



Item No. 20 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 15, 2014

**SUBJECT: AUTHORIZATION TO ISSUE A REQUEST FOR PROPOSAL FOR THE
EL CAMINO REAL LANE REDUCTION TRAFFIC STUDY**

RECOMMENDATION

Authorize issuing a Request for Proposal (RFP) for the El Camino Real Lane Reduction Traffic Study.

BACKGROUND

El Camino Real within the Town of Atherton is an existing State Highway (SR 82) and a major north-south transportation corridor serving the San Francisco Bay Area Peninsula. Currently, the corridor is “incomplete” since it is designed primarily for vehicular travel with minimal or no facilities to safely accommodate pedestrians and cyclists. Within Atherton, El Camino Real is a six-lane arterial roadway with a pavement width that varies from 80-85 feet. The road cross section also includes landscaped medians. The average daily traffic within the 1.6 mile segment of El Camino Real within Atherton exceeds 31,000 vehicles per day.

Walking and biking to destinations through the Town require crossing El Camino Real at one of 5 marked crosswalks at uncontrolled intersections. The 1.6 mile segment of El Camino Real is served by only one signalized intersection. Accordingly, most bicycle and pedestrian crossings of El Camino occurs at the uncontrolled intersections. In addition to Holbrook Palmer Park, uses that create the need to improve bicycle/pedestrian safety along and across El Camino Real include 7 public and private schools that reside within the Town.

Over the past 18 months, staff has been working with Caltrans to identify short and long term solutions to improve pedestrian, bicycle, and vehicular safety along El Camino Real. Items discussed include:

- Installation of enhanced signing and striping at marked crosswalk locations at uncontrolled intersections.
- Trimming trees and removing vegetation within landscaped medians to improve visibility

for pedestrians and vehicles.

- Placement of flashing beacons at selected crosswalk locations to improve driver awareness.
- Signalization of specific intersections.

Although a longer-term solution, the Town and Caltrans also agreed that developing a plan for the entire 1.6 mile segment of El Camino Real would be the most effective approach to improving safety. Specific improvement ideas included:

- Following the coordination with affected agencies, consideration of a reduction of travel lanes from six lanes to four lanes to reduce pedestrian crossing distance and vehicular speeds.
- At uncontrolled intersections with marked crosswalks, widen the existing center median and construct a pedestrian portal to provide a safe refuge for pedestrians crossing El Camino Real.
- Restriction of left-turn movements at specified intersections.
- Consideration of signalization of specific intersections, from hybrid pedestrian beacons to full traffic signals.
- Remove vegetation and trees in the medians to improve visibility.
- With implementation of lane reductions, provide a Class I bike facility along El Camino Real.

DISCUSSION

A reduction of travel lanes from six lanes to four is the first step in discussions with Caltrans about safety along the Atherton stretch of El Camino Real. The operational analysis will determine the safety-related impacts and the delay-related impacts of the roadway conversion (6-lanes to 4-lanes). This information will form the basis of further discussion and analysis of safety improvements (vehicular, pedestrian, and bicycle) along El Camino Real.

While the study is underway, staff will continue further discussions with affected agencies (Redwood City, Menlo Park, County of San Mateo, and Menlo Fire) and Caltrans to consider safety improvements to the roadway. For example, the Town and Caltrans continue to move forward with planned hybrid beacons at Alejandra and Isabella. If the Town wished to install an additional hybrid beacon at another location, it could do so in cooperation with Caltrans through their design and development process. Installation of the hybrid beacons at Alejandra and Isabella are slated for 2016/17. Given the timing and requirements for the Caltrans development process, installation of any additional beacon would likely fall into a similar timeline; although given the Town's independent funding, the Town could ask for expedited processing of the project. Caltrans may or may not agree to do so and it is unlikely that Caltrans would fund any portion of the effort.

The Town could also ask Caltrans to “remove” marked crosswalks at selected uncontrolled intersections (such as Almendral, Stockbridge, or Selby). Staff mentions this with caution however, since removal of a crosswalk does not necessarily mean that pedestrians will not cross at the location.

The operational analysis is the first step in determining the feasibility of reducing the number of lanes on El Camino Real within the Town of Atherton from 6 lanes to 4 lanes, Caltrans requires an engineering operational analysis to evaluate the impacts of this reduction. Atherton staff met with Caltrans in July 2014 to discuss the scope of this analysis and specific Caltrans requirements. As a result of this conversation, staff put together a proposed scope of work for Caltrans review and comment.

After receiving review comments, staff developed the final scope of work that serves as the basis of the RFP. The traffic study will analyze El Camino Real from Oak Grove Avenue (Menlo Park) to Redwood Avenue (Redwood City) and will look at existing and future conditions using the San Mateo C/CAG Travel Demand 2040 model. It is very common for studies of this type to extend beyond the Town’s jurisdictional boundaries since a primary purpose of this operational analysis is to determine potential impacts to major transportation facilities in adjacent jurisdictions and to capture operational impacts at major intersections such as El Camino Real and Woodside Road.

Intersection turning movement counts during the morning and afternoon peak periods will be gathered at over 35 intersections within the study area. Traffic volume and vehicle classification counts will also be collected at key locations within the study segment. Additional analyses to be performed include: review of accident data, field observations, development of traffic simulation models, and travel demand forecasts.

The proposed RFP, along with a sample consultant services agreement, is attached for City Council information. The RFP will be broadly advertised to transportation consultants in the Bay Area. Once the proposals are received, review and ranking of the proposals will be performed by an evaluation team comprised of Town staff and transportation specialists from several adjacent public agencies. Proposals are due 4pm, November 12, 2014.

FISCAL IMPACT

No impact at this time.

Prepared By:

Approved:

Michael Kashiwagi, P.E.
Community Services Director

George Rodericks
City Manager

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ATTACHMENTS
Request for Proposal

TOWN OF ATHERTON



Request for Proposals

for

El Camino Real Lane Reduction Traffic Study

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

Proposals due by 4:00 pm on November 12, 2014

SECTION I	Overview
SECTION II	Background
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I. Overview

The Town of Atherton intends to retain a qualified professional engineering consultant to provide traffic engineering services required to prepare a traffic study for the Atherton-El Camino Real Lane Reduction Study. The study will analyze the feasibility of reducing the number of through travel lanes on El Camino Real from six to four between Valparaiso Avenue and 5th Avenue. The traffic study will analyze El Camino Real from Oak Grove Avenue to Redwood Avenue and will look at existing conditions and project conditions for the current year, interim year and build out (2040) years using the San Mateo C/CAG Travel Demand 2040 model.

II. Background

El Camino Real within the Town of Atherton is an existing State Highway (SR 82) and a major north-south transportation corridor serving the San Francisco Bay Area Peninsula. Currently, the corridor is incomplete since it is designed primarily for vehicular travel with minimal or no facilities to accommodate pedestrians and cyclists. Within Atherton, El Camino Real is a six-lane arterial roadway with a pavement width which varies from 80-85 feet. The road cross section also includes landscaped medians. The average daily traffic within the 1.6 mile segment of El Camino Real within Atherton exceeds 31,000 vehicles per day.

The Town of Atherton has been working with Caltrans since January of 2013 to identify short and long term solutions to improve pedestrian, bicycle, and vehicular safety along and across El Camino Real. Items discussed included:

- Installation of enhanced signing and striping at marked crosswalk locations at uncontrolled intersections.
- Trimming trees and removing vegetation within landscaped medians to improve visibility for pedestrians and vehicles.
- Place flashing beacons at selected crosswalk locations to improve driver awareness.

The Town and Caltrans also agreed that developing a long term plan for the entire 1.6 mile segment would be the most effective approach to improving safety. Items discussed included:

- The reduction of travel lanes from six lanes to four lanes to reduce pedestrian crossing distance and vehicular speeds.
- At Uncontrolled intersections with marked crosswalks, widen the existing center median and construct a pedestrian portal to provide a safe refuge for pedestrians crossing El Camino Real.
- Remove vegetation and trees in the medians to improve visibility.
- With implementation of lane reductions, provide a Class I bike facility along El Camino Real.

This study will begin the process of defining the long term plan for the 1.6 mile segment of El Camino Real.

III. Scope of Work

Reporting to and directed by the Town Engineer, the Project Manager will be responsible for advising on and documenting the progress of the traffic study.

Key Elements/Responsibilities Include but are not limited to:

Project Management and Meetings

The consultant will conduct a kick off meeting with City staff to finalize the scope of work and schedule, and discuss any issues to be clarified prior to the start of work.

Review Background Studies and Plans

The consultant shall review all background studies and plans which are relevant to this study.

Traffic Counts

The consultant shall lead the effort to complete the following intersection turning movement counts during the a.m. and p.m. peak periods including vehicles, bicycles, and pedestrians on El Camino Real at the following intersections:

Oak Grove Avenue	Valparaiso Avenue
Encinal Avenue	Stone Pine Lane
Alejandra Avenue	Buckhorn Way
Spruce Avenue	Watkins Avenue
Isabella Avenue	Walnut Avenue
Maple Avenue	Winchester Drive/Ashfield Road
Fair Oaks Lane/Atherton Avenue	Redwood Way
Tuscaloosa Avenue	Lloyden Drive
Almendral Avenue	Wilburn Avenue
Loyola Avenue	Stockbridge Avenue
Amherst Avenue	Fifth Avenue
Columbia Avenue	Selby Lane
Berkshire Avenue	Dumbarton Avenue/Oakwood Drive
Buckingham Avenue	Nottingham Avenue
Northumberland Avenue	Center Street/Commercial Driveway
Charter Street	Willow Street
Hazel Avenue	Laurel Street
Manzanita Street	Main Street
Redwood Avenue	

The consultant will also obtain traffic volume with vehicle classification counts at three locations along El Camino Real within the study segment.

The traffic counts shall be conducted at a time when schools are in session.

Collision Analysis

The consultant shall review the most recent 10 year collision data from SWITRS for the study area for all vehicle, bicycle, and pedestrian collisions. Rates will be developed for all roadway segments and intersections and compared with Caltrans expected rates for similar facilities.

Field Observations

The consultant shall conduct field observations of traffic operations, including intersection delay, signal phasing, and queuing during each peak period. Observations of bicycling and pedestrians along the corridor will also be completed during each peak period.

Existing Conditions-Synchro and SIMTraffic Simulation

The consultant will create a Synchro model for the corridor to cover the entire segment with all of the intersections on the corridor. Existing traffic volumes and signal timing parameters will be input to evaluate

intersection level of service and queuing on the corridor. The SIMTraffic component of the program will be used to develop a visual simulation of the corridor operations.

Existing + Project Conditions

The consultant will modify the Synchro model to reduce the number of through travel lanes on El Camino Real from six to four from Valparaiso Avenue to 5th Avenue. Intersection level of service and queuing on the corridor will be evaluated and recommendations for improvements shall be provided to keep levels of service at an acceptable level.

Existing and Existing + Project and Recommendations Tech Memo

The consultant shall prepare a technical memorandum that summarizes the existing conditions, existing plus project, and recommendations completed to date.

Develop Travel Demand Forecasts

The consultant shall lead the Travel Demand Forecasts task. Using the San Mateo County/C/CAG Travel Demand Model, will review projected growth, and develop travel demand forecasts using C/CAG model results for the existing conditions and the year 2040. An average per year volume growth factor will also be calculated. Road alternatives will include six and four through lanes on El Camino Real from Valparaiso Avenue to 5th Avenue for the current year, interim, and build out (2040) year will be modeled and evaluated using the C/CAG model. The modeling results will include both link and turning movement volumes in text format as well as shaped files for the following scenarios:

Existing
Existing plus Project
2040 No Project
2040 Plus Project

Year 2040 No Project

The consultant will use the year 2040 travel demand model traffic volumes and the six lane Synchro model to create corridor signal timing parameters for the segment and run a level of service and queuing evaluation. The SIMTraffic component of the program will be used to develop a visual simulation of the corridor operations.

Year 2040 + Project

The consultant will use the modified Synchro model using the four lane El Camino Real model from Valparaiso Avenue to 5th Avenue and the year 2040 travel demand model traffic volumes to create corridor signal timing parameters and run a level of service and queuing evaluation. The SIMTraffic component of the program will be used to develop a visual simulation of the corridor operations.

Interim Year + Project

If the Year 2040 plus project results in unacceptable levels of service, the consultant shall use the average year growth factor to find the design year that the four through lane segment can expect to last before unacceptable levels of service are produced.

Project Documentation

The consultant shall prepare a draft report with findings from the existing, existing plus project, Year 2040, Year 2040 plus project, and Interim Year plus project which includes but is not limited to listing of the Measure of Effectiveness (MOE's) that at a minimum includes delay, travel time, and Vehicle Miles Traveled (VMT) for the corridor, both northbound and southbound, AM and PM peaks from the Simtraffic model, and recommendations for review and comment by City staff. After comments are received, consultant shall revise and submit the final report to the City.

Additional Services

The consultant may be asked to prepare additional evaluations based upon findings of the existing or Year 2040 analysis. The consultant may also be asked to present the findings to the Town Council, other public meetings, or meetings with outside agencies.

IV. Submittal and Review Process

1. Applicant questions: All questions regarding the RFP shall be submitted in writing to Michael Kashiwagi, Community Services Director, at mkashiwagi@ci.atherton.ca.us. Questions and responses will be posted on the Atherton Town website.
2. Submittal Deadline: Late submittals will not be accepted.
3. In addition to written proposal, include sample project management documentation (e.g. meeting minutes, schedule reviews, cost control reporting)
4. Format and Delivery: Submit five (5) 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 Michael Kashiwagi at mkashiwagi@ci.atherton.ca.us.

5. Submittals will not be returned.
6. One (1) copy of the cost proposal shall be submitted in a separate sealed envelope at the same time as submittal of the technical proposal. The Town expects compensation to be on a time and materials basis with a not-to-exceed limit.

7. The Town reserves the right to accept or reject any or all proposals, or to alter the selection process in any lawful way, to postpone the selection process for its own convenience at any time, and to waive any non-substantive defects in this RFP or the proposals.
8. The Town reserves the right to negotiate with other qualified persons or firms, or to solicit additional statements of qualifications at any point in the project should it fail to negotiate a reasonable fee with the initially selected person or firm or should that firm fail to execute the Town's Agreement.

V. Proposed Timeline

October 16, 2014	RFP available on Town of Atherton website
October 31, 2014, 4 pm	Submission deadline for written questions
November 6, 2014	Responses to written questions available on Town website
November 12, 2014, 4 pm	Technical and Cost Proposals due
Week of December 8-12, 2014	Interviews with highest ranked proposers (if necessary)

VI. Proposal Content

The proposal should include the following:

1. **FIRM OR PERSON INTRODUCTION:** including information such as form of organization, length of time in business, office location(s), number of staff and a general summary of qualifications documenting the strengths of the firm or person, areas of expertise and licensing. 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 by the El Camino Real Lane Reduction Traffic Study project. Project experience should list the type of work provided with the client contact information for each project. If sub-consultants are proposed, include information on joint work, if any, and their roles in those projects.
4. **WORK PLAN:** detailed work plans with estimated hours by task or project phase.
5. **KEY STAFF:** including the identification of the Principal-in-Charge and key staff. This section should identify the qualifications and related experience of key staff assigned to the project; and includes their resume showing experience in traffic impact 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. COMMENTS OR REQUESTED CHANGES TO CONTRACT: A typical Town of Atherton Consultant Services Agreement is included as an attachment to the RFP. The proposing person or firm shall identify any objections and/or requested changes to the Agreement. The Town reserves the right to accept or reject any proposed changes.
10. PROFESSIONAL FEES: Include standard hourly fees and charges. **One (1) copy of the cost proposal shall be submitted in a separate sealed envelope at the same time as submittal of the technical proposal.**

VII. Evaluation Criteria

RFQ Evaluation Criteria

The project manager would ideally satisfy the following criteria:

- At least 10-years' experience managing traffic studies.
- Knowledge of the local areas traffic issues.
- Demonstrated experience with Caltrans requirements and process.
- Substantial experience managing public projects
- Sufficiently experienced and confident to challenge the project.
- Business office location within 50 miles of Atherton, CA

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

Standard Form of Agreement

VIII. Professional Services Agreement

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is entered into as of the _____, 2014 by and between the TOWN OF ATHERTON ("Town") and _____ ("Consultant").

RECITALS

WHEREAS, Town desires to obtain transportation planning services in connection with the El Camino Real Lane Reduction Study;

WHEREAS, Consultant hereby warrants to Town that Consultant is skilled and able to provide such services described in this Agreement; and

WHEREAS, Town desires to retain Consultant in accordance with the terms of this Agreement to provide the services described herein.

AGREEMENT

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

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

2. Project Coordination.

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

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

3. Scope and Performance of Services

A. Scope of Services. Subject to such policy direction and approvals as Town through its staff may determine from time to time, Consultant shall perform the services outlined in the "Scope of Work" attached as Exhibit A ("Services"). Town shall have the right to amend the Scope of Work by written notification to Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party. Consultant shall not commence any work exceeding the Scope of Work without prior written authorization from Town. Failure of Consultant to secure Town's written authorization for extra

or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time of performance, whether by way of restitution, quantum meruit, or any other form of monetary or nonmonetary compensation.

B. Time of Performance. The Services are to commence no sooner than _____ and must be completed no later than _____. Consultant shall perform the Services in accordance with the "Schedule of Performance" attached as Exhibit B. Any changes to the dates in either this Section or Exhibit B must be approved in writing by the Project Manager.

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

4. Compensation and Method of Payment.

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

B. Timing of Payment. Town shall make progress payments to Consultant that will be tied to completion of tasks so that all payments are proportional to the work completed. A copy of the progress payment schedule is attached to Exhibit C.

C. Changes in Compensation. Consultant shall not undertake any work that will incur costs in excess of the Cost Ceiling without prior written authorization by the Project Manager.

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

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

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

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

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

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

9. Conflict of Interest.

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

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

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

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

10. Liability of Members of Town. No member of Town, including without limitation any officer, employee, or agent, shall be personally liable to Consultant in the event of any default or breach of Town, or for any amount that may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

11. Indemnity. To the fullest extent permitted by law, Consultant hereby agrees to defend (by counsel reasonably satisfactory to the Town), indemnify, and hold harmless Town, its officers, agents, employees, volunteers, and servants, from and against any and all claims, demands, damages, costs, liabilities, or obligations brought on account of or arising out of any acts, errors, or omissions of Consultant, its officers, employees, agents, and subcontractors undertaken pursuant to this Agreement, excepting liabilities due to the sole negligence or willful misconduct of Town. Town has no liability or responsibility for any accident, loss, or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in California Civil Code Section 2778. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Consultant under Workers' Compensation, disability, or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Consultant and shall continue to bind the parties after termination/completion of this Agreement.

12. Independent Contractor; Not an Agent of Town. It is expressly agreed that Consultant, in the performance of the Services agreed to be performed hereunder, shall act as and be an independent contractor and not an agent or employee of Town. As an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits that accrue to Town employees, and Consultant hereby expressly waives any claim it may have to any such rights. Further, Consultant, its officers, employees and agents shall not have any power to bind or commit Town to any decision.

13. Compliance with Laws.

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

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

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

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

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

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

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

15. Assignment; Subcontractors; Employees.

A. Assignment. Consultant shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without Town's prior written consent. Any assignment without such approval shall be void and, at Town's option, shall immediately cause this Agreement to terminate.

B. Subcontractors; Employees. Consultant shall be responsible for employing or engaging all persons necessary to perform the Services. No subcontractor of Consultant shall be recognized by Town as such; rather, all subcontractors are deemed to be employees of Consultant, and Consultant agrees to be responsible for their performance. Consultant shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, it shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

16. Insurance.

A. Minimum Scope of Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Termination of Agreement; Default.

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

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

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

D. Upon termination of this Agreement with or without cause, Consultant shall immediately turn over to the City Manager any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by Consultant or its subcontractors, or given to Consultant or its subcontractors, in connection with this Agreement. Such materials shall become the permanent property of Town. Consultant, however, shall not be liable for Town's use of incomplete materials or for Town's use of complete documents if used for services other than those contemplated by this Agreement.

18. Suspension. Town shall have the authority to suspend this Agreement and the Services, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of Consultant to perform any provision of this Agreement.

charges for services, expenditures, and/or disbursements charged to Town for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

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

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

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

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

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

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

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

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

- A. Exhibit A: Scope of Work
- B. Exhibit B: Schedule of Performance
- C. Exhibit C: Compensation
- D. Exhibit D: Consultants, Specialists, or Experts

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

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

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

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

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

TOWN OF ATHERTON

**CONSULTANT
(CORPORATIONS REQUIRE (2)
SIGNATURES**

By: _____
George Rodericks, City Manager

By: _____
Title: _____

Date:

Date:

APPROVED AS TO FORM:

By: _____
Title: _____

By: _____
William Connors, City Attorney

Date:

ATTEST:

By: _____
Theresa DellaSanta, City Clerk

EXHIBIT A

Scope of Work

EXHIBIT B

Schedule of Performance

EXHIBIT C

Compensation

EXHIBIT D

Consultants, Specialists, or Experts