

**AGREEMENT FOR ARCHITECTURAL SERVICES
TOWN OF ATHERTON AND WRNS STUDIO, LLP.; ATHERTON CIVIC
CENTER PROJECT**

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

RECITALS

- A.** Town requested a proposal from Consultant to perform the services generally including conceptual design services, planning, building programming, site analysis, site selection, site 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 Library Building Fund, Building Capital Fund and Capital Improvement 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

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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 Three Hundred and Seventy Nine Thousand Four Hundred and Eighty Dollars (\$379,480.00). 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.

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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

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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 1090 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

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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.

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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 alleged 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.

Following determination of liability, the parties shall be responsible to pay any amount of such damages equal to the finally determined percentage of liability based on the comparative fault of the party. If Town is found to be partially at fault due to its own negligence, Town shall repay Consultant or its insurer Town's proportionate share of attorney's fees based on the proportionate share of fault finally determined in the action. This provision shall not relieve Consultant from its initial duty to defend actions based on their alleged negligence as set forth above.

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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
Attn: City Manager
91 Ashfield Road
Atherton CA 94027

To: Consultant
Attn: Pauline Souza, Principal
WRNS Studio, LLP
501 2nd St., #402, San Francisco, CA. 94107

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.

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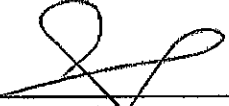
- 19. GOVERNING LAW, JURISDICTION, AND VENUE.** The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard 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 DÉLEGATION.** 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.

27.

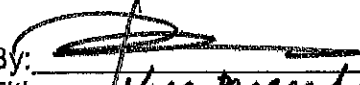
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IN WITNESS WHEREOF, the Town and Consultant do hereby agree to the full performance of the terms set forth herein.

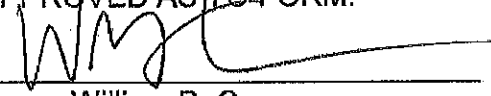
TOWN OF ATHERTON

By: 
Title: City Manager
Date: April 9, 2015

CONSULTANT

By: 
Title: Vice President Partner
Date: March 27, 2015

APPROVED AS TO FORM:


By: William B. Connors
Title: City Attorney