



## **Item No. 1 Town of Atherton**

### **CITY COUNCIL STAFF REPORT – ACTION ITEM**

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

**THROUGH: MICHAEL KASHIWAGI, COMMUNITY SERVICES DIRECTOR**

**FROM: MARTY HANNEMAN, CITY ENGINEER**

**DATE: MAY 3, 2017**

**SUBJECT: ADOPT A RESOLUTION TO ENTER INTO A COOPERATIVE IMPLEMENTATION AGREEMENT WITH CALTRANS; AUTHORIZE THE CITY MANAGER TO SIGN A COOPERATIVE IMPLEMENTATION AGREEMENT WITH CALTRANS; AND DIRECT STAFF TO DEVELOP A MEMORANDUM OF UNDERSTANDING WITH THE LAS LOMITAS SCHOOL DISTRICT**

#### **RECOMMENDATION**

- Adopt the attached Resolution No. 17-XX for the Town of Atherton to enter in to a Cooperative Implementation Agreement (CIA) with the California Department of Transportation (Caltrans); and
- Authorize the City Attorney to review and the City Manager to sign a CIA with Caltrans to receive State funds to construct a stormwater capture facility at Las Lomitas Elementary School; and
- Direct staff to work with the Las Lomitas School District to develop a memorandum of understanding (MOU) for Council's approval to address project management, funding, and responsibilities for the proposed Las Lomitas Elementary School storm water capture facility.

#### **BACKGROUND**

The 2015 Townwide Drainage Study Update conceptually analyzed three possible detention facilities to reduce peak stormwater flows in the Atherton Channel which would in turn reduce the incidence of flooding downstream. One possible location was at Las Lomitas Elementary School located at 299 Alameda de las Pulgas. This facility would need to be constructed in cooperation with the Las Lomitas Elementary School District (District) as they make improvements on campus. To construct a detention facility there, a cooperative development and

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funding agreement with the District would be required. Currently, the District's improvement and drainage plans do not require a detention basin. The District has developed plans to adequately control and direct their drainage to approved drainage courses. Nevertheless, the District recognizes that a water capture facility would benefit the Town and are agreeable to the project. The District would benefit from a joint project with the Town through the potential of reduced on campus flooding occurrences and the possibility that portions of their project are funded via the joint project.

On March 16, 2016, the City Council authorized the City Manager to execute a professional services agreement with Callander Associates for a feasibility study for at Las Lomas School. Since developing the schematic plans for a detention basin at the Las Lomas School, Town staff identified a potential project funding source for design and construction. These funds are administered by the State of California Transportation Department (Caltrans) and are available to projects that help comply with total maximum daily loads (TMDLs). TMDLs are regulatory tools in the U.S. Clean Water Act that describe the maximum amount of a pollutant that a body of water can receive while still meeting water quality standards) and mercury that comes off the roadways from reaching the San Francisco bay.

On November 16, 2016 staff met on the Las Lomas school site with a District representative, consultants, City staff and Constantine Kontaxis P.E., Watershed Manager, Division of Environmental Analysis, Caltrans to discuss the merits of the proposed project to compete for the State funding. Mr. Kontaxis stated the proposed Town project in partnership with the District is a viable project that may be eligible for the funding pending additional analysis that would be required.

As a result, on January 18, 2017, the City Council authorized the City Manager to execute an amendment to the professional services agreement with Callander Associates to prepare additional conceptual level plans and cost estimates required by Caltrans for a Cooperative Implementation Agreement (CIA).

The proposed stormwater detention facility or as Caltrans refers to it as the "Water Capture Facility" at Las Lomas Elementary School, would include a diversion structure to re-direct all dry-weather urban runoff and the first flush of wet-weather runoff from the Atherton Channel through two pre-treatment devices to remove trash, debris, and sediment before conveying the water into two buried multi-chambered storage/infiltration facilities with a targeted storage capacity of seven (7) acre-feet.

The proposed project will initially involve an evaluation of how to best achieve the multiple objectives of 1) capturing dry weather runoff in order to eliminate the transport of mercury,

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PCBs, trash and other pollutants to San Francisco Bay during dry weather; 2) capturing at least the first flush of wet-weather runoff to reduce the load of pollutants transported downstream to the Bay during wet weather, and 3) diverting potential flood flows from the Atherton Channel that flows beneath Alameda de las Pulgas and the campus.

Upon review of the proposed Las Lomitas School Water Capture facility Caltrans has determined that this project will reduce the amount of Total Maximum Daily Load (TMDL) released to San Francisco Bay through stormwater capture and use and/or infiltration to groundwater. Caltrans agrees to enter into a Cooperative Implementation Agreement (CIA) with the Town to collaboratively implement the NPDES Permit requirements as they have been identified as stakeholders in the Total Maximum Daily Load (TMDL) Las Lomitas Elementary School Water Capture Facility and Caltrans has agreed to contribute an amount not to exceed thirteen million six hundred thousand dollars (\$13,600,000) to the Town to construct the Water Capture Facility.

**ANALYSIS**

To receive these Caltrans grant funds, the Town is required to enter into a Cooperative Implementation Agreement (CIA) with Caltrans. In addition, the project includes development and approval of a Memorandum of Understanding (MOU) between the Town and the District and a potential MOU among the benefitting municipalities for the long-term operation and maintenance of the constructed water capture facility. Because the project is on a school site, it will go to the Division of the State Architect (DSA) as a change to the existing school construction project, and the District's Architect will oversee the project (i.e. not the Town).

Consultants will be hired to manage the project, conduct engineering and geotechnical investigations, and assist with environmental clearance, permitting, design, and construction management. Contractors will be selected through Las Lomitas Elementary School District procurement procedures. Pursuant to the MOU between the Town and the District, consultants and contractors working on the project will be under contract with the District and District staff assigned to manage the project will charge hours to the project in accordance with the Caltrans requirements under this agreement. Although the project will be managed by the District, the Town will play an active role in selecting the designers and provide input throughout the construction process.

The construction of the project is expected to begin in the spring of 2018 and completed in the summer of 2019.

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**POLICY ISSUES**

The Town has a unique opportunity to receive \$13.6 million in Caltrans grant funds to implement the Water Capture Facility at the Las Lomitas Elementary School Site, an identified Tier 1 project in the 2015 Townwide Drainage Study Update. Council approval is required to authorize the City Manager to sign the Cooperative Implementation Agreement (CIA) with Caltrans to receive these funds. Also, the Town and District will need to enter into a MOU to determine project funding and management responsibilities.

This item is an action item on the May 3 Agenda as time is of the essence with respect to the Caltrans grant process and the Las Lomitas Campus Improvement Project.

**FISCAL IMPACT**

When the CIA is fully executed, Caltrans agrees to contribute an amount not to exceed thirteen million six hundred thousand Dollars (\$13,600,000) to the Town to design and construct the Water Capture Facility at Las Lomitas Elementary School Site. These State funds do not require any matching funds from the Town. Since these Caltrans grant funds are with the Town and reimbursable in nature, it is assumed the District will pay all costs for design and construction and request reimbursement from Caltrans through the Town.

Once the water capture facility at Las Lomitas School is constructed, the Town will be responsible for ongoing operations and maintenance. These costs are not known at this time. However, because the project involves the capture of drainage from 4 jurisdictions (Atherton, Menlo Park, Woodside, and Stanford University), staff will be concurrently approaching each of these jurisdictions for contribution toward ongoing operations and maintenance costs as part of the MOU.

**PUBLIC NOTICE**

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the item is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials.

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**ATTACHMENT**

1. Cooperative Implementation Agreement
2. Resolution No. 17-XX

## COOPERATIVE IMPLEMENTATION AGREEMENT

THIS AGREEMENT, ENTERED INTO EFFECTIVE ON \_\_\_\_\_ 2017, is between the State of California acting by and through its Department of Transportation, referred to herein as CALTRANS and the TOWN OF ATHERTON, a body politic and a municipal corporation of the State of California, referred to herein as “AGENCY”. CALTRANS and AGENCY are together referred to as PARTIES.

### RECITALS

1. CALTRANS and AGENCY, pursuant to California Streets and Highways Code (SHC) Sections 114 and 130, are authorized to enter into a Cooperative Agreement for improvements to the State Highway System (SHS) as a watershed stakeholder within AGENCY’s jurisdiction.
2. As per Attachment IV of the Caltrans National Pollutant Discharge Elimination Permit Order 2012-0011-DQW (NPDES Permit), Section I.A, CALTRANS and AGENCY are to collaboratively implement the NPDES Permit requirements as they have been identified as stakeholders in the Total Maximum Daily Load (TMDL) Las Lomitas Elementary School Water Capture Facility hereinafter referred to as “Water Capture Facility”). CALTRANS has agreed to contribute an amount not to exceed Thirteen million six hundred thousand Dollars (\$13,600,000) to AGENCY for AGENCY to construct the Water Capture Facility, within the regional area under the jurisdiction of AGENCY to comply with the TMDL. The NPDES Permit (including Attachment IV) is located at:  
[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/caltrans.shtm](http://www.waterboards.ca.gov/water_issues/programs/stormwater/caltrans.shtm)
3. AGENCY has agreed to implement Water Capture Facility Project (hereinafter referred to as the “PROJECT”) subject to the terms and conditions of this Agreement including all attached hereto that are incorporated herein and made a part of this Agreement (collectively referred to as the “AGREEMENT”).
4. AGENCY will be responsible for all management, maintenance and operations, including costs of the constructed Water Capture Facility.
5. CALTRANS will be credited with one (1) Compliance Unit (CU) for each Eighty Eight Thousand Dollars (\$88,000) paid to AGENCY. A compliance unit is defined as one (1) acre of CALTRANS’s Right-of-Way (ROW) from which the runoff is retained, treated, and/or otherwise controlled prior to discharge to the relevant reach. The financial equivalent as submitted by CALTRANS is One Hundred Seventy Six Thousand Dollars (\$176,000) per CU. The State Water Resources Control Board (“State Water Board”) is encouraging collaborative efforts and Cooperative Implementation Agreements, and uses a 50% discount for CU in dollars contributed to the Cooperative Implementation. This sets the CU equivalent at Eighty Eight Thousand Dollars (\$88,000).
6. Cooperative Implementation has the following advantages: (i) allows for retrofit projects off the ROW, at locations that may otherwise have space, access, or safety limitations within the ROW; (ii) provides for the involvement of local watershed partners who have an interest and expertise in the best way to protect, manage, and enhance water quality in

the watershed; (iii) allows for implementation of Best Management Practices (BMPs) and other creative solutions not typically available to CALTRANS; (iv) allows for larger watershed-scale projects; and (v) leverages resources from other entities.

7. All services performed by AGENCY pursuant to this AGREEMENT are intended to be performed in accordance with all applicable Federal, State and AGENCY laws, ordinances, regulations, and CALTRANS published manuals, policies, and procedures. In case of conflict between Federal, State and AGENCY laws, ordinances, or regulations, the order of precedence applicability of these laws shall be Federal, State and then AGENCY laws and regulations, respectively.

8. Project funding is as follows:

<u>FUND TITLE</u>	<u>FUND SOURCE</u>	<u>DOLLAR AMOUNT</u>
SHA	State of California	\$13,600,000

**SECTION I**

All sections of this agreement including the recitals are enforceable.

1. AGENCY has agreed to implement PROJECT in accordance with Attachment II-SCOPE SUMMARY. The SCOPE SUMMARY that is attached to and made a part of this AGREEMENT defines in detail the PROJECT's scope of work, description, timeline, location and budget.
2. AGENCY will be responsible for all management, maintenance and operations, including costs of the constructed Water Capture Facility.
3. AGENCY will develop and construct the Water Capture Facility in accordance with the applicable laws, policies, practices, procedures and standards. This applies to all procurements, including land acquisitions, licenses and permits.
4. AGENCY shall prepare initial engineering and geotechnical assessments, and detailed design as well as acquire environmental reviews and Right-of-Way need for the PROJECT. This work is the AGENCY equivalent to Caltrans process of Project Initiation Document (PID), Project Approval & Environmental Document (PA & ED) and Plans, Specification and Estimate (PS&E). AGENCY will pay for coordinate, prepare, obtain, implement, renew, and amend all any permits needed to complete the PROJECT. AGENCY will prepare CEQA environmental documentation to meet CEQA requirements.
5. AGENCY will advertise, open bids, award, and approve the construction contract in accordance with the California Public Contract Code and the California Labor Code and will be responsible for the administration, acceptance, and final documentation of the construction contract.
6. AGENCY shall be reimbursed for actual costs not exceeding the amount provided in the AGREEMENT herein
7. CALTRANS shall have the right to inspect the work to be performed hereunder at any time during its progress and to make final inspection upon completion thereof. Failure of CALTRANS to object within 30 days after final inspection shall indicate satisfactory performance of the AGREEMENT by AGENCY.
8. The total amount reimbursable to AGENCY pursuant to this AGREEMENT by CALTRANS shall not exceed \$13,600,000 ("Contract Sum"). Costs incurred by AGENCY for PROJECT work under this AGREEMENT in excess of the Contract Sum will be borne by AGENCY. It is understood and agreed that this AGREEMENT fund limit is an estimate and that CALTRANS will only reimburse the cost of services actually rendered as authorized by the CALTRANS Contract Manager or designee at or below the fund limitation amount set forth in this AGREEMENT and in accordance with the Budget included in Attachment II.
9. All administrative draft and administrative final reports, studies, materials, and documentation relied upon, produced, created or utilized for PROJECT will be held in confidence to the extent permitted by law, and where applicable, the provisions of California Government Code section 6254.5(e) shall govern the disclosure of such

documents in the event said documents are shared between the Parties. Parties will not distribute, release, or share said documents with anyone without prior written consent of the party authorized to release said documents except: (i) to employees, agents, and consultants who require access to complete the work described herein this Agreement; or(ii) release is required or authorized by law.

10. HM-1 is defined as hazardous material (including but not limited to hazardous waste) that requires removal and disposal pursuant to Federal or State law, whether it is disturbed by PROJECT or not. HM-2 is defined as hazardous material (including but not limited to hazardous waste) that may require removal and disposal pursuant to Federal or State law, only if disturbed by PROJECT.
  11. CALTRANS independent of PROJECT costs, is responsible for any HM-1 found within existing CALTRANS Right-of-Way (ROW). CALTRANS will undertake HM-1 management activities with minimum impact to PROJECT schedule and will pay all costs associated with HM-1 management activities.
  12. CALTRANS has no responsibility for management activities or costs associated with HM-1 found outside the CALTRANS existing ROW. AGENCY, independent of PROJECT costs, is responsible for any HM-1 found within PROJECT limits outside existing CALTRANS ROW, and will pay, or cause to be paid, all costs associated with HM-1 management activities. AGENCY will undertake, or cause to be undertaken, HM-1 management activities with minimum impact to PROJECT schedule.
  13. If HM-2 is found within the limits of PROJECT, the AGENCY responsible for advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM-2 management activities. Any management activity cost associated with HM-2 is a PROJECT construction cost.
  14. This AGREEMENT may only be amended or modified by mutual written agreement of the parties.
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**SECTION II – GENERAL PROVISIONS.**

**1. TERMINATION**

- A. This AGREEMENT may be terminated by PARTIES upon mutual written agreement. In the event of a termination CALTRANS will reimburse AGENCY all allowable, authorized, and non-cancelable obligations and prior costs incurred by AGENCY.
- B. CALTRANS reserves the right to terminate this agreement before the AGENCY awards the construction contract or begins to do project work. CALTRANS will reimburse AGENCY reasonable, allowable, authorized and non-cancelled costs up to the date of termination that are attributable to the PROJECT.
- C. This Agreement will terminate upon completion of PROJECT that all parties have met all scope, cost, and schedule commitments included in this agreement and have signed a closure statement, which is a document signed by the parties that verifies the completion of PROJECT, except for all indemnification, document retention, audit, claims, environmental commitment, pending legal challenge, hazardous material, operation, maintenance and ownership articles will remain in effect until terminated or modified in writing by mutual agreement.
- D. AGENCY has sixty (60) days after the effective date of AGREEMENT termination, or such other time agreed upon in writing by PARTIES, to submit invoices to CALTRANS to make final allowable payments for Project costs in accordance to the terms of this AGREEMENT. Failure to submit invoices within this period may result in a waiver by AGENCY of its right to reimbursement of expended costs.

**2. BUDGET CONTINGENCY CLAUSE**

All OBLIGATIONS of CALTRANS under the terms of this Agreement are subject to the appropriation of resources by the Legislature, the State Budget Act authority. It is mutually agreed that if the State Legislature does not appropriate sufficient funds for the program, this Agreement shall be amended if possible to reflect any reduction in funds, but nothing herein obligates parties to provide additional funding or proceed if sufficient funding is unavailable

**3. ALLOWABLE COST, PAYMENTS AND INVOICING**

- A. The method of payment for this Agreement will be based on actual allowable costs. CALTRANS will reimburse AGENCY for expended actual allowable direct costs and indirect costs, including, but not limited to labor costs, employee benefits, travel (overhead is reimbursable only if the Agency has an approved indirect costs allocation plan) and contracted consultant services costs incurred by AGENCY in performance of the PROJECT work, not to exceed the cost of the Contract Sum.
- B. Reimbursement of AGENCY expenditures will be authorized only for those allowable costs actually incurred by AGENCY in the performance of the PROJECT WORK. AGENCY must not only have incurred the expenditures on or after the Effective Date of this AGREEMENT and before the Termination Date, but must have also paid for those costs to claim any reimbursement.

- C. Travel, per diem, and third-party contract reimbursements are an OBLIGATIONS COST only after those hired by AGENCY to participate in OBLIGATIONS incur and pay those costs. Payments for travel and per diem will not exceed the rates paid rank and file state employees under current California Department of Human Resources rules current at the effective date of this Agreement.
- D. CALTRANS will reimburse AGENCY for all allowable PROJECT costs no more frequently and no later than monthly in arrears and as promptly as CALTRANS fiscal procedures permit upon receipt of itemized signed invoices. Invoices shall reference this AGREEMENT Number and shall be signed and submitted to the Contract Manager at the following address:

**California Department of Transportation**  
Division of Environmental Analysis – Stormwater Program  
Attention: Tom Rutsch, MS 27  
P.O. Box 942874  
CA, 94271-0001

- E. Invoices shall include the following information:
- 1) Invoice Cover Sheet The invoice cover sheet summarizes the previous, current and total amounts billed for the agreement. Details included on the cover sheet are:
    - a. Invoice Date
    - b. Contract Number
    - c. Invoice Number
    - d. Billing period (performance period), specified with beginning and ending dates. Best towards top of page.
    - e. Brief description of the work performed
    - f. Summary of total dollar amount billed to date
      - i. Previous month invoice balance
      - ii. Amount billed this month
      - iii. Total amount billed including current invoice amount
    - g. Total amount due
    - h. Summary of charges
      - i. Agency (Town) Labor Costs
      - ii. Sub-Vendor Labor Costs (consultant)
      - iii. Sub-Vendor Direct Costs (materials, equipment, miscellaneous itemized costs)
      - iv. Other Direct Costs
    - i. Discounts (if applicable)
    - j. Remittance information including name and address
    - k. Agency Contract Manager's name, address and phone number
    - l. Agency Contract Manager's signature and signature block
    - m. Caltrans Contract Manager's name and address

n. Caltrans Contract Manager's signature block (optional)

2) Invoice and Supports

All invoice charges must match the rates on the contract cost proposal and personnel request. (Changes in billing rates must be approved BEFORE billing.) The Caltrans' Contract Manager needs an invoice with sufficient detail to verify the charges are allowable under the agreement with sufficient support to allow them to verify charges. Supporting documentation, such as receipts, is required for all costs included on the invoice that are not for hourly or sub-contract labor.

Agency labor charges need to show person's name, hours worked, billing rate and brief description of work performed. Supporting documents (timesheet or payroll report) need to be provided. These documents need to include:

- a. Name (first and last)
- b. Hours charged
- c. Brief description -- identify the work is for the project funded by the Cooperative Implementation Agreement
- d. Month, day and year of the charges
- e. Worker and supervisor's signatures (Exceptions can be made for electronic timesheets.) All overtime must be approved in advance by the Caltrans Contract Manager

Direct costs (such as material costs, vehicle rental) are reimbursable. These costs need to be verified, therefore, a copy of the receipt, paid purchase order or other documentation that shows the items and cost needs to be attached to the invoice.

Agency personnel travel costs may be reimbursed according to the Consultant and Contractor travel guidelines located on the Caltrans' website at: <http://www.dot.ca.gov/hq/asc/travel/ch12/1consultant.htm>. Attached is the Travel Expense Claim (TEC) form.

Subcontractor costs are reimbursed after providing a copy of the paid invoice. This invoice needs to show the AGENCY contract manager reviewed and approved the payment. Caltrans requires its vendors to submit proof of costs incurred, such as timesheet or payroll records, travel reimbursement form (that includes the reason and dates for travel) with receipts, receipts for materials, lab services or other items) and assumes the agency has similar requirements that are documented.

3) Progress Reports

Each invoice needs to be accompanied by a Progress Report for the billing period. This report includes:

- a. Work performed during the billing period (can be in a bullet format)

- b. Contract progress estimate -- percentage of work completed (not dollar based)
- c. Work anticipate during the next billing cycle (can be in a bullet format)
- d. Total amount spent during the billing period (agency personnel, agency direct costs, subcontractor costs and total)
- e. Total amount spent to date (agency, subcontractor, total)
- f. Percentage of Caltrans Interagency Agreement (CIA) funds used to date.  
[Total (agency and subcontractor)/CIA not to exceed amount]

**4. COST PRINCIPLES**

- A. If PARTIES fund any part of OBLIGATIONS with state or federal funds, each PARTY will comply, and will ensure that any sub-recipient, contractor or subcontract hired to participate in OBLIGATIONS will comply with the federal cost principles and administrative requirements of 2 CFR, Part 200. These principles and requirements apply to all funding types included in this Agreement.
- B. Any Project costs for which AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, and/or Title 48, Chapter 1, Part 31, are subject to repayment by AGENCY to CALTRANS. Should AGENCY fail to reimburse moneys due CALTRANS within thirty (30) days of discovery or demand, or within such other period as may be agreed in writing between the parties hereto, CALTRANS is authorized to intercept and withhold future payments due AGENCY from CALTRANS.
- C. PARTIES will maintain and make available to each other all PROJECT related documents, including financial data, during the term of this AGREEMENT. PARTIES will retain all PROJECT-related records for three (3) years after the final payment voucher.

**5. INDEMNIFICATION**

Neither CALTRANS nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by AGENCY, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon AGENCY under this Agreement. It is understood and agreed that AGENCY, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by AGENCY, its contractors, sub-contractors, and/or its agents under this Agreement.

**6. RETENTION OF RECORDS/AUDITS**

- A. AGENCY, its contractors, subcontractors and sub-recipients shall establish and maintain an accounting system and records that properly accumulate and segregate incurred PROJECT costs. The accounting system of AGENCY, its contractors, all subcontractors, and sub-recipients shall conform to Generally Accepted Accounting

Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All books, documents, papers, accounting records and other supporting papers and evidence of performance under this AGREEMENT of AGENCY, its contractors, subcontractors and sub-recipients connected with PROJECT performance under this AGREEMENT shall be maintained for a minimum of three (3) years from the date of final payment to AGENCY and shall be held open to inspection, copying, and audit by representatives of CALTRANS, the California State Auditor, and auditors representing the federal government during business hours with appropriate notice. Copies thereof will be furnished by AGENCY, its contractors, its subcontractors and sub-recipients upon receipt of any request made by CALTRANS or its agents. In conducting an audit of the costs and under this AGREEMENT, CALTRANS will rely to the maximum extent possible on any prior audit of AGENCY pursuant to the provisions of State and AGENCY law. In the absence of such an audit, any acceptable audit work performed by AGENCY's external and internal auditors may be relied upon and used by CALTRANS when planning and conducting additional audits.

- B. AGENCY, its sub-recipients, contractors, and subcontractors will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other AGENCY of the State of California designated by CALTRANS, for the purpose of any investigation to ascertain compliance with this AGREEMENT.
- C. This AGREEMENT be subject to a pre-award audit prior to execution of the AGREEMENT to ensure AGENCY has an adequate financial management system in place to accumulate and segregate reasonable, allowable and allocable costs.
- D. CALTRANS, the state auditor, Federal Government, (if the PROJECT utilizes federal funds), will have access to all PROJECT-related records and any party hired by AGENCY to participate in PROJECT, for audit, examination, excerpt, or transcription.
- E. The examination of any records will take place in the offices and locations where said records are generated and/or stored and will be accomplished during reasonable hours of operation.
- F. Upon completion of the final audit, AGENCY has thirty (30) calendar days to refund or invoice as necessary in order to satisfy the obligation of the audit.

## **7. DISPUTES**

- A. PARTIES will first attempt to resolve Agreement disputes at the PROJECT team level. If they cannot resolve the dispute themselves, the CALTRANS Chief Environmental Engineer and the executive officer of AGENCY will attempt to negotiate a resolution.
- B. If PARTIES do not reach a resolution, AGENCY' legal counsel will initiate mediation. PARTIESS agree to participate in mediation in good faith and will share equally in its costs.

- C. Neither the dispute nor the mediation process relieves PARTIES from full and timely performance of OBLIGATIONS in accordance with the terms of this Agreement. However, if either PARTY stops fulfilling OBLIGATIONS, the other PARTY may seek equitable relief to ensure that OBLIGATIONS continue.
- D. Except for equitable relief, no PARTY may file a civil complaint until after mediation, or 45 calendar days after filing the written mediation request, whichever occurs first.
- E. PARTIES will file any civil complaints in the Superior Court of the county in which the CALTRANS district office signatory to this Agreement resides or in the Superior Court of the county in which the PROJECT is physically located. The prevailing PARTY will be entitled to an award of all costs, fees, and expenses, including reasonable attorney fees as a result of litigating a dispute under this Agreement or to enforce the provisions of this article including equitable relief.
- F. Additional Dispute Remedies. PARTIES maintain the ability to unanimously pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.

**8. RELATIONSHIP OF PARTIES**

It is expressly understood that this AGREEMENT is an agreement executed by and between two independent governmental entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of an independent party.

**9. NOTIFICATION OF PARTIES**

- A. AGENCY Project Manager name, title and phone number
- B. CALTRANS's Contract Manager name, title and phone number
- C. All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when made in writing and received by the parties at their respective addresses:

Town of Atherton  
George Rodericks, City Manager  
91 Ashfield Rd.  
Atherton, CA 94027

California Department of Transportation  
043/Environmental  
Attention: Tom Rutsch  
1120 N. St. MS 27  
Sacramento, CA 95814  
Mail to: P.O. Box 942874, 92427

**SECTION III - ATTACHMENTS**

The following attachments are incorporated into and are made a part of this AGREEMENT by this reference and attachment.

- I. AGENCY Resolution, Certification of Approval, order, motion, ordinance or other similar document from the local governing body authorizing execution of the agreement
- II. Scope of Work, Description, Timeline, Location and Budget

**SECTION IV- SIGNATURES**

Signatories may execute this AGREEMENT through individual signature pages provided that each signature is an original. This AGREEMENT is not fully executed until all original signatures are attached. PARTIES are empowered by California Streets and Highways Code (SHC) sections 114 and 130 to enter into this AGREEMENT and have delegated to the undersigned the authority to execute this AGREEMENT on behalf of the respective agencies and covenant to have followed all the necessary legal requirements to validly execute this AGREEMENT.

**STATE OF CALIFORNIA  
DEPARTMENT TRANSPORTATION**

**AGENCY**

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature \_\_\_\_\_  
Print Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

## **ATTACHMENT II**

### **SCOPE SUMMARY**

#### **Town of Atherton Water Capture Project**

The Town of Atherton is a member of the San Mateo Countywide Water Pollution Prevention Program (SMCWPPP), a program of the City/County Association of Governments of San Mateo County (C/CAG). C/CAG is a joint powers agency whose members are the County and the 20 incorporated cities and towns in San Mateo County. SMCWPPP supports C/CAG's member agencies in complying with requirements contained in the second five-year term of the Municipal Regional Permit (MRP) issued by the San Francisco Bay Regional Water Board. There are four important components of the SMCWPPP for implementing and to assist member agencies include; green infrastructure planning, stormwater resource planning, mercury/ polychlorinated biphenyls (PCBs) load reduction, and trash load reductions.

The MRP requires San Mateo County permittees to reduce PCBs by 370 grams per year by June 30, 2020, with an interim reduction of 60 grams per year required by June 30, 2018, with a minimum of 15 grams per year of the total be achieved via green infrastructure. San Mateo County permittees also need to demonstrate they have reduced mercury by six grams per year via green infrastructure by June 30, 2020. These reduction rates are required by the MRP as part of the process to achieve compliance with the mercury and the PCBs Total Maximum Daily Loads (TMDLs) for San Francisco Bay. San Mateo County permittees are also required to reduce trash discharges to the Bay from municipal storm drain systems. This requirement began with the issuance of the first MRP in 2009, with a 40% reduction required in 2014. Under the current MRP term, 70% reduction is required in 2017, 80% reduction in 2019, and zero impact on receiving waters from trash by 2022.

These reductions will largely be accomplished through the implementation of green infrastructure, including stormwater capture and use and/or infiltration to groundwater. SMCWPPP developed a countywide Storm Water Resource Plan (SWRP) that focuses primarily on storm water capture with a multi-benefit approach to overall water resources planning, including water quality. This plan is being followed by local Green Infrastructure Plans (GI Plans) to meet MRP requirements. Development of the GI Plans will be a multi-year effort that includes preparation of a reasonable assurance analysis (RAA) to demonstrate long-term GI Plan implementation by all MRP permittees will reduce PCB loads by three kilograms per year by 2040.

The proposed water capture facility at Las Lomas Elementary School, located at 299 Alameda de las Pulgas, Atherton, would include a diversion structure to re-direct all dry-weather urban runoff and the first flush of wet-weather runoff from the Atherton Channel through two pre-treatment devices to remove trash, debris, and sediment before conveying the water into two buried multi-chambered storage/infiltration facility with a targeted storage capacity of seven (7) acre-feet. Depending on the results of a geotechnical analysis, engineered dry well(s) on the bottom of the

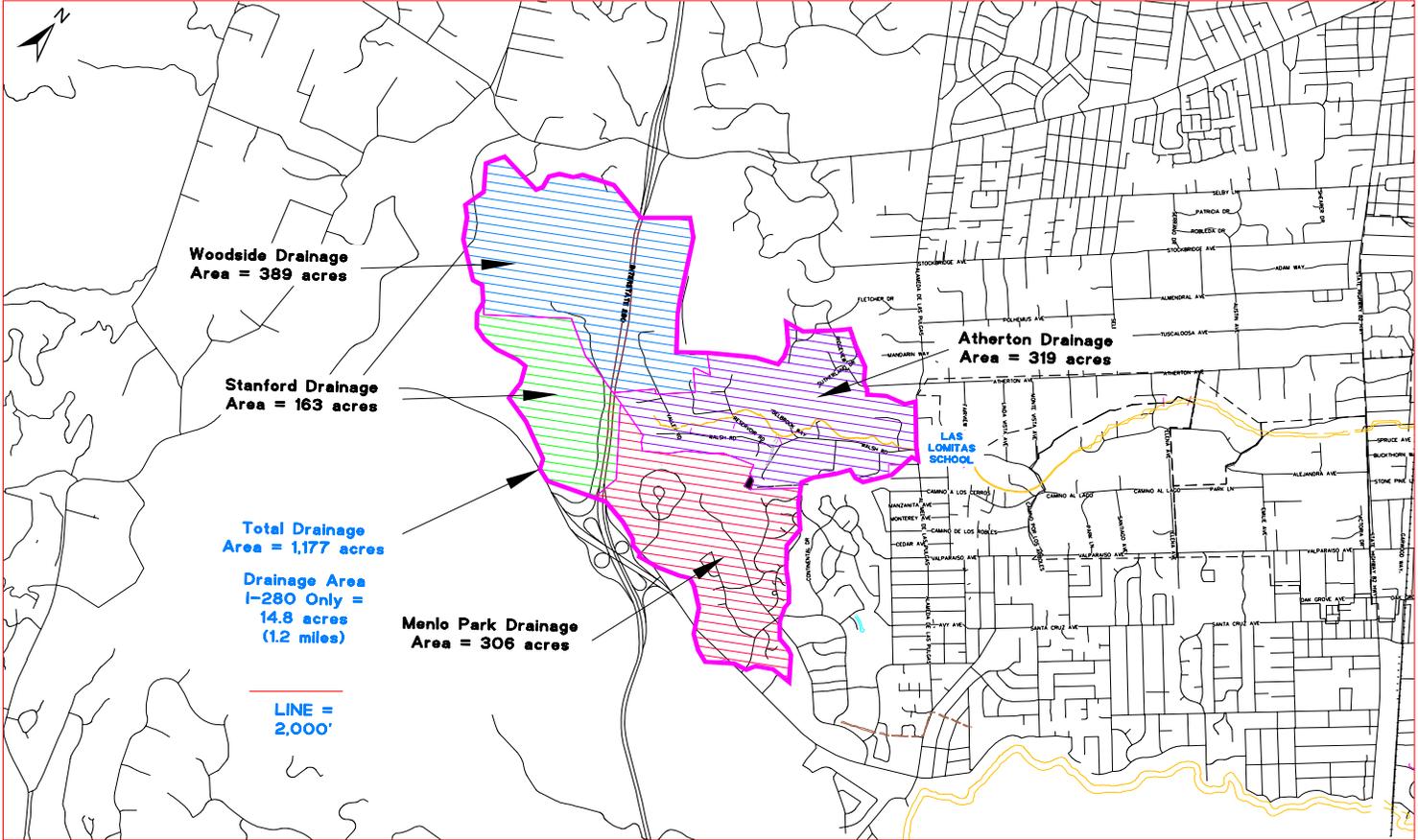
storage chamber are proposed to be constructed to facilitate infiltration. The density, depth, and diameter of these drains (dry wells) will be determined during the site evaluation stage of project design.

The proposed project will initially involve an evaluation of how to best achieve the multiple objectives of 1) capturing dry weather runoff in order to eliminate the transport of mercury, PCBs, trash and other pollutants to San Francisco Bay during dry weather; 2) capturing at least the first flush of wet-weather runoff to reduce the load of pollutants transported downstream to the Bay during wet weather, and 3) diverting potential flood flows from the Atherton Channel that flows beneath Alameda de las Pulgas and the campus.

The Las Lomas Elementary School site would capture discharges from a tributary area of approximately 1,177 acres (see Figures 1 and 2). The drainage area is split between four jurisdictions. The approximate drainage areas are: 319 acres from Atherton, 306 acres from Menlo Park, 389 acres from Woodside, and 163 acres from Stanford University property. A water capture facility at this site could greatly assist Caltrans and the municipalities to come into compliance with the Mercury and PCBs TMDLs by reducing the transport of these pollutants downstream to San Francisco Bay. It will also help Caltrans comply with Part 2 of Attachment V of the Caltrans Statewide MS4 Permit by capturing discharges from approximately 14 acres of I-280 drainage.

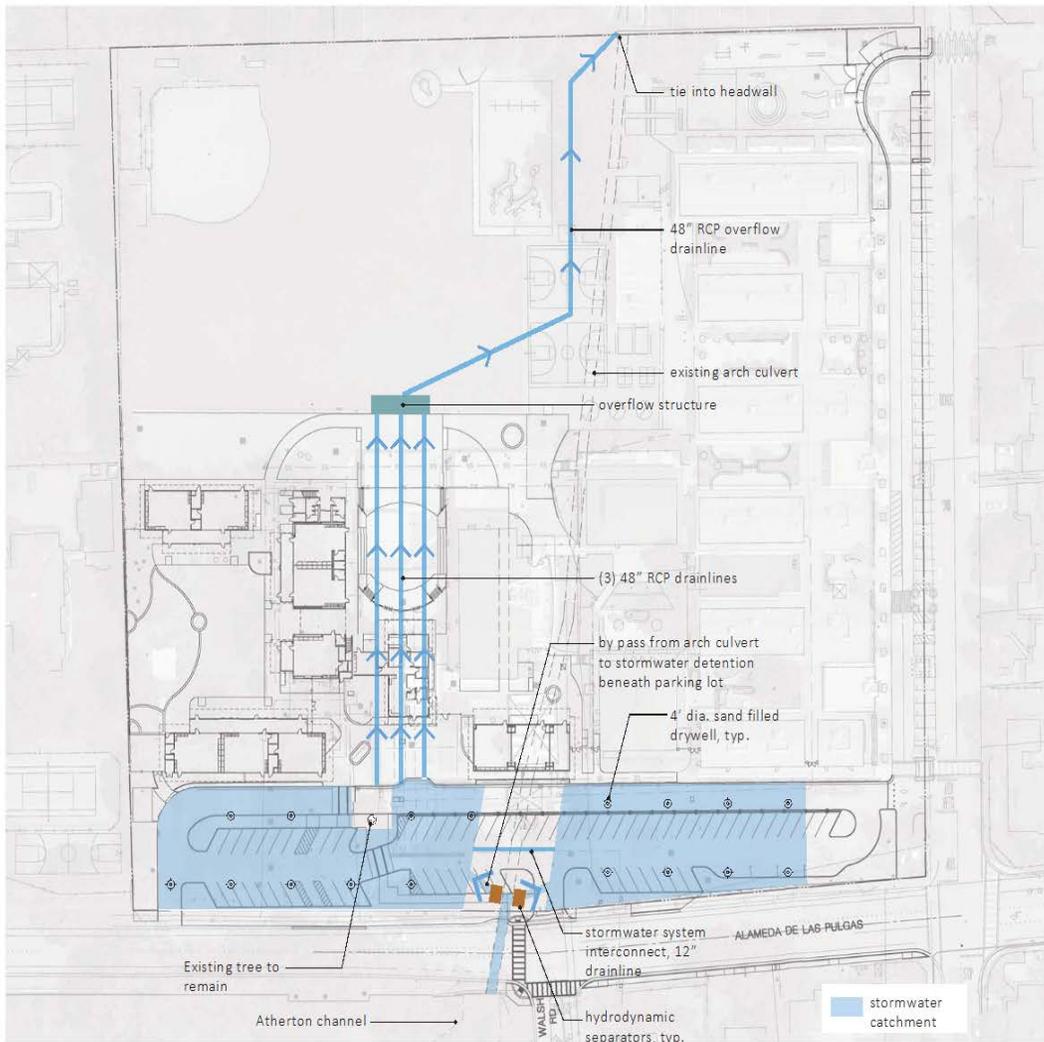
The project involves initial engineering and geotechnical assessments, detailed design, environmental compliance, permitting, construction of a diversion structure and piping, construction of a pre-treatment facility or facilities, excavation and construction of a high void underground storage/infiltration chambers (one on either side of the Atherton Channel culvert), disposal of excavated soil, and reconstruction of disturbed portions of the site. Details of the diversion structure will be determined during the design phase through coordination with the Las Lomas Elementary School District and the San Mateo County Flood Control District. In addition, the project includes development and approval of a Memorandum of Understanding (MOU) between the Town of Atherton and the Las Lomas Elementary School District and a potential MOU among the benefitting municipalities for the long-term operation and maintenance of the constructed water capture facility. Because the project is on a school site, it will go to the Division of the State Architect as a change to the existing school construction project, and the District's Architect will oversee the project.

The Town of Atherton will enter into a Cooperative Implementation Agreement (CIA) with Caltrans, and consultants will be hired to manage the project, conduct engineering and geotechnical investigations, and assist with environmental clearance, permitting, design, and construction management. Annually, during the term of the PROJECT, CALTRANS and AGENCY will agree upon the amount CALTRANS will encumber each year for the PROJECT. Encumbered funds are to be expended within three Fiscal Years (FY). The FY in which the funds are encumbered is considered number one. Any funds not expended by the end of the third FY, that amount will be deducted from RECITALS, Section 2 "not to exceed amount." Contractors will be selected through Las Lomas Elementary School District procurement procedures. Pursuant to the MOU between the Town and the District, consultants and contractors working on the project will be under contract with the District and District staff assigned to manage the project will charge hours to the project in accordance with the Caltrans requirements under this agreement.



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**LAS LOMITAS SCHOOL  
INFILTRATION / DETENTION FACILITY**



**FIGURE 2**  
**CONCEPTUAL PLAN**  
**Antherton Stormwater Management**  
**Las Lomas School Component**  
**Atherton, California**

## Cost Estimate

The following planning-level cost estimate has been prepared for the Las Lomas Elementary School water capture project. During the preliminary concept phase it is difficult to produce a precise cost estimate because the specific details pertaining to the project have not yet been determined; therefore, the costs are presented as preliminary estimates. The cost estimates consider the costs associated with planning, design, permits, an environmental assessment, construction, construction administration and inspections, contingency, bonding, and mobilization. Land acquisition costs may be of importance for other projects, but are not considered in the cost estimates presented because the site is on publically controlled land. The cost estimate will be subject to adjustment as more information becomes available during the course of the preliminary design report and additional project concept details are developed.

## Preliminary Budget

• Bonding and mobilization	\$585,190.00
• Site Preparation	\$1,431,930.00
• Construction	\$7,208,270.00
• Commissioning	\$55,000.00
<b>Construction Subtotal:</b>	<b>\$9,280,390.00</b>
• Construction Contingency	\$1,856,080.00
<b>Construction Total:</b>	<b>\$11,136,470.00</b>
• Project Confirmation	\$250,000.00
• Plans and Permitting	\$1,670,470.00
• District Relocation	\$50,000.00
<b>Project Confirmation, Plans and Permitting Subtotal:</b>	<b>\$1,970,470.00</b>
• Plans and Permitting Contingency	\$394,090.00
<b>Plans and Permitting Total:</b>	<b>\$2,364,560.00</b>
<b>Project Total:</b>	<b>\$13,501,030.00</b>

**Preliminary Timeline**

These dates are subject to refinement as the project gets underway. The complete construction dates will be dependent on receipt of the balance of the project funding from Caltrans.

<b>Release of Preliminary Design RFQ/RFP</b>	<b>05/15/17</b>
<b>Award of Engineering Consultant Agreement by School District</b>	<b>06/08/17</b>
<b>Geotechnical Permits and Investigation</b>	<b>05/15/17 – 07/01/17</b>
<b>Prepare Preliminary Engineering Design Report (10%)</b>	<b>06/12/17 – 07/15/17</b>
<b>Commence CEQA Process</b>	<b>01/01/17</b>
<b>School District Approval for Preparation of the Construction Drawings</b>	<b>06/14/17</b>
<b>Construction Drawings – 60% Milestone</b>	<b>09/15/17</b>
<b>Complete CEQA Process</b>	<b>07/15/17</b>
<b>Construction Drawings – 90% Milestone</b>	<b>11/15/17</b>
<b>Construction Drawings – 100% Complete</b>	<b>11/30/17</b>
<b>Submit to Division of State Architect for Approval</b>	<b>12/03/17-02/01/18</b>
<b>Advertise for Bids for Stormwater Catchment System Only</b>	<b>02/02/18-03/01/18</b>
<b>Award Construction Contract</b>	<b>03/21/18</b>
<b>Commence Site Construction (15 months)</b>	<b>05/15/18</b>
<b>*Deadline to Bill Caltrans for FY16-17 Funding Allocation</b>	<b>04/30/19</b>
<b>Complete Construction</b>	<b>07/31/19</b>
<b>*Deadline to Bill Caltrans for FY17-18 funding allocation</b>	<b>04/30/20</b>
<b>*Deadline to Bill Caltrans for FY18-19 funding allocation</b>	<b>04/30/21</b>

*\*Town may request adjustments to the schedule line items except for the deadlines to expend Caltrans funding allocations.*

**ATTACHMENT I**

**RESOLUTION NO. 17-XX**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON TO  
ENTER INTO A COOPERATIVE IMPLEMENTATION AGREEMENT WITH  
CALTRANS TO RECEIVE GRANT FUNDS TO CONSTRUCT THE WATER  
CAPTURE FACILITY AT LAS LOMITAS ELEMENTARY**

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WHEREAS, the Town of Atherton (Town) is subject to the requirements of mercury and polychlorinated biphenyls (PCBs) Total Maximum Daily Loads (TMDLs) adopted by the San Francisco Bay Regional Water Quality Control Board.

WHEREAS, the Town has an April 2015 Townwide Drainage Study Update.

WHEREAS, the Town's 2015 Townwide Drainage Study Update conceptually analyzed three possible detention facilities to reduce peak stormwater flows in the Atherton Channel, which would reduce the incidence of flooding. One of these, a facility in Atherton at 299 Alameda de las Pulgas, Las Lomitas Elementary School, could be constructed in cooperation with the Las Lomitas Elementary School District (District).

WHEREAS, the California Department of Transportation (Caltrans) has agreed to enter into a Cooperative Implementation Agreement with the Town and contribute an amount not to exceed Thirteen million six hundred thousand Dollars (\$13,600,000) to the Town to construct the Las Lomitas Elementary School Water Capture Facility hereinafter referred to as "Water Capture Facility.", within the regional area under the jurisdiction of AGENCY to help comply with the TMDLs.

WHEREAS, the Water Capture Facility will also capture trash and reduce peak stormwater flows within the Atherton Channel.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the Town of Atherton does agree to enter into a Cooperative Implementation Agreement with Caltrans to receive funds from Caltrans to construct the Water Capture Facility at Las Lomitas Elementary School and authorizes the City Manager to sign the Cooperative Implementation Agreement with Caltrans.

**PASSED AND ADOPTED**, at a meeting of the City Council of the Town of Atherton held on the 3<sup>rd</sup> day of May, 2017 by the following vote:

AYES: Councilmembers:  
NOES: Councilmembers:  
ABSENT: Councilmembers:

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Michael Lempres, Mayor  
Town of Atherton

ATTEST:

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Theresa N. DellaSanta, City Clerk

APPROVED AS TO FORM:

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William B. Conners, City Attorney