



## Item No. 14 Town of Atherton

### **CITY COUNCIL STAFF REPORT – REGULAR AGENDA**

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

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

**DATE: OCTOBER 18, 2017**

**SUBJECT: AUTHORIZE STAFF TO ISSUE A REQUEST FOR PROPOSAL  
FOR LOCAL TRAFFIC FLOW/LONG RANGE PLANNING  
SOLUTIONS/ NTMP**

#### **RECOMMENDATION**

Authorize staff to issue a Request for Proposal (RFP) to retain a traffic engineering consultant to prepare a study for traffic flow/long range planning solutions/NTMP.

#### **BACKGROUND**

The City Council has previously expressed concern regarding local and regional traffic flow utilizing the Town's roadway network. El Camino Real, Middlefield Road, Alameda de las Pulgas, Marsh Road, Atherton Avenue, Valparaiso Avenue, and Stockbridge Avenue are major streets frequently mentioned in complaints regarding by-pass traffic and speeding. Local residential streets are also impacted as drivers try to find ways around congested major roadways during peak hours.

There are currently many large commercial and residential projects that are either being designed or under construction in adjacent communities that will further impact traffic flow in the Town of Atherton. Although the Town provides comments on the project's environmental impact reports (EIR), the Town has no jurisdiction to require mitigation impacts.

City Council has allocated \$50,000 to look at traffic flow issues in the 2017/2021 capital improvement program (CIP) to have staff study local traffic flow and provide long range planning strategies/solutions. As part of this study, staff has been directed to look into alternatives to find ways to mitigate by-pass traffic through the Town and to reduce speeding on residential streets.

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**ANALYSIS**

On July 11, 2017, staff presented this issue to the Transportation Committee to solicit feedback. Several possible solutions identified by the Transportation Committee to study included:

- Adding right turn lanes at the intersections of minor streets at major streets which back-up during school times. For example: Emilie Avenue at Valparaiso Avenue.
- Creating left turn prohibitions during certain hours of the day. - Increase throughput on Middlefield Road.
- Quantifying extent of delays at critical intersections during commute periods. For example: Alameda de las Pulgas at Atherton Avenue.
- Preparing an Origin and Destination (O&D): Where is traffic coming from and where is it going.

At the October 4, 2017 City Council Study Session, staff presented a report requesting Council feedback on what the RFP should include. The Council provided the following feedback:

- The purpose of this study should be to learn what is going on with the traffic flows in Atherton to make informed decisions.
- The traffic study methodology should be able to capture the traffic flows accurately.
- The use of cell-phone based O&D data may not provide sufficient or as accurate a data pool as may be necessary to achieve the objectives of the Study.
- Obtaining additional traffic count data may better serve the objectives of the study.
- An approach that includes restrictions on turning movements onto local neighborhood streets should be considered.
- Consultant needs to incorporate existing and proposed development projects traffic in the region that may impact traffic flow in Atherton.
- Conflict zones at or near local schools need to be included in the analysis.
- The RFP should clearly identify the expected final work product that should include recommendations and strategies that the Town can employ as solutions.
- Once complete, the Council needs to have a discussion on the goals for traffic patterns and potential restrictions and traffic calming measures that can be employed.
- More data is better than less data.
- Traffic volume and flow information would be helpful to assess the impact of cut through traffic.
- The Town should use the data gathered to take stronger action on development projects in adjacent communities.
- The Town should consider connecting with traffic routing applications such as Waze to limit cut through traffic as other communities have done.
- Consultant should develop recommendations for the Towns Circulation Element of the General Plan to develop strategies to mitigate cut through traffic and address EIR comments.

The Consultant is expected to develop their own methodologies to identify potential roadways

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that may require mitigation measures and or strategies to reduce cut through volumes and speeds. The result of the recommendations in the study will be used to develop short and long term strategies to address current and future congestion from traffic generated by neighboring projects that may be mitigated through means of commenting on CEQA Environmental documents.

The Consultant will also work with Town staff on the creation of Level of Service (LOS), Vehicle Miles Traveled (VMT) or other applicable significance threshold criteria for the Town to utilize in the CEQA environmental reviews of future development within the Town and/or neighboring jurisdictions.

The existing Town of Atherton Circulation Element of the General Plan does not have any related maps. The consultant will be asked to work with the Town to build on the existing GIS-based graphics by including a Circulation Plan, Bicycle and Pedestrian Plan and other maps to support the Circulation Element. The consultant shall utilize existing transportation related maps in other Town adopted plans to the greatest extent feasible in preparation of maps as part of the Circulation Element update.

**POLICY FOCUS**

The project is consistent with the primary goal of advancing projects that promotes increased traffic safety and levels of non-motorized activity throughout the Town.

**FISCAL IMPACT**

Funding for this study is recommended to come from the approved 2017/2018 CIP: Traffic Safety Improvement Program Project No. 56064 - Town-wide Traffic Mitigation using Gas Tax Funds.

**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 project 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.

**ATTACHMENTS**

Traffic Calming Study RFP for local traffic flow/long range planning solutions/NTMP

# TOWN OF ATHERTON



## Request for Proposals

for

## Local Traffic Flow/Long Range Planning Solutions Study

Project Number: 56064

City Clerk  
91 Ashfield Road  
Atherton, CA 94027

**Proposals due by 11:00 am on November 30, 2017**

<b>SECTION I</b>	<b>Overview</b>
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<b>SECTION IV</b>	<b>Submittal and Review Process</b>
<b>SECTION V</b>	<b>Proposed Timeline</b>
<b>SECTION VI</b>	<b>Proposal Content</b>
<b>SECTION VII</b>	<b>Evaluation Criteria</b>

## **I. Overview**

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The Town of Atherton through this proposal (RFP), is requesting proposals to retain a qualified professional traffic engineering Consultant to provide transportation/traffic engineering services required to collect data, analyze traffic patterns and develop short and long term strategies to address cut through and speeding traffic.

The study will focus on the Town's roadway network with a focus on development of short and longer term solutions/strategies for mitigating current cut through and speeding traffic. The Consultant shall develop multiple methodologies for what type of data could be collected and identify locations of interest to discuss with Town staff.

The Consultant will also work with Town staff on the creation of Level of Service (LOS), Vehicle Miles Traveled (VMT) or other applicable significance threshold criteria for the Town to utilize in the CEQA environmental reviews of future development within the Town and/or neighboring jurisdictions.

The existing Circulation Element does not have any related maps. The consultant will be asked to work with the Town's Engineering and Public Works Consultants; Interwest Consulting Group, to build on the existing GIS-based graphics by including a Circulation Plan, Bicycle and Pedestrian Plan and other maps to support the Circulation Element. The consultant shall utilize existing transportation related maps in other Town adopted plans to the greatest extent feasible in preparation of maps as part of the Circulation Element update.

## **II. Background**

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The City Council has previously expressed concern regarding local and regional traffic flow utilizing the Town's roadway network. El Camino Real, Middlefield Road, Alameda de las Pulgas, Marsh Road, Atherton Avenue, Valparaiso Avenue, Stockbridge Avenue are major cut-through streets frequently mentioned in complaints regarding by-pass traffic and speeding. Local residential streets are also impacted as drivers try to find ways around congested major roadways during peak hours. Examples of this are Alejandra Avenue, Emilie Avenue, Park Lane and Elena Avenue which are streets surrounding schools that experience high traffic due to cut-through

and speeding traffic.

There are currently many large commercial and residential projects that are either being designed or under construction in adjacent communities that will further impact traffic flow in the Town of Atherton. Although the Town provides comments on the project's environmental impact reports (EIR), the Town has no jurisdiction to require mitigation impacts. Some of these projects in Menlo Park include:

- Greenheart Land Company is redeveloping a 6.4-acre site on El Camino Real and Oak Grove Avenue with approximately 220,000 square feet of commercial uses and 183 dwelling units.
- Pollock Realty Corporation is redeveloping the property at 1400 El Camino Real, the site of a former Shell gas station. The project includes construction of a 63-room boutique style hotel consisting of four stories and an underground parking level on an approximately half-acre site.
- On March 31, 2015, Hibiscus Properties, LLC on behalf of Facebook submitted a preliminary application for the proposed redevelopment of the TE Connectivity campus located at 301-309 Constitution Drive. The site is located between Chilco Street and the recently completed Building 20, formerly referred to as Facebook's West Campus. The proposal includes construction of two new office buildings totaling 962,400 square feet (a net increase of approximately 126,600 square feet of offices) plus publicly-accessible open space and a new pedestrian/bicycle bridge over Bayfront Expressway, providing a more direct connection from the Belle Haven neighborhood to the Bay Trail. The proposed buildings would have a similar look, feel, and height as Building 20. The application also includes the potential for a 200-room limited service hotel of approximately 174,800 square feet at the corner of Chilco Street and Bayfront Expressway. Development of the office buildings and hotel would result in a net increase of approximately 121,300 square feet at the Project Site.

City Council has authorized staff to study local traffic flow and provide short and long range planning strategies/solutions for their consideration. As part of this study, staff has been directed to identify alternative means of determining ways to mitigate by-pass traffic through the Town and to reduce speeding on residential streets. The areas identified by the Transportation Committee to potentially study include:

- Adding right turn lanes at the intersections of minor streets at major streets which back-up during school times. For example: Emilie Avenue at Valparaiso Avenue.
- Creating left turn prohibitions during certain hours of the day. - Increase throughput on Middlefield Road.
- Quantifying extent of delays at critical intersections during commute periods. For example: Alameda de las Pulgas at Atherton Avenue.
- Preparing an Origin and Destination (O&D): Where is traffic coming from and where is it going.

### **III. Scope of Services**

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Reporting to and directed by the City Engineer, or his designee, the Consultant will be responsible for completing the study on the agreed upon schedule. Key Elements/Responsibilities include but are not limited to:

#### **1. PROJECT MANAGEMENT AND MEETINGS**

The Consultant shall attend a kickoff meeting with Town staff. The purpose of the meeting will be to finalize the scope of work and schedule, and to discuss any issues to be clarified prior to the start of work. Another meeting

via conference call, will be held to discuss data collected for draft and final report findings. The consultant will attend up to a total of four Planning Commission and/or City Council study sessions and hearings as well as a public meeting that may include a presentation on the proposed methodology and strategies. Discussions will be provided to City Council for approval of methodology and report findings before continuing onto next phase. The Consultant shall prepare agendas for the meetings, conduct the meetings and distribute minutes of the meetings.

**2. DETERMINE METHODOLOGY OF STUDY, COLLECT DATA AND BACKGROUND DOCUMENTATION**

The Consultant is expected to determine what data is necessary to collect in order to develop a means of increasing throughput and decreasing cut-through traffic. The Consultant shall work with the Town and neighboring public agencies as needed to obtain any studies and information that may impact Atherton traffic. The information shall be utilized by the Consultant to develop short and long term strategies for City Council consideration in the draft and final report to mitigate traffic growth in the Town. The Consultant shall perform field reviews, identify locations of necessary traffic data collection and develop any other roadway information necessary to complete the study.

Examples of data collection could be the following:

- Contact adjacent local agencies to determine existing and proposed projects in the area for potential traffic impacts.
- Collect 24 hour traffic counts during a typical midweek (Tuesday-Thursday) time period on the Town’s minor arterials, collector and side street to determine ADT’s and vehicle’s turning.
- Collect Speed Study data to determine School Zones within areas clustered around schools.
- Collect GPS and cellphone data or use other methodologies to obtain vehicle origins and destinations within the Town.

It should be noted that the Town does have a 2015 Traffic Volume Map (Attached) that should be used as the baseline information.

**3. DETERMINE CURRENT ROADWAY CLASSIFICATION**

The Circulation Element in the Town’s General Plan was last updated in 2002. Traffic volumes have increased and traffic patterns have changed since this was last updated. The consultant is expected to evaluate the classification of the major streets in the Town’s General Plan and determine what the current minor arterials and collectors roadways are in the Town. Below is an excerpt from the Town’s General Plan:

**Major Streets Classified By Road Type**

<b>Street</b>	<b>Between</b>	<b>And</b>
<b>Highways</b>		
El Camino Real	City Limits	City Limits
<b>Minor Arterials</b>		
Middlefield Road	City Limits	City Limits
Marsh Road	Middlefield	City Limits
Alameda de las Pulgas	City Limits	City Limits
<b>Collectors</b>		
Atherton Avenue	Ridgeview	El Camino Real

Encinal Avenue	City Limits	Middlefield
Fair Oaks Lane	El Camino Real	Middlefield
Glenwood Avenue	City Limits	Middlefield
Oak Grove Avenue	City Limits	Middlefield
Ravenswood Avenue	City Limits	Middlefield
Ringwood Avenue	Middlefield	Bay
Valparaiso	City Limits	El Camino Real
Watkins	El Camino Real	Middlefield

The existing Circulation Element does not have any related maps. The consultant will be asked to work with the Town’s Engineering and Public Works Consultants; Interwest Consulting Group, to build on the existing GIS-based graphics by including a Circulation Plan, Bicycle and Pedestrian Plan and other maps to support the Circulation Element. The consultant shall utilize existing transportation related maps in other Town adopted plans to the greatest extent feasible in preparation of maps as part of the Circulation Element update.

**4. ANALYZE DATA FOR FUTURE DEVELOPMENT CEQA ENVIRONMENTAL REVIEWS**

Consultant will determine if there are any additional projects in the general vicinity of Atherton. Consultant will review projected traffic generated by all projects and determine potential routes through Atherton. The Consultant shall work with Town staff on the creation of Level of Service (LOS), Vehicle Miles Traveled (VMT) or other applicable significance threshold criteria for the Town to utilize in the CEQA environmental reviews of future development within the Town and/or neighboring jurisdictions.

**5. DRAFT AND FINAL REPORT IDENTIFYING SHORT TERM AND LONG TERM RECOMMENDATIONS**

Consultant will aggregate and summarize the data in tabular and graphical format. The final study shall be submitted in an editable electronic format (AutoCAD, Word, Excel, etc.) as well as hard copies with engineering signatures. Consultant will provide short and long term strategies to mitigate the by-pass traffic and speeding concerns. The final draft will identify major cut-thru streets and summarize traffic calming recommendations. Consultant will provide preliminary cost estimates for each short and long term strategy.

**IV. Submittal and Review Process**

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1. Applicant questions: All questions regarding the RFQ shall be submitted in writing to Marty Hanneman, City Engineer, at [mhanneman@ci.atherton.ca.us](mailto:mhanneman@ci.atherton.ca.us). Questions and responses will be posted on the Atherton Town website.
2. Late submittals will not be accepted.
3. Format and Delivery: Proposals should be short and concise. Proposals should not be more than 20 two sided pages in length. Submit three (3) letter-sized copies with one (1) unbound copy of the technical proposal to:

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

and e-mail a PDF copy to Marty Hanneman at [mhanneman@ci.atherton.ca.us](mailto:mhanneman@ci.atherton.ca.us).

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

## V. Proposed Timeline

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October 19, 2017	RFP available on Town of Atherton website
November 10, 2017, 11:00 am	Submission deadline for written questions
November 13, 2017	Responses to written questions available on Town website
<b>November 30, 2017, 11:00 am</b>	<b>Technical Proposals and Cost Proposals due</b>
Week of December 4, 2017	Interviews with highest ranked proposers, if necessary
January 17, 2017	Recommendation for Award to City Council

## VI. Proposal Content

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At a minimum, the proposal should include the following:

1. **FIRM OR PERSON INTRODUCTION:** including information such as form of organization, length of time in business, office location(s), number of staff and a general summary of qualifications documenting the strengths of the firm or person, areas of expertise and licensing. Include name, email address and phone number for the firm's contact person.
2. **APPROACH:** the person or firm's project management practices, methodologies and processes.
3. **PROJECT EXPERIENCE:** listing specific experience that is related to the type of service required. Project experience should list the type of work provided with the client contact information for each project. If Sub-Consultants are proposed, include information on joint work, if any, and their roles in those projects.
4. **WORK PLAN:** detailed work plans with estimated hours by task by job title for the project.
5. **KEY STAFF:** including the identification of the Principal-in-Charge and key staff. This section should identify the qualifications and related experience of key staff assigned to the project; and include their resume showing experience in transportation/traffic studies. Include an organizational chart for this project.

6. REFERENCES: Provide client references, for all similar projects in the past five (5) years, that have working experience with the project team and companies proposed for assignment to this project. Furnish the name, title, address and telephone number of the person(s) at the client reference who is most knowledgeable about the work performed and can comment on the professional qualifications/expertise of the staff.
7. LITIGATION: a list of any current litigation to which the firm or person are parties by virtue of their professional service, in addition to a list of any such litigation from the past ten years.
8. DISCLOSURE: of any past, ongoing, or potential conflicts of interest that the firm or person may have as a result of performing the anticipated work.
9. PROPOSED CONSULTING SERVICES AGREEMENT (Attachment 2): The Consultant may include a proposed agreement of their own in the proposal. The agreement must have been approved by another public agency in California within the last two years. The Town reserves the right to accept or reject any proposed agreement language, or to propose its own form of Agreement.
10. PROFESSIONAL FEES: Include standard hourly fees and charges. **One (1) copy of the cost proposal shall be submitted in a separate sealed envelope at the same time as submittal of the technical proposal.**

## VII. Evaluation Criteria

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The Project Manager is expected to be a key component of the proposal. The Project Manager will be the key point of contact with City staff and will be expected to drive the project to meet schedule and budgetary goals. The Project Manager would ideally satisfy the following criteria:

- At least 10-years' experience in transportation/traffic engineering studies
- Knowledge of the local area's traffic issues and demonstrated work experience with O-D matrices.
- Substantial experience managing public projects

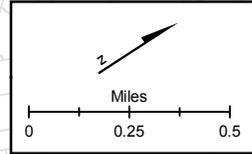
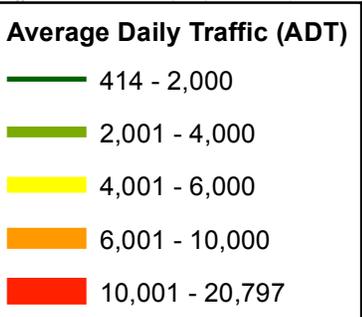
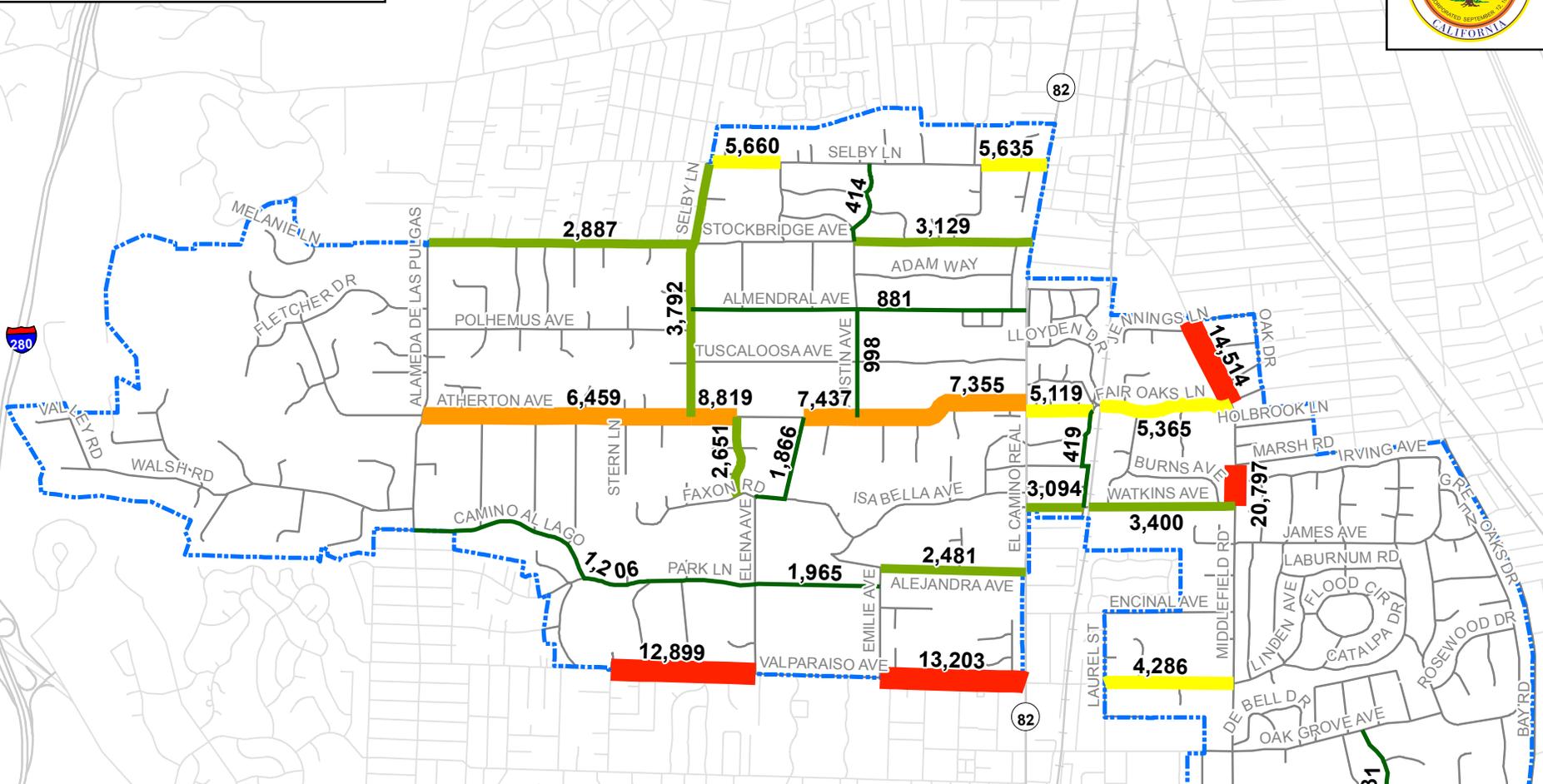
Proposals will be evaluated on the following criteria:

Project Team's qualifications	20%
Project Manager's Technical Experience and Approach	20%
Understanding of Project Issues	20%
Quality of Proposed Work Plan	30%
Quality of References	10%

### Attachments:

- 1). 2015 Traffic Volume Flow Map
- 2). Consultant Services Agreement

# Town of Atherton



**TOWN OF ATHERTON**  
**CONSULTANT AGREEMENT WITH \_\_\_\_\_COMPANY**  
**FOR PROFESSIONAL SERVICES FOR THE \_\_\_\_\_PROJECT.**  
**PROJECT #XXXXXX**

THIS AGREEMENT (hereinafter referred to as "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 201X, by and between the Town of Atherton ("Town"), a California Municipal Corporation and \_\_\_\_\_ Company ("CONSULTANT"), who agree as follows:

**RECITALS**

**WHEREAS**, Town desires to have \_\_\_\_\_ as set forth in Exhibit A, attached and incorporated by this reference; and,

**WHEREAS**, Consultant represents that it is qualified and able to perform services; and,

**WHEREAS**, Consultant is agreeable to providing the services on the terms and conditions hereinafter set forth.

**NOW THEREFORE**, the parties agree as follows:

1. **Term of Agreement**: The Term of this Agreement shall extend from \_\_\_\_\_, 201X ("Commencement Date") to be completed on \_\_\_\_\_ (the "Termination Date").
2. **Consultant's Services**. Consultant shall perform the bicycle lane improvement services describe in Exhibit A ("Scope of Work" and/or "Services") to the full satisfaction of Town.
3. **Time of Performance**. Consultant shall perform the Services on or by the Termination Date set forth in Agreement section 1, unless extended in writing by the parties pursuant to the terms of this Agreement.
4. **Compensation**. Town agrees to compensate Consultant, and Consultant agrees to accept in full satisfaction for the Services required by this Agreement the consideration set forth in Exhibit B, attached and incorporated by this reference ("Payment"). Town shall pay Consultant in accordance with the schedule of payment set forth in Exhibit B.
5. **Independent Contractor**. Consultant is and shall at all times remain, as to Town, a wholly independent contractor. Neither Town nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees or sub-consultants, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of Town.

6. **Assignment.** Consultant shall not assign or attempt to assign any portion of this Agreement without prior written approval by Town.
7. **Responsible Principal of Consultant:** The Responsible Principal of the Consultant is \_\_\_\_\_, Principal-In Charge who shall be the individual responsible for Consultant's obligations under this Agreement and shall service as principal liaison between Town and Consultant. Designation of another Responsible Principal by Consultant shall not be made without the prior written consent of Town.
8. **Personnel.** Consultant represents that it has, or shall secure at its own expense, all personnel required to perform Consultant's services under this Agreement. Consultant shall assign only competent personnel. In the event that Town, in its sole discretion, at any time during the term of this Agreement, desires the removal of any such persons, Consultant shall, immediately upon receiving notice from Town of such desire of Town, cause the removal of such person or persons.
  - a. **Employment Eligibility.** Consultant shall ensure that all employees of Consultant and any sub-consultant or subcontractor retained by Consultant in connection with this Agreement have provided the necessary documentation to establish identity and employment eligibility as required by the Immigration Reform and Control Act of 1986, any amendments thereto and all applicable labor laws in effect at the time of this Agreement. Failure to provide the necessary documentation will result in the termination of the Agreement as required by the Immigration Reform and Control Act of 1986.
9. **Changes to Scope of Work.** Town may, by written notice, initiate any change to the Scope of Work. A corresponding equitable change in the Payment of this Agreement will be made for each change ordered as mutually agreed upon by the parties in writing.
10. **Interests of Consultant.** Consultant affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Services contemplated by this Agreement.
11. **Responsibility of Consultant.** Consultant shall take all responsibility for the work, shall bear all losses and damages directly or indirectly resulting to Consultant or any sub-consultant or subcontractor, to the Town, its elected and appointed officials, officers, attorneys, agents, and employees and each of them from any and all loss or damage on account of the performance or character of the work, unforeseen difficulties, accidents, occurrences or other causes predicated on active or passive negligence of the Consultant or of any sub-consultants or subcontractors.
12. **Insurance.** Consultant agrees to have and maintain the policies set forth in Exhibit C entitled "INSURANCE REQUIREMENTS," which is attached and incorporated by this reference. All policies, endorsements, certificates, and/or binders shall be subject to

approval by the Town as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the Town. A lapse in any required insurance coverage during this Agreement shall be a breach of this Agreement.

- a. Consultant shall procure and maintain for the duration of this Agreement insurance as set forth in Exhibit C, attached and incorporated by this reference. The cost of such insurance shall be included in the Consultant's bid.
- b. Consultant agrees to maintain in force at all times during the performance of the Scope of Work under this Agreement, workers' compensation insurance as required by law.
- c. Contractor agrees to include with all subcontractors in their subcontract the same requirements and provisions of this Agreement including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Contractor agree to be bound to Contractor and Town in the same manner and to the same extent as Contractor is bound to Town under this Agreement and any other applicable contract documents. Subcontractor further agrees to include these same provisions with any sub-subcontractor. A copy of the Indemnity and Insurance provisions in this Agreement will be furnished to the subcontractor upon request. The General Contractor shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the Agreement prior to commencement of any work and will provide proof of compliance to the Town.
- d. Consultant shall require each of its sub-consultants or subcontractors to maintain insurance coverage which meets all of the requirements of this Agreement.
- e. The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California.
- f. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, Town may terminate this Agreement.
- g. At all times during the term of this Agreement, Consultant shall maintain on file with the Town a certificate or certificates of the required insurance as set forth in Exhibit C showing that the required insurance policies are in effect in the required amounts.
- h. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of an insurance policy or proceeds available to the named Insured; whichever is greater.

13. **Indemnification.** Consistent with Civil Code section 2782.8, Consultant shall defend (with legal counsel selected by the Town), hold harmless, and indemnify Town, its elected and appointed officials, officers, directors, attorneys, agents, and employees and each of them from and against any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant and its employees or agents arising out of Consultant's performance of any task or service for or on behalf of Town under this Agreement. Consultant acknowledges that Town would not enter into this Agreement in the absence of the commitment of Consultant to indemnify and protect Town as set forth in this section. This indemnity does not apply to liability for damages arising from the sole negligence, active negligence, or willful acts of the Town its elected and appointed officials, officers, directors, attorneys, agents, and employees and each of them.

- a. **General.** This obligation to indemnify, hold harmless, and defend Town as set forth herein is binding on the successors, assigns, or heirs of Consultant and shall survive the termination of this Agreement or this section. By execution of this Agreement, Consultant acknowledges and agrees that it has read and understands the provisions hereof and that this section is a material element of consideration. The parties agree that if any part of this Indemnification is found to conflict with applicable laws, such part shall be unenforceable only insofar as it conflicts with said laws, and that this indemnification shall be judicially interpreted and rewritten to provide the broadest possible indemnification legally allowed and shall be legally binding upon Consultant.
- b. **Survival.** Contractor and any subcontractor's responsibility for such defense, hold harmless, and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.
- c. **No Limitation by Insurance Obligations.** The defense, hold harmless, and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.
- d. **Scope.** This Section shall in no event be construed to require indemnification by Contractor to a greater extent than permitted under the public policy of the State of California.

14. **Termination.**

- a. In addition to any other rights of termination and suspension set forth in this Agreement or at law, either party may terminate this Agreement with or without cause by providing ten (10) days' notice in writing to the other party.
- b. The Town may terminate this Agreement at any time without prior notice in the event that Consultant commits a material breach of the terms of this Agreement.

- c. In the event of termination of this Agreement by Town, due to no fault or failure of performance by Consultant, Consultant shall be paid full compensation for all services performed by Consultant, in an amount to be determined as follows: For work done in accordance with the terms and provisions of this Agreement, Consultant shall be paid an amount equal to the amount of services performed prior to the effective date of termination or cancellation; provided, in no event shall the amount of money paid under the foregoing provisions of this paragraph exceed the amount which would be paid to Consultant for the full performance of the Scope of Work under this Agreement.
- d. Upon termination, this Agreement shall become of no further force or effect and all parties shall be discharged from their duties and obligations under this Agreement. Notwithstanding, the provisions of this Agreement concerning retention of records, Town's rights to material produced, confidential information, Consultant's responsibility, indemnification, insurance, dispute resolution, litigation, and jurisdiction and severability shall survive termination of this Agreement.

15. **Notice.** All notices that are required either expressly or by implication to be given by one party to the other under this Agreement shall be signed for Consultant by its Responsible Principal and for Town by City Manager or, for either party, by such officer as it may, from time to time, be authorized to so act. All such notices shall be deemed to have been given if delivered personally or if enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail or overnight express carrier. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as follows:

Consultant shall address notices to:

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

Town shall address notices to:

Name  
Title  
Company  
Address:  
City, State, Zip Code  
Phone:  
Email:

16. **Prevailing Wages.** In accordance with the provisions of section 1770 *et seq.* of the California Labor Code, the Director of Industrial Relations of the State of California has determined the general prevailing rate of wages applicable to the work to be done. Consultant will be required to pay all persons employed on the project by the Consultant's

sums not less than the sums set forth in the documents entitled “General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code, part 7, Chapter 1, Article 2, sections 1770, 1773, 1773.1.” These documents may be obtained from the State of California.

**17. Compliance with Laws.**

- a. In General. Consultant shall observe and comply with all laws, policies, general rules and regulations established by Town and shall comply with the common law and all laws, ordinances, codes and regulations of governmental agencies, (including federal, state, municipal and local governing bodies) applicable to the performance of the Scope of Work hereunder, including, but not limited to, all provisions of the Occupational Safety and Health Act of 1979 as amended.
- b. Labor Laws: Consultant shall comply with and adhere to all applicable labor laws, including, but not limited to, alien labor, prevailing wages, etc. Consultant shall comply with all applicable provisions of the California Labor Code.
- c. Drug-free Workplace. Consultant’s employees and sub-consultants or subcontractors shall comply with the Town’s policy of maintaining a drug-free workplace. Neither Consultant nor Consultant’s employees and/or subcontractors shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code section 812, including marijuana, heroin, cocaine, and amphetamines, at any facility, premises or worksite used in any manner in connection with performing services pursuant to this Agreement. If Consultant or any employee or sub-consultant or subcontractor is convicted or pleads *nolo contendere* to a criminal drug statute violation occurring at such a facility, premises, or worksite, the Consultant shall notify the Town within five (5) days.
- d. Discrimination Prohibited. During the performance of this Agreement, Consultant and its sub-consultants or subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, religious creed, marital status, denial of family and medical care leave, ancestry, national origin, medical condition (cancer/genetic characteristics), age (40 and above), disability (mental and physical) including HIV and AIDS, denial of pregnancy disability leave or reasonable accommodation. Consultant and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, §12900 *et seq.*) and the applicable regulations promulgated thereunder (Cal. Code Regs, tit. 2, §7285.0 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12990 (a)–(f), are incorporated into this Agreement by reference and made a part hereof as if set forth in full (Cal. Code Regs, tit. 2, §7285.0 *et seq.*).

Consultant and its sub-consultants or subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

- e. Harassment Prohibited. Consultant and Consultant's employees and sub-consultants or subcontractors shall comply with the Town's Workplace Harassment and Discrimination Policy.
  - f. Illness and Injury Prevention Program (IIPP). Consultant shall provide the Town with a copy of their IIPP to show compliance with CalOSHA.
  - g. Licenses and Permits. Consultant represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant represents and warrants to Town that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Consultant to practice its profession.
18. **Facilities and Equipment**: Except as set forth in Exhibit D ("Facilities and Equipment"), Consultant shall, at its sole cost and expense, furnish all facilities and equipment, which may be required for completing the Scope of Work pursuant to this Agreement. Town shall furnish to Consultant only the facilities and equipment listed in Exhibit D according to the terms and conditions set forth in Exhibit D.
19. **Special Conditions**. None
20. **Exhibits**. All exhibits referred to in this Agreement are attached and incorporated by this reference.
21. **Benefits and Taxes**. Consultant shall not have any claim under this Agreement or otherwise against Town for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability, unemployment, workers compensation or employee benefits of any kind. Consultant shall be solely liable for and obligated to pay directly all applicable taxes, including, but not limited to, federal and state income taxes, for which Consultant shall indemnify and hold Town harmless from any and all liability that Town may incur because of Consultant's failure to pay such taxes. Town shall have no obligation whatsoever to pay or withhold any taxes on behalf of Consultant.
22. **Dispute Resolution**. Should any dispute arise concerning any provisions of this Agreement, or the parties' rights and obligations hereunder, the parties shall meet and confer in an attempt to resolve the dispute. Prior to commencing any legal action, the complaining party shall provide to the other party thirty (30) days' written notice of the intent to take such action; provided that such notice shall not be required where a delay in commencing

an action would prejudice the interests of the party that intends to file suit. During the thirty (30) day notice period, the parties shall meet and confer in an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or abridge any right or remedy that either party may have.

**23. Default and Remedies.**

- a. Events of Default. Each of the following shall constitute an event of default hereunder:
  - i. Failure to perform any obligation under this Agreement and failure to cure such breach immediately upon receiving notice of such breach, if the breach is such that the Town determines the health, welfare, or safety of the public is immediately endangered; or
  - ii. Failure to perform any obligation under this Agreement and failure to cure such breach within fifteen (15) days of receiving notice of such breach, if the breach is such that the Town determines that the health, welfare, or safety of the public is not immediately endangered, provided that if the nature of the breach is such that the Town determines it will reasonably require more than fifteen (15) days to cure, Consultant shall not be in default if Consultant promptly commences the cure and diligently proceeds to completion of the cure.
- b. Remedies upon Default. Upon any Consultant default, Town shall have the right to immediately suspend or terminate the Agreement, seek specific performance, contract with another party to perform this Agreement and/or seek damages including incidental, consequential and/or special damages to the full extent allowed by law.

24. **Attorneys' Fees.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.

**25. Documents and Records.**

- a. Property of Town. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda or other written documents or materials prepared by Consultant pursuant to this Agreement shall become the property of Town upon completion of the work to be performed hereunder or upon termination of this Agreement.
- b. Retention of Records. Until the expiration of five (5) years after the furnishing of any services pursuant to this Agreement, Consultant shall retain and, upon written request by Town, make available to the Town or any party designated by the Town this Agreement, and such books, documents and records of Consultant and subcontractor that are necessary or convenient for audit purposes to certify the nature and extent of the reasonable cost of services to Town.
- c. Professional Seal. Where applicable in the determination of the contract administrator,

the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility"

26. **Inspection of Books and Records.** During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and make copies of any books, records, or reports of the other party pertaining to this Agreement or matters related hereto. Each of the parties hereto shall maintain and make available for such inspection accurate records of all of its costs, disbursements and receipts with respect to its activities under this Agreement.
27. **Confidential Information.** Consultant shall hold any confidential information received from Town in the course of performing this Agreement in trust and confidence and will not reveal such confidential information to any person or entity, either during the term of the Agreement or at any time thereafter. Upon expiration of this Agreement, or termination as provided herein, Consultant shall return materials which contain any confidential information to Town. Consultant may keep one copy for its confidential file. For purposes of this section, confidential information is defined as all information disclosed to Consultant which relates to Town's past, present, and future activities, as well as activities under this Agreement, which information is not otherwise of public record under California law.
28. **Successors and Assigns.** This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.
29. **Waiver.** Any waiver at any time by either party hereto of its rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any other default or matter.
30. **Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
31. **Agreement Interpretation.** Each party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither party shall rely upon Civil Code section 1654 in order to interpret any uncertainty in the meaning of the Agreement.
32. **Entire Agreement.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the subject matter described herein.
33. **Jurisdiction and Severability.** This Agreement shall be governed and construed in accordance with California law. The venue for any legal action in State court filed by a party to this Agreement for the purpose of interpreting or enforcing any provision of this

Agreement shall be in the Superior Court of California, County of San Mateo. The venue for any legal action in Federal court filed by a party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement within the jurisdiction of the Federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceeding under this Agreement shall be in San Mateo County, California; however nothing in this Agreement section shall obligate a party to submit to arbitration any dispute arising under this Agreement. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

34. **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 Consultant and Town.

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

**CONSULTANT**

BY: \_\_\_\_\_  
NAME:  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

**TOWN OF ATHERTON**

BY: \_\_\_\_\_  
George Rodericks, City Manager  
DATE: \_\_\_\_\_

**APPROVED AS TO FORM:**

BY: \_\_\_\_\_  
William Conners, City Attorney  
DATE: \_\_\_\_\_

**ATTEST:**

BY: \_\_\_\_\_  
Theresa N. DellaSanta, City Clerk  
DATE: \_\_\_\_\_

**Attachments:**

**Exhibit A – Scope of Work**

**Exhibit B – Payment and Schedule of Payments**

**Exhibit C – Insurance Requirements**

**Exhibit D – Facilities and Equipment**

**EXHIBIT A**  
**SCOPE OF WORK**

Per this agreement, Consultant will provide the following scope of services.

**EXHIBIT B**  
**PAYMENT AND SCHEDULE OF PAYMENTS**

**1. TOTAL COMPENSATION**

Town shall compensate Consultant for the satisfactory performance of the work described in this Agreement for a not exceed fee amount of \_\_\_\_\_ **(\$XXXXXX)** for all Tasks.

2. Consultant shall submit an itemized statement to Town on a Town approved form for its services performed, which shall include documentation setting forth in detail a description of the services rendered, and the hours of service, if appropriate. Town shall compensate Consultant the amount of such billing within thirty (30) days receipt of same.
3. There shall be no right to reimbursement of expenses incurred by Consultant except as specified in Exhibit A to this Agreement.

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

CONSULTANT shall procure and maintain for the duration of the contract and three years thereafter insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, its agents, representatives, employees or subcontractors.

**MINIMUM SCOPE OF INSURANCE**

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 0001 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- 2 **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONSULTANT has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
- 3 **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. Professional Liability (Errors and Omissions): insurance appropriate to the CONSULTANT's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.
- 4 If the CONSULTANT maintains higher limits than the minimums shown above, the TOWN requires and shall be entitled to coverage for the higher limits maintained by the CONSULTANT.

**Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

*Additional Insured Status*

**The TOWN, it's elected and appointed officials, employees, and agents are to be covered as insured's** on all insurance policies for liability set forth above.

***Primary Coverage***

For any claims related to this contract, the CONSULTANT's insurance coverage shall be primary insurance as respects the TOWN, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the TOWN, its elected and appointed officials,

employees, or agents shall be excess of the CONSULTANT's insurance and shall not contribute with it.

***Notice of Cancellation***

Each insurance policy required above shall provide that coverage shall not be canceled, except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the TOWN.

***Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the TOWN.***

*Claims Made Policies (note - should be applicable only to professional liability, see below)*

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided *for at least three (3) years after completion of the contract of work.*
3. If coverage is canceled or non-renewed, and not replaced *with another claims made policy form with a Retroactive Date prior to the contract effective date,* the CONSULTANT must purchase "extended reporting" coverage for a minimum of *three (3) three years after completion of work.*

***Verification of Coverage***

CONSULTANT shall furnish the TOWN with original certificates and amendatory endorsements or copies of the applicable policies if requested by Town. All certificates and endorsements are to be received and approved by the TOWN before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. The TOWN reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**NONASSIGNABILITY**

Both parties hereto recognize that this Agreement is for the personal services of CONSULTANT and cannot be transferred, assigned, or subcontracted by CONSULTANT without the prior written consent of TOWN.

**RELIANCE UPON PROFESSIONAL SKILL OF CONSULTANT**

It is mutually understood and agreed by and between the parties hereto that CONSULTANT is skilled in the professional calling necessary to perform the work agreed to be done under this Agreement and that TOWN relies upon the skill of CONSULTANT to do and perform the work in the most skillful manner, and CONSULTANT agrees to thus perform the work. The acceptance of CONSULTANT's work by TOWN does not operate as a release of CONSULTANT from said obligation.

**WAIVERS**

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions of any ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

**SEVERABILITY**

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

**COSTS AND ATTORNEY FEES**

In the event of any controversy, claim, dispute, arbitration or litigation between the parties hereto (whether sounding in contract, tort or both) to enforce or interpret any of the provisions of this Agreement or any right of any party hereto, the non-prevailing party to such action agrees to pay to the prevailing party all costs and expenses, including reasonable attorney's fees, incurred therein by the prevailing party, including, without limitation, fees incurred during a hearing of any action, claim or dispute and any fees incurred regarding any petition to confirm, correct, modify or vacate any award, as a result of any appeal from a judgment entered in connection with such litigation, or to enforce said judgment. To so recover, it shall not be necessary that the prevailing party prevail in each and every one of its claims. Rather, the amount of the award of attorney's fees shall, in the court's discretion, reflect the degree to which the prevailing party or parties have prevailed in some of their claims.

**EXHIBIT D**  
**FACILITIES AND EQUIPMENT**

Town shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with Town employees and reviewing records and the information in possession of Town. The location, quantity, and time of furnishing said physical facilities shall be in the sole discretion of Town. In no event shall Town be obligated to furnish any facility which may involve incurring any direct expense, including, but not limiting the generality of this exclusion, long-distance telephone or other communication charges, vehicles, and reproduction facilities. Consultant shall not use such services, premises, facilities, supplies or equipment for any purpose other than in the performance of Consultant's obligations under this Agreement.