



Item No. 12 Town of Atherton

CITY COUNCIL STAFF REPORT – CONSENT AGENDA

TO: HONORABLE MAYOR AND CITY COUNCIL
GEORGE RODERICKS, CITY MANAGER

FROM: MIKE KASHIWAGI
COMMUNITY SERVICES DIRECTOR

DATE: DECEMBER 17, 2014

SUBJECT: STREET LIGHT ENGINEERING CONSULTING RFP

RECOMMENDATION

That City Council approve the Series Circuit Street Light Analyses and Replacement Program Request for Proposal (RFP) and authorize its distribution.

BACKGROUND

The Town's street light facilities include several areas that are energized using series circuits which are obsolete, difficult to repair and that provide poor service. Outages in the past several years have persisted for many weeks as their identification and repair required extensive investigation and work. These circuits, when damaged, are at higher than typical voltages and therefore represent a less safe environment for nearby pedestrians. The Town has utilized PG&E as well as private electrical contractors to make emergency repairs, at significant cost due to the obsolete nature of the equipment, which uses lead-covered cable.

Town staff recommended and City Council approved a capital project that would replace the series circuits. Recently, staff completed a visual inventory and the next step involves a technical analysis of the entire street light system to not only replace the obsolete circuits but to analyze all aspects of street light service and costs, including energy efficiency, ownership, operations and maintenance.

FINDINGS/ANALYSIS

Much of the engineering effort to replace the series circuits is applicable to the larger system analysis. The RFP is written such that the series circuit replacement is the primary task, with add-alternate tasks to analyze all lights, including their ownership, energy efficiency, operating and maintenance costs, while still meeting the intent of the base program.

FISCAL ANALYSIS

Sufficient funds are budgeted in the Capital Improvement Program from Measure A to pay for the proposed engineering services.

ATTACHMENT

Series Circuit Street Light Analyses and Replacement Program Request for Proposal (RFP)

Town of Atherton



Request for Proposal (RFP)

ENGINEERING AND CONSULTING SERVICES

SERIES CIRCUIT STREET LIGHT ANALYSES AND REPLACEMENT PROGRAM

Proposal Release Date: Thursday, December 18, 2014

Proposal Due Date/Time: Wednesday, January 21, 2015
By 3:00 pm

Deliver Proposals to: City Clerk
Town of Atherton
91 Ashfield Road
Atherton, CA 94027

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I. NOTICE OF INVITATION

REQUEST FOR PROPOSAL

Sealed Proposals will be received at the City Clerk's office, located at 91 Ashfield Road, Atherton, CA 94027, by **3:00 pm, Wednesday January 21, 2015** for work described in the Request for Proposal (RFP) entitled:

ENGINEERING AND CONSULTING SERVICES

SERIES CIRCUIT STREET LIGHT ANALYSES AND REPLACEMENT PROGRAM

At the above mentioned time, date and address, proposals to perform an analysis of the existing condition of the Town of Atherton's series circuit street light system, to develop options to replace the series circuit lighting, inclusive of schedule and cost estimates, and to develop engineering plans and specifications to replace the existing series circuit lights with standard parallel circuitry with energy efficient lighting fixtures will be accepted by the Town of Atherton.

The RFP and contract documents may be downloaded from the Town's website:

www.ci.atherton.ca.us/

PROJECT DESCRIPTION

The Town of Atherton is a residential community located between US Hwy 101 and Interstate 280 in southern San Mateo County. The Town is approximately five square miles in size and has approximately 7,000 residents, 106 lane miles of public streets and approximately 483 street lights, as shown on PG&E's inventory. The Town is soliciting proposals from qualified consultants to help create a Master Plan for upgrading the Town's streetlight system. Of the 483 streetlights in town, approximately 178 are designated as Distribution Lights, owned and operated by PG&E on wood utility poles. The remaining approximately 250 lights are Town-owned and located on standalone decorative or standard metal poles or, in some cases on decorative gateway entry structures. Of the Town's owned lights, it is believed that approximately 40 of the lights are currently powered by series (regulating output) circuits. All Distribution and street lights in Town, regardless of who owns them, are currently maintained by PG&E. Spreadsheets of PG&E's inventory will be available for download from the Town's Web site.

At a minimum, this project must result in the development of plans and specifications for a project that will replace each of the series circuit lights with standard parallel circuitry lights. Conversion of the series circuitry to parallel circuitry is desired to improve safety, minimize large area blackouts, reduce maintenance expenses, and increase lighting reliability. The Consultant shall make recommendations regarding illumination levels and what, if any, infrastructure shall be reused. The design shall require minimum easements and result in minimal service disruptions. The Consultant will be required to work closely with Town and PG&E staff to determine critical information such as the location of available service points, easement requirements, if any, and maintaining full operation of the existing systems during construction.

In order to ensure the elimination of series circuit lights in town, the Consultant shall complete a detailed inventory and assessment of the Town's lights. A visual audit was completed in November 2014 to determine the size and scope of the Town's street light system. The audit identified and verified existing lights and various parameters, such as the pole conditions, light ownership and foliage constraints. A physical inspection that will positively determine fixture types, wattages and how the light is powered (series v. parallel) would provide more assurance that all series circuit lights are being eliminated and a base for better level of analysis.

In addition to replacing the series circuitry, the Town is also interested in:

1. Developing a plan to upgrade all lights to an energy efficient technology, such as Light Emitting Diode, Induction, or some other alternative, including developing estimated costs and identifying and applying for potential funding sources.
2. Analyzing the costs and potential benefits/negative impacts associated with taking over ownership of the approximately 178 PG&E owned Distribution lights and making a recommendation as to whether the Town should pursue this option.
3. Reviewing current maintenance practices, and making a recommendation regarding whether the Town should continue to utilize PG&E to maintain the lights, or seek an alternative service provider or method.

ADDITIONAL REQUIREMENTS

Plans and specifications shall be prepared, stamped and signed by a registered electrical engineer.

The successful Proposer will be required to meet the Town's minimum insurance requirements and sign the Town's standard Consulting Services Agreement (draft attached).

REJECTION OF PROPOSALS

Atherton reserves the right to reject any or all proposals and to determine which proposal is, in Atherton's judgment, the most responsive and responsible proposal of a Proposer or group of Proposers. Atherton also reserves the right to waive any informality in any proposal and to delete certain items listed in the proposal as set forth therein. Costs for developing, submitting, and presenting proposals are the sole responsibility of the Proposer and claims for reimbursement will not be accepted by Atherton.

PROPOSALS RECEIVED AFTER DEADLINE

Proposals received after the time established for receiving proposals will not be considered. No Proposer may withdraw a proposal after the time established for receiving proposals or before the award and execution of the contract, unless the award is delayed for a period of ninety (90) calendar days after the date of the Town's opening of proposals.

COMMUNICATIONS DURING SOLICITATION PERIOD

All communications shall be made in writing to the contact listed below. **Telephone calls will not be accepted.** Unauthorized contact with other Town staff regarding this RFP may result in disqualification. Any oral communications will be considered unofficial and non-binding on Atherton.

Mr. Gordon Siebert, PE
City Engineer
Town of Atherton
91 Ashfield Road
Atherton, CA 94027
gsiebert@ci.atherton.ca.us

II. SCOPE OF SERVICES

The main deliverables of this project are:

1. Plans and specifications outlining an improvement project that will replace each of the series circuit lights within the Town of Atherton with standard parallel circuitry lights. Conversion of the series circuits to parallel circuits is desired to improve safety, minimize large area blackouts, reduce maintenance expenses, and increase lighting reliability. The design shall accommodate the illumination levels as recommended by the Consultant;
2. A field inventory and feasibility report to upgrade and modernize the Town's street light facilities;
3. A benefit/cost analysis of ownership, operations and maintenance options; and
4. Add-alternate services:
 - a. Project construction management; (Depending on the delivery method chosen to implement the project.)
 - b. A report on funding opportunities through available grants or sponsored loan programs.

The following services shall be performed by the Consultant in completing this project:

Task 1: Project Coordination

The Consultant will be required to work closely with Town and PG&E staff to learn about issues such as historical maintenance and modifications, available power sources, constraints and to develop alternatives to upgrade the lights in the most cost efficient manner. The Consultant shall be prepared to meet with stakeholders to provide technical assistance and input to staff, and to provide at least one public presentation.

Task 2: Street Light Inventory

The Town has conducted a preliminary audit to help determine the size and scope of the project. The Audit results are included as an attachment to this RFP. The Consultant will be required to perform their own investigation and to work closely with Town and PG&E staff to determine critical information such as the wattage, locations, types and power sources of existing distributions, street and safety lighting in Town, the conditions of the existing conduit and power system, the location of available service points, easement requirements and identifying potential constraints in upgrading the system. Town staff will make existing documentation, PG&E invoices and maps available to Consultant to assist in their research. It is likely the Consultant will need to have a bucket truck to physically access the lights in the air, as well as qualified staff to open hand holes and pullboxes as necessary to positively determine their power sources, wattages and conditions, etc.

Task 3: Develop Alternative Mitigations

It is believed that there are currently three series circuits in Town. The Consultant shall develop a minimum of two options to upgrade each of the circuits. Preliminary budgetary level cost estimates and estimated implementation schedules for each option shall be prepared. The Consultant shall prepare a design memorandum with conceptual sketches of each option, clearly illustrating the benefits and differences between each option. The memorandum shall make recommendations regarding how best to replace each circuit.

Task 4: Prepare Design Plans Specifications and Estimates (PS&E)

Upon receiving staff feedback on the recommended mitigation options, the Consultant shall prepare preliminary and final PS&E. It is anticipated that the drawings utilized to develop the mitigations may be used as 35% PS&E, and the Consultant will in-turn be required to prepare 65%, 90% and 100% plans prior to being ready to take the PS&E to Council for approval and advertising. The PS&E shall be prepared in accordance with industry and Town standards and shall provide clear bid items and enough direction and information to all stakeholders such that bid inquiries, evaluations, and construction interpretations and contract change orders are minimized.

Task 5: Field Inventory and Energy Efficient Upgrades

Develop recommendations and bid alternatives to upgrade all of the Town's lights for safe, energy efficient operation using Light Emitting Diode, Induction, or some other lighting alternative. This task shall include field assessment of fixtures, with particular attention on physical integrity. The Consultant will be expected to develop estimated costs for fixtures including poles, if required, and lighting. As there is a mixture of ownership (Town owned and PG&E owned) and various types of fixtures (standard cobra head, decorative teardrop, post-top, etc.), it is understood that more than one technology may be recommended. This task will include developing a clear and concise bid schedule.

Task 6: Light Ownership

Analyze the costs as well as the potential benefits and negative impacts associated with the Town taking over ownership of the approximately 178 PG&E owned Distribution lights. Based upon the potential costs and information collected, the Consultant shall make a recommendation as to whether the Town should pursue this option.

Alternative tasks that the Consultant should propose are:

Task 7: Maintenance Operations

The Consultant shall review current maintenance practices and costs and make a recommendation regarding whether the Town should continue to utilize PG&E to maintain the lights, or seek an alternative service provider or method.

Task 8: Construction Management

The Consultant shall provide construction management and oversight services throughout the construction phase of the project. Sample Construction Management tasks may include, but not be limited to; Bid Analysis, Submittal Review, Change Order Analysis, RFI Responses, Field Inspection and Punchlist preparation may be included.

Task 9: Grant Funding

Identifying potential sources and applying for grants or programs to help fund the replacement of the Series Circuits and upgrades to energy efficient lights.

III. CONSULTANT QUALIFICATIONS

The Consultant shall have the following:

1. A member with registration as a professional Electrical Engineer in the State of California.
2. Ability to demonstrate performance of similar services for a minimum of three other public agencies.
3. Qualified and experienced personnel, including registered electrical engineers and licensed electricians as needed
4. Demonstrated ability in working effectively and collaboratively with public utilities, City Councils, neighborhood groups and residents. Strong presentations skills, consensus building expertise and strong verbal communications are a necessity.
5. Experience in designing a minimum of 3 parallel lighting circuits for municipal agencies.
6. Experience in identifying potential funding sources from both public and private entities.

IV. PROPOSAL REQUIREMENTS

The Town will accept proposals from Consultants in a two step process. Proposers are required to submit their proposals in two separate sealed envelopes. The main proposal highlighting their technical expertise, staffing, qualifications, related work experiences and proposed work plan shall be in one envelope. This first envelope shall clearly be marked “Qualifications/Work Plan”.

The second envelope shall provide the Consultants proposed pricing. Pricing shall be broken down for each of the proposed tasks. The Consultant may propose grouping of Add-alternate tasks. The pricing shall include a matrix showing the proposed number of hours and hourly rate by job classification for each proposed task. The second envelope shall clearly be marked “Pricing”.

The Town will screen the proposals for the purpose of inviting finalists to an interview, if necessary. Consultants shall submit four copies of their proposal. At a minimum, the proposals shall include the following.

1. Provide a complete description of the Company including its licenses, work history organizational structure and number of employees. Include email and telephone contact for the project principal.
2. Proposer shall provide a “Statement of Qualifications,” which shall provide sufficient information about Company, the proposed Project Manager and staff experience so as to allow Atherton to ascertain whether the proposer has the financial, organizational, and technical wherewithal to complete the Scope outlined in this RFP.
3. Based upon Atherton’s Scope of Services set forth in this RFP, the Proposer shall describe the approach the Consultant would use to achieve the Project Objectives.
4. The Proposer’s Scope of Services shall include, at a minimum, a description of all the components of services, a description of the work product to be provided by the Proposer, how the Proposer will accomplish each service identified in the Scope of Service included in this RFP below, and the expected timeframe of completion for each component.
5. Provide a list of similar projects completed within the last five years, including a brief summary of the relevant services provided and the client contact information.
6. Provide a detailed work plan including estimated hours and rates by job classification for the prime consultant, and any major sub consultants, to complete each task. The work plan shall also include a detailed schedule to complete the requested Scope of Services. Included in the schedule should be enough time for public review and input and an overall picture of the timeline of when the upgrade projects could be advertised for bid, awarded and fully implemented in the field.

The successful Proposer will be required to adhere to the terms, and conditions of the attached Consultant Services Agreement. Objections to any provisions must be identified in the Proposal. Any exceptions or changes to the Consultant Services Agreement may constitute grounds to reject the proposal. No response will signify that the Consultant accepts the Agreement as is.

Proposals shall be delivered as follows:

Proposal Due Date/Time: Wednesday, January 21, 2015 by 3:00 pm

Deliver Proposals to: City Clerk
Town of Atherton
91 Ashfield Road
Atherton, CA 94027

V. ADDITIONAL INFORMATION

Conformance to Proposal Requirements

Proposals shall conform to the requirements of this RFP. All requested attachments shall be submitted with the completed Proposal and in the designated format. Failure to comply with all requirements may result in proposal rejection.

Interpretation of Request for Proposal and Addenda

Should a Proposer discover conflicts or ambiguities in the RFP that require a decision or explanation, the Proposer may request an interpretation. Such a request shall be made in writing no later than **5:00 pm on Monday, January 12, 2015**. Interpretations made to Proposers will be in the form of a written Addendum. Addenda, if issued, will be posted on the Town of Atherton website: www.ci.atherton.ca.us

Only properly issued Addenda shall be binding upon Atherton; any oral and/or other form of interpretation or clarification will have no legal or contractual effect. Proposers shall acknowledge the receipt of Addenda within their Proposal.

Project Pricing

Proposal pricing shall be complete, including all costs for labor, supervision, methods or processes, implements, tools, machinery, equipment, transportation and materials required to complete the work described in this Request for Proposals.

Non-Collusion Certification

By submitting a proposal, proposer is certifying that it has not directly or indirectly been collusive with any other proposer in the preparation and submission of the proposal. If at any time it shall be found that the proposal to whom a contract has been awarded has, in presenting the proposal, colluded with any other party or parties, said proposer shall be liable to Atherton for any loss or

damage which Atherton has or may suffer as a result of the collusive activity, including, but not limited to, the cost of advertising and awarding a new contract.

Signature

Proposers shall be signed by an authorized representative of the proposer.

Key Personnel

Any and all persons identified in the Proposal to perform work hereunder are deemed by Atherton to be key personnel whose services are a material inducement to enter into an Agreement with the Consultant. The Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of Atherton.

Award

If awarded, the contract award will be made to the best qualified Consultant whose proposal offers the best value to the Town of Atherton. The acceptance of a proposal will be evidenced by a written contract delivered to the successful proposer for execution.

Reservations

The Town reserves the right to accept or reject any or all submissions, 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 submittal.

The Town proposes to short list the most qualified firms for interviews. The Town reserves the right to solicit additional proposals at any point in the project should it fail to select a firm, or should that firm fail to execute the Town’s Agreement.

Evaluation Criteria

Proposals will be evaluated based on the following criteria:

Project Team, relevant experience, capability to perform the required scope, Project Manager, references, etc	30%
Understanding of the work to be performed	25%
Proposed work plan, including proposed hours and staff levels	25%
Schedule	10%
Cost Effectiveness	10%

Schedule

The expected schedule for procurement is as follows:

Release of Request for Proposal:	December 18, 2014
Last Day to Submit Questions:	January 12, 2015, 5:00 pm
Proposal Responses Due:	January 21, 2015; 3:00 pm
Interviews (if Necessary):	Week of February 2, 2015
Contract Award:	March 2015

ATTACHMENT 1

CONSULTANTS SERVICE AGREEMENT

ENGINEERING AND CONSULTING SERVICES

**SERIES CIRCUIT STREET LIGHT ANALYSES AND
REPLACEMENT PROGRAM**

AGREEMENT FOR ENGINEERING SERVICES TOWN OF ATHERTON AND X.; X PROJECT

This Service Agreement (hereinafter "Agreement") is made and entered into by and between the TOWN OF ATHERTON, a municipal corporation (hereinafter "Town"), and X (hereinafter "Consultant"). Town and Consultant may be collectively referred to herein as the "parties."

1. *RECITALS*

- A. Town requested a proposal from Consultant to perform the services generally including conceptual design services, design, cost estimating, public participation and construction administration support services as set forth fully in Exhibit "D"; and
- B. In response to Town's request for proposals, Consultant submitted a proposal (Proposal), as set forth in Exhibit "D" and, after negotiations, Consultant agreed to perform, or to have performed, the services more particularly described on Exhibit "A" Scope of Work described in Exhibit A, in return for the compensation described in this Agreement and Exhibit "B", the Compensation Schedule; and
- C. All of the costs associated with this Agreement shall be paid out of the Measure A Fund; and
- D. In reliance upon Consultant's documentation of its qualifications as set forth in Exhibit "C," Town finds that Consultant has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested services.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS IDENTIFIED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

- 1. SCOPE OF SERVICES. Consultant shall perform the scope of services described in Exhibit "A," attached hereto and incorporated herein by reference, in accordance with the terms and conditions contained in this Agreement, plus contract for, manage and be responsible for any associated work necessary in order to satisfactorily complete the services requested in the RFP and the Proposals.

TIME FOR PERFORMANCE. Time is of the essence in the performance of services under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall commence performance, and shall complete all required services no later than the dates set forth in the Project Schedule detailed in Section 4 of Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be commenced and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the Town in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. Any minor changes to

extend the Project Schedule required by Town's Authorized Representative made in good faith shall not result in any changes to compensation due Consultant.

2. (A) Consultant agrees to hold harmless and indemnify Town from any damages resulting from any such minor extension of time for performance under the Project Schedule.

(B) Force Majeure. The Consultant shall be excused from performing any obligation or undertaking provided in this Agreement in the event and so long the performance of such obligation is prevented or delayed, retarded or hindered by any act of God, fire, earthquake, flood, explosion, actions or elements, war, invasion, insurrection, riot, mob, violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions, condemnation, requisition, laws, orders of governmental or civil military authorities, or any other cause, whether similar or dissimilar to the foregoing not within the respective control of the Consultant.

3. PAYMENT.

3(A). Billing. Consultant shall submit monthly invoices to the Town identifying the services performed and the charges for such services and reimbursable expenses based upon Consultant's compensation schedule set forth in Exhibit "B" attached hereto and incorporated herein by reference). The Town shall make monthly payments to Consultant for services which are reasonably satisfactorily performed in accordance with this Agreement

3(B-1) Payments. Town shall pay Consultant no later than 45 days following receipt and acceptance of a properly rendered invoice.

3(B-2) Disputes. Town shall have 10 business days to notify Consultant, in writing, of any disputes relating to any invoice. In such cases, Town shall pay the undisputed invoice portion in accordance with 3(B-1) above.

3(B-3). "Not to Exceed" Compensation. The compensation payable to Consultant for the services identified in Exhibit "A" shall not exceed the combined sum of **Z** Dollars (\$**Z**.00). Consultant shall not perform any services beyond the services identified in Exhibit "A" without prior written authorization from the Town's City Manager.

3(C). Consultant's Failure to Perform. In the event that Consultant performs services which do not comply with the requirements of this Agreement in Town's reasonable opinion, Consultant shall, upon receipt of written notice from the Town, revise the work product without additional compensation. If Consultant's failure to perform in accordance with this Agreement causes damages to the Town, Consultant shall be liable for such damages and reimburse the Town for the damages incurred which may be charged as an offset to Consultant's payment. Consultant will be required to modify the design, at their sole cost, should the construction bids exceed their Final Estimate of Probable Cost by more than 5%

4. AUTHORIZED REPRESENTATIVES.

4(A). Consultant's Authorized Representative. Consultant understands that, in entering into this Agreement, the Town has relied upon Consultant's ability to perform in accordance with its representations regarding the qualifications of the Consultant including the qualifications of its Authorized Representative, its personnel, and its subconsultants, if any identified in "A" Sections 1.3 and 1.4 attached hereto and incorporated herein by reference. Therefore, Consultant shall not replace its Authorized Representative, or any of the personnel or subconsultants identified in Exhibits "A" Sections 1.3 and 1.4 without the prior written consent of the Town. Such personnel shall be deemed and considered by the Parties to be "key personnel" and an integral part of this Agreement. All services under this Agreement shall be performed by or under the direct supervision of Consultant's Authorized Representative and other key personnel as identified in Exhibits "A" Sections 1.3 and 1.4.

4(B). Town's Authorized Representative. For the performance of services under this Agreement, the City Manager shall be the Authorized Representative unless that person shall designate in writing some other person to perform this function on his or her behalf.

5. INFORMATION AND DOCUMENTATION.

5(A). Information from Town. Town has made an effort to provide Consultant with all information necessary for Consultant's performance of services under this Agreement. If Consultant believes additional information is required, Consultant shall promptly notify the Town, and the Town will provide to Consultant all relevant non-privileged information in Town's possession. Any failure to do so prior to commencement of services under this Agreement shall result in waiver of any compensation for services believed by Consultant to be necessary at that time. This provision shall not relate to any outside survey or soils work not within the Scope of Work set forth in Exhibit "A".

5(B). Consultant's Accounting Records. Consultant shall maintain all accounting records related to this Agreement in accordance with generally accepted accounting principles and state law requirements, and in no event for less than three years after

final acceptance of the project. Consultant's accounting records shall include, at a minimum, all documents which support Consultant's costs and expenses related to this Agreement, including personnel time records, subconsultant invoices and payments, and reimbursable expenses. Consultant's accounting records shall be made available to Town for review or audit within a reasonable time after Town's request, during normal business hours. Should any such audit result in a dispute, the designated representatives of both the Consultant and the Town shall, within 10 working days convene to resolve the issue. In the event that a credit is due back to either party as a result of such resolution, then party owing shall make such payment within 45 days.

5(C). Ownership of Work Product. All original drawings, plans, reports, specifications, calculations, other documents and copyright interests including all copyrightable interests arising under the 1990 Architectural Works Copyright Protection Act developed, prepared or discovered by Consultant, including its employees and subconsultants, in performance of this Agreement (collectively "work product"), whether complete or in progress, are the property of the Town, and shall be presented to the Town at the completion of Consultant's services, or upon demand by the Town. Consultant shall have a right to make and keep copies of the work product, but Consultant shall not reveal the work product, or make it available, to any third party without the prior written consent of the Town.

Town acknowledges that its use of the work product is limited to the purposes contemplated by the scope of work attached to this Agreement and that the Consultant makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by this scope of work. The right of Town to modify and reuse the work product for purposes other than that contemplated by the scope of work is subject to the provisions of California Business and Professions Code section 5536.25, 6735, 6735.3 or 6735.4, whichever is applicable.

5(D). Errors/Omissions. Consultant shall correct, at no cost to Town, any and all errors, omissions, or ambiguities in the work product submitted to Town upon notice to Consultant. If Consultant has prepared plans and specifications or other design documents to be used in construction of a project, Consultant shall be obligated to correct any and all errors, omissions or ambiguities in the work product discovered prior to and during the course of construction of the project. All such obligations set forth in this Agreement shall survive termination of this Agreement.

6. RELATIONSHIP BETWEEN THE PARTIES. Consultant is, and at all times shall remain, an independent contractor solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not Town's agent, and shall have no authority to act on behalf of the Town, or to bind the Town to any obligation whatsoever, unless the Town provides prior written authorization to Consultant. Consultant is not an officer or employee of Town, and Consultant shall not be entitled to any benefit, right, or compensation other than that

provided in this Agreement.

7. **CONFLICTS OF INTEREST PROHIBITED.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. Consultant shall comply with all requirements of the Political Reform Act as set forth in California Government Code sections 81000, *et seq.*, Government Code section 1090k and other laws relating to conflicts of interest, including: (a) Consultant shall not make or participate in a decision made by the Town if it is reasonably foreseeable that the decision may have a material effect on Consultant's economic interest, and (b) if required by law, Consultant shall file financial disclosure forms with the Town Clerk. Furthermore, Consultant asserts that at no time during the selection and during the performance of this contract, has any member of the Town or the review Committee or the Library had any material financial interest in, or received compensation from, Consultant. If Consultant maintains or acquires a conflicting interest, any contract with the Town (including this Agreement) involving Consultant's conflicting interest may be terminated by the Town.
8. **NON-SOLICITATION.** Consultant agrees not to solicit any of Town's employees, officials or committee members for the period of this agreement and 1 year following its completion,
9. **NONDISCRIMINATION.** Consultant shall not discriminate against any person related to the performance under this Agreement (including any employee or applicant) because of race, color, religious creed, national origin, physical disability, mental disability, medical condition, marital status, sexual orientation, or sex.
10. **COMPLIANCE WITH LAW AND STANDARD OF CARE.** Consultant shall comply with all applicable legal requirements including all federal, state, and local laws (including ordinances and resolutions), whether or not said laws are expressly stated in this Agreement. Consultant shall perform services under this Agreement using a standard of care equal to, or greater than, the degree of skill and diligence ordinarily used by reputable professionals, with a level of experience and training similar to Consultant, performing under circumstances similar to those required by this Agreement.
11. **INSURANCE.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant (including its agents, representatives, subconsultants, and employees) in connection with the performance of services under this Agreement. This paragraph identifies the minimum insurance levels with which Consultant shall comply; however, the minimum insurance levels shall not relieve Consultant of any other performance responsibilities under this Agreement including the indemnity requirements, and Consultant may carry, at its own expense, any additional insurance it deems necessary or prudent. Concurrently with the execution of this Agreement by Consultant, and prior to the commencement of any services, Consultant shall furnish written proof of insurance (certificates and endorsements), in a form reasonably acceptable to Town. Consultant shall provide written proof of insurance no later than 30 days prior to the expiration date of any insurance policy required by this Agreement.

11(A). **Minimum Insurance Levels.** Consultant shall maintain insurance at the following minimum levels:

10(A)(1). Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) coverage in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

10(A)(2). Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") coverage in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

10(A)(3). Workers' Compensation coverage as required by the State of California.

10(A)(4). Professional Liability coverage for damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$2,000,000 per claim.

10(B). Endorsements. The insurance policies, except for Professional Liability coverage, shall be endorsed as follows:

10(B)(1). For the commercial general liability insurance, the Town (including its officials, employees, and agents) shall be named as additional insured, and the policy shall be endorsed with a form equivalent to ISO form CG 20 10 11 85.

10(B)(2). Consultant's insurance is primary to any other insurance available to Town with respect to any claim arising out of this Agreement. Any insurance maintained by Town shall be deemed to be in excess of the Consultant's insurance and shall not contribute with it.

10(B)(3). Consultant's insurance will not be canceled, limited, or allowed to expire without renewal until after 30 days written notice has been given to the Town.

10(C). Qualifications of Insurers. All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, and shall have an A.M Best's rating of not less than "A:VII."

12. REPORTING DAMAGES. If any damage including death, personal injury or property damage occurs in connection with the performance of this Agreement, Consultant shall immediately notify the Town Risk Manager's office by telephone at 510-284-4050, and Consultant shall promptly submit to the Town's Risk Manager and the Town's Authorized Representative, a written report in a form acceptable to the Town with the following information: (a) name and address of the injured or deceased person(s), (b) name and address of all witnesses, (c) name and address of Consultant's insurance company and contact person, and (d) a detailed description of the damage and whether any Town personnel or property was involved.

13. INDEMNIFICATION. Consultant shall, to the fullest extent permitted by law, hold harmless, defend with counsel approved by the Town, and indemnify Town and its officers, officials, employees and volunteers from and against all claims, including all litigation, demands, damages, liabilities, costs, and expenses, and including court costs and attorney's fees, arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant or its employees, agents and subconsultants, except where caused by the negligence, sole negligence or willful

misconduct of Town or any of its officers, officials, employees, or volunteers. The provisions of this section survive completion of the services or the termination of this Agreement. The provisions of this section are not limited by the provisions of Section 11 relating to insurance.

Notwithstanding the above, the Indemnitor has no obligation to pay for any defense related cost prior to a final determination of its liability. Following any such determination of its liability, the Indemnitor shall be responsible to pay amount of such costs equal to the finally determined percentage of liability based on the comparative fault of the Indemnitor.

14. TERM OF THE AGREEMENT. The term of this Agreement shall commence on the date signed by the parties below, and shall continue until completion of all services in accordance with the timing requirements set forth in Exhibit "A" and paragraph 2 of this Agreement. This Agreement may be terminated by Town without cause upon fifteen (15) days written notice to Consultant. If Town exercises its right to terminate this Agreement in accordance with this paragraph, it shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, through and including the date of notice of termination, but not to exceed the payments according to the rates specified in Exhibit "B" or the maximum amount authorized under paragraph 3 of this Agreement.

15. DEFAULT. If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this Agreement, the demanding party shall give written notice of the default with reasonable specificity to the defaulting party and demand the default to be cured within ten (10) days from receipt of the notice. If: (a) the defaulting party fails to cure the default within ten (10) days from receipt of the notice, or, (b) if more than ten (10) days are reasonably required to cure the default and the defaulting party fails to give adequate written assurance of due performance within ten (10) days of the notice, then (c) the demanding party may terminate this Agreement upon written notice to the defaulting party of such fact. In the event that Consultant is terminated due to a material breach then Consultant shall be held liable for any and all damages incurred by Town plus re-procurement costs.

16. NOTICES. All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party's Authorized Representative, or (b) actual receipt at the address designated below, or (c) three working days after deposit in the United States Mail of registered or certified mail sent to the Authorized Representative at the address designated below. The Authorized Representative of either party may modify their respective contact information identified in this section by providing notice to the other party.

To: Town

To: Consultant

Attn: City Manager

91 Ashfield Road

Attn: X, Principal

X

Atherton CA 94027

X, CA.

- 17. HEADINGS.** The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.
- 18. SEVERABILITY.** If any term of this Agreement, including any phrase, provision, covenant, or condition, is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.
- 19. GOVERNING LAW, JURISDICTION, AND VENUE.** The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Mateo.
- 20. DISPUTE RESOLUTION/ATTORNEY'S FEES.** As a condition precedent to initiating a legal action in the event of a dispute arising out of either party's obligations under this Agreement or to enforce any provision of this Agreement, the parties agree first to attempt to settle such dispute through direct negotiations, and if necessary, through mediation with a mutually agreed upon mediator experienced in architectural and construction matters. In the event that mediation is unsuccessful, either party may initiate a legal action to enforce any provision or obligation under this Agreement. The prevailing party in any such legal action is entitled to reasonable attorney's fees, costs, and expenses incurred. Any applicable limitations period shall be tolled during the time spent pursuing mediation.
- 21. ASSIGNMENT AND DELEGATION.** This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the written consent of Town. Any attempt to assign or delegate this Agreement without the written consent of Town shall be void and of no force or effect. Consent by Town to one assignment shall not be deemed to be a consent to any subsequent assignment.
- 22. MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an amendment in writing signed by both parties.
- 23. WAIVERS.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 24. ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the services described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or

oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

25. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the Town. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

26. ORDER OF PRECEDENCE. The order of precedence of documents in the event of any ambiguity or inconsistency shall be: 1) this Agreement, 2) the RFP and 3) the Proposal.

IN WITNESS WHEREOF, the Town and Consultant do hereby agree to the full performance of the terms set forth herein.

TOWN OF ATHERTON

CONSULTANT

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

By: William B. Conners

Title: City Attorney

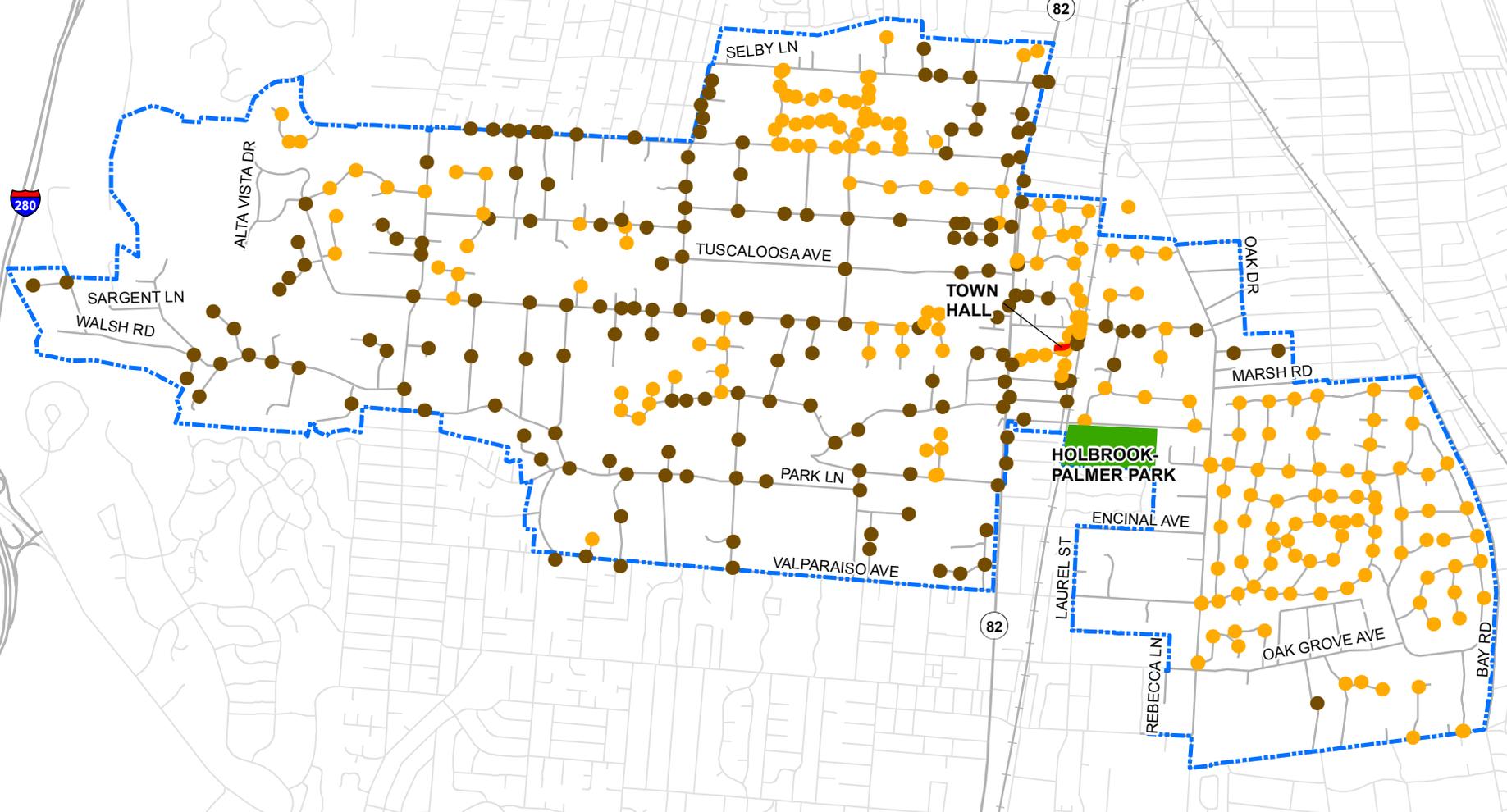
Request for Proposal
Series Circuit Street Light Replacement and Upgrade Program

ATTACHMENT 2

EXISTING LIGHT MAP

See Attachment

Town of Atherton



Street Light Usage (and count)

- Atherton (227)
- PG&E Distribution (178)

