C. Exhibit C: Compensation

32. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

33. News Releases/Interviews. All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the Town.

34. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of San Mateo, California.

35. Authority. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

IN WITNESS WHEREOF, the Town and Consultant have executed this Agreement as of the date first above written.

TOWN OF ATHERTON

CONSULTANT

By: _____

City Manager

By: _____

Title: _____

Date:

Date:

APPROVED AS TO FORM:

By: _____

City Attorney

ATTEST:

By: _____

City Clerk

EXHIBIT A

Scope of Work

[to be inserted]

EXHIBIT B

Schedule of Performance

[to be inserted]

EXHIBIT C

Compensation

[to be inserted]

